

Kern River Watermaster

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BY U.S. MAIL AND EMAIL

Dan Bartel
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Rosedale-Rio Bravo Water Storage District
849 Allen Road
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Re: Public Comments on Draft Environmental Impact Report (“DEIR”) for the Onyx Ranch South Fork Valley Water Project (“Project”) (SCH #2018021061)

Dear Mr. Bartel:

As Kern River Watermaster, I provide written public comment to Rosedale-Rio Bravo Water Storage District (“Rosedale”) with regard to the DEIR and the Project. The Kern River Watermaster acts as a representative of various public agencies with historic rights to use Kern River water in the southern San Joaquin Valley portion of Kern County, including the City of Bakersfield, Kern Delta Water District, North Kern Water Storage District, Buena Vista Water Storage District (including Henry Miller Water District and Olcese Water District), and the Kern County Water Agency (“Kern River Interests”) with regard to conservation storage space at Isabella Reservoir.

Previously, in my March 23, 2018 letter addressing the Notice of Preparation (“NOP”), I requested that Rosedale “expand the scope of its DEIR to include a comprehensive investigation, identification and evaluation of any potential significant environmental impacts, a reasonable range of alternatives and also appropriate mitigation measures with regard to the beneficial uses of Kern River water by the Kern River Interests.” Specifically, I requested that the Project “be designed, developed and implemented in such a manner to ensure that it avoids causing any adverse impacts to the Kern River Interests long-established public water projects all of which are reliant on the continued use of Kern River water.” Detailed comments were provided in that

regard. Unfortunately, the DEIR does not address any of the concerns explained in my March 23, 2018 letter. As a result, the DEIR is not in compliance with CEQA in a number of respects.

The DEIR fails to consider and evaluate the potential impacts of the proposed change of point of diversion and place of use of the Onyx Ranch and Smith Ranch water rights on the Kern River Interests' operations in Isabella Reservoir and their respective public water projects downstream. Further, the DEIR does not disclose and evaluate the uncertainty and existing public controversy that exists over the origins, nature, and extent of the Project's asserted right to flows of the South Fork of the Kern River. In particular, the DEIR does not identify and evaluate the potential impact to the Kern River Interests and the environment if the right to South Fork flows—and thus the amount of water available for transfer—assumed in the DEIR are overstated, and how such action would impact the Kern River Interests' ongoing public water projects. In short, it does not address the potential impacts of the Project in the manner required by CEQA.

I. The Project Description Is Inadequate, Because It Fails to Completely Describe the Mechanics of the Proposed Transfer

CEQA requires that an EIR be “prepared with a sufficient degree of analysis to provide decisionmakers with information which enables them to make a decision which intelligently takes account of environmental consequences.” (Cal. Code Regs., tit. 14, § 15151.) A crucial part of that analysis is an adequate “description of the project's technical, economic, and environmental characteristics.” (Cal. Code Regs., tit. 14, § 15124.) The degree of specificity required depends on the project, as the project description must provide “sufficient information to understand the environmental impacts of the proposed project.” (*Dry Creek Citizens Coalition v. County of Tulare* (1999) 70 Cal.App.4th 20, 28.)

The Project Description in the DEIR consists of six “elements” of the Project. (DEIR, pp. 2-20 through 2-23 (pdf 78-81).) But these “elements” are not a description of the Project at all, rather they describe how the substance of the Project will be planned. An appropriate Project Description would require these elements to be completed before it could be formulated, and thus *before* circulation of the DEIR. The first three “elements” merely describe data that Rosedale intends to gather related to South Fork diversions and groundwater levels. Such data should have been collected during preparation of the DEIR. The fifth and sixth “elements” are the only portions of the Project Description that seem to describe any part of the Project proper, and those do not provide any of the details necessary to assess the Project's impacts. They do not adequately explain how Rosedale will accurately measure, monitor, and report to the United States Army Corps of Engineers (“USACE”) and the Kern River Watermaster the daily incremental increase in South Fork Kern River water entering and being released from Lake Isabella, nor how Rosedale will convey that daily water flow downstream from the Project Location in the South Fork Valley into Lake Isabella and then downstream from Isabella Dam into Rosedale's service area (i.e., under

what manner of daily operation, through what facilities, under what terms, and with what increment of daily losses, etc.). These deficiencies render the Project Description inadequate.

A. The DEIR Does Not Articulate a Clear and Accurate Method for Determining the Assumed Incremental Increase in Flows Entering Lake Isabella

The core assumption of the Project is that Rosedale will “reduce the diversion and use of surface water on the project site by converting irrigated fields to non-irrigated pasture or native vegetation,” which “would result in a net increase in the South Fork flows that would run downstream to the Isabella Reservoir.” (DEIR, p. 1-1 (pdf 49).) It is crucial, therefore, that the DEIR clearly and accurately describe the Project’s intended method to accurately measure, monitor, and report the presumably daily flow and volume of water derived from the Project’s South Fork water supply that will be conserved by the conversion of the fields as well as the daily volume and flow rate of such water that is determined to enter the gross pool of Isabella Reservoir.

