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JUN 29 1998

June 26, 1998

Mr. Rick Breitenbach
CALFED Bay Delta Program
1416 Ninth Street, Suite 1155
Sacramento CA 95814

Re: Comments of Tuolumne Utilities District on Draft PEIR/EIS

Dear Mr. Breitenbach:

These comments are submitted on behalf of Tuolumne Utilities District (TUD).

A. Summary

TUD's comments can be summarized as follows:

1. The preferred alternative should be consistent with and reinforce the obligations and priorities of the county of origin and watershed protection statutes of the State of California. In particular, the implementation of the preferred alternative should not impair the ability of the Bureau of Reclamation to meet its obligations to TUD as set forth below or impair the ability of TUD to exercise its statutory priorities to water from the South Fork of the Stanislaus River and/or New Melones Reservoir.

2. Any new Delta conveyance facilities, such as those described in Alternative 3, which are included in the preferred alternative, should be constructed and operated in a way which does not impair the ability of the Bureau of Reclamation to meet its obligations to TUD, which impairment could occur by increasing the water quality or other instream flow obligations on New Melones Reservoir.

3. The urban water use efficiency element of the preferred alternative should not result in mandatory obligations on a water supplier, such as TUD, which are not cost effective from the perspective of the water supplier, or which do not reflect the water conservation measures and programs already established and implemented by the water supplier. TUD does support setting numeric consumptive use efficiency goals or targets. TUD will not support the proposal that a non-governmental entity, such as the Urban

Water Conservation Council, be authorized to impose monetary or legal sanctions on a public agency water supplier.

Each of these comments is explained in more detail below.

B. Background

TUD occupies approximately the northerly 2/3rds of Tuolumne County. It is bounded on the north by the North Fork and main stem of the Stanislaus River; on the south by the Tuolumne River and the Yosemite National Park; on the east by Alpine County; and on the west by Stanislaus County. More than 70% of the entire Stanislaus River watershed flowing into New Melones Reservoir is located within Tuolumne County, and within the boundaries of TUD.

TUD is the principal water supplier of domestic and agricultural water within Tuolumne County. It also provides sewer service to a large number of its customers. TUD currently diverts approximately 19,000 a.f. annually from the South Fork of the Stanislaus River at Lyons Reservoir, located near the community of Twain Harte and upstream of New Melones Reservoir. From there the water is diverted into the Main Canal, primarily under pre-1914 water rights held by the Pacific Gas & Electric Company (PG&E), in combination with a 1928 appropriative right of PG&E for 5,360 a.f. of storage at Lyons Dam. Past studies indicate that TUD's projected needs will grow to an estimated 39,000 a.f. per year by year 2030.

From the time that the New Melones Project was first conceived in the 1940's, TUD and its predecessors have planned on obtaining approximately 9,000 a.f. of water from New Melones Reservoir for meeting portions of TUD's future water needs.

In addition, TUD hopes to be able to meet future water demands in part through enlargement of PG&E's Lyons Dam, from its current capacity of approximately 6,000 a.f.. This enlargement is dependent upon TUD's ability to finance the approximate Fifty Million dollar construction cost as well as obtaining the necessary water rights. The water right would be available under the 1927 county of origin State-filed Application 5649, which includes the storage of 17,000 a.f. at the existing Lyons Dam, 27,000 a.f. at Pinecrest Reservoir, and an additional 15,000 a.f. on the upper South Fork, in what is now the Emigrant Wilderness area. Presumably some of the storage under this filing, which totals 59,000 a.f., could be utilized at an enlarged reservoir at a single site, to wit, the existing Lyons Reservoir site. The State-filed Application 5649 is prior to the appropriative rights for the New Melones Project, which have priorities of 1952 and 1960.

In light of the current water environment, however, particularly on the Stanislaus River, it must be assumed that building a new storage project on the Upper Stanislaus will not be easy to accomplish.

C. TUD's Legal Rights to Water from New Melones

TUD's position is that the USBR is required to provide TUD a firm water supply out of New Melones Reservoir, and that the Bureau cannot enter into any other contracts or make any other commitments that would have a priority over deliveries of water to TUD under its contract. The basis of TUD's rights are as follows:

1. In response to the Bureau's Applications to appropriate water for the New Melones Project, TUD's predecessor, Tuolumne County Water District No. 2 (TCWD No. 2), protested Bureau Applications 19303, 19304 and 19305 for New Melones Reservoir when they were Noticed in 1963. In 1968, the Bureau petitioned for assignment of State-filed Applications 14858 and 14859 for New Melones Reservoir, which was also protested by TCWD No. 2.

