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July 27, 2020

VIA EMAIL

Dan Bartel
Assistant General Manager/District Engineer
Rosedale-Rio Bravo Water Storage District
849 Allen Road
Bakersfield, CA 93314

Re: City of Bakersfield's Comments to Draft Environmental Impact Report for Onyx Ranch South Fork Valley Water Project

Dear Mr. Bartel:

On behalf of the City of Bakersfield ("City" or "Bakersfield"), we submit the following comments to the Draft Environmental Impact Report ("DEIR") for the Onyx Ranch South Fork Valley Water Project ("Project") issued by the Rosedale-Rio Bravo Water Storage District ("Rosedale" or "RRBWSD") on May 22, 2020.

On March 23, 2018 the City submitted detailed comments to the Notice of Preparation ("NOP") for the Project. In the comments, the City raised a number of concerns with the Project and identified a number of issues, and impacts, that Rosedale should identify and review in the DEIR for the Project. Rosedale, however, failed to sufficiently address or respond to the City's comments to the NOP in the DEIR. Rosedale in particular failed to provide data, information and analysis in the DEIR that is necessary and required for an EIR for a project that proposes a change in the point of diversion and place of use of a significant quantity of Kern River water.

The City accordingly has a number of significant concerns with regard to the Project, and Rosedale's failure to comply with the requirements of the California Environmental Quality Act ("CEQA") in connection with the DEIR.

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The City also remains convinced that Rosedale has not proposed a valid, or viable, Project. The City has significant practical, operational and legal concerns with regard to the Project, and questions whether Rosedale can implement the Project without causing harm to the local environment, the City's water resources and supplies, and the Kern River.

1. BAKERSFIELD HAS SIGNIFICANT CONCERNS WITH AND OBJECTIONS TO THE PROJECT

Bakersfield will not repeat all of its practical and legal concerns with regard to the Project in these comments. The City's comments to Rosedale's NOP set forth the City's extensive and detailed questions, concerns and objections to the Project. The City attaches a copy of the comments to the NOP as Exhibit A, and incorporates such comments as part of the City's comments to the DEIR. (*See Woodward Park Homeowners Assn., Inc. v. City of Fresno* (2007) 150 Cal.App.4th 683, 712, noting that comments to an NOP were preserved for a later challenge to an EIR.)

The City points out that the DEIR fails to address any of the questions, uncertainties and deficiencies with the water rights that Rosedale claims in connection with the Project, and the extent, yield and viability of Rosedale's claimed rights, and Rosedale's ability to change the point of diversion and place of use of such rights. The continued lack of information and uncertainty with regard to Rosedale's claimed water rights undercuts and negates the review and analysis of Project impacts in the DEIR.

In particular, the DEIR fails to address or respond to the City's prior stated concerns with regard to (1) the viability and yield of Rosedale's claimed pre-1914 appropriative water rights, and its claimed ability to create a water supply on the South Fork of the Kern River through a curtailment of diversions, (2) Rosedale's lack of any practical or legal right to move water through Lake Isabella, or to hold water in Lake Isabella, (3) Rosedale's practical and legal inability to transport alleged new or additional water supplies through the Kern River channel to Rosedale, and (4) adverse impacts on the City's water rights and supplies through a loss of water, in violation of Water Code Section 1706.

As explained in detail in the attached NOP comments, the City's concerns and objections with regard to the Project, include, but are not limited to, the following:

- The City continues to question whether the "pre-1914 appropriative water rights on the South Fork of the Kern River" which Rosedale claims it acquired and holds in connection with the Onyx Ranch property, are still valid, viable and enforceable.
- The City has concerns over the amount of water that Rosedale claims it will utilize in connection with the Rosedale's claimed rights, and questions whether

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the actual, historic record of diversion and use of Rosedale's rights supports or properly evidences the quantities of water Rosedale proposes to use, and transfer, in connection with the Project.

- The DEIR fails to indicate or establish that Rosedale holds any right to transfer water through Lake Isabella, or to hold or store water in Lake Isabella. Absent a right or agreement to use Lake Isabella, the Project is not valid or viable in its present form, and any hope or intention for a future right to use Lake Isabella represents pure, unsupported speculation and conjecture.
- The DEIR fails to indicate or establish that Rosedale holds any right to transfer or transport its purported new water supply, with a claimed yield of between 2,000 and 12,000 acre-feet of water per year, through the Kern River channel below Lake Isabella.
- Any attempt to move water through Lake Isabella and the Kern River channel would adversely impact the City's prior water rights and supplies, as the transportation of water pursuant to the Project would necessarily displace or replace water which would otherwise be diverted by the City and other Kern River interests.
- The potential loss of between 2,000 to 12,000 acre-feet per year of the City's Kern River water supply, as well as the water supplies of other Kern River parties, would cause significant "injury" to the City, in violation of Water Code Section 1706.

The City will also address and challenge Rosedale's claimed water right at a later time, and its attempted change in the point of diversion and place of use of its claimed rights, in an appropriate forum. The City still believes it is necessary and advisable to raise its substantive objections and challenges to the Project at this time, in these comments to the DEIR, because presumably the Rosedale Board of Directors will consider such objections and concerns, along with the environmental impacts of the Project, in deciding whether to approve the Project and the DEIR. The City wants to make sure that Rosedale's Board of Directors considers the City's serious and strenuous objections to the Project in making that determination.

2. ROSEDALE HAS FAILED TO COMPLY WITH BASIC, NECESSARY CEQA REQUIREMENTS IN ITS PREPARATION OF THE DEIR

In addition to the City's ongoing concerns with the validity and viability of the Project, and Rosedale's claimed water rights, it is also apparent that Rosedale has not complied with the requirements of CEQA, and applicable provisions of California law, in the DEIR.

Among other things, Rosedale has not complied with the provisions of CEQA through the DEIR because:

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- The description of the Project in the DEIR is incomplete, and misleading, as Rosedale omits any mention or discussion of important, necessary components of the Project, including details regarding the storage of Project water in Lake Isabella, the release of water from Lake Isabella, the conveyance of Project water through the Kern River channel, and the diversion of water into Rosedale's service area.
- The DEIR omits other critically important details and components of the Project, and information regarding the water that will be developed and used in connection with the Project. Among other things, the DEIR fails to identify the process, procedures and future agreements that will dictate and regulate the transfer, conveyance and diversion of water pursuant to the Project, and the DEIR fails to include necessary, important information regarding the source of water for the Project, and uncertainties and expected challenges to the alleged water rights that Rosedale claims it can use in the Project.
- The Project area identified and studied by Rosedale in the DEIR is improperly limited and restricted to only the Onyx and Smith Ranch areas in the Kern River Valley, without consideration of impacts from the Project on areas below Lake Isabella, including the Kern River channel, Rosedale's service area, and the service areas of the City and other Kern River interests that will suffer a loss of water through the Project.
- Based in large part on the lack of required and necessary information regarding the Project, and the improperly narrow Project area, the DEIR fails to properly identify, study and review significant Project impacts.
- The DEIR is incomplete, and deficient, because it does not disclose the questions, uncertainties or challenges to Rosedale's claimed water rights, or Rosedale's right and ability to change the place of use and type of use of such claimed water rights pursuant to Water Code Section 1706.
- The DEIR fails to identify baseline conditions in Lake Isabella, the Kern River, and the areas that will be impacted by the Project.
- The DEIR does not sufficiently or adequately identify and discuss related Project Impacts, including cumulative impacts.
- The DEIR does not properly or sufficiently consider alternatives to the Project, Including the no project alternative.
- Rosedale violated CEQA by committing itself to the Project and deciding on a definite course of action with regard to the Project, prior to preparation of the DEIR.

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In light of all of these deficiencies, and omissions, the DEIR fails to comply with the policy, purpose or specific requirements of CEQA, and fails as a public document.

The fundamental purpose of an EIR is “to provide public agencies and the public in general with detailed information about the effect which a proposed project is likely to have on the environment.” (Public Resources Code § 21061.) Full and candid disclosure, and an honest assessment of the environmental consequences of governmental action, is the foundation of the CEQA process. The foremost principle under CEQA is that the Legislature intended the act “to be interpreted in such manner as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language.” (*Friends of Mammoth v. Board of Supervisors* (1972) 8 Cal.3d 247, 259.)

In sharp contrast to the underlying purpose and principles of CEQA, Rosedale has attempted, through the DEIR, to obscure and hide the details of the Project, and to avoid or minimize any real analysis of the Project’s impact on the environment, the City, and other entities that divert and use Kern River water. Rosedale attempts to use the DEIR and the CEQA process not to inform the public, but to confuse the public and to hide the details and impacts of its intention to strip rural, agricultural lands of water supplies and to ship the water more than 60 miles to the far western region of Kern County.

A. The Project Description is Incomplete and Misleading

The DEIR fails to provide a clear, consistent or complete description of the Project, the goals and purposes of the Project, or the various “components” of the Project. The description of the Project, and the purpose and objectives of the Project, consequently does not comply with the requirements of CEQA.

The DEIR describes the Project as follows:

“The proposed project involves changing the points of diversion and place of use for the RRBWSD’s pre-1914 appropriative surface water rights in the South Fork of the Kern River from the project site to the RRBWSD diversion point on the San Joaquin Valley floor. The proposed changes would allow water to flow past the project site (Onyx and Smith Ranches), resulting in a net increase in surface flows within the South Fork of the Kern River and the Isabella Reservoir. The increased amount of water accumulated in the Isabella Reservoir would be released through the Isabella Dam and flow downstream in the Lower Kern River. The RRBWSD would divert the water from the Lower Kern River and deliver it to the groundwater recharge basins and channels in and near the

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RRBWSD's service area west of the City of Bakersfield in the San Joaquin Valley.” (DEIR, at pages ES-4, 5.)¹

The DEIR later claims that the Project would produce and result in “an average of 6,014 net acre-feet per year of new water in the Isabella Reservoir.” (2-22.) The DEIR also claims that “the total amount of water that would be moved from the project site to the RRBWSD service area on the San Joaquin Valley floor . . . would range from about 2,000 acre-feet per year to 12,000 acre-feet per year, depending on year type.” (2-19.)

The DEIR also lists six “elements” of the Project, including:

- (1) “collection of surface flow diversion data for the South Fork of the Kern River and the preparation of data records for use by downstream water right holders,”
- (2) “collection of groundwater pumping data and the preparation of data records for use by the water right holders,”
- (3) “collection of groundwater level and water quality data . . . from the wells on the project site,”
- (4) “use of a comprehensive calibrated groundwater/surface water model to estimate the net difference between the amount of South Fork of the Kern River water reaching Isabella Reservoir in the existing condition and with the proposed project,”
- (5) “the coordinated release of water from the Isabella Reservoir,” which would include coordination with “the USACE, Kern River Watermaster, and the Kern River Interests to release the RRBWSD water through the Isabella Reservoir and ensure that amount is not diverted by others between the Isabella Reservoir and the existing diversion points in the RRBWSD service area,” and
- (6) “land management practices for the agricultural fields on the project site.”

The first four “elements” of the Project only describe data gathering and monitoring efforts in connection with the Project, instead of actual components of the Project. The last element of the Project involves “land management practices” that Rosedale would presumably have to undertake outside of and independent of the Project.

The fifth element of the Project is therefore the only element that reflects and refers to the actual Project, which calls for a change in the point of diversion and place of use for certain claimed water rights, and the conveyance of water allegedly generated by the Project through Lake Isabella, and then through the Kern River channel, until Rosedale diverts the alleged “new” water supply out of the Kern River and into its service area. The Project Description section of

¹ All future references to portions of the DEIR will only list the page number.

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the DEIR, however, fails to identify or describe important components of the Project, including the agreements that would be necessary before Rosedale could move any water into Lake Isabella, hold water in Lake Isabella, release water from Lake Isabella, and transport water through the Kern River channel downstream to Rosedale's service area, all without being lost or diverted by senior Kern River right holders, including the City.

The DEIR only states that "the increased flows resulting from the proposed project would be released through the Isabella Dam and flow downstream in the Lower Kern River until the water is diverted at the RRBWSD diversion points." (2-1.)

The DEIR later provides slightly more information regarding the practical and physical components of the Project with regard to "Element 5:"

"Project Element 5 consists of coordination with the USACE, Kern River Watermaster, and the Kern River Interests to release the RRBWSD water through the Isabella Reservoir and ensure it is not diverted by others between the Isabella Reservoir and the existing diversion points in the RRBWSD service area. The RRBWSD would coordinate with the Lower Kern River Interests to address scheduling releases and computing any losses between the Isabella Reservoir and the existing RRBWSD diversion points within its service area.

The increased flow in the South Fork of the Kern River watershed would move downstream through Isabella Reservoir and the Isabella Dam and then into the Lower Kern River. The RRBWSD would coordinate with the Kern River Watermaster, Kern River Interests, and USACE to facilitate the movement of the water through the Isabella Dam, or alternatively, secure temporary storage of the water in the Isabella Reservoir for later release to the downstream RRBWSD service area." (2-22, 23.)

The DEIR does not provide any additional information regarding this critical component of the Project. The DEIR in particular fails to disclose or identify the type of multi-party agreement or understanding that Rosedale would obtain in order to "coordinate" the conveyance of water into Lake Isabella, and out of Lake Isabella, and through the Kern River channel to Rosedale's service area. The DEIR also does not explain how Rosedale would "coordinate" to schedule releases and compute any losses between Lake Isabella and Rosedale's downstream diversion points.

The DEIR does not explain what type of "coordination" Rosedale would need to accomplish with the listed entities with regard to the transportation of water through Lake Isabella and the Kern River Channel. The DEIR does not describe which "Kern River Interests" Rosedale would need to reach an agreement or understanding with to obtain the required "coordination" of flows. The DEIR fails to explain how diversions of alleged new water

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supplies from the Project could be accommodated or coordinated with diversions by prior right holders with senior Kern River water rights.

Rosedale indicates that “system losses” for water conveyed through the Kern River channel would have to be determined in the future. (2-22.) The DEIR, however, does not provide any specific details as to how such losses would be determined, or how the conveyance of water and calculation of losses would be coordinated or accommodated with the conveyance of water by Bakersfield and other Kern River interests below Lake Isabella. That is an important feature of the Project that would necessarily determine whether, and how, Rosedale could move water physically, and legally, through the Kern River below Lake Isabella.

The lack of information regarding the conveyance of water to Rosedale is significant, and indicates that the Project is premature, incomplete, and not viable. Rosedale presently has no right or ability to move Kern River water through Lake Isabella, and through the Kern River channel below Lake Isabella. Rosedale would need some sort of permission, agreement or license from the City and other Kern River interests for the use and operation of the facilities within and around the Kern River. Rosedale would also need to reach an agreement with the City, as operator and record keeper on the Kern River, recognizing that water placed in the Kern River pursuant to the Project belongs to Rosedale, and is not absorbed by other Kern River rights. Absent an agreement with the City and other Kern River water interests, any water brought into the Kern River channel by Rosedale would be considered abandoned, and would be subject to and absorbed by prior rights held by the City and other interests.

The limited information that is provided in the DEIR regarding the conveyance of water for the Project is incomplete and misleading. Rosedale fails to address or account for the legal and practical obstacles to the use of the Kern River channel and Lake Isabella for storage and conveyance of water. The DEIR simply assumes that Rosedale will reach an agreement with a number of disparate water right holders and users, without identifying any of the issues, and obstacles, that Rosedale would have to address through such an agreement.

Rosedale would necessarily have to displace, replace or dispose of water presently in Lake Isabella in order to hold or transport water through Lake Isabella. That would result in adverse impacts to various Kern River interests, and would require future agreements and arrangements with Kern River interests. The DEIR, however, fails to identify or discuss this critically important component of the Project, and fails to assess the impact of the Project on those agreements and arrangements.

The DEIR provides no indication or explanation as to how or to what extent Rosedale would attempt to avoid reducing or displacing water accruing to existing Kern River water rights, including rights held by the City. There is no explanation or indication as to the specific

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steps or measures Rosedale would take to avoid or mitigate adverse impacts on other Kern River water rights and supplies.

The DEIR does not identify or account for any impacts on power generation and power generation rights involving flows released from Lake Isabella, including rights held by Southern California Edison and PG&E.

Rosedale also does not hold or use any Kern River water rights, other than through contracts with the City, and the alleged water right described in the DEIR. Rosedale additionally cannot utilize or rely on accessing any of its contract Kern River water in connection with the Project to hold or move water through Lake Isabella. Any attempt to transport water through the Kern River channel would be subject to competing claims, needs and demands by Kern River interests and prior Kern River water right holders, including the City.

The claimed intent to “coordinate” the storage and conveyance of water through Lake Isabella constitutes an admission that Rosedale has no present right or ability to move water into or out of Lake Isabella. That statement does not establish that Rosedale will be able to secure any right to move water through Lake Isabella. The Project Description presents only “wishful thinking” with regard to necessary and important Project components. The Project description is therefore incomplete and invalid in its present form.

The DEIR also fails to describe how, where and for what purpose Rosedale would use water generated by the Project. It is not clear, for example, whether Rosedale would use Project water in connection with existing Rosedale projects and groundwater banking programs. It is also not clear if water generated by the Project would be used within Rosedale, or transferred, sold or exchanged for use elsewhere in Kern County or outside of Kern County.

An accurate, finite project description “is indispensable to an informative, legally adequate EIR.” (*County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 192.) Without an accurate description on which to base the EIR’s analysis, CEQA’s objective of furthering public disclosure and informed environmental decision making are stymied. “An accurate project description is necessary for an intelligent evaluation of the potential environmental effects of a proposed project.” (*San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 730.)

An EIR’s project description must provide “enough information to ascertain the project’s environmentally significant effects, assess ways of mitigating them, and consider project alternatives.” (*Sierra Club v. City of Orange* (2008) 163 Cal.App.4th 523.) California courts have frequently stated that “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, assess the advantage of terminating the proposal ... and weigh other alternatives in the balance” and that “[a]n accurate, stable and finite project description is

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the sine qua non of an informative and legally sufficient EIR.” (*County of Inyo, supra*, 71 Cal.App.3d at 192-193; *Santiago County Water Dist. v. County of Orange* (1981) 118 Cal.App.3d 818, 830.)

If a project description is incomplete or inadequate, the environmental analysis will necessarily be incomplete and inadequate. (*Laurel Heights Improvement Association v. Regents of University of California* (1988) 47 Cal.3d 376, 399-400; *San Joaquin Raptor/Wildlife Rescue Center, supra*, 27 Cal.App.4th at 729.) In *County of Amador v. El Dorado County* (1999) 76 Cal.App.4th 931, for example, the court found that an EIR for a water supply project was deficient for not providing information on historic water release schedules from storage lakes, so that parties could determine if the project would alter the historic “baseline” pattern of water releases. An accurate and complete description of a project is required under CEQA to allow for “an intelligent evaluation of the potential environmental effects of a proposed activity.” (*McQueen v. Board of Directors* (1988) 202 Cal.App.3d 1136, 1143, in which the court stated that the term “project” under CEQA “is given a broad interpretation in order to maximize protection of the environment.”)

As a result of Rosedale’s failure to describe necessary elements of the Project, including the agreements, arrangements and procedures for the storage of water in Lake Isabella, the release of water from Lake Isabella, the transportation of water in the Kern River channel in conjunction with water accruing to existing Kern River rights, and the diversion of Project water into Rosedale’s service area, the DEIR does not and cannot review significant and inevitable Project impacts. Failure to include that such important Project details and information in the DEIR constitutes improper “piecemealing”, in violation of CEQA.

The entire project being proposed for approval must be described in the EIR. A complete project description is necessary to ensure that all of the project's environmental impacts are considered. (*City of Santee v. County of San Diego* (1989) 214 Cal.App.3d 1438, 1450.) In *County of Inyo*, for example, the court found that an EIR improperly fails to described or analyze groundwater exports because the EIR improperly sought to characterize expanding groundwater exports as a separate, ongoing project. (71 Cal.App.3d at 193.)

