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Nipomo Community Services District
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Dear Bruce Buel:

I would like to make the following comment on the NCSD Water Intertie EIR (Draft Environmental Impact Report, second try in 2009, Number SCH# 2005071114). Each of the following points out a deficiency in the EIR that results a failure of the EIR to adequately analyze potentially significant environmental impacts of the real project or the alternative projects that are reasonably foreseeable to resulting in Class 1 impacts.

1. The EIR does not evaluate the effect of the project reducing NCSD's future pumping rights while increasing Santa Maria's future pumping rights compared to the no project alternative or other alternatives, where NCSD pumps its full use from the basin. NCSD's will have a reduced future appropriative priority due to it's reduced pumping in the future and Santa Maria will have an increased appropriative priority due to it's increased pumping in the future. This lowering in pumping priority will affect NCSD's future ability to supply water. The EIR needs to do a proper analysis of this effect.
2. The EIR incorrectly relies on the assumption that NCSD does not have discretion to decide not to bring water from "Santa Maria" to Nipomo.
3. The MOU between the NCSD and the City of Santa Maria at section 5.1 states:
 - (a) General Feasibility. City will deliver to NCSD, as soon as possible following the execution of this MOU, such further documents, plans, maps, studies, reports, records, permits, licenses and contracts relating to the Supplemental Water that NCSD may deem necessary or desirable in order to assess the viability and feasibility of the Supplemental Water for NCSD's intended use. NCSD will have until the proposed Contract Date to review and **approve or disapprove the same**.

NCSD has yet to approve any final agreement on supplemental water the EIR has failed to consider all the aspects of that discretionary decision.

4. The MOU between the NCSD and the City of Santa Maria at section 5.1 states:
 - (c) CEQA Compliance. NCSD will **diligently pursue CEQA compliance for the delivery of the Supplemental Water and the facilities necessary to transport the Supplemental Water from City to NCSD**. NCSD agrees to the following time line:

- (i) **To develop a project description for the Supplemental Water Agreement contemplated in this MOU** no later than one hundred and twenty (120) days from the date upon which NCSD's Board of Directors approves this MOU; and
- (ii) To retain environmental consultants within one hundred and twenty (120) days from the date upon which NCSD's Board of Directors approves this MOU; and
- (iii) To use reasonable efforts to complete all associated CEQA studies and reports.

NCSD has failed to diligently pursue CEQA compliance for the delivery of the Supplemental Water and the facilities necessary to transport the Supplemental Water from City to NCSD and instead attempted to focus only on the pipe line as the project.

NCSD has failed to develop a project description for the Supplemental Water Agreement contemplated in this MOU (note the tense of the word contemplated, results in a future discretionary decision)

NCSD has failed to use reasonable efforts to complete all associated CEQA studies and reports

5. On Page I-1 the EIR incorrectly states:
- Section III. Project Description, provides a description of the pertinent aspects of the proposed project and related permits and approvals. This section also discusses pertinent aspects of the project's background history and identifies the objectives of the proposed project. As noted therein, the proposed project involves connecting to the City of Santa Maria water distribution system and construction of a waterline from Santa Maria to the Nipomo Community Services District water distribution system. The pipeline will be constructed beneath the Santa Maria River by horizontal directional drilling. A pump station(s) and water storage facilities will be constructed to boost the water pressure into the District system and provide water storage as necessary. Several water transmission facilities within the NCSD will replaced and upgraded. A final element of the proposed project involves the I. Introduction and Purpose conversion of District water supply wells to chloramination treatment in order to provide disinfection within the District's water distribution system. These facilities may be developed within three phases and could have an ultimate capacity to transport a maximum 6,200 acre feet per year.

The Real project is to provide up to 6200 acre feet of "supplemental water" of which the above pipeline is only a part, the project is commonly call the "supplemental water project" NCSD staff, board and the public. In this comment letter I will use the true name of "supplemental water project" or "real project" interchangeably for the incorrect name "Water Intertie project"

An EIR requires the analysis of the total project as a whole and does not allow "peace mealing" the projects as is done in this EIR.

The EIR has failed to analyze the whole project as a whole including but not limited to the effects of where the water will come from, Water Quality, Water Quantity at both the beginning and end of the project.