“Element 6” of the Project Description assumes that lands “converted to non-irrigated pasture or native vegetation” under the program will achieve “total reliance on natural precipitation for pasture production.” (DEIR, p. 2-23 (pdf 81).) The method by which this will be achieved, however, is not described. Furthermore, because the groundwater level in the area is high, it is not clear whether deep rooted native vegetation will withdraw a significant amount of water from the interconnected surface water and groundwater system. The surface water model relied upon by the DEIR does not account for any such continued consumptive use and assumes a perfect reduction of consumptive use on the property to precipitation. (DEIR, Appendix E, p. 8 [assuming all surface water deliveries are discontinued and that all such water flows down South Fork to Lake Isabella].) Further study is necessary to compare consumptive use under current conditions with the consumptive use that will result from the conversion of the lands to native vegetation. The DEIR cannot assume, as it does, that all water currently used on these lands will flow downstream and enter the gross pool in Lake Isabella.

In addition to accurately determining the amount of water conserved at the Project Site, the DEIR also needs to establish the daily flow rate of that water that will enter Lake Isabella as a result of the Project. The Project Description does not provide for any determination of this flow rate or describe in any way how the Project could be integrated with existing reservoir operations. All operations in Lake Isabella administered by the USACE in conjunction with the Kern River Watermaster are directed by governing flood control and operation manuals and agreements (see Appendix A) and each require the daily measurement, monitoring, and reporting of water to ensure safe and reliable dam operations for flood control, public safety, conservation storage, recreation, electric power projects, and other authorized purposes of Lake Isabella. Specifically, each day a precise accounting is required to measure, monitor, and report the gross pool elevation within Isabella Reservoir, storage increment, mean inflow and outflow, evaporation, and pre- and post-project measurements at the First Point of Measurement located downstream of Lake Isabella.

Such data is essential to the calculation and allocation of Kern River Interest water right entitlements and storage balances in order for the Kern River Watermaster to fulfill defined duties including determining the instantaneous, daily, natural flow of Kern River water at the First Point of Measurement without regard for Isabella Reservoir operations. For the Watermaster to account for any water purported to be added to Lake Isabella from the Project, the specific daily flowrate of any additional water needs to be known with certainty. It is also unclear how the Project's assumed additional inflow will affect the current daily measurement of evaporation in Lake Isabella. Given that the pathway for entrance of the proposed water supply into Lake Isabella could be either surface or groundwater infiltration the DEIR needs to study whether and to what extent the introduction of additional South Fork flows into Lake Isabella affects and may necessitate changes to current methods for determining evaporation in Lake Isabella. For example, evaporation of flows from groundwater infiltration could be significantly higher if the water has to go over geologic structures like Lime Dike. More hydrogeologic technical study is needed to identify and evaluate the impact on evaporation within Lake Isabella resulting from the Project.

B. The DEIR Does Not Describe How Water Will Be Transferred Downstream from Lake Isabella

The Project Description is required to include all aspects of the Project. (*Santiago County Water Dist. v. County of Orange* (1981) 118 Cal.App.3d 818, 829–30.) However, the DEIR does not discuss a critical aspect of the Project: the transfer of the conserved water from Lake Isabella downstream to Rosedale's place of use. The DEIR merely states, in "Element 5" of the Project Description, that Rosedale will "coordinate with ... Kern River Interests to address scheduling releases and computing any losses" (DEIR, p. 2-22 (pdf 80).) There are important operational issues with this aspect of the Project, which could have significant impacts on storage operations in the reservoir as well as conveyance of water downstream from the reservoir. The DEIR cannot defer consideration of those issues and must consider them now. (See *Lighthouse Field Beach Rescue v. City of Santa Cruz* (2005) 131 Cal.App.4th 1170, 1208 ["The requirements of CEQA cannot be avoided by piecemeal review...."]; *Bozung v. Local Agency Formation Com.* (1975) 13 Cal.3d 263, 283–84.)

Rights to storage of Kern River water in Lake Isabella are authorized and defined by various agreements with the United States of America and among the Kern River Interests, including the 1964 "Contract Among The United States of America and North Kern Water Storage District, Buena Vista Water Storage District, Tulare Lake Basin Water Storage District, and Hacienda Water District", the 1964 "Storage Agreement Among First Point Entities", and the 1962 "Kern River Water Rights and Storage Agreement by And Among Buena Vista Water Storage District, Tulare Irrigation District and Hacienda Water District", as amended, which define and allocate stated rights of storage among the entities who have funded the costs of Isabella Dam and Reservoir. Rosedale does not have any right to store any water in Lake Isabella under any agreement with the United States or the Kern River Interests. This means that any South Fork