A lead agency may not split a single large project into small pieces so as to avoid environmental review of the entire project. (*Orinda Association v. Board of Supervisors* (1986) 182 Cal.App.3d 1145, 1171.) Instead, an EIR must examine all components necessary to a project, including those that will have to be approved by another agency. (*Riverwatch v. County of San Diego* (1999) 76 Cal.App.4th 1428.)

The description of the Project in the DEIR is therefore incomplete and deficient.

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B. The DEIR Fails to Identify, Include and Discuss Important Information Which is Necessary for a Proper Review of Project Impacts

In addition to failing to provide necessary and important information regarding the Project components, goals and objectives, the DEIR fails to include or disclose additional data and information regarding a number of other matters which is necessary for any proper or meaningful review of the impact of the Project on the environment. The DEIR, most importantly fails to provide necessary information with regard to the operation and management of Lake Isabella and the Kern River, and the prior rights and agreements that govern and regulate the Kern River.

The Kern River is highly regulated, managed and controlled by the City and other Kern River interests. The City uses the Kern River channel to transport water supplies through various weirs, dams and other regulating structures to various diversion points on the river. The City also uses the Kern River channel and structures for recharge purposes, including to store and bank Kern River surface water in the groundwater basin for later extraction and use. In effect, every drop of water coming into the Kern River channel is owned and controlled by the City or other Kern River interests, and such ownership and control extends to recharged and stored water supplies in the groundwater basin.

The City also measures, monitors and records flows of water in the Kern River, and diversions from the river for various uses, including diversions into storage through the Kern River channel for recharge purposes. The City prepares monthly and annual summaries of the diversion and use of Kern River water for distribution to various Kern River interests.

Rosedale ignores and fails to acknowledge or account for all of these facts and circumstances. The DEIR does not identify or refer to the myriad of agreements, judgments, policies and procedures commonly referred to as “the Law of the River” that controls and impacts the diversion and use of Kern River water. The DEIR further ignores and fails to discuss the regulating structures, weirs and canals on the river, or the City’s active management and operation of such structures in connection with the Kern River.

The DEIR also fails to identify or describe any other Kern River water rights and supplies, including rights held by Bakersfield and other entities below Lake Isabella. The DEIR does not acknowledge or identify the agreements, judgments, orders, policies and practices which govern and control the conveyance of water through the Kern River channel, and the diversion and use of water from the Kern River. Without that critical information, the DEIR cannot properly review the impacts of the Project on other Kern River interests. The DEIR, moreover, improperly fails to acknowledge or identify any potential impact on the water rights and supplies of other entities, such as Bakersfield, that hold Kern River water rights or which use and rely on Kern River water supplies.

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The DEIR does not discuss or analyze the impact of the Project on the quantity and timing of flows in the Kern River below Lake Isabella. The DEIR does not attempt to explain or quantify such flows, which consequently makes it impossible to determine the impacts of the Project on such flows. The DEIR also does not describe the plant and animal life in and around the river, or the impact of the Project on such plant and animal life.

The DEIR fails to include or discuss information regarding uncertainties and questions with regard to Rosedale's claimed water rights, as discussed in more detail in the City's comments to the NOP for the Project. Even if Rosedale rejects the challenges and uncertainties associated with its claimed water rights, it must acknowledge such uncertainties in the DEIR. Rosedale is also required to discuss and identify potential alternate sources of water for the Project if its claimed water rights and supplies are later challenged and invalidated, or reduced in volume.

The failure to provide information regarding Rosedale's claimed new water rights, other Kern River water rights and supplies, and the use of water from the Kern River, is contrary to the intent and requirements of CEQA. The California Supreme Court has recognized that "the future water sources for a large land use project and the impacts of exploiting those sources are not the type of information that can be deferred for future analysis." (*Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 431.) In *Vineyard*, the court explained that "future water supplies" identified and analyzed in an EIR "must bear a likelihood of actually proving available; speculative sources and unrealistic allocations ('paper water') are insufficient bases for decisionmaking under CEQA." (*Id.* at 432.) The court further explained that an EIR for a land use project "must address the impacts of likely future water sources, and the EIR's discussion must include a reasoned analysis of the circumstances affecting the likelihood of the water's availability." (*Id.*, citing *California Oak Foundation v. City of Santa Clarita* (2005) 133 Cal.App.4th 1219, 1244.)

Courts have previously invalidated EIRs that did not contain sufficient information and details about water supplies proposed for use in a project, and which did not adequately discuss uncertainties associated with water supplies. (See e.g. *Planning & Conservation League v. Department of Water Resources* (2000) 83 Cal.App.4th 892, 908, fn. 5, noting that State Water Project entitlements represent nothing more than "hopes, expectations, water futures or, as the parties refer to them, 'paper water'"; *Santa Clarita Organization for Planning the Environment v. County of Los Angeles* (2003) 106 Cal.App.4th 715, 722, holding that an EIR's water supply discussion was inadequate because of its assumption that 100 percent of a party's SWP entitlement would be available; *California Oak Foundation, supra*, 133 Cal.App.4th at 1238–1239, 1244, in which the court rejected an EIR for an industrial park because the water supply analysis relied, without adequate consideration of the uncertainties of SWP supplies, on the party's purchase of 41,000 af in imported SWP water supplies.

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An EIR also cannot rely on information that is not either included or described and referenced in the document. (*Vineyard Area Citizens for Responsible Growth, Inc., supra*, 40 Cal.4th at 442.) An EIR should not be written in a way that forces readers “to sift through obscure minutiae or appendices” to find important components of the analysis. (*San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645, 659.)

C. The Project Area Described and Studied in the DEIR is Improperly Limited and Incomplete

The DEIR has adopted an unreasonably limited, deceptive and misleading description of the Project site, or area. The DEIR states:

“The project site is located approximately 5 miles from the eastern boundary of the Isabella Reservoir along the South Fork of the Kern River, approximately 50 miles east of the RRBWSD service area in the San Joaquin Valley. The majority of the project site, consisting of approximately 3,418 acres, is located within lands collectively known as the Onyx Ranch. The remaining approximately 691 acres are parcels within the Smith Ranch, of which the RRBWSD owns one-third interest.” (2-2.)

It is inexplicable, and a clear and obvious violation of CEQA, for Rosedale not to include its own service area in the Project site, since water generated by the Project will allegedly eventually be diverted into and used within Rosedale’s service area. The Project area should have also included Lake Isabella and the Kern River channel and corridor below Lake Isabella, as the Project involves the conveyance of water through those facilities and properties. The Project area should have also included the service areas for the Kern River interests, such as the City, that will likely experience a reduction of their Kern River surface water supplies as a result of the Project.

That limited Project location description is not in compliance with CEQA. The Project location must include all areas where the Project will be implemented, and where the Project will impact the environment. An EIR must consider all impacts of a project on the environment, even if the impacts would be felt by another agency. (*San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus, supra*, 27 Cal.App.4th.) A complete project description is necessary to ensure that all of the project's environmental impacts are considered. (*City of Santee, supra*, 214 Cal.App.3d at 1454.)

As a result of the incomplete, improper description of the Project area, the review and analysis of Project impacts in the DEIR is necessarily incomplete and deficient. The Project setting and Project location must include the Kern River channel, the area in and around the Kern River channel, and Rosedale’s service area. The Project will be implemented and carried out at those locations, and the Project will have significant impacts on those areas. In particular, most of the impacts from the Project will occur within the Kern River channel as a result of the

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Project's proposed conveyance of water through the channel, which would occur at same time as, and potentially in conflict with, water moved through the channel by the City or by the City on behalf of other Kern River interests. Project impacts will additionally primarily be realized within the boundaries of Rosedale, where water generated and transported pursuant to the Project would eventually be put to use.

D. The DEIR's Discussion of Project Impacts is Incomplete, Misleading and Erroneous

As a direct and obvious result of the DEIR's incomplete Project description, missing data and information, and limited and restricted Project area, the review and discussion of Project impacts in the DEIR is incomplete, deficient and not in compliance with CEQA requirements.

The DEIR does not and cannot properly and completely review Project impacts without proper identification and discussion of important Project components, starting with the details and information involving the storage of Project water in Lake Isabella, the release of Project water from Lake Isabella, and the conveyance of Project water through the Kern River channel to the Rosedale service area. The DEIR additionally does not and cannot completely assess Project impacts without considering impacts within Rosedale, and within the service areas of Kern River interests that will be impacted by the Project through a reduction in their surface water supplies.

The DEIR also fails to properly identify and study Project impacts because it arbitrarily and improperly limits the Project Area to the Kern River Valley, and fails to include Lake Isabella, and the areas below Lake Isabella in the Project Area. The DEIR therefore improperly concludes that the Project will not result in any significant impacts on a number of resources, based on its failure to consider Project impacts below Lake Isabella. The DEIR also understates a number of other Project impacts by limiting its consideration of impacts to the Kern River Valley.

An EIR must describe and analyze the significant environmental effects of a project, and discuss ways of mitigating or avoiding those effects. (14 Cal. Code Regs. § 15362.) Among other things, an EIR must identify direct, indirect and long-term environmental effects, and cumulative impacts. (14 Cal. Code Regs. §§ 15126(a), 15130.) An EIR must provide public agencies, and the public in general, with detailed information about the effects a proposed project is likely to have on the environment. (Pub. Res. Code §§ 21060.5, 21061; *Environmental Planning and Information Council v. County of El Dorado* (1982) 131 Cal.App.3d 350, 354.)

An EIR must be prepared with a sufficient degree of analysis to provide decision-makers with the information needed to make an intelligent judgment concerning a project's environmental impacts. (14 Cal. Code Regs. §15151; *Napa Citizens for Honest Government v. Napa County Board of Supervisors* (2001) 91 Cal.App.4th 342, 356.) An EIR should, when

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looked at as a whole, provide a reasonable, good faith disclosure and analysis of the project's environmental impacts. (*Laurel Heights Improvement Assn.*, *supra*, 47 Cal.3d at 392.)

The entire DEIR is fundamentally flawed because it fails to discuss, recognize or account for the fact that the Project will necessarily result in a decrease in water supplies for the City, and other entities that use and rely on Kern River surface supplies, and banked Kern River supplies. Consequently the DEIR fails to properly assess or review Project impacts, including impacts on local water supplies, fails to inform the public of the impacts resulting from the Project, and fails as a CEQA document.

The Kern River, and Lake Isabella, contain a finite amount of water. Water in Lake Isabella, and in the Kern River following release of the water from Lake Isabella, is the property of the Kern River interests. Although the Kern River also contains certain quantities of unappropriated high flow water and unappropriated water forfeited by a senior right holder, the Kern Delta Water District, that unappropriated water is also subject to competing claims before the State Water Resources Control Board, and is currently being diverted and used by various Kern River interests.

The Project would not practically increase the quantities of water in Lake Isabella and the Kern River channel, but would instead necessarily displace and replace water subject to senior rights and claims. The Project would therefore reduce the quantity of Kern River water available for use by the City and other Kern River interests. The loss of such water supplies would necessarily result in adverse impacts to the local groundwater basin through a loss of valuable surface water supplies. The Project would lead to a decrease in the quantity of water available for groundwater recharge, and would further deplete groundwater resources through increased groundwater pumping to replace lost surface water supplies. It is inexcusable, and a clear violation of CEQA, for the DEIR not to acknowledge or review those significant and adverse impacts on the City, the Kern River, the local groundwater basin, and the environment in and around the Kern River.

In addition, any attempt to move water through Lake Isabella and the Kern River channel would adversely impact the City's prior water rights and supplies. The transportation of water pursuant to the Project would necessarily displace or replace water which would otherwise be diverted by the City. The supply of water available for use by the City for a number of beneficial uses, including direct diversion to water treatment plants and groundwater recharge and banking in the Kern River channel, would necessarily be reduced and adversely impacted. A reduction of the supply of Kern River water available to the City would also cause significant secondary and cumulative adverse impacts, including a decline in groundwater levels in the region, and increased pumping and reliance on groundwater supplies.

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The Project would accordingly violate Water Code Section 1706, which provides that a party holding pre-1914 water rights may only “change the point of diversion, place of use, or purpose of use if others are not injured by such change.” Based on the potential injury to the City, it is unlikely that the Project could be implemented as proposed by Rosedale.

Despite these significant, far reaching changes, the DEIR presents a very limited, narrow and incomplete analysis of the Project’s impacts, only considering limited, project-specific impacts. In particular, the DEIR fails to consider the overall impact on the local environment, including the Kern River, flows of water in the river, and the environment in and around the river. The DEIR also fails to sufficiently consider or analyze the impacts of the Project on the local groundwater basin and water supply, including impacts that would result from the transfer of water from Kern River interests to Rosedale.

Despite such obvious and apparent impacts and changes to the river, the DEIR only discusses or focuses on very narrow and limited impacts to the Kern River from the Project. The DEIR also improperly, and without sufficient supporting evidence or explanation, dismisses any impacts on the Kern River from the Project as “less than significant.”

The DEIR is also deficient because to the extent it does attempt to review the impacts of the Project on the environment, it dismisses or minimizes a number of potential impacts to the environment without explanation, based on the limited Project area and incomplete Project description, and based on unsupported or unexplained conclusions. In particular, due to the limited Project area and incomplete Project description, the DEIR fails to properly or sufficiently consider and review impacts from the Project on aesthetics, agriculture, air quality, biological resources, cultural resources, geology and soils, greenhouse gas emissions, hazards and hazardous materials, hydrology and water quality, land use and planning, population and development, tribal cultural resources and utilities, service systems and energy.

The DEIR’s unexplained conclusions regarding Project impacts does not comply with CEQA, as a bare conclusion without an explanation of the factual and legal basis is not a sufficient analysis of an environmental impact. (*Laurel Heights Improvement Assn.*, *supra*, 47 Cal.3d at 404.) The discussion of environmental impacts must instead contain an explanation of the reasoning supporting the EIR’s impact findings, and the supporting evidence. (*Association of Irrigated Residents v. County of Madera* (2003) 107 Cal.App.4th 1383.)

California courts have frequently invalidated environmental review documents for failing to adequately review the impact of a project on a local water supply or source. (*See Napa Citizens for Honest Government*, *supra*, 91 Cal.App.4th at 386, rejecting an EIR for failing to provide sufficient information on the effect a project would have on a region’s water supply and the need for treatment of wastewater; *County of Amador*, *supra*, 76 Cal.App.4th at 948, setting aside an EIR for a new water diversion for failing to “adequately assess the project’s impacts on

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fishery resources and lake levels;” *Friends of the Santa Clara River v. Castaic Lake Water Agency* (2002) 95 Cal.App.4th 1373, finding an EIR for the acquisition of supplemental state water pursuant to the Monterey Agreement deficient for failing to completely assess the impacts of the water transfer.)

In *Citizens to Preserve the Ojai v. City of Ventura* (1985) 176 Cal.App.3d 421, 432, the court concluded that if a precise technical analysis of environmental impacts is not practical, the lead agency must still make a reasonable effort to pursue a less detailed analysis. When it is difficult to forecast future actions, an EIR must still base its analysis on reasonable assumptions. (*State Water Resources Control Board Cases* (2006) 136 Cal.App.4th 674, 797.) When uncertain future events could lead to a range of possible outcomes, an EIR should base its analysis on a reasonable “worst-case” scenario. (*Planning and Conservation League v. Castaic Lake Water Agency* (2009) 180 Cal.App.4th 210, 244.)

E. The DEIR Fails to Disclose or Discuss the Significant Questions, Uncertainties and Challenges to Rosedale’s Claimed Water Rights, and Rosedale’s Right and Ability to Change the Place of Use and Type of Use of its Claimed Water Rights

The DEIR must also identify and discuss “areas of controversy” known to the parties. (14 Cal. Code Regs. §15123.) At pages 1-7 and 1-8, the DEIR lists “areas of controversy and issues of concern” which were identified in “comments made during the 30-day public review period in response to information published in the NOP and Initial Study.”

Despite that claim, the DEIR fails to identify the most significant “areas of controversy and issues of concern” with regard to the Project; the uncertainty over the existence and extent of the water rights Rosedale seeks to develop and utilize in connection with the Project. The City raised and identified a number of specific concerns with regard to Rosedale’s claimed water rights in its comments to the NOP. Rosedale’s failure to identify and assess the disputes and questions surrounding the water rights is a fatal, material failure which, by itself, calls for amendment, correction, and recirculation of the DEIR.

In its NOP comments, the City also explained that the Project likely violated Water Code Section 1706, as Rosedale’s proposed change in the point of diversion and place of use of claimed “pre-1914” appropriative water rights would cause injury to the City and other Kern River Interests. Rosedale should have identified that issue in this section of the DEIR.

The DEIR also fails to acknowledge prior disputes among the Kern River interests and other local water districts, including Rosedale, which could impact Rosedale’s ability to implement the Project or to transport water developed through the Project. Rosedale, for example, has been involved in litigation with its neighboring water districts with regard to Rosedale’s groundwater pumping and use. The DEIR should have identified and discussed those

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disputes, and considered the impact of the Project on such disputes, and the issues arising from such disputes.

The DEIR also fails to identify and discuss opposition to the Project from residents in the Kern River Valley. Local residents have recently made posts on Facebook opposing the Project (See Kern River Valley News & Community Info site for comments). At the very least, Rosedale should have summarized and discussed the mounting opposition to the Project from neighbors and residents of the Kern River Valley, and the grounds for such opposition.

Rosedale's listing of areas of controversy and issues of concern, with no further explanation or information, is not in compliance with CEQA requirements. Even if Rosedale disagrees with various objections to and complaints about the Project, the environmental documentation must still summarize the main points of disagreement regarding controversies and issues of concern. (14 Cal. Code Regs. § 15151; *Browning-Ferris Indus. v. City Council* (1986) 181 Cal.App.3d 852.) An agency may choose among differing opinions or conclusions as long as the EIR identifies the competing arguments correctly and in a responsive manner. (*Browning-Ferris Indus.*, *supra*, 181 Cal.App.3d at 863.)

F. The DEIR Fails to Identify Baseline Conditions in Lake Isabella, the Kern River, and the Areas that Will be Impacted by the Project

An EIR must describe the environmental setting for a proposed project, to establish the “baseline” that a lead agency uses to determine whether project impacts are significant. (14 Cal. Code Regs. § 15125.) Specifically, the EIR must describe “the physical environmental conditions in the vicinity of the project.” (*Id.*) The description of physical and environmental conditions must include both a local and regional perspective. (*Id.*)

Establishment of the baseline is critical to a meaningful assessment of the environmental impacts of a project, because the significance of environmental impacts cannot be determined without setting the baseline. (*Save Our Peninsula Committee v. Monterey County Board of Supervisors* (2001) 87 Cal.App.4th 99, 119.) The description should place special emphasis on environmental resources that are rare or unique to the region and that would be affected by the project. (14 Cal. Code Regs. § 15125(a); *San Joaquin Raptor/Wildlife Rescue Center*, *supra*, 27 Cal.App.4th at 722.)

The DEIR fails to meet these standards, as it does not set forth a clear or comprehensive description of baseline conditions surrounding Lake Isabella, the Kern River, the diversion and use of water from the River, the local groundwater basin, or irrigation and agricultural operations within Rosedale, or within the service areas of the City and other Kern River interests that will be impacted by the Project.

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At the very least, the DEIR should have described current flow conditions in the Kern River, the environment in and around the river, and the timing and frequency of diversions from the river. Absent such information, the DEIR cannot possibly, properly or completely assess the impact of a Project that involves the conveyance of an alleged new water supply through Lake Isabella and the Kern River channel.