2. TCWD No. 2's 1968 Protest included a demand that the requested assignment of the State-filed Applications 14858 and 14859 to the Bureau be approved only on the condition that the Bureau would be obligated to make water available to any areas within Tuolumne County which may desire to purchase water out of the project, at an equitable cost.

3. As a result of these Protests, the Bureau entered into an Agreement with TCWD No. 2 on November 29, 1972, which provides that TCWD No. 2 would withdraw its Protests, and further provides that:

a. Any new diversion or development of water from the Stanislaus River upstream from New Melones Reservoir for use within TCWD No. 2 would have a right prior to the New Melones filings; and

b. TCWD No. 2 and any user within TCWD No. 2 would have a right to purchase water impounded in New Melones.¹

4. The November 29, 1972 Agreement under which the Bureau contractually obligated itself to make water available to TCWD No. 2 from New Melones Reservoir, rests on three legal principles.

a. Under California's county of origin statute, the two State-filed Applications could legally be assigned to the Bureau for the New Melones Project only upon the condition of the SWRCB finding that the assignment would not deprive the county of origin of any water necessary for the development of the county. (Water Code § 10505).

¹ At the time this Agreement was entered into, the Bureau estimated that the firm long-term conservation yield of New Melones Reservoir, after allowing for future upstream development, would exceed 180,000 a.f. per year.

b. Under the watershed protection statute, the Bureau is prohibited from depriving TUD (which includes both the area where the water originates and also the area immediately adjacent thereto) of the prior right to all of the water reasonably required to adequately supply the beneficial needs of such areas (Water Code § 11460).

c. Congress, in reauthorizing and modifying the New Melones Project in 1962 by the Flood Control Act of 1962 approved October 23, 1963 (76 Stat. 1173), provided in the Act:

"That before initiating any diversions of water from the Stanislaus River Basin in connection with the operation of the Central Valley Project, the Secretary of the Interior shall determine the quantity of water required to satisfy all existing and anticipated future needs within the basin and the diversions shall at all times be subordinate to the quantities so determined."

5. In addition, the SWRCB, in Paragraph 24 of Decision D 1422, required that the Bureau's Permits would be subject to the terms of the Bureau's November 29, 1972 Agreement with TCWD No. 2. As a result, the Bureau's Permit Nos. 16597 and 16600 for storage of water at the New Melones Project provide as follows:

"24. This permit shall be subject to the following agreements between the Permittee and other parties:

* * *

(B) The agreement between the Permittee and Tuolumne County Water District No. 2 dated November 29, 1972.

* * *

25. This permit does not authorize the use of any water outside the counties of origin which is necessary for the development of the counties."

6. In 1982, the Bureau filed a Petition for assignment of the *direct diversion portion* of State-filed Application 14858 at New Melones Reservoir. TUD's predecessor Tuolumne Regional Water District (TRWD)² protested that Petition as well, and on June 8, 1987, the Bureau entered into a second agreement with TRWD, stipulating that the same conditions provided for in the November 29, 1972 Agreement, be a part of the Bureau's Permits for direct diversions under State-filed Application 14858, including the right to purchase water from New Melones Reservoir.

7. The SWRCB approved the petition for assignment in its Decision 1616 and determined that the same provisions assuring TRWD's right to purchase New Melones

² The name of Tuolumne County Water District No. 2 was changed to Tuolumne Regional Water District in September 1981.

water would also be included in the Bureau's Permit for direct diversions (pages 9 - 11 and Ordering paragraph 6.c. on page 31 of Decision 1616). The same provision quoted above assuring that right to a water supply was placed in the Bureau's Permit 20245 issued on that State-filed Application.

8. In the late 1980s, the County of Tuolumne, in reliance on the 1972 Agreement assuring that a water supply contract would be provided TRWD for a firm water supply out of New Melones Reservoir, and with full knowledge and the consent of the Bureau, proceeded with the construction and installation of facilities to pump water out of New Melones Reservoir and deliver the same to the areas now being served by TUD. Approximately \$4,000,000 was expended for this purpose.³ TRWD pursued a contract with the Bureau for the delivery of New Melones water in the late 1980s, but the negotiations became bogged down over various new issues and requirements that the Bureau imposed.