Kern River water transferred under the Project must enter into and flow through Isabella Dam without infringing on the existing Lake Isabella operations and storage rights of the existing users. Project Element 5 states that Rosedale will “coordinate with the Kern River Watermaster, Kern River Interests, and USACE to facilitate the movement of the water through the Isabella Dam.” (DEIR, p. 2-22 (pdf 80).) However, this single sentence fails to disclose or evaluate the complexity of that coordination and the potential impacts of the Project on both Isabella Reservoir and downstream operations. Releases through Isabella Dam are carefully coordinated on a daily basis by the USACE and the Watermaster to ensure public health and safety through flood control and emergency operations (i.e., dam integrity and safety, search and rescue), accommodate the conservation, storage, and delivery of water stored for beneficial use by Kern River Interests, and avoid interference with associated downstream activities such as hydroelectric power generation and recreation (e.g. white-water rafting and fishing). Daily administration of any outflow from Lake Isabella for any of these purposes, as well as recognized capacity restrictions in different reaches of the Kern River channel downstream, make the coordination of releases from Isabella Reservoir a sophisticated water management operation which necessitates detailed monitoring and daily communication under clearly defined modes of communication among the United States, the Kern River Watermaster, and the Kern River Interests in coordination with City of Bakersfield Department of Water Resources Hydrographic Unit. To further complicate matters, the ongoing Isabella Lake Dam Safety Modification Project imposes certain temporary reservoir capacity restrictions and approved methods of operation. In this context, Rosedale’s proposal to add potentially thousands of acre-feet of water to the reservoir, with no storage rights, raises numerous potential impacts that are neither considered nor described in the DEIR. In light of the storage restrictions, Rosedale needs to analyze the Project’s potential to increase the frequency of flood releases and the impacts of those flood releases on river operations under both the temporary and permanent Lake Isabella operations criteria.

It is also unclear how the Project might impact flows in the river channel downstream of the reservoir. Between Isabella Reservoir and First Point of Measurement, certain accretions and depletions occur (beyond the measured diversions). To the extent the Project will impact the flow rate necessary in this reach of the river to make deliveries to Rosedale, the DEIR needs to analyze whether and to what extent the Project will impact those accretions and depletions. Further downstream from First Point of Measurement, different reaches of the Kern River channel are subject to losses through evaporation and infiltration. Releases for current uses are carefully monitored, measured, reported, and coordinated to minimize losses and accommodate different operations along the Kern River without injury. Implementing the Project would require agreements with various Kern River Interests and the Kern River Watermaster to coordinate releases of the water conserved by the Project to ensure that the Project does not result in injury to those operations or associated interests. Unfortunately, the only commitment in the DEIR Project Description to address a “no injury factor” is limited solely to “account for ... losses between the Onyx Ranch and Isabella Reservoir.” The Project needs to be revised to define, evaluate, and

adopt equivalent protections as part of the Project Description which will ensure “no injury” to the Kern River Interests’ rights, projects, and operations as was provided to water users in the South Fork Valley. (DEIR, p. 2-17 (pdf 75).)

II. The DEIR Fails to Describe the Full Environmental Setting or Baseline, Because It Does Not Describe Operations and Activities Downstream of Lake Isabella

CEQA defines the “environment” subject to analysis in an EIR as the entire “area which will be affected by a proposed project.” (Pub. Resources Code, § 21060.5.) That physical environment must be adequately described in the EIR to provide a solid foundation for the assessment of environmental impacts. (Cal. Code Regs., tit. 14, § 15125(a); *Neighbors for Smart Rail v. Exposition Metro Line Construction Authority* (2013) 57 Cal.4th 439, 447.) The “environment” of a project can extend beyond the project area, and impacts beyond that area must be analyzed. (*Muzzy Ranch Co. v. Solano County Airport Land Use Com.* (2007) 41 Cal.4th 372, 387–88, citing *County Sanitation Dist. No. 2 of Los Angeles County v. County of Kern* (2005) 127 Cal.App.4th 1544, 1582–83.) Defining the project area to exclude an area where significant impacts will occur is contrary to CEQA. (*Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1216.)

The DEIR defines the Project Area narrowly, including only the Onyx and Smith Ranches and the Rosedale service area. (DEIR, p. 2-3 (pdf 61).) Even the broader “Local Setting” encompasses only the South Fork and Lake Isabella. (*Id.*, p. 2-4 (pdf 62).) The only discussion of the Kern River downstream of Lake Isabella is an acknowledgment that the Kern River Interests exist and are entitled to water from the reservoir in keeping with the Miller-Haggin Agreement. (*Id.*, p. 2-9 (pdf 67).) There is no description of the Kern River channel and the associated water facilities or of the operations and activities currently existing along the Kern River from Isabella Reservoir to the proposed place of use within Rosedale. There is no description of any of the Kern River Interest diversion facilities, canals, and projects existing within and in the vicinity of the Kern River. There is no description or evaluation of any Kern River Interest projects within their respective boundaries related to ongoing use of Kern River water. Failure to include this information about the relevant environment prevents the identification of all the relevant potential impacts. As referenced above, attached to this letter is an Appendix including a map and summary of Kern River operations including certain governing manuals, agreements, and records relating to the current administration of Kern River water between Lake Isabella and Rosedale’s proposed point of diversion and use of Project water. The DEIR should have identified, considered and evaluated the effects of the Project on the existing administration of Kern River. The DEIR does not consider, discuss, and evaluate the potential impacts of the Project in this regard, nor does it develop and adopt appropriate mitigation measures to avoid adverse environmental impacts and injury to the Kern River Interests’ public water projects.