The DEIR also fails to completely or accurately describe baseline conditions within Rosedale, especially with regard to Rosedale's water rights and diversion and use of water. The DEIR does not describe in any detail water supply and use information within Rosedale, or groundwater conditions within Rosedale, and the DEIR consequently fails to properly consider Project impacts within Rosedale.

G. The DEIR does not Sufficiently or Adequately Identify and Discuss Related Projects and Cumulative Impacts

The DEIR's discussion of the cumulative impacts of the Project, in connection with other, similar projects in the region, is inadequate and incomplete.

An EIR must evaluate significant cumulative impacts, based on an assessment of the project's incremental effects "viewed in connection with the effects of past projects, the effect of other current projects, and the effects of probable future projects." (14 Cal. Code Regs. §§ 15130(a), 15065(c).) An adequate cumulative analysis requires a list of projects producing related or cumulative impacts. (14 Cal. Code Regs. § 15130(b)(1).) In formulating those projects to be considered and each cumulative analysis, the lead agency has "a duty to interpret the guidelines so as to afford the fullest possible protection to the environment." (*San Franciscans for Reasonable Growth v. City and County of San Francisco* (1984) 151 Cal.App.3d 61, 74.) An EIR is further required to assess the cumulative impact of the project on not just related existing projects, but also "probable future projects." (14 Cal. Code Regs. § 15130(b)(1)(A).)

In *Citizens to Preserve the Ojai*, the court stated that "it is vitally important that an EIR avoid minimizing the cumulative impacts. Rather, it must reflect a conscientious effort to provide public agencies and the general public with adequate and relevant detailed information about them." (176 Cal.App.3d at 431.) The court therein further stated: "A cumulative impact analysis which understates information concerning the severity and significance of cumulative impacts impedes meaningful public discussion and skews the decision maker's perspective concerning the environmental consequences of the project, the necessity for mitigation measures, and the appropriateness of project approval." (*Id.*)

Despite this authority and policy, the DEIR provides a very limited, incomplete description of "related projects that would have similar impacts." (3-6.) The list of related projects considered in the cumulative impact analysis in Table 3-2 is too limited, and excludes a

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number of additional projects that could result in cumulative effects and impacts when combined with the effects of the Project. (3-7, 8.) Again, the shift in water supplies away from the City and other Kern River interests could result in significant adverse impacts on local water supplies, and groundwater recharge and extraction.

To comply with CEQA, Rosedale should have listed and considered the cumulative impacts of the Project on all other entities in the region that divert and use Kern River water, including the City, as well as all other “projects” proposed or undertaken by those entities that involve the diversion and use of Kern River water. Rosedale’s intention to transport between 2,000 and 12,000 acre-feet of water per year would have direct and immediate impacts on diversions by the other entities that use Kern River water. Rosedale must identify and describe those other projects in order to properly assess the impacts, including cumulative impacts, resulting from the Project.

The related projects considered in connection with cumulative impacts must therefore include all water banking projects within the San Joaquin Valley portion of Kern County, including the City’s 2800 Acre recharge project, the Pioneer Project, the Kern Water Bank, and water banking projects within various other Kern County water districts. The Project could also impact a number of water supply and water conveyance projects within Kern County, including new and planned projects identified in Groundwater Sustainability Plans (“GSPs”) prepared on behalf of the Kern River Groundwater Sustainability Agency (“KRGSA”), the Kern Groundwater Authority Groundwater Sustainability Agency (“KGA”), and other local Groundwater Sustainability Agencies (“GSAs”). The DEIR should have considered the cumulative impact of Rosedale’s increased recharge and use of water when combined with those existing projects.

An EIR’s cumulative impacts analysis must include future aspects of the project that are reasonably foreseeable consequences of project approval. (*Del Mar Terrace Conservancy, Inc. v. City Council* (1992) 10 Cal.App.4th 712, 738.) The DEIR does not comply with that requirement, as the DEIR fails to discuss the probable future aspects and impacts of the Project, including the loss of Kern River water to the region, decreases in Kern River flows and water available for diversion, decreases in groundwater resulting from a potential decrease in recharge, and adverse water quality impacts.

The DEIR’s discussion of cumulative impacts arising from the Project, and in connection with other, similar projects in the region, is therefore inadequate and incomplete. In *Whitman v. Board of Supervisors* (1979) 88 Cal.App.3d 397, 408, the court noted that the full environmental impact of a project “cannot be gauged in a vacuum.” Instead, the DEIR must provide a list of projects producing related or cumulative impacts, a brief summary of the expected environmental impacts to be produced by the projects and a reasonable analysis of the combined or cumulative impacts of all the projects. (*Id.* at 409.) The court in *Whitman* found that the

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cumulative impact section of the EIR did not comply with the statutory authority because it “lacks even a minimal degree of specificity or detail.” (*Id.* at 411.)

Despite this authority and policy, the DEIR provides a very limited, incomplete description of “related projects that would have similar impacts.” (DEIR, Chapter 5.) The DEIR violates CEQA requirements by only providing a limited consideration of the impacts of the Project “in a vacuum,” without consideration of other, related projects that will increase the severity of impacts associated with the Project.

H. The DEIR does not Properly or Sufficiently Consider Alternatives to the Project, Including the No Project Alternative

An EIR must consider the full range of alternatives for meeting the goals of a particular program, and inform the decision makers as to the various issues associated with those alternatives. It is the policy of this state to require governmental agencies at all levels to consider alternatives to proposed actions affecting the environment. (Pub. Res. Code § 21001(d).) Even if a project proponent has rejected various alternatives, “an EIR must explain why each suggested alternative either does not satisfy the goals of the proposed project, does not offer substantial environmental advantages, or cannot be accomplished.” (*San Joaquin Raptor/Wildlife Rescue Center, supra*, 27 Cal.App.4th at 737.)

An EIR must “describe a range of reasonable alternatives to the project, or to the location of the project, which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives.” (14 Cal. Code Regs. § 15126.6(a).) It must contain “sufficient information about each alternative to allow meaningful evaluation, analysis, and comparison with the proposed project.” (14 Cal. Code Regs. § 15126.6(d).)

There is no indication in the DEIR that Rosedale considered actual, practical or meaningful alternatives to the Project, including alternate sources of supply, such as State Water Project water, reclaimed waste water, or water purchased from the City. The DEIR also fails to indicate that Rosedale has considered alternatives, such as conservation, designed to reduce its water demands or to satisfy the alleged “unmet irrigation demands” and therefore reduce its need for the Project. Similarly, there is no indication that Rosedale actually or properly considered the “no project” alternative, as required by CEQA.

Accordingly, the DEIR is clearly deficient for failing to consider reasonable, valid alternatives to the conveyance and diversion of between 2,000 and 12,000 acre-feet of a purported new water supply through Lake Isabella and the Kern River channel to Rosedale, including through the use of alternative sources and supplies of water, and through less convoluted and controversial projects and options. In *Watsonville Pilots Association v. City of Watsonville* (2010) 183 Cal.App.4th 1059, 1087, the court similarly found that an EIR for a

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city's new general plan did not comply with CEQA by only including alternates with the same level of increased development as the proposed plan, without considering any reduced development alternatives.

It certainly appears possible, and reasonable, that a combination of additional recycled water supplies, water conservation, more efficient irrigation methods, and additional alternate water supplies would serve as a complete, viable and environmentally superior alternative to the Project. The DEIR's failure to consider such alternatives constitutes a direct and clear violation of CEQA. (See e.g. *Laurel Heights Improvement Assn.*, *supra*, 47 Cal.3d at 403, in which the court stated that an EIR was inadequate because the consideration of alternatives was "cursory at best.") Among other things, the EIR listed and rejected alternatives without providing "a factual informational underpinning for the conclusory statement[s]." (*Id.*)

I. Rosedale Improperly Committed to the Project in Advance of CEQA Review and Without Properly Considering Alternatives

Rosedale appears to have violated CEQA by committing itself to the Project and deciding on a definite course of action with regard to the Project, prior to preparation of the DEIR. Rosedale has therefore practically and effectively precluded any alternatives to the Project in advance of and independent of the requirements of CEQA.

Rosedale's failure to adequately consider alternatives to the Project also confirms that it violated the fundamental requirement of CEQA, as discussed in *Save Tara v. City of West Hollywood* (2008) 45 Cal.4th 116, that a public agency cannot commit to or decide on a specific course of action for a project until it has subjected the proposed project to proper CEQA review.

In *Save Tara*, the court explained that "before conducting CEQA review, agencies must not 'take any action' that significantly furthers a project 'in a manner that forecloses alternatives or mitigation measures that would ordinarily be part of CEQA review of that public project.'" (45 Cal.4th at 138; *see also* 14 Cal. Code Regs. § 15004(b)(2)(B).) The court in *Save Tara* further explained that courts should look "to the surrounding circumstances to determine whether, as a practical matter, the agency has committed itself to the project as a whole or to any particular features, so as to effectively preclude any alternatives or mitigation measures that CEQA would otherwise require to be considered, including the alternative of not going forward with the project." (45 Cal.4th at 139.)

It is apparent that Rosedale violated this authority when it made the decision, well before preparation of the DEIR, to obtain the Onyx Ranch property with the sole goal and purpose of stripping the property of its water rights and transferring the water far from its source and origin. The decision to "create" water supplies from the Onyx and Smith Ranch properties for transfer to Rosedale was set in stone and agreed to well before Rosedale instituted the current CEQA review process. Rosedale's unequivocal decision to purchase the property effectively precluded

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any consideration of water supply alternatives, and indicates that Rosedale's CEQA review is nothing but a sham process intended to shield and rubberstamp Rosedale's transfer of water downstream to its service area.

3. COMMENTS TO SPECIFIC PORTIONS OF THE DEIR

Bakersfield has the following additional comments, questions, and concerns regarding the DEIR and the Project. These comments do not constitute or represent all of the City's objections to and concerns with the DEIR and the Project, or to the adequacy of Rosedale's compliance with CEQA. The City reserves the right to supplement these comments, in the future, and the City reserves the right to submit substantive objections to the Project.

- The DEIR should describe and account for pending applications to the California State Water Resources Control Board to appropriate Kern River water, including Rosedale's application, and the impact of the Project on those applications. That information is certainly relevant to Rosedale's vague and incomplete plan to transport Project water through the Kern River channel.
- The DEIR states: "The proposed project's change in point of diversion method is consistent with how the other "Kern River Interests" (including the Buena Vista Water Storage District, North Kern Water District, Kern Delta Water District, City of Bakersfield, Henry Miller Water District, and Kern County Water Agency) manage their respective Kern River pre-1914 water rights. This includes their use of changes in points of diversion and place of use in order for those agencies to manage and maximize their water supply benefits in Kern County." (ES-2.)

That statement is incorrect, and misleading. All of the referenced entities use Kern River water within historic service areas, and do not and have not changed the point of diversion and place of use of their water supplies, subject only to rare exceptions. The North Kern Water Storage District ("North Kern"), for example, only diverts and uses Kern River water pursuant to agreements with the City, and those agreements expressly require North Kern to only use Kern River supplies provided by the City within its boundaries.

In addition, the actions of other entities does not affect or excuse Rosedale's need to comply with Water Code Section 1706 in order to change its point of diversion and place of use for its claimed water rights. Even if various Kern River interests had previously changed their point of diversion or place of use of their supplies, Rosedale would still need to independently and separately comply with Water Code Section 1706.

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- One of the primary assumptions underlying the Project involves increased flows in the South Fork of the Kern River (*See* 1-1). There is no evidence, however, that increased flows in the South Fork of the Kern River will actually increase the available supply of Kern River water further downstream, or increase flows of water into Lake Isabella over historic levels. Rosedale does not provide any data from calibrated or otherwise river gauging stations directly above or directly below the Project properties. The DEIR fails to provide any information regarding the impact of alleged increased flows on quantities stored in and released from Lake Isabella.
- “Currently, the RRBWSD service area contains approximately 44,000 acres of land, of which approximately 27,500 acres are utilized for irrigated agriculture and approximately 7,500 acres are developed for residential, commercial, and industrial uses.” (1-2.) Because of that urban development, the Project could cause impacts to population growth, but the DEIR fails to identify or consider such impacts.
- The DEIR states: “The urban development is primarily located in the eastern end of the RRBWSD’s service area and is anticipated to increase as the City of Bakersfield develops to the west.” (1-2.) The DEIR fails to account for the fact that as development by the City increases within Rosedale’s service area, Rosedale’s water demands will decrease because the City provides water directly to urbanized lands within Rosedale. Rosedale should have also addressed the fact that its future reduced demand for water will offset and obviate the need and purpose for the Project.
- The DEIR states: “The analysis of the proposed project uses a method that conservatively accounts for the quantity of pre-1914 appropriative rights and the available water supply that can be moved downstream as a result of the proposed project, without injury to other water right holders. This conservative method is not intended to quantify the full extent of the pre-1914 appropriative rights associated with the Onyx Ranch or Smith Ranch.” (1-5.) The DEIR does not explain why it elected to use a “conservative” method to quantify its claimed rights. That methodology also implies some dispute or uncertainty over the extent and yield of rights, yet the DEIR does not disclose or review such uncertainty over the pre-1914 rights.
- “Flow in the South Fork is measured at the U.S. Geological Survey (USGS) Onyx Gage Station 11189500 located at the upper end of the South Fork Valley upstream of the project site. During 2005 to 2017, the South Fork had an annual average flow of approximately 88,440 acre-feet, with a maximum of 292,062 acre-feet in 2017 and minimum of 6,385 acre-feet in 2015 (Thomas Harder & Company.,” (2-8.) The DEIR should have reviewed and considered older flow

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and diversion records and information, including data on flows going back further than 2005. Rosedale claims it holds “pre-1914” appropriative water rights, and it is important to document and provide evidence of prior historic use to establish any claim to the right or to the extent of the right. The limited time period used for the flow calculation also does not convey or represent the actual historic use of the claimed water rights, or the actual remaining amount of the claimed rights, if any, available for use by Rosedale.

- Bakersfield questions the accuracy of the data reported at page 2-8. In 2015, the USGS Onyx Gage Station measured 4,300 acre-feet for the calendar year, not 6,385 acre-feet, as noted in the DEIR. In 2015, the USGS Onyx Gage Station measured 282,500 acre-feet for the calendar year, not 292,062 acre-feet, as noted in the DEIR.
- “The Isabella Reservoir consists of 11,499 acres (45 square kilometers) and has a design capacity of 568,000 acre-feet.” (2-9.) That is misleading, because due to safety concerns and dam improvements, actual reservoir capacity has been significantly reduced within the past few years. The lack of accurate or complete information calls into question the review and analysis of Project impacts.
- “The Kern River Watermaster prepares and keeps daily records on the flow of the waters of the Upper Kern River and the storage and release of surface water to the Lower Kern River from the Isabella Reservoir for deliveries to water right holders in the San Joaquin Valley as coordinated by the City of Bakersfield Water Resources Department.” (2-9.) That statement is not entirely accurate. The City prepares and keeps daily records of flows and storage and releases from Isabella reservoir, with some minimal supervision and collaboration by the Watermaster.
- “The water rights of the South Fork of the Kern River are associated with the landholdings upstream of the Isabella Reservoir. The majority, but not all, of the South Fork water rights were quantified in a 1902 Arbitration Decree (1902 Decree) that resolved water rights disputes between various diverters on the South Fork.” (2-10.) Rosedale’s apparent reliance on the 1902 decree does not take into account later challenges to the claimed water rights, changes in the quantity of water used, or later reductions in the use of the claimed water rights.
- Throughout the DEIR, Rosedale refers to information from only the 2009 to 2017 time period. That is misleading and incomplete information. To properly and accurately describe the Project, the Project setting, and impacts from the Project, the DEIR should have used and considered broader, older, and more expansive information. There is no indication that older information was not available or reliable. The lack of older and more complete information is particularly concerning and problematic for information in the DEIR on water diversion and

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use, and flow information. Water rights, particularly the pre-1914 appropriative rights referenced throughout the DEIR, are based on and tied to historic use, and such historic use defines and determines the existence and extent of the rights. Only using water flow, diversion and use information from 2009 to 2017 creates an incomplete, false and misleading assessment of the existence and extent of the claimed water rights. The DEIR should have used and considered older data and information regarding the diversion and use of water connected to the Onyx Ranch property.

- Table 2-1 at page 2-14, “provides a summary of the crops that have been historically grown on the Onyx Ranch portion of the project site between 2009 and 2017.” Rosedale could have, and should have, identified and considered crops grown on the property prior to 2009, and historically, in order to properly identify and depict the quantities of water used on the property historically.
- “The majority of the water rights for the proposed project were quantified in a 1902 Arbitration Decree (1902 Decree) that resolved water rights disputes between various diverters on the South Fork. The balance of the pre-1914 rights involved in the proposed project are evidenced in other historic documents and chains of title for the RRBWSD property in the South Fork Valley.” (2-16.) Rosedale should have provided more information regarding the purported evidence for such historic rights, including any evidence that demonstrates a pattern or history of use of the claimed rights following the 1902 decree.
- The DEIR does not provide sufficient information about the extent of the historic diversion and use of water pursuant to the rights. That information, instead of the 1902 decree, will determine and evidence the actual extent, quantity and viability of those water rights.
- The DEIR provides information on the current point of diversion for the Project, yet fails to provide any relevant or helpful information on the proposed new point, or points, of diversion for the water within Rosedale. (2-15.) It is not apparent from the DEIR how Rosedale will actually divert the new water from the Kern River, and where the diversions will take place.
- “The Boone Field has riparian rights with an 1882 priority date. The riparian rights for the Boone Field cannot be transferred. However, the RRBWSD could reduce water diversions under the Boone riparian right to make more water available for appropriative rights junior to 1882, such as the 33rd water right under the 1902 Decree.” (2-16.) We question whether riparian rights are still viable or valid, and whether Rosedale can try to create appropriative rights to that water based on reduced diversions. Rosedale would need to provide consistent water diversion and use data since 1882 to determine if riparian rights still exist

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on the property, and the extent of the rights, and whether curtailment of diversions and use could create new water supplies available for diversion and use and transfer downstream to Rosedale's service area.

- "Table 2-2 provides the priorities, priority dates, and the decreed water right quantities associated with the project site based on the pre-1914 appropriative rights on the South Fork of the Kern River." (2-16). That chart is misleading and incomplete without water use information since the purported "priority date" for the various water rights, and without identifying or addressing questions and challenges to the claimed water rights.
- The section addressing the "Quantity of Surface Water Involved in the Proposed Project" (2-17) describes a "three-step process" to determine the amount of water available for the Project. That is not a valid process without underlying data and information regarding the existence, extent and quantity of rights, based on historic use. The process is also invalid and incomplete for not factoring in or accounting for the availability of capacity in Lake Isabella and in the Kern River channel below Lake Isabella.
- At page 2-18, Table 2-3 depicts Kern River diversions to Onyx Ranch from 2009 to 2017, and the DEIR uses that information to calculate a "typical water demand." (2-19.) That calculation is incomplete and of questionable accuracy and utility, however, without historic diversion information for a longer period of time than just the past 10 years. The DEIR should have identified and considered diversions from years prior to 2009.
- "To accomplish the project objectives, the proposed Project involves changing the points of diversion and place of use for the RRBWSD's pre-1914 appropriative surface water rights in the South Fork of the Kern River from the project site to the RRBWSD diversion point on the San Joaquin Valley floor. The proposed changes would allow water to flow past the project site (Onyx and Smith Ranches), resulting in a net increase in surface flows within the South Fork of the Kern River and the Isabella Reservoir. The increased amount of water accumulated in the Isabella Reservoir would be released through the Isabella Dam and flow downstream in the Lower Kern River." (2-19, 2-20.) That description assumes the existence of net increase of surface flows "within" and an "increased amount of water accumulated" in Isabella Reservoir. But there is no evidence, explanation or data to support those assumptions. The DEIR also fails to account for uncertainties and questions regarding claimed increased quantities of water in Lake Isabella. Most importantly, Rosedale has no right to store water in Lake Isabella. All water in Lake Isabella is owned and held by parties to various agreements, including agreements involving the federal government. Rosedale would have to obtain some storage right, or an agreement to share storage

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capacity with one of the parties with storage rights, in order to implement the Project. Absent that information, the analysis in the DEIR is incomplete and not in compliance with CEQA.