6. Every aspect of supplemental water (and the WIP) is discretionary. Among other places this as is clearly outlined on the NCSD website at

http://ncsd.ca.gov/Library/Supplemental_Water/E%20VERSION%20%20FAQ%20Waterline%20Intertie%20Project.pdf

“NCSD would initially execute an agreement with the City of Santa Maria for the purchase of up to 3,000 acre feet per year of supplemental water.”, The project as a whole is contingent on a future discretionary agreement by NCSD. Try as it might the EIR can not hide behind the words of the (currently appealed) Judgment, the settlement it contains or the MOU referenced in the settlement that any part of the project as a whole is not discretionary

7. The EIR’s analysis of the “No project” alternative is an admission that there is discretion by the NCSD board to select the “No Project” alternative, if there was a non-discretionary requirement by the court or other agency the EIR would need to based only on alternatives that met that minimum requirement.
8. The EIR does not analyze the effect of the costs for this temporary Supplemental water project will have on the funding for other needed future projects like desalinization that are required to provide a reliable, priority source of water.
9. The EIR does not analyze the effect of the true nature of the temporary Supplemental water this project provides. It does not note the clear unambiguous comments made by NCSD Board members on the reliability of Supplemental water options. “the ocean for us represents the only long term sustainable drought proof water supply that we can get, State water allocations are iffy, you know the smelt decision and others have a reduced the deliveries, we don’t know that those are going to be sustainable in the future, the others where you take water and your sort of move it around you still have a finite amount with in your basin and when it’s utilized to it’s full maximum it’s over” (Mike Winn, 10/16/07 comments to the San Luis Obispo Board of Supervisors meeting on Supplemental water for the Nipomo area, See attached link for audio/Video copies).
10. The EIR fails to analyze the unreliable nature of the water from Santa Maria both in quality and quantity
11. The EIR fails to analyze the nature of the water from Santa Maria as it will change from now to the end of the term of the contract as more water is used by both Santa Maria and Nipomo, both in quality, quantity, priority and reliability are reasonability foreseeable to change considerably over time.
12. The EIR fails analyze the priority of source of the water from Santa Maria during times of shortage and surplus.
13. As noted on page I-2 this EIR is a second draft of an earlier 2005/2006 EIR, I include my comments from that draft and apply them to this EIR as an integral part of this comment letter, as the “project” as a whole is essentially the same with some limited changes in the implementation of the piping and storage tank parts of the real project.
14. The EIR states on page II-2

“The proposed Nipomo Community Services District Waterline Intertie involves a series of approvals and discretionary actions by the Nipomo Community

Services District, as Lead Agency, and other involved regulatory agencies. The proposed project involves the following approvals by the Nipomo Community Services District: 1) certification of the Final Environmental Impact Report; 2) approval of the Mitigation Monitoring Program and 3) review and approval of detailed plans for pipelines, pump stations, storage facilities and other infrastructure for the proposed waterline intertie.”

This section does not include the need discretionary approval for an agreement with Santa Maria to acquire the water that is clearly anticipated in the MOU which is an “agreement to make an agreement”. There are no final terms as for the source, amount, quality, cost, quantity or reliability of the water and it’s reasonably foreseeable that any of those aspects will change considerably up to and eliminating the source of water completely. Doing the EIR before an actual contract is developed prevents The EIR from evaluating the full impacts with out considerable investigation into all contract options, this EIR has failed to consider all reasonably foreseeable results of that future discretionary decision which is a key part of the project as a whole.

15. The project and project EIR references and relies on the Santa Maria Groundwater litigation, and the “Settlement” but fails to note that the judgment which includes the Settlement as a part. Is being appealed and is not final until the appeal process is over. See notice of appeal at Submit Date: 04/01/2008
<http://www.sccomplex.org/cases/noticelink.jsp?FormCaseId=VAE2661C98F&FormDocId=KD3D5B15C3DE>
16. Because the NCSO South land sewer plant that treats the majority of water NCSO supplies to customers after use, is flowing into Nipomo Creek, any change or increase in water to NCSO will be reasonably foreseeable to change the flows and quality of water and salts in the creek. The EIR has failed to analyze those impacts that will be a class I impact if no mitigation measures are taken.
17. The EIR has no explanation as to why NCSO can not use ground water that results from the San Luis Obispo county portion of the Cuyama River water shed which is about 1/4 of the total water in the basin with out paying Santa Maria \$1250 per acre foot as an alternate project.
18. The EIR claims the City of Santa Maria has 49,710 AF of “water” and the attached article in the Santa Maria Times dated 12/28/08 states a similar number from Santa Maria’s staff:

Including 38,000 acre-feet of groundwater, the city’s annual total water supply from various sources is nearly 50,000 acre-feet — significantly more than the city’s present annual use of only 15,000 acre feet.