III. The DEIR Does Not Disclose or Address the Potential Overstatement of the Water Rights that Rosedale Seeks to Transfer

Because the primary purpose of an EIR is to inform, it must be “prepared with a sufficient degree of analysis to provide decisionmakers with information which enables them to make a decision which intelligently takes account of environmental consequences.” (Cal. Code Regs., tit. 14, § 15151.) The EIR must therefore include all “material necessary to informed decision making and informed public participation.” (*Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 515.) The EIR should “enable those who did not participate in its preparation to understand and to consider meaningfully the issues raised by the proposed project.” (*Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 405.) The DEIR does not meet these standards, because it does not disclose or evaluate the existing uncertainty and public controversy over the origins, nature, and extent of the asserted water rights of the Onyx Ranch and Smith Ranch proposed to be transferred by the Project, as well as the whether their point of diversion and place of use may be transferred without causing injury to other users of Kern River water such as the Kern River Interests.

The DEIR asserts the Onyx Ranch and Smith Ranch “pre-1914 appropriative rights ... were quantified in a 1902 Arbitration Decree....” (DEIR, p. 2-16 (pdf 74).) The DEIR does not discuss the context of the arbitration or the case from which it arose. In fact, the name of the case appears nowhere in the DEIR. The case was *Walter Rankin v. Patrick O’Brien, et al.*, Kern County Superior Court Case No. 1641.¹ There are several important facts, relevant to an understanding of the DEIR and proposed Project, which are never disclosed to the public in the DEIR. First, *Rankin* was not a stream-wide adjudication of the South Fork, only a dispute between some South Fork diverters, and no trial was completed or judgment entered by the Kern County Superior Court in the matter. Second, the parties in the case all originally claimed for their same lands in the South Fork Valley both riparian and pre-1914 appropriative rights. Third, the arbitration which the DEIR mistakenly refers to as a “decree” established “adjudicated right[s]” was actually merely a voluntarily agreement among only some of the original *Rankin* parties, and the “Report of the Arbitrators” is not binding on anyone but the parties who submitted to the arbitration. Most importantly, the instructions under which the matter was submitted to the arbitrators directed the arbitrators to determine the relative priorities of the diverters but provided an assumed allocation of “one hundred fifty (150) miner’s inches of water to each 160 acres so owned or claimed, measured under a four (4) inch pressure.”² The Report of the Arbitrators does not include any explanation for this agreed-upon ratio to allocate the amount of water. However, under California water rights law, any right acquired by appropriation is limited to “the amount of water applied to

¹ Failure to cite the actual documents is itself a violation of CEQA. (Cal. Code Regs., tit. 14, § 15148 [“The EIR shall cite all documents used in its preparation”].)

² It is also worthy of note that the DEIR applies this same methodology to water rights that were not joined in the arbitration. (DEIR, p. 2-16 (pdf 74).)

a beneficial use, which has been interpreted to mean the amount actually used and reasonably necessary for a useful purpose to which the water has been applied.” (*Haight v. Costanich* (1920) 184 Cal. 426, 431.) Thus, the scope of the right is not defined by the amount diverted but by the amount actually applied to beneficial use by the original appropriator. (*Hufford v. Dye* (1912) 162 Cal. 147, 153; *Millview County Water Dist. v. State Water Resources Control Bd.* (2014) 229 Cal.App.4th 879, 898.) The DEIR acknowledges that the rights proposed to be transferred are limited to pre-1914 appropriations but it includes no information of any record of the actual, pre-1914, beneficial use of water that was made on these properties in the South Fork Valley. However, it is implausible that the amount assigned in the Arbitration Report reflects the actual beneficial use. As calculated in the DEIR, 150 miner’s inches under a 4 inch head equates to 3 cubic-feet per second (“cfs”). An allotment of 3 cfs per 160-acres equates to approximately 2,172 acre-feet per year, or 13.57 acre-feet per-acre per-year, an extremely high figure relative to recognized beneficial uses. Under this calculation, Rosedale’s claimed water rights on the Project Site total 31.2 cfs, or 22,587.8 acre-feet per year. Again, the DEIR includes no historical record of use or any analysis to support the assumption that this stipulated allocation equaled the actual beneficial use of South Fork water during the period prior to December 1914. Instead, the DEIR analysis depends exclusively on data on diversions reported from 2009-2017. (DEIR, p. 2-18 (pdf 76).) Significantly, the DEIR fails to disclose to the public that neither Rosedale nor its predecessors in title to the Onyx Ranch and Smith Ranch lands have obtained an appropriative permit or license to use South Fork water from the State Water Resources Control Board. Further, the DEIR fails to discuss or attempt to establish that the records of modern, post-1914 diversions for the period of record cited in the DEIR (2009-2017)³ do not exceed the maximum actual beneficial use on the Project Site for the period prior to 1914. In short, the quantity of pre-1914 appropriative rights attributable to the property is uncertain and a matter of public controversy, yet the DEIR neither explains how it comes to its conclusions, nor does it acknowledge that there is any uncertainty and controversy. An EIR must assess potential water supplies realistically and not rely on unsubstantiated assumptions or “paper water.” (*Santa Clarita Organization for Planning the Environment v. County of Los Angeles* (2003) 106 Cal.App.4th 715, 722; *Planning & Conservation League v. Department of Water Resources* (2000) 83 Cal.App.4th 892, 908, fn. 5.)