- The DEIR fails to account for dry year conditions, when there is not enough water flowing in the Kern River to satisfy all but the most senior Kern River rights. It is not clear, for example, if water generated by the Project could still be transported in the Kern River channel when there is little water flowing in the river, and the water that is in the river is subject to claims by senior right holders. The City also calculates the “Natural Flow” of the Kern River at First Point in determining the allocation of water pursuant to the 1900 “Shaw Decree” and other rights, considerations and interest. The DEIR does not describe how the purported “new water” generated by the Project would factor into those calculations.
- “Project Element 1 consists of the collection of surface flow diversion data for the South Fork of the Kern River and the preparation of data records for use by downstream water right holders. Coordination of surface flow diversions among the water right holders is a necessity to ensure good water management and preclude water rights disputes based on erroneous or no information.” (2-20.) The DEIR later states: “In addition, more frequent coordination with the Kern River Watermaster and City of Bakersfield Water Department would occur.” (*Id.*) The DEIR needs to explain how diversions would be “coordinated,” and how Rosedale would “preclude water rights disputes.” The DEIR provides no explanation of how coordination would occur, how prior and senior rights would be protected and not reduced or adversely impacted. Absent those details, it is not possible to determine impacts from the Project and from the diversion of water downstream of Lake Isabella by Rosedale pursuant to the Project.
- “Project Element 2 consists of the collection of groundwater pumping data and the preparation of data records for use by the water right holders. Coordination of groundwater data among the water right holders is a necessity to ensure good groundwater management and to preclude water rights disputes based on erroneous or lack of information.” (2-20, 2-21.) The DEIR provides no information about potential “water rights disputes” for Project Element 2, who would be involved, what the disputes would involve, or how those disputes would impact the Project.
- For Project Element 3, the DEIR states: “Project Element 3 consists of the collection of groundwater level and water quality data. Coordination of data about groundwater level and water quality among the water right holders is a necessity to ensure good groundwater management and to preclude water rights disputes based on erroneous or lack of information.” (2-21.) Those statements are vague and unclear. It is not clear which “water right holders” it refers to. It is not clear

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if the DEIR is referring to data relating to the Onyx Ranch area, Rosedale's service area, the service area of various Kern River interests, or some other area. It is also not clear what the DEIR means by "coordination," or how coordination would "preclude water rights disputes."

- "The calibrated model for the period is January 2005 to December 2017. For this 13-year period, the model shows that reducing 94,452 acre-feet per year of previous net diversions to the project site results in 78,183 acre-feet per year more water in the Isabella Reservoir, without impacting other reservoir storage amounts. Said differently, over the 13-year period, a modeled comparison of the existing condition and the proposed project shows that 83 percent of re-directed flows (from pre-project surface water diversions) goes into and can be released out of Isabella Reservoir as new water below the Isabella Reservoir without injury to other legal users. On an average annual basis, the model shows that an average of 7,265 net acre-feet per year of redirected flows from the Onyx Ranch and the Smith Ranch results in an average of 6,014 net acre-feet per year of new water in the Isabella Reservoir." (2-22.) These conclusions are suspect because of the limited data cited and relied on in the DEIR. The DEIR should have looked at actual diversions and flow information, and South Fork flows into Isabella, for a longer period of time, instead using a "model" which relies on incomplete and limited information.
- Rosedale bought the Onyx Ranch property in 2013, and the Smith Ranch property in 2015. The DEIR should have discussed efforts to obtain historic, older flow and diversion information relating to the properties, and should have relied on more than exaggerated flow records submitted to the SWRCB.
- The DEIR's reliance on very limited flow and diversion data from 2005 to 2017 to calculate average annual flows and diversions is suspect and unreliable because that data includes the driest Kern River flows on record (2015) and the fourth wettest runoff year (2017) experienced in the over 120 year history of record keeping on the river.
- The DEIR should have used the USACOE daily Lake Isabella flow records to calculate prior daily flows in "cubic feet per second" (cfs), which data would more accurately depict quantities of water actually available to Rosedale through the Project.
- The DEIR does not describe how seepage in the Kern River channel, evaporation in Lake Isabella and other conveyance losses will impact the Project water that Rosedale would try to transfer through Lake Isabella and downstream to its service area. Such conveyance losses in drier years could absorb all or most of

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the water generated by the Project, and the DEIR should have addressed that issue, and considered potential impacts from such conveyance losses.

- Project element 4 consists of an estimation of the amount of “new” water which Rosedale claims will flow into Lake Isabella as a result of the Project. (2-21, 22.) From a practical and legal standpoint, reducing diversions does not necessarily create additional or new water supplies that the diverter can then transfer downstream to itself or another diverter. Instead, water not diverted by an upstream appropriate becomes subject to diversion and use by other downstream diverters, and those entities typically gain rights to and ownership of the additional water allegedly created by reduced diversions. In addition, any and all water that flows into Lake Isabella, no matter the amount becomes the property of the entities that hold water rights, and storage rights, in Lake Isabella.
- The DEIR should account for and describe all potential “end uses” for water generated by the Project, including any potential transfers or exchanges of such new water supplies with other districts and entities.
- “Project Element 5 consists of coordination with the USACE, Kern River Watermaster, and the Kern River Interests to release the RRBWSD water through the Isabella Reservoir and ensure it is not diverted by others between the Isabella Reservoir and the existing diversion points in the RRBWSD service area.” (2-22.) “The RRBWSD would coordinate with the Lower Kern River Interests to address scheduling releases and computing any losses between the Isabella Reservoir and the existing RRBWSD diversion points within its service area.” (2-22.) The DEIR also states: “The RRBWSD would coordinate with the Kern River Watermaster, Kern River Interests, and USACE to facilitate the movement of the water through the Isabella Dam, or alternatively, secure temporary storage of the water in the Isabella Reservoir for later release to the downstream RRBWSD service area.” (2-22, 2-23.) The lack of details about this “coordination” process with Kern River interests and other entities makes it impossible to determine Project impacts, and specifically impacts from this anticipated coordination process involving releases and transfers of water through Lake Isabella. It is not clear what coordination means, how that would occur, which entities would be involved, and how practically the water allegedly created by the Project would be moved through Lake Isabella through this coordination process.
- The DEIR neglects to identify all the Kern River interests with whom Rosedale will need to “coordinate” or obtain the approval of in order to move water through Lake Isabella and then downstream to Rosedale’s boundaries. In fact, Rosedale would need an agreement from and approval by all Kern River interests, with appropriate protections and mitigation for senior right holders on the river, such

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as the City, in order to implement the Project. The DEIR is deficient for not identifying those necessary approvals and agreements, and for consequently failing to review or analyze any impacts associated with those approvals and agreements. (2-27.)

- The DEIR neglects to address how Project water would be used or addressed during “Mandatory Release” operations involving Lake Isabella, during heavy rain fall and high flow events, when the Watermaster is required to quickly release large amounts of water from Lake Isabella.
- “It was determined that several environmental topics would not be affected by implementation of the proposed project (see Appendix A, Public Participation Process, to this Draft EIR). Therefore, further evaluation of the following environmental topics are not required within this Draft EIR: Forestry Resources; Mineral Resources; Noise; Housing; Public Services; Recreation; and Transportation and Traffic.” (3-1.) The Project could decrease the quantity of water available to the City, and the Project therefore could have an impact on Housing and Public Services, and the DEIR should have identified and reviewed those impacts. For example, reduced water supplies for City residents as a result of the Project could impact housing construction and development within the City, and the City’s ability to provide water to its residents. Water delivered to Rosedale from the Project, in addition, could create a water supply for development outside of the City, which could further urban sprawl and the creation of utility service issues through the creation of development “islands.”
- The “geographic scope” for the cumulative impact analysis, as identified in Table 3-1 at page 3-5, is improperly narrow and restricted. Table 3-1 indicates that the geographic scope for most of the subjects addressed in the DEIR, including land use and planning, population and employment, and utilities, service systems and energy, will be the Kern River Valley. The Project, however, will involve a shift of important Kern River water supplies away from the City or other Kern River right holders and diverters to Rosedale, which will result in significant impacts within the City, and the San Joaquin Valley portion of Kern County, downstream of Lake Isabella.
- In Table 3-2, at page 3-8, item G, the “James Groundwater Storage and Recovery Project” is not accurate, as the project is actually called the “McAllister Ranch Groundwater Banking Project,” and the project will utilize the entire 2,072 acre McAllister Ranch parcel, not just 1,400 acres. The table also erroneously indicates that the Notice of Preparation (“NOP”) for the project was issued in 2012, as the NOP for the project was actually issued in 2020.

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- Table 3-2, starting at page 3-7, fails to include the City's 2800 Acre recharge project. That omission is significant in light of the location of the 2800 Acre recharge project on the Kern River, the proximity of the project to Rosedale, and the use of the facility by multiple Kern River interests. That omission also renders the entire cumulative impact analysis incomplete and invalid.
- The DEIR also describes the Kern Fan Groundwater Storage Project, at page 3-15, between Rosedale and the Irvine Ranch Water District. The DEIR should disclose whether any water generated by the Project will eventually be used within this project, and, more importantly, whether Rosedale proposes to transfer any water generated through the Project to the Irvine Ranch Water District, or to other entities in Southern California.
- The shift in up to 12,000 acre-feet per year from the City or other Kern River interests will result in potential significant impacts within the City and the San Joaquin Valley on (1) air quality, as the City and other entities would have to increase groundwater pumping, which produces greenhouse gases, to replace water lost to Rosedale through the Project, (2) hydrology and water quality based on the shift in water supplies and the need for the City and other impacted water users to find replacement water supplies, (3) land use and planning, based on impacts on the City's growth and development as a result of a decrease in and uncertainty over the City's water supplies, (4) population and employment as a result of a decrease in the City's ability to provide drinking water to its residents, and (5) utilities, service systems and energy, based on the shift of water supplies away from the City and other water users and the need to locate and utilize alternate, replacement water supplies. The DEIR should have identified, discussed and analyzed all of those impacts.
- The DEIR fails to acknowledge or admit that the Project could have significant impacts on agriculture in the San Joaquin Valley portion of Kern County, and not just in the Kern River Valley. (See Section 3.4, Agriculture.) As a result of the Project, significant quantities of Kern River water diverted and used by various Kern River interests and local water districts to serve agricultural lands could be shifted to Rosedale for groundwater recharge and other uses within Rosedale's boundaries. It is also possible that some of the water associated with the Project could be transferred or sold outside of Kern County, including to southern California water interests, such as the Irvine Ranch Water District. The shift in water supplies to Rosedale could adversely impact Kern County agriculture by reducing the quantity of water available for agricultural use. That shift could result in conversion of farmland to non-agricultural use within the San Joaquin Valley portion of Kern County, shifts in cropping patterns, secondary impacts related to efforts to find replacement water supplies to serve agricultural lands.

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The impacts to agriculture in the San Joaquin Valley could be significant, yet the DEIR fails to identify, consider or review any of those impacts. The DEIR is therefore incomplete, deficient and misleading.

- The transfer of a significant quantity of surface water away from the Kern River interests, and the Onyx Ranch region, would result in additional groundwater pumping and use to generate replacement water. Kern River interests would additionally likely have to pump and use groundwater supplies to replace water lost or displaced as a result of the Project. Such increased pumping would generate energy and emissions which could have a significant impact on air quality in the region. The DEIR fails to identify and review those impacts. (3.5-1.)
- The DEIR is deficient for failing to identify potential significant impacts on air quality in the region, and in the San Joaquin Valley portion of Kern County. The DEIR improperly only reviews air quality impacts resulting from and related to Project impacts in the Kern River Valley, and in the Onyx Ranch region. That limited, incomplete analysis also improperly downplays or obscures actual impacts on air quality because existing baseline air quality conditions in the San Joaquin Valley portion of Kern County are considerably worse, and less favorable, than in the Kern River Valley.
- The Project area should include Rosedale's service area, where the water generated by the Project will be used, and should also include the Kern River corridor, where the water will be transferred, and the service areas of the City and other Kern River interests who will be impacted by the Project by a reduction in Kern River supplies. (3.5-2.)
- The DEIR understates and fails to review impacts on air quality from increased pumping within the Kern Subbasin to replace surface water supplies lost and transferred to Rosedale through the Project. The Project could also increase agricultural production within Rosedale as a result of new water supplies obtained by and delivered to Rosedale through the Project. That could result in impacts on air quality in the region, and the DEIR should have identified and reviewed impacts on air quality associated with increased agricultural production. The DEIR therefore understates and does not properly consider air quality impacts resulting from and caused by the Project.
- Without information on air quality impacts associated with areas downstream of Lake Isabella, it is not possible to determine whether emissions will exceed the "thresholds of significance associated with the adopted air quality standards." (3.5-31, 33.) In particular, the DEIR is not able to accurately or credibly assess cumulative impacts on air quality associated with the Project. (3.5-37, 38.)

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- The DEIR should have but fails to review biological impacts associated with a reduction in water supplies by downstream diverters of Kern River water as a result of the Project. (See Biological Resources, at 3.6-1.) For example, the City has a Habitat Management Program within the 2800 Acres for the Buena Vista Lake Shrew a species on the Endangered Species list. Reduced water supplies for and reduced diversions into the 2800 Acres as a result of the Project could potentially impact that species, and the HMP for the species, as well as other species within the 2800 Acres, and in the Kern River channel near the 2800 Acres.
- The Project could have a “substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations or by the CDFW or USFWS,” as a result of a decreased supply of Kern River flows resulting from the Project. (3.6-1)
- The DEIR states that “the 4,247-acre Biological Study Area (study area)” which is limited to “the 4,109-acre project site (consisting of the Onyx Ranch and the Smith Ranch) plus 138 acres of area that includes off-site agricultural ditches that provide water to the project site and a 50-foot wide buffer area around the alignment of the agricultural ditches and the boundaries of the project site.” (3.6-2.) It is highly concerning that Rosedale is proposing a project which will result in a significant shift of Kern River surface water supplies away from existing users to Rosedale, yet has failed to review or consider impacts on Biological Resources in and around the Kern River, particularly below Lake Isabella and through the City. Those arbitrary limitations on the area for the Project results in a substantial understatement and concealment of potential impacts on biological resources, including cumulative impacts.
- The DEIR fails to identify “special-status wildlife” that could be impacted by Project as a result of its improperly narrow and limited Project Area, including the Buena Vista Lake Shrew.
- “Within the study area, the South Fork of the Kern River is under the jurisdiction of the USACE, RWQCB, and CDFW. The agricultural ditches do not fall under the jurisdiction of the USACE based on the Code of Federal Regulations (CFR) Title 33 § 328.3 (b)(4)(i), which states that features that are not considered ‘waters of the U.S.’ include ‘artificially irrigated areas that would revert to dry land should application of water to that area cease.’ However, agricultural ditches may potentially be considered RWQCB jurisdictional ‘waters of the State.’” (3.6-30.) The DEIR does not account for the possibility that these Project “features” could be considered waters of the U.S. or the State, which is a distinct possibility as a result of shifting interpretations and application of those terms. The DEIR further

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does not explain how and to what extent those entities might exercise jurisdiction over aspects of the Project.

- “Within the study area, USFWS designated critical habitat for the southwestern willow flycatcher and the yellow-billed cuckoo occurs within the riverine and floodplain of the South Fork of the Kern River (USFWS, 2018) (Figure 3.6-4). The South Fork of the Kern River provides suitable habitat by supporting thickets of large trees, such as willows and cottonwoods, with a relatively low-density canopy and patches of thick understory containing mulefat. The last documented occurrence of southwestern willow flycatcher within the vicinity of the South Fork was August 5, 2016 (CDFW, 2018) and the last documented occurrence of yellow-billed cuckoo was in 2017 (Stanek, 2017). A total of approximately 455 acres of yellow-billed cuckoo critical habitat and approximately 1,545 acres of southwestern willow flycatcher critical habitat overlap the study area.” (3.6-32.) The DEIR does not sufficiently account for Project impacts, including impacts resulting from a reduction in water supplies, on the habitat for these species.
- “The proposed project includes the installation of up to 12 shallow, low-volume wells powered by solar facilities, provided on an as needed basis, that would be located in previously disturbed areas at least 1,000 feet from the South Fork of the Kern River. Therefore, the proposed wells would be located outside of the sensitive natural communities, riparian areas, and marsh habitats areas. The earthen irrigation ditches on the project site are not a river, stream, or lake. There would be no diversion of the natural flow of any river, stream, or lake; rather, the proposed project would maintain the natural flows within the South Fork of the Kern River. Therefore, the proposed project would not have activities subject to CFGC Section 1600 et seq.” (3.6-36, 37.) We question those statements, as it seems apparent that the transfer of up to 12,000 acre-feet of water from the Onyx Ranch region to the western portion of Kern County, many miles away, would naturally and certainly “change the natural flow” of the Kern River, and in particular the South Fork of the river.
- Due to the shallow and very permeable aquifer of the South Fork Valley, the “12 shallow, low-volume wells” could interact with and reduce flows in the South Fork of the Kern River. Rosedale should either provide a detailed engineering analysis to demonstrate that pumping will not impact river flows, or add any amounts pumped on the Onyx and Smith Ranch properties as part of the claimed diversions from the river.
- “No habitat conservation plans or natural community conservation plans are applicable to the study area.” (3.6-38.) That statement fails to account for or consider habitat conservation plans, and related plans, in place and under consideration in areas that will be impacted by the Project downstream of Lake

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Isabella, including the City's BV Lake Shrew HMP. The Audubon Society's Kern River Preserve, the CDFW's Canebrake Eco Reserve and the USFS South Fork Wildlife Area, moreover, are all adjacent to or in the immediate area of the Project, and those areas, which provide habitat for the protected species, may be adversely impacted by the Project.

- Because the Project area considered in the DEIR is improperly limited, impact analysis also incomplete and improper. The entire impact analysis, at pages 3.6-46 through 3.6-66, is therefore flawed, and incomplete. For example, without studying Project impacts on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Wildlife or U.S. Fish and Wildlife Service within San Joaquin Valley portion of Kern County, the analysis of impacts "to special-status plants or wildlife or their habitats" is flawed and incomplete. (3.5-47.)
- "Therefore, the conveyance of more water in the South Fork of the Kern River would be a benefit to the southwestern willow flycatcher and western yellow-billed cuckoo and their nesting and foraging habitat, as well as critical habitat designated for these species." (3.6-47.) Also, "[w]ith the implementation of the proposed project, the potential impacts to the breeding and foraging habitat for the southwestern willow flycatcher and the yellow-billed cuckoo would be less than significant." (p. 3.6-48.) The narrow and misleading Project description renders that discussion and analysis incomplete and deficient. The DEIR does not take into account the loss of water supplies to the region, increased pumping and changes in land use, all of which could and would likely have significant impacts on threatened and endangered species.
- "USFWS designated critical habitat for the southwestern willow flycatcher and western yellow-billed cuckoo includes the riverine and floodplain of the South Fork of the Kern River throughout much of the potential impact area (USFWS, 2018). Notably, USFWS recently published a proposed rule to revise the designation of critical habitat for the western yellow-billed cuckoo, including areas along the South Fork of the Kern River (USFWS, 2020); however, the final rule has not been published." (3.6-31.) It is apparent that transfer of 12,000 acre-feet of water to the San Joaquin Valley portion of Kern County would have a significant impact on critical habitat for species. Again, a loss of substantial water supplies previously used within the critical habitat for these listed species would certainly have a significant impact on those species.
- A change in diversion patterns on the Kern River, and a transfer of water supplies to the western portion of Kern County would certainly have an impact on "riparian habitat or other sensitive natural community identified in local or

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regional plans, policies, regulations, or by the California Department of Fish and Wildlife or U.S. Fish and Wildlife Service.” (3.6-66.)