But in the same article it also states with all that water that they have they are still trying to buy new water for Quality.

The county holds an entitlement to 12,000 acre-feet of State Water that could be pushed through city pipes, Ness said, and the city is interested in making a deal with the county and Central Coast Water Authority in the next year or two to acquire “what the city could afford and what would be available” to improve the quality of municipal water.

The EIR fails to consider that even with the outrageous claim of having 49,710 AF/Year of water and only using a fraction of that at 15,000 AF/Year, the City of Santa Maria is still buying additional water. The inconsistency between having so much that they can sell and transport a 6200 AF/Year over the next 30 years as a insignificant amount and needed to buy attritional water during a non long term drought period now, has not been fully or properly analyzed in the EIR. That Failure results in possible Class I impacts not being properly considered in the EIR on both water Quality and Quantity .

19. On page V-47 the EIR states:

As previously discussed, the three sources of water to the City of Santa Maria, groundwater from City Wells, the State Water Project (including return flows) and a recharge from Twitchell Reservoir provides a total of 49,710 acre-feet per year of water being introduced into the Santa Maria Groundwater Basin. This water supply is projected to remain relatively constant throughout the year 2030 in order to meet current and projected water demands over that period. Current water demands within the City of Santa Maria are approximately 15,000 acre-feet per year with projected water demands in the year 2020 estimated to be 20,500 acre-feet per year, 25,000 acre-feet per year in the year 2025 and 28,867 acre-feet per year in the year 2030.

There is no listed source for this bogus information, The city does not have fixed supply or a fixed allocation, the “Cities Wells” is a low priority right to pump after the full needs of the overlying landowners is satisfied (less a potential deminimis prescribed amount [a few hundred AF/Year) and may be cut back during any dry period to protect the basin by the court independently of the settlement. The Twitchell rights were not modified by the court and no party has a prior right to that water (see full trial transcripts and Judgment) effectively making it part of the common water supply and prioritized the same as city well water. That only leaves the State water and it’s return flows as a priority source of water to supply NCSD, which depend on the percentage delivered which have been below 20% and most likely will be in that range this year. $17,820 \text{ Af} * 20\% = 3564 \text{ AF}$ Plus a 65% return flow on that gives **Santa Maria a priority right to 5880 AF/Year far below the needs of the city** of now of 15,000 AF not even considering the Extra 6200 AF of this project. The EIR fails to consider the Priority of Santa Maria’s water supply and the resulting reliability and it’s effect on delivery to Nipomo now and in the future.

20. On page V-47 the EIR states:

“Impact C-4. *The proposed project may result in a substantial depletion of the Santa Maria Groundwater Basin supplies, such that there would be a net deficit in aquifer volume or a lowering of the local groundwater table level.*

In dry years, when the City of Santa Maria receives a less than average allotment of SWP water, the City may increase pumping from the Santa Maria Groundwater Basin to make deliveries to the Nipomo area. Diversion of up to a maximum of 6,200 acre-feet per year of City of Santa Maria water to the NCSD is a potential part of the project.

As previously discussed, the three sources of water to the City of Santa Maria, groundwater from City Wells, the State Water Project (including return flows) and a recharge from Twitchell Reservoir provides a total of 49,710 acre-feet per year of water being introduced into the Santa Maria Groundwater Basin. This water supply is projected

to remain relatively constant throughout the year 2030 in order to meet current and projected water demands over that period. Current water demands within the City of Santa Maria are approximately 15,000 acre-feet per year with projected water demands in the year 2020 estimated to be 20,500 acre-feet per year, 25,000 acre-feet per year in the year 2025 and 28,867 acre-feet per year in the year 2030.

The additional demand of 3,000 acre-feet per year (Phases I and II of the proposed waterline intertie project) combined with the current total demand of 15,000 acre-feet per year results in a total demand of 18,000 acre-feet per year or a net surplus of 31,710 acre feet per year. The additional “worst-case” demand of 6,200 acre-feet per year (completion of Phase III of the proposed project) results in a total demand of 26,700 acre-feet per year by the year 2020, 31,200 acre-feet per year by the year 2025 and 35,067 acre-feet per year by the year 2030. These future water demand levels result in a net surplus of 23,010 acre-feet per year in the year 2020, 18,510 acre-feet per year in the year 2025 and 14,643 acre-feet per year in the year 2030. With the additional water demands associated with the provision of the proposed waterline intertie project, the City of Santa Maria expects to have an available water supply in excess of projected water demands through the year 2030. The impact of the additional water demands associated with the proposed project upon the Santa Maria Groundwater Basin represents a less than significant impact.