Additionally, the DEIR is not clear, that whatever pre-1914 appropriative rights may be associated with the Onyx Ranch and Smith Ranch parcels, that those rights can be transferred to Rosedale’s points of diversion on the valley floor as proposed in the Project. “[T]he point of diversion, place of use, or purpose of use” of pre-1914 appropriative rights may be changed only “if others are not injured by such change.” (Wat. Code, § 1706; see *City of Lodi v. East Bay Municipal Utility Dist.* (1936) 7 Cal.2d 316.) Regardless of the origins and nature of any South Fork water rights, other water rights holders on the Kern River could be injured by the transfer and

³ Even those numbers (2009-2017) show an annual average diversion of only 15,332 acre-feet, which includes water diverted from the stream that is later returned to the South Fork unused.

change in point of diversion and place of use of such rights. All waters of the South Fork which have flowed into Lake Isabella have been stored, regulated, released, and beneficially used by Kern River Interests under long-existing court decree and agreements recognized by the United States and the Kern River Interests downstream since Isabella Reservoir was first operational in 1954. The Project Description asserts that the amount of water being transferred by Rosedale under the Project will be “the lesser of the amount available ... under its Onyx Ranch and Smith Ranch pre-1914 appropriative water rights from the South Fork during actual flow conditions and the typical pre-project irrigation demands on the project site....” (DEIR, p. 2-20 (pdf 78).) Neither metric accounts for return flows that rejoin the South Fork unused and have historically contributed to the Lake Isabella storage accounts of the Kern River Interests. Such waters are subject to appropriation by downstream users, including the Kern River Interests, and a transfer that reduces those historic flows constitutes an injury. (*Hufford v. Dye* (1912) 162 Cal. 147, 153; *Dannenbrink v. Burger* (1913) 23 Cal.App. 587, 596-597; *Crane v. Stevinson* (1936) 5 Cal. 2d 387, 394-395.) The DEIR fails to consider and evaluate operational conditions, alternatives, and mitigation measures to address Project diversions to ensure that the Project does not injure the rights of Kern River Interests to continued beneficial use of Kern River water. Inexplicably, unlike for other South Fork water users, the Project Description fails to include any express provision to avoid causing injury to Kern River Interests. (DEIR, p. 2-17 (pdf 75).)

The DEIR states that, “The [Project’s] change in point of diversion method is consistent with how the other ‘Kern River Interests’ ... 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.” (DEIR, p. 2-7 (pdf 65).) But there are very important distinctions between the Project and how the Kern River Interests have historically provided for changes in the point of diversion and place of use. Changes of point of diversion and place of use by the Kern River Interests have been established by court judgment and decree, as well as agreements among all the Kern River Interests recognized by the United States. Those judgments, decrees, and agreements ensure that the respective rights of the parties do not cause injury to the rights of others. Importantly, Rosedale is not a party to any of those court judgments, decrees, and agreements, and Rosedale has not made any equivalent agreement with the United States and the Kern River Interests to provide the necessary protections to avoid injury arising from the Project.

IV. The DEIR Does Not Consider the Potential Impacts to Operations and Activities Downstream of Lake Isabella

An EIR must include “a detailed statement setting forth ... [a]ll significant effects on the environment of the proposed project.” (Pub. Resources Code, § 21100(b)(1).) The DEIR excludes from its analysis at least two large categories of potentially significant effects. One category of impacts not studied in the DEIR is impacts within Isabella Reservoir and also the downstream activities and operations as described in Appendix A. Failure to fully and accurately describe the

entirety of the project necessarily leads to defects in this impact analysis. (*City of Santee v. County of San Diego* (1989) 214 Cal.App.3d 1438, 1454.) If the DEIR's Project Description and Environmental Setting are revised to address the deficiencies discussed above, further environmental review will be necessary to determine the impacts caused by the full Project in light of the full baseline. This includes, without limitation, consideration of Isabella Reservoir operations, channel capacity restrictions, flow requirements for different uses, and other factors relevant to the operations. Another category of impacts not studied is impacts of the reduction of Kern River supplies currently available and applied to beneficial use by downstream users such as the Kern River Interests. These impacts could include increased reliance on groundwater (which also implicates compliance with the Sustainable Groundwater Management Act), impacts to groundwater quality due to less surface water recharge, and related impacts to uses of water by the Kern River Interests.