- The loss of water to the Onyx Ranch region, and a change in diversion patterns below Lake Isabella, would have significant impacts on riparian habitat in and around the Kern River. The cumulative impact analysis of biological resources is therefore flawed and incomplete.
- The DEIR should have reviewed impact on cultural resources, including cumulative impacts, on all of the regions and areas impacted by the Project, in particular downstream of Lake Isabella, in the Kern River channel and corridor, and in the service areas of the Kern River interests who will experience a reduction in their Kern River water supplies as a result of the Project.
- “In order to provide a regional context for the geological setting of the project site, a larger Geological Study Area has been defined. The Geological Study Area, including the project site, is located within the Sierra Nevada geomorphic province which extends from where the Coast Ranges, Transverse Ranges, and Mojave Desert Ranges meet in southern California, to the Cascade Ranges in northern California (see Figures 3.8-1 and 3.8-2)” (3.8-3.) Rosedale should have further expanded the Geographical Study Area to include the San Joaquin Valley portion of Kern County.
- The DEIR concludes that “there would be no net increase in GHG emissions relative to existing conditions, and the proposed project would not result in a cumulatively considerable impact” (3.9-22), and the Project would therefore have a “less than significant impact.” That conclusion is flawed, and inaccurate, because the DEIR improperly limits its review to impacts within the Kern River Valley. The DEIR should have considered impacts in other areas that will be directly impacted by the Project, including areas downstream of Lake Isabella, and in the service areas of Kern River interests that will see a reduction in the availability of surface water as a result of the Project, and who consequently will have to increase pumping, and greenhouse gas emissions, to replace the lost surface water supplies.
- The transfer of a significant quantity of surface water away from the Onyx Ranch region would very likely result in additional groundwater pumping and use to generate replacement water. Kern River interests would additionally likely have to pump and use groundwater supplies to replace water lost or displaced as a result of the Project. Such increased pumping could have a significant impact on greenhouse gas emissions in the region. The DEIR fails to identify and review those impacts. The DEIR is deficient for failing to identify potential significant

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impacts resulting from increased greenhouse gas emissions in the region, and in the San Joaquin Valley portion of Kern County. The DEIR improperly only reviews greenhouse gas emissions resulting from and related to the Project in the Kern River Valley, and in the Onyx Ranch region.

- The DEIR's discussion of "potential impacts related to hydrology and water quality associated with implementation of the proposed project" is once more flawed and incomplete because the DEIR improperly limits the study area for such impacts to the Onyx Ranch region and the Kern River Valley. It is inconceivable for the DEIR to not consider Project impacts on stream flows, and related hydrological impacts on the Kern River below Lake Isabella. Rosedale contemplates that water generated by the Project will flow through the Kern River channel below Lake Isabella. It is a clear and obvious violation of CEQA for the DEIR not to consider impacts on stream flows, and related hydrological conditions, from the Project below Lake Isabella. The DEIR should have also considered Project impacts on groundwater conditions and water quality, below Lake Isabella, instead of narrowly restricting its analysis to just the Onyx Ranch area.
- "The inflow from the South Fork of the Kern River into the Isabella Reservoir is not gaged. Therefore, the inflow to the Reservoir from the South Fork of the Kern River is inferred as the balance of inflow necessary to account for the reported change in Reservoir storage, after accounting for other sources of inflow and outflow." (3.11-6.) The DEIR should use more reliable data than information based on an "inference." Rosedale should have more accurately calculated the actual alleged increase in flows generated by the Project, above and in addition to current, and historic, pre-Project flows into Lake Isabella. As a potential mitigation measure, Rosedale should accurately measure actual South Fork flows into Lake Isabella.
- "The Kern River Valley Groundwater Basin is not a critically-over drafted groundwater basin identified by the DWR. Therefore, the Kern River Valley Groundwater Basin is not subject to a Sustainable Groundwater Management Act (SGMA) Groundwater Sustainability Plan because it is considered to be a low-priority basin by the DWR." (3.11-7.) The Kern Subbasin, however, is critically over drafted, and is subject to a proposed GSP through coordination agreements between various Groundwater Sustainability Agencies. The DEIR should have considered the impacts, including cumulative impacts, on the Kern Subbasin as a result of the Project.
- The DEIR should have considered and discussed the groundwater budgets for the Kern Subbasin, and the Project's impacts on that budget. (3.11-12.) That

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information is readily available, as GSPs for the Kern Subbasin contain detailed and up to date groundwater models and budgets.

- The DEIR states: “The RRBWSD service area is within the Kern County Sub-basin (DWR Basin 5-022.14), which is considered a “high-priority” basin by the DWR. As such, the RRBWSD is a member of the Kern Groundwater Authority, which has prepared a Groundwater Sustainability Plan for the portion of the Kern County Sub-basin that is within the boundaries of its member agencies. The aquifer characteristics and groundwater conditions of the Kern County Sub-basin where the RRBWSD service area is located are documented in the Kern Groundwater Authority’s Groundwater Sustainability Plan (Kern Groundwater Authority, 2019).” (3.11-20.) The mention of just the Kern Groundwater Authority GSP, but not the other GSPs that apply to the Kern Subbasin, is misleading, as the KGA GSP does not apply to the entire basin that will be impacted by the Project. The DEIR should have at least identified and discussed the GSP for the Kern River GSA, and Project impacts on the Kern River GSA’s GSP, as the Kern River GSA members all hold historic Kern River water rights, and the GSP covers the majority of the Kern River channel and corridor within the San Joaquin Valley portion of Kern County. The KGA GSA, in contrast, is comprised primarily of entities without Kern River water rights, such as Rosedale, and the GSP for the KGA GSA does not cover or regulate the Kern River corridor and channel.
- The DEIR mentions the Kern County General Plan (3.11-22), but not Bakersfield’s General Plan. The City’s General Plan is far more relevant than the County’s plan, as the City’s plan applies to an extensive portion of the Kern River channel and corridor, and contains specific elements relating to the Kern River. In light of the improperly narrow and limited Project area, and arbitrary and incomplete failure to identify features, conditions and impacts below Lake Isabella, the entire discussion of Project impacts on hydrology and water quality is incomplete, and flawed, and not in compliance with CEQA requirements.
- “A numerical groundwater flow model was developed for the proposed project to evaluate the response of the aquifer to the proposed project’s reduction in the amount of surface water diversion and reduction in the amount of surface water irrigation on the project site. The model also was used to develop a no-injury factor by estimating how much water would be delivered to Isabella Reservoir with the proposed project. As part of Project Element 4, the no-injury factor would be applied to the proposed project to determine the amount of re-directed flows (from preproject surface water diversions) that would flow into and be released through the Isabella Dam as new water without injury to the Kern River Interests and other legal users downstream. The model included the development

of a water budget for the existing conditions, estimated the changes in the surface water volumes, and estimated the changes in the groundwater levels and storage within the Hydrological Study Area with implementation of the proposed project. The model analysis addressed the simulation of the proposed project over a 13-year period. The time period of January 2005 to December 2017 was selected because it contains both dry and wet time periods, with an average precipitation similar to historical precipitation.” (3.11-26.) The model should have extended beyond Lake Isabella to identify and consider impacts on Kern River flows below Lake Isabella, as well as impacts resulting from decreased diversions and increased pumping by Kern River interests as a result of the Project. The model should have also used more data and older data than just the 2005 to 2013 time period. Kern River flows and supplies are highly variable, so the accuracy and reliability of information on Kern River supplies and flows increase substantially when more information is used in a study or report.

- The groundwater model described at pages 3.11-26 and 27 is based on a number of “assumptions,” including assumptions involving a reduction in groundwater pumping and diversions within the Onyx Ranch property. The DEIR, however does not provide any details regarding the actual implementation and enforcement of such reductions. It is not apparent from the DEIR that Rosedale would have the ability to implement or enforce such reductions.
- The assessment of groundwater conditions in the model (3.11-29) is highly flawed for only considering groundwater conditions in the Kern River Valley and not below Lake Isabella, where actual impacts from increased pumping to replace supplies lost by Kern River interests as a result of the Project would occur.
- The assessment that the Project would have a “less than significant impact” on water quality (3.11-34), is flawed and incomplete because the DEIR improperly limits its review of water quality impacts to impacts in the Kern River Valley. The DEIR should have considered and reviewed impacts on water quality below Isabella Dam, including impacts on water quality as a result of increased groundwater pumping by the City and others to replace water lost to Rosedale through the Project. Increased pumping in areas already experiencing degraded groundwater quality adversely and significantly impacts water quality, and increased pumping could also shift and “pull” contaminated supplies, and plumes, towards groundwater production wells.
- The conclusion in the DEIR that the Project will have a “less than significant impact” on aquifer volume and groundwater levels (3.11-37) is flawed, and incomplete, because it again fails to consider impacts below Lake Isabella, or impacts associated with increased pumping by the City and other Kern River interests to replace water transferred to Rosedale as a result of the Project. The

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DEIR should have specifically identified and considered Project impacts on the Kern Subbasin, and not just the Kern River Valley Groundwater Basin.

- The DEIR states: “Depending on the year, the proposed project could provide water for groundwater replenishment in the Kern County Sub-basin, which would have a beneficial effect to groundwater levels and the aquifer volume. The proposed project would not impede, but rather support, the sustainable management of the Kern County Sub-basin.” (3.11-37) That self-serving claim is not supported by any data or evidence. In addition, Rosedale fails to account for increased pumping demands within the Kern County Subbasin to replace water “provided” to Rosedale through the Project.
- The discussion and analysis of drainage patterns, and the conclusion of “less than significant impacts” is untenable, and incomplete, as the DEIR fails to consider impacts below Lake Isabella. The DEIR does not, most importantly, identify and review impacts on Kern River flows, and diversions, below Lake Isabella.
- The DEIR states: “The surface water that would remain in the South Fork of the Kern River with the proposed project would be allowed to pass through the Isabella Dam based on communications between the Kern River Watermaster, USACE and the RRBWSD and would not raise its surface water level above the designated operational levels of the Reservoir. Therefore, the proposed project would not result in flooding offsite adjacent to the Isabella Reservoir in comparison to the existing conditions.” (3.11-38, 39.) The DEIR fails to explain why it arbitrarily cut off consideration of any impacts below Lake Isabella.
- In addition, “communications between the Kern River Watermaster, USACE and the RRBWSD” would not give Rosedale any right to hold water in Lake Isabella or to move water through Lake Isabella. (3.11-38, 39.) Rosedale would instead need an agreement with the entities that actually hold rights to water in Lake Isabella, and the right to store water in Lake Isabella. The Kern River Watermaster does not hold rights to any water in Lake Isabella, and does not manage any water supplies on his own, but only take actions at the direction of the Kern River interests with rights in and to Lake Isabella.
- The discussion of impacts on Water Quality Control Plans and Sustainable Groundwater Management Plans (3.11-20) is flawed and incomplete for primarily focusing on impacts within the Kern River Valley, and for selectively understating or ignoring adverse impacts downstream of Lake Isabella.
- “The proposed project also would increase flow in the South Fork of the Kern River downstream of the project site, downstream of Isabella Reservoir, and below the Isabella Dam in the Lower Kern River until the RRBWSD diversion points at their recharge basins. As a result, the implementation of the proposed

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project would provide Kern River water for groundwater replenishment in the Kern County Sub-basin, which would have a beneficial effect to groundwater levels and aquifer volume. Therefore, the proposed project would not conflict or obstruct with the Tulare Lake Basin Plan requirement for surface water and groundwater to be put to beneficial use to the fullest extent of which they are capable.” (3.11-43.) It is highly concerning that the DEIR only identifies purported positive impacts on groundwater in the Kern County Subbasin as a result of the Project, while ignoring adverse impacts resulting from increased groundwater pumping to replace water lost to Rosedale through the Project.

- The DEIR states “The implementation of the proposed project would not conflict with or obstruct implementation of a water quality control plan or sustainable groundwater management plan. No impact would occur.” (3.11-44.) That analysis is highly flawed and incomplete because the DEIR ignores and fails to assess actual Project impacts within the Kern Subbasin, including impacts caused by increased groundwater pumping to replace water lost to Rosedale. The DEIR also only mentions the GSP for the KGA, without mentioning all of the other GSPs, including the KRGSA’s GSP, which will manage and govern groundwater in the Kern Subbasin.
- The discussion of cumulative impacts (3.11-44, 45) is deficient as a result of the errors and omissions underlying the prior assessments of Project impacts.
- “Given that the proposed project would be adding water to the Kern River and would not decrease the Kern River water supply or affect Kern River water rights downstream of the Isabella Dam, there would be no adverse impact to Kern River diversions, Kern River water rights, or groundwater recharge associated with any of the cumulative projects downstream of Isabella Reservoir and the Isabella Dam. Additionally, the proposed project would support sustainable groundwater management in the Kern County Subbasin. Therefore, the proposed project, when considered together with Cumulative Projects E through J, would have no cumulatively considerable adverse impacts to hydrology and groundwater resources.” (3.11-45.) That conclusion, and the entire discussion, is erroneous and incomplete, as the DEIR ignores impacts associated with a shift of water to Rosedale, and necessary actions by Kern River interests, including increased groundwater pumping, to replace water lost to Rosedale as a result of the Project.
- The contention that the Project would “add water” to the Kern River is not supported by any data or evidence, and is objectively not correct. Lake Isabella and the Kern River channel have finite and defined capacity, and any new water in Lake Isabella or downstream of Lake Isabella would necessarily have to replace, and displace, other Kern River supplies that are claimed by a prior right holder or one of the Kern River interests.

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- “The proposed project would not change the volume of water stored in the Isabella Reservoir and, therefore, would not affect the Isabella Dam or increase the risk of failure of the Isabella Dam. Therefore, the proposed project, when considered together with Cumulative Project A, would have no cumulatively considerable adverse impacts to hydrology or water quality.” (3.11-45.) That statement is not accurate, and is contradicted by Rosedale’s claim that the Project would generate a “new” water supply that would flow into Lake Isabella.
- The Land Use and Planning section is flawed for not considering any potential impacts involving land use and planning below Lake Isabella. A decrease in water supplies available to the City and other Kern River interests as a result of the Project could limit the availability of water for growth and development within the City and in other parts of Kern County. By limiting and restricting any discussion of Project impacts on land use and planning to impacts within the Kern River Valley, the DEIR understates and fails to consider significant potential Project impacts.
- The DEIR should have also identified and considered land use and planning documents that apply to the areas impacted by the Project below Lake Isabella, including the City’s Urban Water Management Plan and General Plan, and City policies. It does not make sense that the DEIR only considered the County’s General Plan, and not the City’s General Plan, since the County has no Kern River water rights and therefore will not be impacted by the Project. The DEIR is again deficient for only identifying and considering the GSP prepared by the KGA GSP, and not the remainder of the GSPs that will regulate groundwater production and use within the Kern Subbasin, including the KRGSA’s GSP.
- “One of the objectives of the proposed project is to reduce reliance on imported water from the Sacramento/San Joaquin Delta via the SWP, which has become unreliable due to environmental restrictions in the Delta. As discussed in Chapter 4 Growth Inducement of this Draft EIR, the RRBWSD has been receiving a reduced long-term average of approximately 60 percent of the contracted amount of SWP water. This reduction equals approximately 10,000 AFY. The approximately 2,000 to 12,000 AFY of water to be supplied by the proposed project would help replace the 10,000 AF of imported water, thereby augmenting the groundwater basin with a sustainable local supply to support agricultural irrigation. Therefore, implementation of the proposed project would be consistent with the RRBWSD’s adopted Groundwater Sustainability Plan. Impacts would be less than significant.” (3.12-30.) Once again, the DEIR’s analysis is flawed and incomplete for failing to consider or account for efforts by Kern River interests to replace water supplies transferred to Rosedale as a result of the Project, including increased groundwater pumping and increased use of imported water supplies.

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- The list of “cumulative projects that could have impacts to land use and that, combined with the proposed project, could result in cumulatively considerable impacts” (3.12-31), is incomplete and deficient for not identify projects below Lake Isabella.
- Section 3.13, addressing Population and Employment, is flawed for failing to consider any issues or impacts below Lake Isabella, and for arbitrarily and improperly limiting consideration of any impacts to the Kern River Valley.
- The analysis in the Utilities, Service Systems and Energy section is flawed for failing to consider any issues or impacts below Lake Isabella, and for arbitrarily and improperly limiting consideration of any impacts to the Kern River Valley. In particular, the DEIR improperly fails to consider impacts on City utilities and service systems as a result of the City’s loss of up to 12,000 acre-feet of water per year as a result of the Project.
- “The proposed project would reduce irrigation on the project site and allow water that is currently diverted under existing conditions to stay in the South Fork of the Kern River and flow downstream into Isabella Reservoir, then the Lower Kern River, and then to the existing RRBWSD diversion structures and recharge basins for storage in their groundwater bank (Thomas Harder & Co., 2019; see Appendix E of this Draft EIR). No water supply associated with any other Kern River water rights holders would be affected or changed. Therefore, relative to surface water and implementation of the proposed project, there would be no change in surface water supplies available to serve adjacent land uses, communities, and local water suppliers. No impact on surface water supplies would occur.” (3.15-12.) That conclusion is highly flawed, on its face, as it ignores the reduction in City water supplies, and in supplies available to other Kern River interests, as a result of the transfer of water supplies to Rosedale through the Project. The reduction in surface water supplies to the City could have a significant impact on the supply of water available to serve its customers and residents.
- “As stated in Chapter 2 Project Description, several entities have water rights or access to surface water via agreement along the Lower Kern River downstream of the Isabella Dam, including the City of Bakersfield, Olcese Water District, North Kern Water Storage District, Kern Delta Water District, Buena Vista Water Storage District, and Kern County Water Agency (Kern River Interests). In addition, the RRBWSD receives Kern River water from the City of Bakersfield and other Kern River Interests through contractual arrangements. As explained in Section 3.11 Hydrology and Water Quality, with implementation of the proposed project, based on the 13-year model period of 2005 to 2017, it is estimated that an average of 7,265 net AFY of redirected flows from the Onyx Ranch and the Smith Ranch would result in an average of 6,014 net AFY of new water flowing through

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the Isabella Reservoir and the Isabella Dam and into the Lower Kern River. The difference, which amounts to a 17 percent “no injury factor,” accounts for model estimated losses that are anticipated to occur between Onyx Ranch and Isabella Reservoir as a result of the proposed project. These losses are associated with increased streambed infiltration, evapotranspiration, and subsurface outflow. Therefore, up to 6,014 AFY of water on average for the model period could be released out of Isabella Reservoir without injury to other legal users. In addition, Project Element 5 of the proposed project discussed in Chapter 2 Project Description of this Draft EIR consists of coordination with the USACE, Kern River Watermaster, and the Kern River Interests to release the surface water from the project site through the Isabella Dam and ensure it is not diverted by others between the Isabella Dam and the existing diversion points in the RRBWSD service area. The RRBWSD would coordinate with the Lower Kern River Interests to address scheduling releases and computing any losses between the Isabella Reservoir and the existing RRBWSD diversion points within its service area. With implementation of the proposed project, there would be no impact on water supplies available to serve the existing water rights and entitlements of the Kern River Interests.” (3.15-15.) That entire discussion is suspect, flawed, and based on unsupported assumptions and incomplete information. Once again, the DEIR fails to identify or consider project impacts below Lake Isabella, including impacts resulting from a loss of water supplies and the replacement of those supplies by Kern River interests, and the DEIR fails to include necessary details regarding the “coordination” and conveyance of water through Lake Isabella and downstream of Lake Isabella through the Kern River channel.

