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*FIRM and AFFILIATE OFFICES*

COLIN L. PEARCE  
DIRECT DIAL: +1 415 957 3015  
PERSONAL FAX: +1 415 704 3098  
E-MAIL: [clpearce@duanemorris.com](mailto:clpearce@duanemorris.com)

[www.duanemorris.com](http://www.duanemorris.com)

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January 11, 2021

## 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 the Final Environmental Impact Report for the 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 Final Environmental Impact Report ("FEIR") for the Onyx Ranch South Fork Valley Water Project ("Project") issued by the Rosedale-Rio Bravo Water Storage District ("Rosedale" or "RRBWSD") on December 30, 2020.

The City previously submitted detailed comments to the Draft Environmental Impact Report ("DEIR") for the Project on July 27, 2020. Prior to those comments, the City submitted comments to the Notice of Preparation ("NOP") for the Project on March 23, 2018. Representatives of the City have also attended two separate Rosedale special meetings regarding the Project and the environmental review process for the Project, including a January 6, 2021 special "District Policy Committee" meeting regarding the FEIR and the Project.

In its prior comments, the City raised a number of concerns with the Project, and with Rosedale's compliance with the requirements of the California Environmental Quality Act ("CEQA") in connection with the DEIR. One of the City's primary concerns involved a lack of critical and necessary information regarding the Project, and the specific details and components of the Project. The City indicated that the DEIR was deficient and not in compliance with

DUANE MORRIS LLP

SPEAR TOWER, ONE MARKET PLAZA, SUITE 2200  
SAN FRANCISCO, CA 94105-1127  
DM2\13567266.1 R0041/00012

PHONE: +1 415 957 3000 FAX: +1 415 957 3001

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CEQA. For example, the DEIR failed to identify or disclose 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 FEIR does not sufficiently address the City's questions or alleviate the City's concerns with the Project, but instead exacerbates and increases the City's concerns with the Project, and highlights the lack of information regarding the Project. In the FEIR, Rosedale still fails to provide important and necessary information regarding the Project, including practical details regarding the implementation and operation of the Project. The responses to comments in the DEIR, and in particular the responses to the City's comments, fail to properly or sufficiently address 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.

In the FEIR and during the course of the January 6, 2021 special meeting, Rosedale still failed to disclose or discuss a number of critical details regarding the Project and failed to address a number of significant questions regarding the Project. As noted in an email to you from Steve Teglia, General Manager of the Kern Delta Water District, on January 6, 2021, among other things, Rosedale has still failed to disclose how it proposes to coordinate with the Watermaster, the City, and other Kern River interests for the delivery of water from Onyx Ranch to the desired point of delivery, when it will initiate negotiations with the Watermaster, the City and other Kern River interests regarding appropriate operations/access/wheeling agreement(s), the authority that Rosedale relies on for the proposition that "project-related water can flow through the Isabella Reservoir and be released in addition to any water being released from the Reservoir for others," and how Rosedale can guarantee that its new downstream diversions will not reduce existing diversion rights or otherwise injure other water rights holders.

In addition, in the response to comments in the Final EIR Rosedale refers several times to the need to enter into various agreements in the future with the Kern River interests, including with the Watermaster and Bakersfield, in order to implement and operate the Project. Rosedale claims, for example, that in the future it will either "coordinate" with the Kern River interests, or enter into agreements with Bakersfield and other parties with regard to the storage and transportation of water into and through Isabella Reservoir. (FEIR, p. 9-3.) Rosedale also claims that "the details of any potential future agreement for temporary storage in the Isabella Reservoir would be speculative and, therefore, cannot be analyzed in the Draft EIR." (Id.)

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Rosedale also responds to the City's comments about the lack of information on conveyance losses for Project water by stating that it intends to later "coordinate with the Kern River Interests to address computing losses between the Isabella Reservoir and the RRBWSD points of diversion." (FEIR, p. 9-6.) Rosedale also claims that one of the potential options for the delivery of "project-related water" into Rosedale's service area would involve the use of an existing agreement between Bakersfield and Rosedale, or "pursuant to a new agreement between the City of Bakersfield and RRBWSD, for delivery into Goose Lake Canal and the Rosedale Groundwater Recharge Project." (FEIR, p. 9-7.)

Rosedale has failed to contact or communicate in any way with the City with regard to those proposed agreements. The City is not aware of any attempts or efforts by Rosedale to negotiate or enter into agreements with the Watermaster or other Kern River interests. Rosedale also fails to provide any details or information regarding the terms, substance, or duration of the proposed agreements identified in the FEIR. Rosedale has not separately or otherwise provided that information or those details to the City.

As we discussed in our comments to the DEIR, 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 and FEIR do not and cannot review significant and inevitable Project impacts. Failure to include that such important Project details and information in the DEIR and FEIR constitutes improper "piecemealing", in violation of CEQA. 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.)

In the FEIR Rosedale also claims that it could transport and divert Project water "as a third-party beneficiary of the 1996 Agreement between the City of Bakersfield and the Kern County Water Agency, attached at Appendix G to this Final EIR, known as the 'Pioneer Project Joint Operating Agreement.'" (FEIR, p. 9-6.) We have reviewed that agreement and believe it does not support or authorize the transportation of Project water in the Kern River channel or the diversion of Project water from the river. We additionally do not believe Rosedale would have any right or ability or to directly enforce that agreement, as it is not a party to the agreement.

Based on Rosedale's failure to provide important and necessary information regarding the Project, failure to comply with CEQA requirements, and lack of any agreement, actual "coordination" or arrangement with the Watermaster, Bakersfield or other Kern River interests for the implementation and operation of the Project, Rosedale cannot and should not approve the Project or adopt and certify the FEIR at its January 12, 2021 Board of Directors meeting.

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

Sincerely,

A handwritten signature in cursive script, appearing to read "Colin L. Pearce".

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