V. The DEIR Does Not Consider Mitigation Measures and Project Alternatives to Protect Water Users Downstream of Lake Isabella

CEQA requires the mitigation of significant impacts of a project where feasible. (Pub. Resources Code, §§ 21002.1(a), 21100(b)(3); Cal. Code Regs., tit. 14, § 15126.4.) In an EIR, the potential mitigation measures "should be discussed and the basis for selecting a particular measure should be identified." (Pub. Resources Code, § 21100(b)(3); Cal. Code Regs., tit. 14, § 15126.4(a)(1)(B).) The lead agency is also required to consider "a range of reasonable alternatives to 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." (Cal. Code Regs., tit. 14, § 15126.6.) In the context of an action, like this Project, that could result in interference with the water rights of others, appropriate mitigation measures should ensure those other water rights holders "the ability to use water in substantially the same manner that they were accustomed to doing if the Project had not existed." (*Gray v. County of Madera* (2008) 167 Cal.App.4th 1099, 1117.) As discussed above, the DEIR does not even discuss the operations and activities within and downstream of Lake Isabella, and the amount of water that can be transferred without injury to other water users is not studied or known. Thus, the DEIR does not include any mitigation measures or project alternatives that would avoid the potential impacts to those operations and activities.

Instead of identifying, evaluating, and addressing these impacts and the appropriate mitigation measures and project alternatives, the DEIR states in its Project Description that Rosedale 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." (DEIR, p. 2-22 (pdf 80).) This approach is not proper under CEQA for two independent reasons. First, the use of such language in a project description "compress[es] the analysis of impacts and mitigation measures into a single issue" and thus "disregards the requirements of CEQA." (*Lotus v. Department of Transportation* (2014) 223 Cal.App.4th 645,

655-57.) A finding of significant impacts “would trigger the need to consider a range of specifically targeted mitigation measures [and] ... adopt an enforceable monitoring program.” (*Ibid.*) Simply stating in the project description that impacts will be avoided is not a substitute for that analysis. Second, the DEIR does not attempt to study and describe the losses or give the method to calculate them, and it does not discuss how releases must be scheduled to avoid impacts downstream. Instead, it assures decision-makers and the public that those details will be worked out later. However, “it is improper to defer the formulation of mitigation measures until after project approval.” (*Oakland Heritage Alliance v. City of Oakland* (2011) 195 Cal.App.4th 884, 906.) To meet the requirements of CEQA, the DEIR must be revised to identify and assess all impacts to Kern River operations and then describe appropriate mitigation measures.

VI. If Rosedale Intends to Proceed, Recirculation of a Revised DEIR Is Required

Addressing these deficiencies in the DEIR will require the addition of “significant new information” and thus will require recirculation. (Pub. Resources Code, § 21092.1.) A considerable amount of new analysis would be required, and failure to recirculate would “deprive[] the public of a meaningful opportunity to comment.” (Cal. Code Regs., tit. 14, § 15088.5.)

Thank you in advance for your careful consideration of these comments.

Sincerely,

A handwritten signature in blue ink, consisting of a stylized 'D' followed by a vertical line and a horizontal line with a small 'M' shape above it.

Dana S. Munn
Kern River Watermaster

APPENDIX “A”

KERN RIVER WATERMASTER

SUMMARY OF OPERATIONS AND PROCEDURES FOR THE ADMINISTRATION OF THE USE OF KERN RIVER WATER BY THE KERN RIVER INTERESTS ACCORDING TO CERTAIN POLICIES, MANUALS, AGREEMENTS AND PRACTICES

This Appendix “A” is a simple overview¹ and summary of current facilities, operations and procedures relating to the administration and use of Kern River water by the Kern River Interests (City of Bakersfield, Kern Delta Water District, North Kern Water Storage District, Buena Vista Water Storage District [including the Henry Miller Water District and Olcese Water District] and the Kern County Water Agency) according to certain² policies, manuals, court judgments and decrees, agreements and practices relating to Isabella Dam and Reservoir and associated water facilities and infrastructure in the region downstream of Isabella Dam and Reservoir of the southern portion of the San Joaquin Valley, Kern County, California. This overview spans from the region of Isabella Dam and Reservoir and the region downstream along the Kern River channel including the Rosedale Rio Bravo Water Storage District (“Rosedale”) identified as the place of use for the proposed South Fork Kern River water supply the subject of the Draft Environmental Impact Report (DEIR) regarding the “Onyx Ranch South Fork Valley Water Project”, State Clearinghouse #20118021061, May 2020 (“Project”) and then continuing to the Kern River-California Aqueduct Intertie.

To assist in providing an overview of the affected region, enclosed is a map entitled “Kern River Watershed & Kern River Interests” prepared by the Kern County Water Agency. This map shows the Kern River watershed where waters of the Kern River converge (originating from both the North Fork and South Fork branches of the Kern River) in the Isabella Reservoir in the mountains north and east of Bakersfield. From that point, all the waters of the Kern River are conserved, regulated, released, diverted and used in the region downstream from Isabella Dam and Reservoir.

¹ This Appendix is not intended to be a detailed and comprehensive restatement of all the daily operations and procedures relevant to the administration of the waters of the Kern River by the Kern River Interests or others.

² This Appendix does not attempt to identify and discuss each and all the policies, manuals, agreements, court judgments and decrees, and practices relating to Isabella Dam and Reservoir and the management of Kern River water relied upon by the Kern River Interests.

The following are certain existing facilities, standards, operations and procedures which require study in a revised DEIR in order for the Project to avoid injury to existing beneficial uses of Kern River water by the Kern River Interests.