- The conclusion that the Project will have a “less than significant impact” on water supplies (3.15-15) is obviously false, based on incomplete information, and not supported by any actual or credible data. As explained herein, any water generated by the Project will result in a loss of water supplies within the Kern River Valley and downstream of Lake Isabella.
- The conclusion that impacts on energy consumption through the Project would be less than significant (3.15-17) is incomplete and deficient for failing to consider increased energy consumption from increased groundwater pumping to replace water supplies lost to Rosedale through the Project.
- “Implementation of the proposed project would not have direct growth inducement effects, as it does not propose development of new housing, either in the Kern River Valley or the RRBWSD service area, that would attract additional population. Nor would the project build or extend roads or other any other essential utility infrastructure that could indirectly induce growth. Furthermore, implementation of the proposed project would not result in permanent or short-

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term employment that would indirectly stimulate the need for additional housing and services to support the new employment demand. In fact, as identified in Section 3.13 Population and Employment, employment may be slightly reduced as a result of the project. Therefore, the proposed project would not indirectly induce population growth by establishing new employment opportunities or housing to accommodate such employees.” (4-4.) The DEIR fails to consider that the addition of up to 12,000 acre-feet of water per year into the urban Bakersfield region could increase population growth in that region.

- “Based on the 13-year modeled period of 2005 to 2017, the proposed project would make approximately 2,000 to 12,000 AFY available for recharge into the San Joaquin Valley Groundwater Basin (groundwater basin).” (4-4.) “The proposed project would reduce the reliance on Delta water and offset the use of imported water with a local water supply for RRBWSD’s landowners and customers. Increased groundwater storage as part of the proposed project may support planned population growth by Kern County that has been identified within the RRBWSD service area.” (4-4.) The DEIR concludes: “The proposed project would not remove any obstacles to growth and would not indirectly have a significant impact on growth inducement. As a result, impacts to growth inducement would be less than significant.” (4-5.) That conclusion contradicts prior statements in the DEIR, and common sense and logic. It seems apparent that the shift of 2,000 to 12,000 acre-feet of water per year from a lightly populated agricultural area in the Sierra Nevada Mountains to the edge of Bakersfield, where the City’s population is growing, would have an inevitable and immediate impact on population growth, and development. As the DEIR states, “[w]ater storage and supply is one of the primary public services needed to support growth and community development.” (4-1.) The addition of such a large supply of water would have significant impacts on continued growth and development in and around Rosedale’s service area. The DEIR is misleading and deficient for not recognizing or reviewing that significant impact.
- In the alternatives section, to satisfy the objective of “maximizing the beneficial use of water rights associated with the Onyx Ranch and Smith Ranch in Kern County (5-2), the DEIR should have considered other uses of water rights that would have less adverse impacts on Kern River interests below Lake Isabella as a result of the shift in 2,000 to 12,000 acre-feet per year of Kern River water supplies from those entities to Rosedale.
- To satisfy objectives associated with increasing the quantity of water delivered to Rosedale (5-2), the DEIR should have considered other less impactful alternatives, and sources of supply.

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- The DEIR also cannot properly consider alternatives due to omission of critical information regarding the Project from the DEIR, including details of the agreements or arrangements that would potentially allow Rosedale to convey water through Lake Isabella, and through the Kern River channel, to Rosedale.
- The DEIR takes an improperly narrow and limited view of alternatives. The Delta Conveyance Project is not the only alternative water supply available to Rosedale. The DEIR should have considered water conservation, transfers or exchanges with local water districts or the City, recycled water, or expanded conjunctive use and groundwater banking.
- The No Project Alternative would have significant attractiveness, as it would reduce adverse impacts from the shift of water supplies away from the Kern River Valley, and away from Kern River interests. The No Project Alternative would also reduce conflict over the use of a highly questionable and dubious water supply, with very questionable water rights claims.
- The DEIR should have identified and considered actual separate alternatives to the Project, instead of limiting the consideration of alternatives to a “50 percent” version of the Project. A lesser version of the Project does not present a true, viable and practical alternative to the Project and the objectives of the Project.
- The DEIR also cannot properly or practically identify the “environmentally superior alternative” without identifying and considering all components of and impacts resulting from the Project.

4. COMMENTS TO APPENDIX E-HYDROGEOLOGICAL TECHNICAL REPORT

The following comments relate to Appendix “E” of the DEIR the Hydrogeological Technical Report and a Technical Memorandum (“Report”) prepared by Thomas Harder & Co., and dated July 2019.

The Report is apparently intended to evaluate how changes to surface water diversions along the South Fork of the Kern River associated with the Project are anticipated to change the surface water and groundwater budget of the Project study area and Lake Isabella. The evaluation uses a computer numerical model.

The Report concludes with a summary of findings that included:

1. The study period of 2005 to 2017 yielded an average of 6,074 acre-feet per year of water that could be released from Isabella Lake without a change in reservoir storage with the Project in place.
2. The Project is predicted to result in a net increase of groundwater in storage across the study area, as compared to the no Project historical condition.

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3. Groundwater levels under “with Project” conditions are predicted to be less variable and periodically lower by 0 to 16 feet in some places than they would have otherwise been without the Project but generally fall within the range of groundwater levels historically measured in the area.

4. At the end of the 13-year model period, groundwater levels under Project conditions are predicted to be within a few feet of no Project groundwater levels throughout most of the study area, particularly areas away from the Project site. Groundwater levels in areas away from the Project site, such as the area immediately upgradient of Isabella Reservoir and immediately downgradient of Smith Ranch, are predicted to be 0 to four feet higher as a result of the Project. Thus, the Project is not predicted to result in a long-term negative change in groundwater storage.

5. Pumping from Project wells is planned to be reduced from an annual average of approximately 6,500 acre-ft/yr to approximately 875 acre-ft/yr.

The City has the following concerns with the Report:

- The findings in the Report were based on several faulty data sets and assumptions built into the model.
- The United States Army Corps of Engineers’ (“USACOE”) “Daily Operation of Isabella Reservoir, Kern River, CA” sheets are a tool to assist in calibration of Kern River South Fork inflow, but are not definitive. The USACOE uses a subtraction method to calculate the total inflow to Lake Isabella. After measurements are taken daily and calculations are completed, any deficient inflow is added to the total inflow to account for all other potential inflows, including South Fork. There is no direct measuring station that gauges the flow that enters the lake. The Report “infers” that the make-up number is South Fork flows, but other considerations for inflow are “bank storage”, minor stream flows and springs.
- The flows and quantities listed in the SWRCB’s statements of flow and diversion are not verified, or at least not known to be verified. The Report notes that several measuring stations reported flows that exceeded the capacity of the station whereby the numbers used in the model were “adjusted”. The Report also mentions that if total diversions on the South Fork were less than the “inferred” South Fork flow into the lake, the diversion flows were again “adjusted” proportionately among diverters.
- Precipitation data infers that a certain quantity of water makes it to the groundwater basin or satisfies a portion of crop demands, but the Report provides no direct explanation how that translates into water used in the Kern River Valley.
- The Report uses estimates for years when no historical records were available.

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- The Report states that diversion amounts throughout the Kern River Valley were generally overstated.
- The Report mentions that other flow records, presumably from the South Fork right holders, were recorded by Rosedale. There is no indication that these records were verified or that the measurements were calibrated. There is no mention of the measurement method or of the verification of any recorded flows by diverters. There is no mention of daily flows by each South Fork right. The Report provides no examples of recording sheets or calibration.
- Statistics in the Report were annualized to total volume. It would have been helpful to also report the range of instantaneous flows in cubic feet per second, as well as the high and low flows, and seasonal or high flow years compared to low flow years.
- The only reliable and verified gauging station is the USGS Onyx Station located in the upper end of the South Fork Valley. It measures and records flows in 15 minute intervals. The Report does not list any other calibrated, reliable measuring station on the South Fork.
- The conclusions and summary of findings in the Report regarding the quantity of water “available” are suspect and unconvincing due to (a) the lack of calibrated measuring stations at key points along the South Fork of the Kern River, especially at some point beyond the last diversion before entering Lake Isabella, (b) the lack of historic records, sloppy and incomplete diversion records, suspect flow measurements, estimates in the place of actual records, and “adjusted” diversions, (c) water sources in the form of precipitation are not adequately explained or quantified, (d) crop consumptive uses not fully explained or disclosed, and (e) the model had some groundwater levels above ground surface, with no explanation.
- In light of the tremendous uncertainty over the quantity of water actually “available” for the Project, and to move downstream to Rosedale, the DEIR should have considered the consumption use (ET) of crops grown on the property minus any groundwater pumping needed to meet ET in dry years, and minus any precipitation that falls during the growing season. The net amount would identify the actual amount of water beneficially used and presumably available for moving off the property.
- The City also joins in, supports and endorses the comments, conclusions and findings in the July 17, 2020 Technical Memorandum prepared by Todd Groundwater and submitted as Exhibit B to the Kern Delta Water District’s comments to the DEIR.

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5. CONCLUSION

The City maintains that Rosedale must revise and recirculate the DEIR to address all of the errors, omissions and deficiencies in the current DEIR. (Pub. Resources Code § 21092.1.) Rosedale will need to revise and add considerable information to the DEIR, and failure to recirculate would “deprive[] the public of a meaningful opportunity to comment.” (14 Cal. Code Regs. § 15088.5.)

As indicated, in addition to all of the comments herein, Bakersfield has significant substantive and legal concerns with regard to the Project, which concerns it will raise at the appropriate time, in the appropriate forum. The statements and comments in this letter only constitute the City’s comments to the DEIR. The City reserves the right to comment on and raise appropriate objections and challenges to the Project, and any other efforts or approvals related to the Project.

We thank you for consideration of these comments. Please let us know if you have any questions with regard to these comments.

Sincerely,



Colin L. Pearce
for DUANE MORRIS LLP

CLP:bah

cc: Virginia Gennaro, City Attorney, City of Bakersfield
Art Chianello, Water Resources Manager, City of Bakersfield

EXHIBIT A

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ALLIANCES IN MEXICO
AND SRI LANKA

March 23, 2018

VIA EMAIL

Dan Bartel
Assistant General Manager/District Engineer
Rosedale-Rio Bravo Water Storage District
849 Allen Road
Bakersfield, CA 93314

**Re: City of Bakersfield's Comments to Notice of Preparation of Draft
Environmental Impact Report for Onyx Ranch South Fork Valley Water
Project**

Dear Mr. Bartel:

On behalf of the City of Bakersfield ("City" or "Bakersfield"), we submit the following comments to the Notice of Preparation and supporting Initial Study (herein collectively "NOP") for an Environmental Impact Report ("EIR") for the Onyx Ranch South Fork Valley Water Project ("Project") issued by the Rosedale-Rio Bravo Water Storage District ("Rosedale" or "RRBWSD") on February 22, 2018.

The City has a number of concerns with regard to the Project, the NOP, and Rosedale's failure to comply with the requirements of the California Environmental Quality Act ("CEQA") in connection with the potential scope and contents of an EIR for the Project.

The City does not believe Rosedale has proposed a valid, viable or appropriate Project. In particular, the City is concerned with and has questions with regard to (1) Rosedale's claimed pre-1914 appropriative water rights, and its claimed ability to create a water supply on the South Fork of the Kern River through a curtailment of diversions, (2) Rosedale's lack of any practical or legal right to move water through Lake Isabella, or to hold water in Lake Isabella, (3) Rosedale's practical and legal inability to transport alleged new or additional water supplies through the

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Kern River channel to Rosedale, and (4) adverse impacts on the City's water rights and supplies, in violation of Water Code Section 1706. The City maintains that Rosedale should address all of these issues, and concerns, in the EIR for the Project.

With regard to CEQA, the City believes Rosedale has (1) failed to properly or sufficiently describe the Project, (2) failed to disclose critically important components and details of the Project, (3) failed to acknowledge or indicate it will review significant and potentially significant impacts of the Project, including impacts on the City and other Kern River interests, and (4) failed to indicate it will include and review required and necessary information in the EIR, including alternatives to the Project, and mitigation measures.

Based on these errors and omissions, absent a substantial revision of the NOP and a switch in the approach and focus of the intended CEQA review for the Project, the City believes Rosedale cannot prepare an EIR which complies with the intent or specific requirements of CEQA. The City's concerns are also exacerbated by the lack of details and information in the NOP regarding the Project, as well as Rosedale's additional failures to comply with CEQA.

In addition to those concerns, the City provides specific comments regarding the NOP, and points out additional errors, omissions and misstatements in the NOP.

1. BAKERSFIELD HAS SIGNIFICANT CONCERNS WITH AND OBJECTIONS TO THE PROJECT

A. Concerns with Water Supply for the Project

Bakersfield questions and has serious concerns with regard to the water supply which Rosedale proposes to use in the Project. Bakersfield in particular questions whether the "pre-1914 appropriative water rights on the South Fork of the Kern River" which Rosedale claims it acquired and holds in connection with the Onyx Ranch property, are still valid, viable and enforceable. The City additionally has concerns over the amount of water that Rosedale claims it will utilize in connection with the rights.

Rosedale claims that "The majority of the water rights were quantified in a 1902 Arbitration Decree (1902 Decree) that resolved water rights disputes between various diverters on the South Fork. The balance of the pre-1914 rights involved is based on other historic documents and chains of title for the RRBWSD acquired property in the South Fork Valley." (p. 1-23.) Bakersfield understands that the 1902 Decree may constitute evidence of pre-1914 appropriative water rights associated with the Onyx Ranch property. The Decree, however, is not determinative, and does not by itself establish that Rosedale still holds the rights referenced in the Decree.

The 1902 Decree only indicates that the rights claimed by Rosedale existed in 1902. The NOP does not refer to any other evidence regarding the existence or extent of the claimed water

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rights. The NOP presents no evidence that the claimed rights are still in existence and still viable and valid, or that Rosedale can change the point of diversion and place of use for the water right.

The Decree is not binding on the City, or on other Kern River interests, as they were not parties to the proceeding. The Decree did not arise out of a streamwide adjudication or a determination of any other rights or claims on the Kern River. The City also questions whether an arbitration decree, as opposed to a court judgment, can be binding or determinative of the rights referenced in the decree.

Rosedale's more recent diversion and use of water does not establish that it actually holds rights to such water, or that it holds rights to the quantities of water diverted in recent years. When an appropriator holding pre-1914 appropriative water rights fails to make beneficial use of water for a period in excess of five years, such water rights revert to the public for subsequent appropriation. (Water Code § 1241; *Smith v. Hawkins* (1895) 110 Cal. 122, 126-28.) The NOP does not provide any evidence showing a continuous use of water on the subject property since 1902 in the amounts claimed. There are no references to older or prior statements of diversion and use. Rosedale's claimed rights may therefore have been lost or reduced through non-use. Specifically, absent evidence of continuous use of the water rights claimed by Rosedale, and in the amounts claimed by Rosedale, it would appear that the water rights may have been forfeited or abandoned, in whole or in part.

Recent increased diversions of water by Rosedale would not establish, revive, evidence or quantify the existence or extent of Rosedale's claimed pre-1914 water rights on the South Fork of the Kern River. The use of a certain flow of water, even on a regular basis, does not, by itself, give rise to any property right to the water or to a right to the continued use of the water. (*Stevens v. Oakdale Irr. Dist.* (1939) 13 Cal.2d 343, 350.) In *Dannenbrink v. Burger* (1913) 23 Cal.App. 587, 596-97, the court stated that a party's use of water would "raise no presumption of a grant" of a water right, and a user of such water does not, without more, "secure or acquire the right to the continuous flow of such water."

The NOP also claims that: "The amount of water involved in the proposed project annually would be the lesser of the amount available to the RRBWSD under its Onyx Ranch and Smith Ranch pre-1914 appropriative water rights from the South Fork during actual flow conditions and the largest amount that was diverted in that same month between the years 2009 and 2017." (p. 1-28.) Table 1-3 lists the quantities of water "associated with the proposed project," stated as rates of flow, and Table 1-4 lists the "actual diversion of water available from the Onyx Ranch water rights since the year 2009." (p. 1-24.)

Rosedale then claims "[f]or the purposes of the proposed project, the amount of water from the Onyx Ranch that may be left to flow in the South Fork of the Kern River to the Isabella Reservoir would be: the lesser of the amount available under the water rights under actual flow conditions; and the largest amount that was diverted in that same month of the year between

2009 and 2017 (excluding the year 2011).” (p. 1-24.) As indicated, recent cropping patterns and increased use of water by Rosedale does not establish that the water rights will or should yield those same amounts of water in the future. Rosedale’s predecessors in title may have forfeited, abandoned or reduced the water rights, in whole or in part, by failing to use the rights to that extent in the past. (See Water Code § 1241.)

Two law firms that recently investigated the Onyx Ranch property for possible purchase by Kern County concluded that the pre-1914 appropriative water rights associated with the Onyx Ranch property may not be viable and enforceable. The law firms also questioned the amount of water associated with the claimed appropriative water rights for the property. In a September 30, 2009 report to Stephen D. Schuett, Assistant County Counsel for Kern County, for example, the Hanson Bridgett law firm stated that “a substantial portion of the ‘paper rights’ derived from the 1902 arbitration may have long gone unused.”

B. Lack of any Right to use Lake Isabella for Conveyance or Storage

It does not appear that Rosedale holds any right to transfer water through Lake Isabella, or to hold water in Lake Isabella. The NOP does not indicate or claim that Rosedale has any right to move water into or out of Lake Isabella, or to temporarily hold or store water in Lake Isabella. Absent a right or agreement to use Lake Isabella, the Project is not valid or viable in its present form.

The US Army Corps of Engineers (“USACE”) owns and operates Lake Isabella reservoir and dam. The USACE allows certain water districts to use Lake Isabella for storage of water pursuant to various agreements. Absent such an agreement, Rosedale has no rights to any water that may flow into Lake Isabella.

The City is not aware of any agreements which would give Rosedale a right to hold water in Lake Isabella or to move water through Lake Isabella. Rosedale has not claimed and does not claim in the NOP that it is a party to any agreements involving storage in Lake Isabella. Rosedale also does not claim that it is entitled to store water in Lake Isabella pursuant to any statute, regulation, right, interest or policy. The City, the USACE, and other Kern River right holders and Kern River interests are not obligated to allow Rosedale to transport water through Lake Isabella, or to store water in Lake Isabella.

The NOP does not provide any details or explanation as to how Rosedale would hold water in or convey water through Lake Isabella. Rosedale only states that it “would coordinate with the Kern River Watermaster, Kern River Interests, and U.S. Army Corps of Engineers to facilitate the movement of the water through the Isabella Dam, or alternatively, secure temporary storage of the water in the Isabella Reservoir for later release to the downstream RRBWSD service area.” (p. 1-29.)

All of the water in Lake Isabella is already subject to prior rights. Water that flows into Lake Isabella is part of or becomes part of the native supply and is thereafter subject to and absorbed by prior existing rights to water in the Kern River. Any water released from Lake Isabella has been claimed by and accrues to prior rights on the Kern River.

Rosedale would have to displace, replace or dispose of water presently in Lake Isabella in order to hold or transport water through Lake Isabella. That would result in adverse impacts to various Kern River interests, and would require future agreements and arrangements with Kern River interests.

Rosedale also does not hold or use any Kern River water rights, other than through contracts with the City, and the alleged water right described in the NOP. Rosedale therefore cannot utilize or rely on any of its own Kern River rights in connection with the Project to hold or move water through Lake Isabella.

The claimed intent to “coordinate” the storage and conveyance of water through Lake Isabella constitutes an admission that Rosedale has no present right to move water into or out of Lake Isabella. That statement does not establish that Rosedale will be able to secure any right to move water through Lake Isabella. The Project is therefore incomplete and invalid in its present form.