9. In December 1996, the Bureau informed TUD that water supply deliveries to TUD out of New Melones Reservoir would be subordinate, not only to CVPIA and ESA requirements, but to the flows which were agreed to in the December 1994 Accord, which have now been incorporated into the 1995 Bay Delta Plan:

"However, notwithstanding Article 2 of the Contract, Reclamation cannot sell or deliver any water 'impounded by the United States in New Melones' (Project water) to TUD under a water service contract until it has satisfied its obligations under the Central Valley Project Improvement Act (CVPIA), the Endangered Species Act, the December 1994 Bay Delta Accord, and other water quality, environmental, and Fish and Wildlife Service requirements. Water released to meet these requirements is not considered to be diverted or exported from the Stanislaus River Basin. The magnitude of these demands is such that Project water from New Melones Reservoir is not available under water service contracts in many years."
(December 2, 1996 letter from the Bureau to TUD)

D. TUD Concern for Impact of the CALFED Program on Downstream New Melones Obligations

The foregoing discussion describes the conflict between the downstream obligations currently imposed on New Melones Reservoir and the legal priorities of upstream, in-basin users, such as TUD. The Bureau appears to be saying that the in-basin consumptive needs of Tuolumne County are secondary to out-of-basin water quality requirements and environmental needs of the San Joaquin River and Bay Delta. Consequently, TUD is concerned that the CALFED Bay Delta Program may include actions or elements which will

³ The immediate need for this project was to deliver up to 1,500 a.f. of water per year to the then-producing Sonora Gold Mining Project near Jamestown. Operation of that Mine was closed down in 1996.

further increase the downstream flow obligations on the Bureau's operation of New Melones and thus further exacerbate the conflict between downstream obligations and in-basin consumptive uses.

For example, Table 3-1 of the Draft PEIR/EIS, Summary of Environmental Consequences, shows that for all alternatives, the Ecosystem Restoration Program pulse flows and Delta outflow targets may result in substantial short term increases in San Joaquin River flows during selected periods from March to May. Increased flow on the San Joaquin River probably means increased releases from New Melones Reservoir. If so, this would lead to further impacts on the ability of the Bureau of Reclamation to meet its contractual and other legal obligations to in-basin users, such as TUD, for the use of New Melones water.

E. TUD Concern for the Impact of Alternative 3 on Downstream New Melones Obligations

The isolated conveyance facility described in Alternative 3 would divert water from the Sacramento River and move it around the Delta to the SWP/CVP export pumps. Table 3.1 and the discussion in Section 6.1 of the Draft PEIR/EIS indicate that Alternative 3 would result in increased salinity in the South Delta, due to the reduced component of Sacramento River water moving through the Delta. Would this result in increased demands on New Melones in order to meet the water quality requirements of the Water Quality Control Plan? If so, this would lead to further impacts on the ability of the Bureau of Reclamation to meet its contractual and other legal obligations to in-basin users, such as TUD, for the use of New Melones water.

F. TUD Concern about Urban Water Use Efficiency Requirements

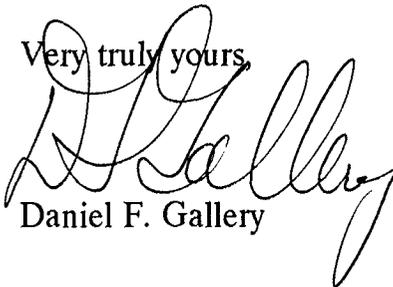
TUD is generally supportive of the goals and objectives of the urban water use efficiency component. However, this element of the CALFED preferred alternative should not result in mandatory obligations on a water supplier, such as TUD, which are not cost effective from the perspective of the water supplier, or which do not reflect the water conservation measures and programs already established and implemented by the water supplier.

TUD would support the concept of setting numeric consumptive use efficiency goals. DWR Draft Bulletin 160-98 indicates that consumptive water use, per capita per day, on a statewide basis, can be reduced to 203 gallons, per capita per day, by year 2020, with implementation of certain water conservation measures. (See Volume I, Table 4-8 of Bulletin 160-98). This is compared to 237 gallons per capita per day without implementation of these water conservation measures.

Using a numeric "yardstick" by which the consumptive use of a water agency or purveyor can be measured would be beneficial to the purveyor and the regulatory/management agencies. Water purveyors not meeting the targets or goals could be sanctioned by loss of eligibility for CALFED program benefits or would be subject to additional regulation or other counter-incentive measures. Those agencies which meet the goals or targets, having demonstrated the success of their programs, would not be subject to sanction or regulation. This process would result in clear identification of those agencies and purveyors where additional conservation measures would be useful, and would allow the CALFED agencies to concentrate their efforts and resources on those "problem areas".

TUD is specifically concerned about the proposal, described on Pages 2-17 and 2-18 of the Water Use Efficiency Component Technical Appendix, to authorize the Urban Water Conservation Council to levy monetary sanctions against a public agency for failure to comply with the provisions of MOU Regarding Urban Water Conservation in California. TUD believes that it is not appropriate, nor is it good public policy, to vest this kind of "police power" in a non- governmental entity, which is not accountable to voters, taxpayers or ratepayers.

Thank you for your consideration of these comments.

Very truly yours,

Daniel F. Gallery

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cc: Tuolumne Utilities District

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