1. The Region in The Vicinity of Isabella Dam and Reservoir-

- Coordinating and managing with the United States Army Corps of Engineers and the Kern River Watermaster the measured daily inflow of any Project water entering Isabella Reservoir with Kern River water in storage at the direction of the Kern River Watermaster on behalf of the Kern River Interests as authorized in the October 23, 1964 "Contract Among the United States of America and North Kern Water Storage District, Buena Vista Water Storage District, Tulare Lake Basin Water Storage District, And Hacienda Water District" (including Exhibit "A", the December 31, 1962 "Kern River Water Rights And Storage Agreement by and among Buena Vista Water Storage District, North Kern Water Storage District, Tulare Lake Basin Water Storage District, and Hacienda Water District", as amended, including Exhibit "B", "Agreement For Establishment and Maintenance of Minimum Recreation Pool of 30,000 Acre-Feet in Isabella Reservoir between Buena Vista Water Storage District, North Kern Water Storage District, Tulare Lake Basin Water Storage District, and Hacienda Water District and the County of Kern", and also including the March 3, 1964 "Storage Agreement Among First Point Entities", collectively the "Isabella Agreements") to monitor and avoid injury to the Kern River Interests storage in Isabella Reservoir.
- Coordinating and managing with the United States Army Corps of Engineers and the Kern River Watermaster the daily monitoring, measurement, accounting, and reporting of any Project water inflow, evaporation, outflow, effect on storage elevation and the total storage quantity, to monitor and avoid injury to Kern River Interests storage in Isabella Reservoir as authorized in the Isabella Agreements.

2. The Region From Isabella Dam to The First Point of Measurement-

- Coordinating and managing the measured daily release of any Project water discharged from Isabella Dam in coordination with any release of Kern River water made at the direction of the Kern River Watermaster for the purpose of downstream beneficial uses and/or flood control under authority and direction from the United States Army Corps of Engineers as authorized in the Isabella Agreements to monitor and avoid injury to the Kern River Interests storage in Isabella Reservoir and downstream beneficial uses.
- Coordinating and managing the release of any Project water from Isabella Dam in conjunction with all the existing and permitted hydroelectric power plants operating on the Kern River including Isabella Partners, Southern California Edison Kern River Number 1, Pacific Gas and Electric Company Kern Canyon and Rio Bravo Hydroelectric, to monitor and avoid injury to such existing facilities and operations.
- Coordinating and managing the release of any Project water from Isabella Dam in conjunction with public health and safety emergency search and rescue operations in

coordination with the Kern River Watermaster, United States Army Corps of Engineers, and the Kern County Sheriff Department to monitor and avoid injury to such public health and safety operations.

- Coordinating and managing the release of any Project water from Isabella Dam to the extent necessary to satisfy legal requirements relating to permitted flows for environmental or recreational uses including, whitewater rafting, fishery resources, recreational facilities in the Sequoia National Forest and to monitor and avoid injury to such other beneficial uses and operations.
- Coordinating and managing any Project water within the Kern River channel in consideration of existing water treatment plants, facilities and operations including the California Water Company Northeast Water Treatment Plant to monitor and avoid injury to such existing facilities and project operations.

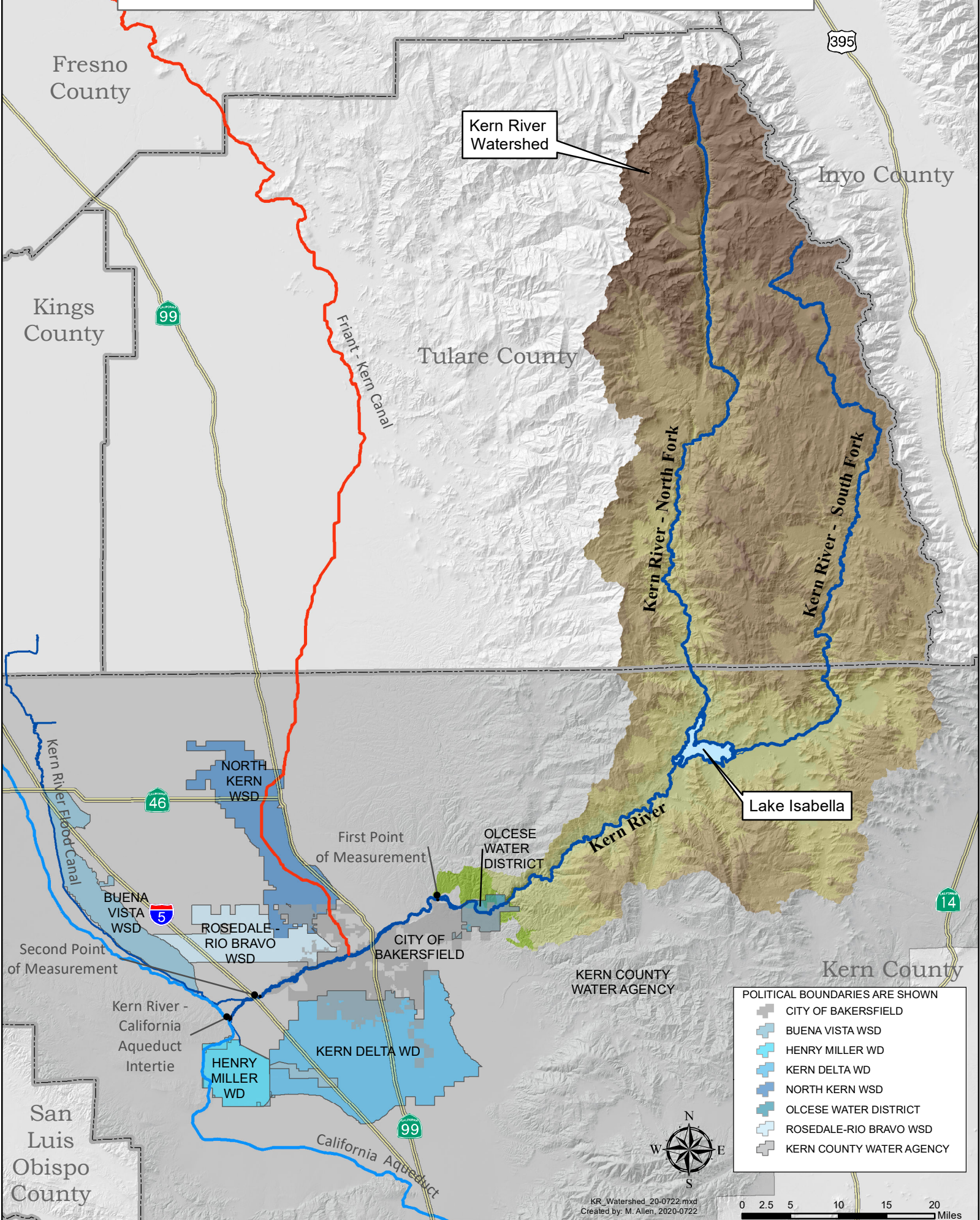
3. The Region From The First Point of Measurement to The Rosedale Place of Use-