C. Rosedale has No Right or Ability to Transport Water Through the Kern River Channel

In addition to the concerns over the movement of water into Lake Isabella, the City has concerns over Rosedale’s proposed use of the Kern River channel to transport an alleged “block” or supply of water through the Kern River channel to Rosedale’s service area in western Kern County.

The Kern River is highly regulated, managed and controlled by the City and other Kern River interests. The City uses the Kern River channel to transport water supplies through various weirs, dams and other regulating structures to various diversion points on the river. The City also uses the Kern River channel and structures for recharge purposes, including to store and bank Kern River surface water in the groundwater basin for later extraction and use. In effect, every drop of water coming into the Kern River channel is owned and controlled by the City or other Kern River interests, and such ownership and control extends to recharged and stored water supplies in the groundwater basin.

The City also measures, monitors and records flows of water in the Kern River, and diversions from the river for various uses, including diversions into storage through the Kern River channel for recharge purposes. The City prepares monthly and annual summaries of the diversion and use of Kern River water for distribution to various Kern River interests.

Rosedale ignores and fails to acknowledge or account for all of these facts and circumstances. The NOP does not identify or refer to the myriad of agreements, judgments, policies and procedures commonly referred to as “the Law of the River” that controls and impacts the diversion and use of Kern River water. The NOP further ignores and fails to mention the regulating structures, weirs and canals on the river, or the City’s active management and operation of such structures in connection with the Kern River.

The NOP does not indicate how Rosedale would transport water through the Kern River channel below Lake Isabella. Rosedale does indicate that “system losses” for water conveyed through the Kern River channel would have to be determined in the future. (p. 1-28.) The NOP, however, does not provide any specific details as to how such losses would be determined, or how the conveyance of water and calculation of losses would be coordinated or accommodated with the conveyance of water by Bakersfield and other Kern River interests below Lake Isabella.

The NOP instead only states: “The channel and canal losses from the mouth of the Kern Canyon to the RRBWSD point of diversion point at their recharge areas west of Bakersfield would be assessed in proportion to the flows of other Kern River operations by the Kern River Watermaster. RRBWSD would seek to coordinate and schedule deliveries coincidental to the operations of others so as to minimize losses and maximize recharge benefits.” (p. 1-28.) That statement is too vague and general for purposes of CEQA, and for an NOP. The statement is also erroneous, as the Kern River Watermaster has no authority or ability to coordinate and schedule deliveries of water to Kern River interests. The Watermaster has no authority over any Kern River water rights or right holders, and does not have the right to assign or impose transportation losses on any Kern River interest, or to control or limit the actions of any Kern River right holder.

Rosedale has no legal or practical right to move water through the Kern River channel, at least through the Bakersfield City limits. Water Code Section 7075, for example, would not give Rosedale a right to use the portion of the Kern River that runs through the City because the City manages, controls and regulates the flows of water in and around the Kern River channel for a number of purposes, and reasonable and beneficial uses, included recharge for banking and later recovery. Rosedale would need some sort of permission, agreement or license from the City for the use of the facilities within and around the Kern River. Rosedale would also need to reach an agreement with the City recognizing that water placed in the Kern River pursuant to the Project belongs to Rosedale, and is not absorbed by other Kern River rights.

Rosedale additionally could not rely on Water Code Section 7075 to convey water through the Kern River channel unless it can demonstrate that it is actually introducing new water, foreign water, or surplus water in the Kern River system, above prior rights, and which actually increases flows of water in the river. (*Stevinson Water Dist. v. Roduner* (1950) 36 Cal.2d 264, 267-268.) The NOP does not indicate that Rosedale’s alleged water supply would practically and physically increase or add to flows of Kern River water, as opposed to replacing or

displacing water accruing to other Kern River rights. The court in *Stevinson* indicated that absent an agreement with additional appropriators, water placed in a stream for conveyance would be considered abandoned water. (*Id.*)

Absent an agreement with the City and other Kern River water interests, any water brought into the Kern River channel by Rosedale would therefore be considered abandoned, and would be subject to and absorbed by prior rights held by the City and other interests. Rosedale's failure to acknowledge or account for its inability to transport water generated through the Project establishes that the Project is premature, incomplete, and invalid. At the very least, the NOP is deficient for not explaining and identifying one of the primary components of the Project.

D. The Project Would Adversely Impact the City's Rights

Any attempt to move water through Lake Isabella and the Kern River channel would adversely impact the City's prior water rights and supplies. As indicated, the transportation of water pursuant to the Project would necessarily displace or replace water which would otherwise be diverted by the City. The supply of water available for use by the City for municipal uses, including direct diversion to water treatment plants and groundwater recharge and banking in the Kern River channel, would necessarily be reduced and adversely impacted. A reduction of the supply of Kern River water available to the City would also cause significant secondary and cumulative adverse impacts, including a decline in groundwater levels in the region, and increased pumping and reliance on groundwater supplies.

As indicated, the City actively manages and regulates the flow of water in the Kern River for a number of purposes and beneficial uses, including recharge, banking and storage of flows of water for later recapture and use by the City. The City relies on the Kern River channel for conveyance of water to diversion points and to the City's 2800 Acre Recharge Facility. The City also utilizes the Kern River channel to send water to the North Kern Water Storage District ("North Kern") pursuant to 1952 agreement with the City, and to the Kern Delta Water District ("Kern Delta") pursuant to its pre-1914 appropriative rights. In addition to reducing quantities of water diverted and used by the City, the Project could disrupt or displace additional supplies of water allocated for use by other entities and parties on the Kern River.

The Project would accordingly violate Water Code Section 1706, which provides that a party holding pre-1914 water rights may only "change the point of diversion, place of use, or purpose of use if others are not injured by such change." Based on the potential injury to the City, it is unlikely that the Project could be implemented as proposed by Rosedale.

In its investigation of the Onyx Ranch property, the Hanson Bridgett law firm also recognized the likely application of Water Code Section 1706 to an attempted transfer of water from Onyx Ranch to other parts of Kern County. In its September 30, 2009 opinion letter, the law firm stated: "In order to effectively convey water from Onyx Ranch to, for example, the

California Aqueduct, the transferor would need to prohibit downstream users from themselves diverting it for consumptive use. Thus, a proposed transfer of that sort might elicit a challenge by a downstream user claiming injury caused by a reduction in the water available to it.”

2. THE NOP OMITTS AND OBSCURES NECESSARY AND REQUIRED INFORMATION REGARDING THE PROJECT, IN VIOLATION OF CEQA

In addition to the foregoing objections and concerns, the City maintains that the NOP is misleading, deficient and incomplete. Rosedale fails to provide or explain important, necessary details and components of the Project.

An NOP must contain “sufficient information describing the project and the potential environmental effects to enable the responsible agencies to make a meaningful response.” (14 Cal. Code Regs. § 15082(a)(1).) At the very least, an NOP must include (a) a description of the project, (b) the location of the project, and (c) probable environmental effects of the project. (Id.) An Initial Study must additionally consider “[a]ll phases of project planning, implementation, and operation.” (14 Cal. Code Regs. § 15063(a)(1).)

Rosedale’s NOP does not satisfy those basic, limited requirements. The NOP instead contains incomplete, misleading and incorrect statements with regard to the Project, the local environment, and the water rights and supplies that will be impacted by the Project. The NOP does not identify or consider all phases of the Project. The NOP further fails to indicate that the EIR will include required, relevant sections, or that it will properly discuss and consider required and necessary issues and subjects. The document does not satisfy even the most basic requirements for the contents of an NOP, and therefore does not comply with CEQA.

A. The Project Description is Incomplete and Misleading

The “Project Description” in the NOP is deficient, as it is incomplete, vague and lacking in critical details about the Project. The Project Description fails to provide important details about the physical features of the Project, and the agreements, conditions and infrastructure necessary for the implementation of the Project. Without a more complete, and accurate, description of the Project, it is impossible to determine whether, and to what extent, the proposed EIR for the Project will properly review all significant Project impacts, including impacts on the City and its water rights and supplies.

The NOP provides that the Project “involves changing the point(s) of diversion and place of use for certain South Fork of the Kern River water rights from lands in the South Fork Valley to lands on the San Joaquin Valley floor in Kern County (County).” (p. 1-1.) The NOP further provides:

“The RRBWSD proposes to change the point of diversion and place of use for the water rights associated with these parcels so that the water can be delivered in the RRBWSD

service area on the San Joaquin Valley floor and used for irrigation and groundwater recharge. The RRBWSD proposes to reduce the diversion of water on the project site and convert the irrigated fields to lower water use crops or allow the fields return to their native vegetative state. The RRBWSD would then allow the water that would have been diverted on the project site to remain in the South Fork of the Kern River and flow downstream. This would result in a net increase in flows within the South Fork of the Kern River, and the Isabella Reservoir where the water would be released through the Isabella Dam and flow downstream in the lower Kern River until the water is diverted at the RRBWSD diversion point. From there, the RRBWSD would deliver the water to recharge basins and channels within and near its service area west of the City of Bakersfield (City) in unincorporated Kern County within the San Joaquin Valley.” (p. 1-1.)

At page 1-19, in a description of the “Purpose of the Proposed Project,” the NOP states “The purpose of the proposed project is to enable the RRBWSD to change the point of diversion and place of use for certain water rights from lands in the South Fork Valley to a location downstream within the San Joaquin Valley floor.” As indicated above, that statement is incomplete and misleading. The statement omits the primary, most problematic feature of the Project; the intended conveyance of a purported new water supply through Isabella Reservoir, Isabella Dam, and more than 50 miles of the highly regulated, managed and controlled Kern River system.

At page 1-28, in the description of proposed Project characteristics, Rosedale fails to provide necessary and important details regarding the transportation and diversion of water from the Kern River for the Project. Rosedale instead only very generally states:

“The proposed changes would allow water to flow to past the project site (Onyx and Smith Ranches), resulting in a net increase in surface flows within the South Fork of the Kern River and the Isabella Reservoir. The increased amount of water accumulated in the Isabella Reservoir would be released through the Isabella Dam and flow downstream in the lower Kern River to the groundwater recharge basins and channels in and near the RRBWSD’s service area west of the City of Bakersfield (City) and in unincorporated Kern County in the San Joaquin Valley.” (p. 1-28.)

The NOP later indicates that Rosedale would have to “coordinate with the Kern River Watermaster, Kern River Interests, and U.S. Army Corps of Engineers to facilitate the movement of the water through the Isabella Dam, or alternatively, secure temporary storage of the water in the Isabella Reservoir for later release to the downstream RRBWSD service area.” (p. 1-29.) The NOP provides no further details or information regarding the proposed “coordination” of flows of water into or out of Lake Isabella. The NOP does not provide any suggestion or proposal as to the type or manner of agreement or other accommodation that would allow it to bring water into and out of Lake Isabella.

The NOP therefore fails to provide essential, necessary information regarding the conveyance of water through Lake Isabella and the Kern River channel to Rosedale. The NOP does not indicate how water would be moved into and out of Lake Isabella, how long and under what circumstances the water would remain in Lake Isabella, and when and in what quantities water would be “released” from Lake Isabella. The NOP instead appears to simply assume that water generated in connection with the Project will somehow magically be conveyed more than 50 miles through the Kern River system to Rosedale, without any impact on the environment or on the Kern River interests.

The information that is provided in the NOP regarding the conveyance of water is incomplete and misleading. Rosedale fails to address or account for the legal and practical obstacles to the use of the Kern River channel and Lake Isabella for storage and conveyance of water. Rosedale erroneously claims that such issues can be resolved through arrangements or accommodations made with the Kern River Watermaster, yet the Watermaster has no authority over the matters addressed in the NOP.

The NOP also fails to provide any information as to whether other Kern River water supplies or water accruing to other water rights would be impacted, or how such supplies and rights would be impacted, by “releases” of Project water from Lake Isabella. The NOP does indicate that “channel and canal losses” would have to be calculated and assessed for the water conveyed through the Kern River channel pursuant to the Project, and that Rosedale “would seek to coordinate and schedule deliveries coincidental to the operations of others so as to minimize losses and maximize recharge benefits.” (p. 1-28.) The NOP, however, provides no further details or information beyond those vague, general statements.

It is also not clear whether the Project would result in an actual net increase in surface flows below Lake Isabella, in addition to above Lake Isabella. As indicated above, the NOP claims that there will be a “net increase,” in flows above Lake Isabella, but there is no direct claim or indication that the Project would result in a net increase in flows of water in the Kern River, below Lake Isabella. There is also no indication that water developed pursuant to the Project and which flows in the South Fork of the Kern River would increase flows below Lake Isabella in the same or similar amount.

There is also no indication or explanation as to how or to what extent water conveyed through the Kern River channel below Lake Isabella would avoid reducing or displacing water accruing to existing Kern River water rights, including rights held by the City. There is no explanation or indication as to the steps or measures Rosedale would take to avoid or mitigate adverse impacts on other Kern River water rights and supplies.

B. The Project Area is Improperly Restricted and Not in Compliance with CEQA

The EIR identifies the Project location as “five miles from the eastern boundary of the Isabella Reservoir along the South Fork of the Kern River, approximately 50 miles east of the RRBWSD service area in the San Joaquin Valley. The majority of the project site, consisting of 3,418.42 acres, is located within the northwestern portion of lands collectively known as the Onyx Ranch. The remaining acres are parcels within the Smith Ranch.” (pp. 1-2, 4.) In the Environmental Checklist form, Rosedale further claims that the Project location is limited to “29 parcels within the Onyx and Smith Ranches in and around the unincorporated communities of Onyx and Weldon within the Kern River Valley area in the northeastern portion of Kern County.” (p. 2-1.)

That limited Project location description is not in compliance with CEQA. The Project location must include all areas where the Project will be implemented, and where the Project will impact the environment. An EIR must consider all impacts of a project on the environment, even if the impacts would be felt by another agency. (*San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713.) A complete project description is necessary to ensure that all of the project's environmental impacts are considered. (*City of Santee v. County of San Diego* (1989) 214 Cal.App.3d 1438, 1454.)

The Project setting and Project location must include the Kern River channel, the area in and around the Kern River channel, and Rosedale's service area. The Project will be implemented and carried out at those locations, and the Project will have significant impacts on those areas. In particular, most of the impacts from the Project will occur within the Kern River channel as a result of the Project's proposed conveyance of water through the channel, which would occur at same time as, and potentially in conflict with, water moved through the channel by the City. Project impacts will additionally primarily be realized with the boundaries of Rosedale, where water generated and transported pursuant to the Project would eventually be put to use.

It is inexplicable for a large water supply project not to identify the property where the conveyance of water will occur, and the territory where water will be used, as part of the project location. As a result of the incomplete, improper description of the Project area, the review and analysis of Project impacts in the EIR will necessarily be incomplete and deficient.

The NOP indicates that the EIR will review a number of potential Project impacts, including impacts on hydrology and water quality, but only within the Onyx Ranch area, and not the areas actually impacted by the Project, such as the Kern River channel and Rosedale's service area. As explained in more detail below, the NOP also indicates that the EIR will not review or consider a number of potential impacts from the Project as a result of its impermissibly narrow focus on the Onyx Ranch region. The failure to identify the actual Project area would

therefore perpetuate and exacerbate additional violations of CEQA involving a failure to review all Project impacts.

C. The NOP Fails to Describe or Include Relevant Information Required in an EIR

The NOP fails to include or refer to additional information regarding Rosedale, including Rosedale's current water rights and supplies, Rosedale's diversion, delivery and use of water within its service area, or Rosedale's intended use of water generated through the Project. Absent that information, it is impossible to determine or identify potential impacts from the Project on Rosedale or its operations. It is additionally impossible to determine the necessity or need for the Project.

The NOP also fails to identify or describe any other Kern River water rights and supplies, including rights held by Bakersfield and other entities below Lake Isabella. As indicated, the NOP does not acknowledge or identify the agreements, judgments, orders, policies and practices which govern and control the conveyance of water through the Kern River channel, and the diversion and use of water from the Kern River. Without that critical information, the EIR cannot properly review the impacts of the Project on other Kern River interests. The NOP, moreover, improperly fails to acknowledge or identify any potential impact on the water rights and supplies of other entities, such as Bakersfield, that hold Kern River water rights or which use and rely on Kern River water supplies.

The failure to provide information regarding Kern River water rights and supplies, and the use of water from the Kern River, is contrary to the intent and requirements of CEQA. The California Supreme Court has recognized that "the future water sources for a large land use project and the impacts of exploiting those sources are not the type of information that can be deferred for future analysis." (*Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 431.)

Courts have previously invalidated EIRs that did not contain sufficient information and details about water supplies proposed for use in a project, and which did not adequately discuss uncertainties associated with water supplies. (See e.g. *Planning & Conservation League v. Department of Water Resources* (2000) 83 Cal.App.4th 892, 908, fn. 5 (noting that State Water Project entitlements represent nothing more than "hopes, expectations, water futures or, as the parties refer to them, 'paper water'"); *Santa Clarita Organization for Planning the Environment v. County of Los Angeles* (2003) 106 Cal.App.4th 715, 722 (holding that an EIR's water supply discussion was inadequate because of its assumption that 100 percent of a party's SWP entitlement would be available); *California Oak Foundation v. City of Santa Clarita* (2005) 133 Cal.App.4th 1219, 1238–1239, 1244 (in which the court rejected an EIR for an industrial park because the water supply analysis relied, without adequate consideration of the uncertainties of SWP supplies, on the party's purchase of 41,000 af in imported SWP water).)

The EIR for the Project must also identify and discuss “areas of controversy” known to the parties, and the NOP should have acknowledged this duty. (14 Cal. Code Regs. §15123.) The NOP, however, fails to acknowledge prior disputes among the Kern River interests and other local water districts, including Rosedale, which could impact Rosedale’s ability to implement the Project or to transport water developed through the Project. Rosedale, for example, has been involved in litigation with its neighboring water districts with regard to Rosedale’s groundwater pumping and use. The NOP should have indicated that the EIR will mention and discuss those disputes, or consider the impact of the Project on such disputes, and the issues arising from such disputes.

The NOP further fails to indicate that it will identify and consider “areas of controversy” involving opposition to the Project from residents and landowners in the Onyx Ranch region. In particular, the City believes that some affected residents and landowners have objected to the fallowing of land in the region to “create” a new water supply, and the attempted transfer of significant water supplies to Rosedale’s service area.

The NOP does not reflect or mention any consideration of alternatives to the Project, including the “no project” alternative. The NOP specifically does not indicate that Rosedale will consider alternatives that would satisfy the alleged purpose and goals of the Project, including to “mitigate shortages in [Rosedale’s] SWP water supply that has been reduced due to environmental constraints in the Sacramento/San Joaquin Delta.” (p. 1-19.) Such alternatives would logically include conservation, additional sources of water, changes in cropping patterns, or use of groundwater banking facilities and projects within Kern County.

The NOP does not indicate that the EIR will identify and analyze the cumulative impacts of the Project, including the impact of the Project in connection with other water supply projects in the vicinity of the Project. The NOP should have also indicated that the EIR will identify and discuss the cumulative impacts of the planned conveyance of water generated through the Project to Rosedale. Bakersfield, for example, has proposed and recently completed program level CEQA review of the Kern River Flow and Municipal Water Project. That project could compete directly with Rosedale’s Project for the use of flows of Kern River water. Rosedale’s EIR should therefore consider and account for cumulative impacts associated with Bakersfield’s proposed project, in conjunction with Rosedale’s Project.

The NOP does not indicate that the EIR will examine all of the impacts and potential impacts of the Project on other entities that use and rely on Kern River water supplies, or which hold Kern River water rights, such as the City. An EIR must consider all impacts of a project on the environment, even if the impacts would be felt by another agency. (*San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus*, (1994) 27 Cal.App.4th 713.) The NOP should therefore indicate that the EIR will assess the impact of the Project on the City, other water users in the region, and the Kern River generally.