However, management of the Santa Maria Valley Groundwater Basin has been evaluated and restructured by the Settlement Stipulation and Judgment with specific provisions related to groundwater rights, groundwater monitoring programs and development of plans and programs to respond to potential water shortage conditions. The City of Santa Maria recently entered an agreement, dated July 7, 2005, with other water purveyors in the Santa Maria Groundwater Basin, which stipulates that a proposed entity will monitor groundwater levels and water quality in the basin, as well as recommend groundwater management actions if needed. Therefore, groundwater extractions would be limited to maintain a safe yield. Any limits set forth by the adjudication could also limit the NCS D deliveries. The City would not be able to provide water to the Nipomo area in excess of limitations of the adjudication. This would act to further protect the Santa Maria Valley Groundwater Basin, resulting in a less than significant impact.”

The Judgment that accepted NCS D and Santa Maria’s Settlement of there complaints inter se (but not with respect to litigating and non-settling parties), includes several sections that are reasonably foreseeable that eliminate the settlement and it’s “protections” to the Santa Maria Valley area and eliminate the Cities ability to provide water to NCS D in the future. Such as settlement section:

Page 31 X D 1. To the extent allowed by law, SCWC and RWC shall comply with this Stipulation, prior to obtaining California Public Utilities Commission (“PUC”) approval. If the PUC fails to approve SCWC’s and RWC’s participation or fails to provide approval of the necessary rate adjustments so that SCWC and RWC may meet their respective financial obligations, including the participation in Developed Water projects, Monitoring Programs, TMA and as otherwise provided in this Stipulation, **shall render the entirety of the Stipulation and those terms of any judgment based on this Stipulation invalid, void and unenforceable**, as to any Stipulating Party who files and serves a notice of rescission within sixty days of notice by SCWC or RWC of a final PUC Order.

The EIR fails to consider those discretionary outcomes and the environmental effects that may result from that aspect of this project because those decisions are part and parcel of the project as a whole.

21. The EIR fails to consider the effect of NCS D relying on water in the future which is intrinsically unreliable and the Significant environmental impacts that can result from that supply being reduced or eliminated in the future.

22. On page I-3 the EIR states:

“This Draft EIR will provide a **full** and **fair** discussion of the environmental impacts of the proposed Nipomo Community Services District Waterline Intertie project. In preparing this EIR, the Nipomo Community Services District decision-makers, staff and members of the public **will be fully informed** as to the impacts, mitigation measures **and reasonable alternatives** associated with the proposed project. In accordance with Section 15021 of the State CEQA Guidelines, this EIR is intended to enable the Nipomo Community Services District, as Lead Agency, to evaluate these environmental impacts, mitigation measures and project alternatives in their consideration of the project proposal. The Lead Agency has an obligation to balance possible adverse effects of the project against a variety of public objectives, including economic, environmental and social factors, in determining whether the proposed project is acceptable and approved for development.”

The EIR fails on each of the above quoted points and will not allow the Lead Agency to meet it’s obligation to balance possible adverse effects of the project against a variety of public objectives, including economic, environmental and social factors, in determining whether the proposed project is acceptable and approved for development. It needs to be returned and reworked to the point that an additional comment period is now needed after any revisions.

23. Because the EIR document was not provided in a word processing format allowing easy quoting and commenting in the context of the document, In addition to the comments written out in the text above I included the comments directly noted on the 53 pages in the attached copy of the EIR as if they were a written above.
24. Because the EIR does not respond or deal with the majority of Attached comments made in the (2008) NOP response letter dated July 28th 2008 I include those in full as included comments to this letter on this EIR
25. Because the EIR is on the same project as the 2005/2006 Draft EIR and this EIR does not respond or deal with the majority of Attached comments made on the 2005/2006 Draft EIR and the Comments Numbered 1 to 5 dated 8/2006 I include my specific comments to that 2005/2006 draft EIR in full to this (2008) EIR, along with any other comments, in full, made on the 2005/2006 Draft EIR or the NOP of the 2005/2006 draft EIR
26. Because the size of this draft EIR and the repetitive nature of the areas covered within it, each comment is placed or referenced to a related location but applies to the document as a whole and text in any location with in the draft EIR as needed.