- Coordinating and managing any Project water within the Kern River channel from the First Point of Measurement and at each downstream diversion weir, canal and associated facility operated by the Kern River Interests including Beardsley, Rocky Point, Calloway, River Canal, and Bellevue weirs and Beardsley, Eastside, Kern Island, Carrier, Calloway, Stine/Farmers, River, Buena Vista and Pioneer canals to monitor and avoid injury to such existing facilities and project operations.
- Coordinating and managing any Project water within the Kern River channel in consideration of existing water treatment plants, facilities and operations including the Henry Garnett Water Treatment Plant, and the California Water Company Northwest Water Treatment Plant to monitor and avoid injury to such existing facilities and project operations.
- Coordinating and managing any Project water within the Kern River channel in consideration of existing groundwater recharge and banking programs within and in the vicinity of the Kern River channel including Kern Delta Water District, City of Bakersfield and North Kern Water Storage District, groundwater recharge facilities to monitor and avoid injury to such existing facilities and project operations.
- Coordinating and managing the monitoring, measuring, accounting and reporting of any Project water losses between Isabella Reservoir to the Rosedale point of diversion and Project Place of Use with the existing procedures administered by the Kern River Watermaster and the City of Bakersfield Department of Water Resources, Central Records Hydrographic Unit on behalf of the Kern River Watermaster.
- Coordinating and managing the measuring, record keeping, and reporting of any Project water with the existing daily, monthly, and annual procedures of the Kern River Watermaster and the City of Bakersfield Department of Water Resources, Central Records Hydrographic Unit on behalf of the Kern River Interests.

4. The Region From Rosedale Place of Use to The Kern River-California Aqueduct Intertie-

- Coordinating and managing any Project water within the Kern River channel in consideration for each diversion weir, canal and associated facilities operated and maintained by the Kern River Interests from the Rosedale Place of Use to the Kern River-California Aqueduct Intertie including McClung and Second Point of Measurement weirs, Pioneer, River, Cross Valley, Alejandro, Kern Water Bank canal, Buena Vista Outlet canals Kern River-California Aqueduct Intertie to monitor and avoid injury to such existing facilities and project operations.
- Coordinating and managing any Project water within the Kern River channel in consideration for existing groundwater recharge and banking programs, facilities and operations within and in the vicinity of the Kern River channel including Brenda Mesa, Pioneer, 2800 Acre, Kern Water Bank, Buena Vista, and West Kern groundwater recharge facilities to monitor and avoid injury to such existing facilities and project operations.
- Coordinating and managing any Project water within the Kern River channel with the Kern River Interests, Kern River Watermaster, the United States Army Corps of Engineers, and the State of California, Department of Water Resources to ensure compliance with the requirements and procedures specified in the applicable agreements, judgments, manuals and reports which govern operation and maintenance of the Kern River-California Aqueduct Intertie and associated facilities.

Kern River Watershed & Kern River Interests



- POLITICAL BOUNDARIES ARE SHOWN
- CITY OF BAKERSFIELD
 - BUENA VISTA WSD
 - HENRY MILLER WD
 - KERN DELTA WD
 - NORTH KERN WSD
 - OLCESE WATER DISTRICT
 - ROSEDALE-RIO BRAVO WSD
 - KERN COUNTY WATER AGENCY