3. COMMENTS TO SPECIFIC PORTIONS OF THE NOP

Bakersfield has the following additional comments, questions, and concerns regarding the NOP and the Project. These comments do not constitute or represent all of the City's objections to and concerns with the Project, or to the adequacy of Rosedale's compliance with CEQA. The City reserves the right to supplement these comments, in the future, and the City reserves the right to submit substantive objections to the Project.

- The NOP states: "In addition, the following entities also have water rights along the Kern River downstream of the Isabella Dam: City of Bakersfield, Olcese Water District, North Kern Water Storage District, and Kern Delta Water District." (p. 1-7.) That statement is not accurate. Only Bakersfield and Kern Delta hold Kern River water rights within the First Point of Measurement service area. Bakersfield and Kern Delta provide Kern River water to other entities pursuant to various agreements. Such entities include North Kern, Olcese Water District, the California Water Service Company, the Kern-Tulare Water District, and the County of Kern.
- The NOP states: "The Kern River Watermaster prepares and keeps daily records on the flow of the waters of the Kern River and the storage and release of surface water to the Kern River from the Isabella Reservoir for deliveries to water right holders in the San Joaquin Valley." (p. 1-7.) That statement is not accurate. The City, and not the Kern River Watermaster, prepares and keeps the daily record of the flow water in the Kern River, the storage and release of water from Isabella Reservoir, and the diversion and delivery of water to various entities. The City prepares certain records for use by the Watermaster, but the Watermaster does not have access to or the ability to prepare and maintain such records, which records are now the responsibility of the City.
- The NOP states: "The release of water from the Isabella Dam is made in accordance with prior existing agreements on the Kern River, beginning with the Miller-Haggin Agreement of 1888." (p. 1-7.) That statement is incomplete and misleading. The release of water from Isabella Dam is made in accordance with a number of agreements between various Kern River interests, including the City's predecessors in interest, and the federal government. After water is released from Lake Isabella it is distributed among various Kern River right holders and other parties pursuant to a number of agreements, policies, and practices. Those agreements include the Miller-Haggin Agreement of 1888, but also the 1900 Shaw Decree, subsequent amendments to the Miller-Haggin Agreement, and a number of other agreements.

- The NOP further states that the Project “would result in a net increase in surface flows within the South Fork of the Kern River and the Isabella Reservoir where the water would be released through the Isabella Dam and flow downstream in the lower Kern River . . .” That statement is incomplete, confusing and misleading. While Rosedale may have the ability to increase flows of water within the South Fork of the Kern River, the reference to Isabella Reservoir is not clear. It is not clear, in particular, whether that statement refers to increased flows of water into Isabella Reservoir, or out of Isabella Reservoir. In any case, the statement is misleading because it does not indicate that the Project would increase flows of water “in the lower Kern River.”
- The claim that the Project’s change in point of diversion method is consistent with how the other “‘Kern River Interests’ . . . routinely manage their respective Kern River pre-1914 water rights” (p. 1-19.) is misleading and inaccurate. Water is released out of Lake Isabella for diversion and use by the Kern River interests pursuant to a number of agreements. Rosedale is not a party to those agreements and does not have the same, or any, right to utilize the distribution, regulation and water management facilities along and throughout the Kern River channel downstream from Lake Isabella.
- As indicated, the City questions the existence and extent of the pre-1914 appropriative rights to divert water from the South Fork of the Kern River identified and quantified in the NOP at p. 1-23. The EIR should provide evidence of the existence and prior use of the alleged water rights in the amounts previously claimed. The EIR must provide more information with regard to Rosedale’s claimed rights in order to properly review the impact of a change of the point of diversion, place and manner of use, and the transportation of that claimed water supply to Rosedale’s service area.
- Table 1-3 list the quantities of water “associated with the proposed project,” stated as rates of flow, and Table 1-4 lists the “actual diversion of water available from the Onyx Ranch water rights since the year 2009.” (p. 1-24.) As indicated, recent information regarding the diversion and use of water on the Onyx Ranch property does not establish a right to use or to continue to use that quantity of water. The EIR should disclose any and all additional information which evidences or supports the claimed water rights, including records of diversion and use between 1902 and 2009.
- The NOP provides that the objectives of the Project “include project elements that avoid: Unreasonably affecting fish, wildlife, or other in-stream beneficial uses; Unreasonably affecting the overall economy or environment of the South Fork Valley as well as the Kern River Valley; and Injuring any legal users of the waters

of the South Fork of the Kern River.” (p. 1-27.) The City supports the inclusion of those objectives in the Project, but maintains that Rosedale should include and review “project elements” that (1) avoid unreasonably affecting fish, wildlife and other instream beneficial uses throughout the Kern River channel, including through the Bakersfield city limits, (2) avoid unreasonably affecting the economy and environment of the entire Kern River service area and channel, including the San Joaquin Valley portion of Kern County, and (3) avoids injury to any and all legal users of water on the entire Kern River, and not just on the South Fork of the Kern River.

- The NOP states that system losses for the water transferred between Lake Isabella and Rosedale’s point of diversion “would be determined” in the future. (p. 1-28.) The NOP further states:

“The channel and canal losses from the mouth of the Kern Canyon to the RRBWSD point of diversion point at their recharge areas west of Bakersfield would be assessed in proportion to the flows of other Kern River operations by the Kern River Watermaster. RRBWSD would seek to coordinate and schedule deliveries coincidental to the operations of others so as to minimize losses and maximize recharge benefits.” (Id.)

That statement does not provide basic, necessary or specific information regarding the conveyance of water through the Kern River channel. It is not sufficient for the NOP to simply state that critical components of the Project will be determined in the future. The NOP must provide specific information about critical components of the Project. The EIR cannot properly review the impacts of the Project without necessary, basic information regarding the Project, including the circumstances, timing, procedures, and process for determining conveyance losses.

- The claim that conveyance losses would be assessed in proportion to the flows of other Kern River interests is also unclear, incomplete and lacking in necessary details. The NOP fails to explain how the losses could be assessed in proportion to other flows, or other rights. The NOP also does not identify any other rights, or flows, that would be subject to some sort of proportionate reduction as a result of the Project.
- The NOP erroneously claims that the Kern River Watermaster is entitled to assess or impose conveyance losses on Kern River right holders. That assertion is inaccurate. The Watermaster does not have the authority to determine, enforce, adjust or modify any water rights. Any claim that the Watermaster could adjust flows of water in the Kern River or impose conveyance losses on existing right

holders, is misguided and incorrect. Instead, Rosedale would have to reach some agreement or arrangement with the City, as the operator and record keeper on the Kern River, and other Kern River interests, with regard to the allocation of conveyance losses associated with the movement of water through the Kern River channel pursuant to the Project.

- As indicated previously, the NOP fails to provide important necessary details regarding the movement of water into Lake Isabella, the storage or conveyance of water through Lake Isabella, and the “release” of a new supply of water for distribution to Rosedale through the Kern River channel. The NOP fails to provide any information as to how, and when water will be moved through and out of Lake Isabella, and through the Kern River channel. There is no information on system losses, the capacity of the Kern River system, impacts on other Kern River water rights and supplies, and impacts on diversions from the River.
- It is inaccurate and misleading to indicate that the Watermaster could authorize or play any kind of role in the agreements or arrangements that would have to be made by Rosedale with the Kern River parties, including the City, to allow it to move water through the Kern River below Lake Isabella. As indicated, the Watermaster has no authority or role in the conveyance of water through the Kern River channel or the allocation of water within the First Point Kern River service area. The Kern River interests, primarily the City, instead own and operate the physical regulating and diversion structures in the Kern River, and hold rights to all of the water in the river, including water which percolates into the ground for later recapture and use.
- The NOP states, at page 1-29, that “To support the purpose of the proposed project, irrigated agricultural fields on the project site could be converted from high consumptive use lower value forage crops to non-irrigated uses, such as non-irrigated pasture, grazing lands, and native upland vegetation.” The EIR, of course, must review the impacts of the Project at the Onyx Ranch site, including impacts associated with the fallowing of agricultural lands, the conversion of agricultural lands to other uses, and the shift of a significant quantity of water away from the region.
- The EIR should also address local opposition to the Project and the transfer of water away from the region, and any economic impacts on the region from the loss of the water supply projected for use in the Project, as the EIR should discuss “areas of controversy” known to the parties. (14 Cal. Code Regs. §15123.) The NOP, for example, refers to potential “water rights disputes” arising from the

Project, and the EIR should identify, review and analyze those disputes in detail. (p. 1-29.)

- The NOP explains: “In addition, more frequent coordination with the Kern River Watermaster would occur. On a weekly or even daily basis, as determined to be needed, the RRBWSD would notify downstream South Fork water users and the Kern River Watermaster of the RRBWSD diversions that would be directed to and through Lake Isabella, so that surface flow is not mistakenly diverted by others.” (p. 1-29.) Once again, that statement omits and fails to include necessary, important details regarding the Project. The vague reference to “coordination” does not provide any details or information regarding the actual agreements, circumstances or procedures which would allow Rosedale to transport its “new” water supply through the Kern River channel below Lake Isabella. The NOP fails to provide any information regarding the timing, process, procedure or conditions which would allow Rosedale to move its water through the Kern River channel.
- The information that is provided in the NOP at page 1-29, is also incomplete and misleading, as the Watermaster has no ability or authority to regulate, monitor or “coordinate” the movement of water through the Kern River channel or the distribution of water to various water right holders and interests. Instead, Rosedale would need to make arrangements and agreements with the City, as the operator and record keeper on the River, and other Kern River interests and right holders.
- At page 1-29, the NOP indicates that the Project will apparently involve a shift in water supplies within the Onyx Ranch region from surface water to groundwater supplies. The NOP states that one of the elements of the Project involves “the collection of groundwater pumping data and the preparation of data records for use by the water right holders. Coordination of groundwater data among the water right holders is a necessity to ensure good groundwater management and to preclude water rights disputes based on erroneous or lack of information.” (p. 1-29.) The NOP should have identified a shift to groundwater resources as a component of the Project. The NOP should have provided additional information regarding that component of the Project, including amounts projected to be pumped in the region to replace water transferred pursuant to the Project, groundwater conditions in the region, pumping in the region, and impacts associated with the use of groundwater in connection with the Project.
- The NOP lists, at pages 1-30 and 2-2, the “additional responsible or trustee agencies [that] may have discretionary or other permit authority over all or portions of the proposed project.” That list is incomplete, as it should have

included the State Water Resources Control Board, Bakersfield, and other Kern River interests. All of those entities may and will likely have some sort of discretionary, approval or regulatory authority over the Project. The State Water Resources Control Board, for example, could impose terms and conditions on the conveyance of water through the Kern River channel in the course of the pending dispute over unappropriated Kern River water. The City, as the operator and record keeper on the Kern River, would also have considerable practical and legal authority over Rosedale's ability to transport water in the Kern River channel.

- The NOP, and the EIR, should discuss Rosedale's pending application to appropriate Kern River water, and explain how that application would impact, affect or alter the Project, if approved by the State. The EIR, for example, should explain whether Rosedale's application is an alternative to the Project, or a separate, unrelated Project. It is particularly important that the EIR review the application to appropriate because Rosedale has failed to undertake any CEQA review in support of the application, or in connection with the project discussed in the application for the use of water requested by Rosedale.
- At page 2-1, the NOP states: "The project site consists of a total of 4,109.18 acres located in and around the unincorporated communities of Onyx and Weldon in the Kern River Valley." As indicated, that is incomplete and misleading. The Project site should also consist of the Kern River channel and surrounding environment, where the water will be conveyed, and Rosedale's service area, where the water will purportedly be used, or at least stored.
- The City disputes Rosedale's claim that the Project would not have a significant impact on greenhouse gas emissions. (pp. 2-8, 3-14, 15.) The transfer of a significant quantity of surface water away from the Onyx Ranch region would very likely result in additional groundwater pumping and use to generate replacement water. Kern River interests would additionally likely have to pump and use groundwater supplies to replace water lost or displaced as a result of the Project. Such increased pumping would generate energy and emissions which could have a significant impact on greenhouse gas generation. The EIR must identify and review those impacts.
- The Project, contrary to the claims in the NOP (see p. 2-11), could also have significant impacts on population and housing in the region. The Project, for example, could reduce or displace water supplies available to the City for municipal use. The Project could also significantly impact population and housing in the Onyx Ranch region by reducing the quantity of water available for use for those purposes in the region. The EIR should identify and review those impacts.

- The Project, contrary to the claims in the NOP (pp. 2-13, 14), could have a significant impact on utilities and service systems. The Project could reduce the quantity of water available to the City's utility system, as well as utilities in the Onyx Ranch region. The EIR must identify and review those impacts, and any related impacts on Kern River water right holders and interests.
- The NOP states: "The implementation of the proposed project would not involve changes in the existing environment which, due to the location or nature, could result in the conversion of Farmland to non-agricultural use or the conversion of forest land to non-forest use. Therefore, no impact would occur and no mitigation measures would be required. No further analysis of this environmental issue will be provided in the Draft EIR." (p. 3-5.) That statement is incorrect and misleading. The NOP instead indicates that the Project will likely involve the conversion of farmland to non-agricultural use as a result of the transfer of a significant quantity of surface water away from the Onyx Ranch region, and the conversion of farmland to non-agricultural uses. The EIR should therefore identify and review potentially significant adverse impacts associated with the conversion of agricultural land to non-agricultural uses.
- The NOP states: "The implementation of the proposed project has the potential to deplete groundwater supplies or interfere with groundwater recharge from the reduction in irrigation to allow for the continuation of surface water downstream. This has the potential to cause a net deficit in aquifer volume or a lowering of the local groundwater table level. Therefore, this potentially significant impact of the proposed project will be analyzed in the Draft EIR." (p. 3-20.) That statement appears to only refer to potential groundwater impacts in the Onyx Ranch region. The EIR should additionally review potentially significant Project impacts on groundwater supplies and recharge in other areas impacted by the Project, including the Kern River channel, Bakersfield's service area, and within Rosedale. Water from the Project which replaces or substitutes for water accruing to the City's rights in the Kern River channel, for example, could reduce the quantities of water used by the City for recharge and banking purposes in the Kern River channel or in the City's 2800 Acre Recharge Project. Water from the Project diverted into Rosedale would also have some sort of impact on groundwater conditions within Rosedale, which impacts must be reviewed in the EIR.
- At page 3-20, the NOP indicates that the EIR will review potential adverse water quality impacts resulting from "increased sedimentation from erosion downstream." The NOP later indicates, however, that "implementation of the proposed project would not otherwise substantially degrade water quality. No impact would occur and no mitigation measures would be required. No further

analysis of this environmental issue will be provided in the Draft EIR.” (p. 3-21.) The City points out that the Project could have additional adverse water quality impacts, including impacts arising from a loss of surface water supplies, increased groundwater pumping and use, migration of contaminated water supplies, and reduced groundwater recharge. The City’s groundwater supply has been impacted by water quality issues, and the Project could increase or exacerbate such impacts by reducing surface and groundwater supplies available to the City. The EIR must review those potential impacts.

- The NOP claims that the Project would not conflict with or impact “any applicable land use plan, policy, or regulation of an agency with jurisdiction over the proposed project or project site that was adopted for the purpose of avoiding or mitigating an environmental effect.” (p. 3-23.) The NOP concludes that “no further analysis of this environmental issue will be provided in the Draft EIR.” (Id.) Rosedale reached that conclusion, however, based solely on a consideration of land use plans and land uses in the Onyx Ranch region of Kern County. As indicated previously, the EIR should consider impacts and environmental issues throughout the entire Project area, including in Lake Isabella, the Kern River channel, and Rosedale’s service area. Rosedale should not unreasonably narrow the Project area to avoid consideration of Project impacts.
- The NOP further states that the EIR will not review impacts on and conflicts with any applicable habitat conservation plan or natural community conservation plan because “the project site is not within the boundaries of a habitat conservation plan or similar plan.” (p. 3-23.) That conclusion is based on an improperly narrow and limited view of the Project site. The Project site should include the Kern River channel and Rosedale’s service area. Those regions are within the boundaries of several habitat conservation and similar plans. The EIR should review and analyze Project impacts on those plans.
- The NOP indicates that the EIR will not consider or review growth inducing impacts from the Project, because “the implementation of the proposed project would not induce substantial growth, either directly or indirectly, in the surrounding areas.” (p. 3-27.) That conclusion is based on an improper narrow and limited characterization of the Project area as only including the Onyx Ranch region. As indicated, that is not in compliance with CEQA, as the Project area should include Rosedale’s service area, as well as the Kern River channel and surrounding areas.
- Rosedale states that its service area “contains approximately 43,000 acres of agricultural and urbanized agricultural land.” (p. 1-20.) The NOP also indicates that “urban development” within Rosedale “is anticipated to increase as the City

develops to the west.” (p. 1-23.) As the water developed and conveyed pursuant to the Project will eventually be diverted into and used within Rosedale’s service area, it certainly appears likely that the Project will impact urban development within Rosedale. The EIR should therefore review growth inducing impacts resulting from the Project, as well as related impacts on urban development.

- The NOP states that “The implementation of the proposed project would not require potable water supplies that serve existing entitlements and no new or expanded entitlements are needed. No impact would occur and no mitigation measures would be required. No further analysis of this environmental issue will be provided in the Draft EIR.” (p. 3-35.) That statement is not accurate. The Onyx Ranch region will have to utilize new or expanded entitlements and supplies, including groundwater supplies, to replace water transferred to Rosedale from Onyx Ranch. Bakersfield and other Kern River interests would also have to obtain new water entitlements and supplies to replace any of their water supplies lost or diminished as a result of the Project. The EIR must review and any and all impacts associated with efforts to obtain new or expanded water supplies and entitlements.
- The NOP provides that “proposed project would not generate significant environmental effects which would cause substantial adverse effects on human beings, either directly or indirectly. Therefore, a less than significant impact would occur and no mitigation measures would be required. No further analysis of this environmental issue will be provided in the Draft EIR.” (p. 3-37.) That statement is incorrect. The fallowing of farmland and transfer of substantial water supplies away from Onyx Ranch could have adverse economic impacts on the region and residents of the region, including impacts resulting from a loss of agricultural jobs, reduced water supplies, increased dust and risks of valley fever, and related adverse consequences. The EIR must review economic and social effects resulting from physical changes to the environment, including, in this situation, economic and social effects resulting from the fallowing of farmland and the transfer of water away from Onyx Ranch. (14 Cal. Code Regs. § 15064(e).)

4. CONCLUSION

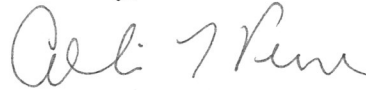
As indicated, Bakersfield has significant concerns with regard to the Project, which concerns it will raise at the appropriate time, in the appropriate forum. The statements and comments in this letter only constitute the City’s comments to the NOP. The City reserves the right to comment on and raise appropriate objections and challenges to the Project, the EIR which will be prepared in connection with the Project, and any other efforts or approvals related to the Project.

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For purposes of CEQA, however, Rosedale should at the very least disclose the material details and components of the Project in the NOP. Rosedale's failure to provide such necessary information, and failure to comply with additional CEQA requirements, raise serious concerns about Rosedale's willingness and ability to comply with CEQA and to undertake a proper and complete review of the environmental impacts of the Project. Bakersfield therefore urges Rosedale to rescind the NOP and delay preparation of a Draft EIR for the Project until it is able to identify and disclose the material components of the Project, and until it indicates it will properly review all impacts of the Project on the environment.

We thank you for consideration of these comments. Please let us know if you have any questions with regard to these comments.

Sincerely,



Colin L. Pearce
for DUANE MORRIS LLP

CLP:bah

cc: Virginia Gennaro, City Attorney, City of Bakersfield
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