Attachments that are included as an integral part of this comment letter:

Santa Maria Times article from 12/28/08, Orcutt water use expanded.

Commented copy of the Draft EIR

(2008) NOP response letter dated July 28th 2008

Comments on NCS D Intertie EIR Number 1 06 0813

Comments on NCS D Intertie EIR Number 2 06 0814

Comments on NCS D Intertie EIR Number 3 06 0815

Comments on NCS D Intertie EIR Number 4 06 0816

Comments on NCS D Intertie EIR Number 5 06 0817

The 2005/2006 Draft EIR

The 2005/2006 Draft EIR technical appendices, A. Notice of Preparation, Initial Study and Project Correspondence

The 2005/2006 Draft EIR comments, Keep Nipomo Rural

The 2005/2006 Draft EIR comments, Santa Maria Valley Water Conservation District August 16th 2006.

Documents that are included by reference to this comment letter:

To these EIR comments I include by reference the entire contents and comments made in response to the second (2008) NOP including but not limited to:

My response letter dated July 28th 2008

To these EIR comments I include by reference the entire contents and comments of the documents in the “2006” EIR process for the “City of Santa Maria /Nipomo Community Services District Water Intertie” project, as noted on page I-2, weather held by NCS D or Douglas Wood or Douglas Wood and Associates, Inc. or not, including but not limited to:

The comments submitted by me and all others in 2005 through 2006, including but not limited to:

Comments on NCS D Intertie EIR Number 1 06 0813

Comments on NCS D Intertie EIR Number 2 06 0814

Comments on NCS D Intertie EIR Number 3 06 0815

Comments on NCS D Intertie EIR Number 4 06 0816

Comments on NCS D Intertie EIR Number 5 06 0817

The 2005/2006 Draft/Initial Study

The 2005/2006 Draft EIR

The 2005/2006 comments and responses

To these EIR comments I include by reference the entire contents of the case titled Santa Maria Groundwater Case No. 1-97-CV-770214, located at the Superior Court of the State of California, County of Santa Clara, most of which is on the Internet at www.sccomplex.org, including but not limited to, from each of the five phases of the trial.:

The pleadings

Transcripts

Evidence

Decisions

To these EIR comments I include by reference the entire contents of the Internet, including but not limited to:

The entire contents of the NCSD web site at www.ncsd.ca.gov now and as it exists at the time of this comment letter.

The entire contents of the San Luis Obispo County website at <http://www.slocounty.ca.gov/> including but not limited to:

The Board meeting agenda, Minutes, Board packets and audio/video records located at <http://www.slocounty.ca.gov/Page106.aspx>

The entire contents of the DWR web site at <http://www.dpla.water.ca.gov/> as it exists at the time of this comment.

Including but not limited to the reports and information:

<http://wdl.water.ca.gov/> (water level data)

http://www.dpla.water.ca.gov/sd/water_quality/arroyo_grande/arroyo_grande-nipomo_mesa.html

<http://www.groundwater.water.ca.gov/bulletin118/index.cfm>

http://www.dpla.water.ca.gov/sd/groundwater/publications/water_facts_3.pdf

http://www.dpla.water.ca.gov/sd/groundwater/publications/water_facts_5.pdf

http://www.dpla.water.ca.gov/sd/groundwater/publications/water_facts_6.pdf

http://www.dpla.water.ca.gov/sd/groundwater/publications/water_facts_7.pdf

<http://www.dpla.water.ca.gov/sd/groundwater/references.html>

<http://www.dpla.water.ca.gov/sd/groundwater/publications/bulletin%20170-98.pdf>

The results of Google searches with any words used in this Comment packet in any combination or order including but not limited to: water, Santa Maria, Nipomo, NCSD, Supplemental Water, EIR, Intertie, pipeline, Lafco, San Luis Obispo, return flow, state water, transport, supplemental, water, project,

To these EIR comments I include by reference the entire contents of the documents and records kept by NCSD including but not limited to:

All Board meeting agenda, minutes, board packets, audio recordings, and reports.

All Board Committee meeting agenda, minutes, board packets, audio recordings, and reports.

All reports provided to NCSD.

Thank You



Harold Snyder
For Sale!!

