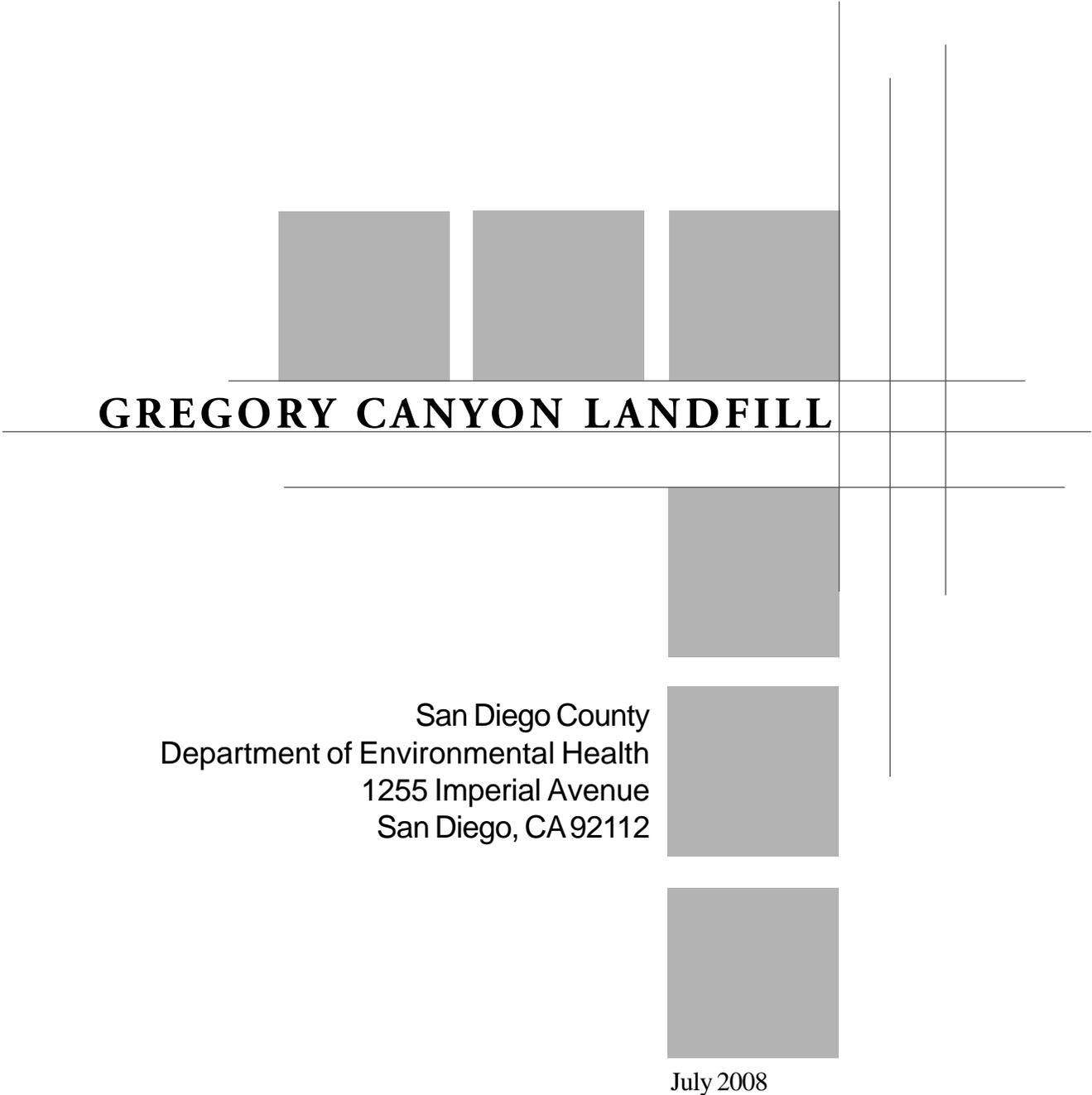


**ADDENDUM TO THE CERTIFIED
FINAL ENVIRONMENTAL IMPACT REPORT**



GREGORY CANYON LANDFILL

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1255 Imperial Avenue
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ADDENDUM TO THE CERTIFIED FINAL ENVIRONMENTAL IMPACT REPORT

1.0 BACKGROUND

The Gregory Canyon Landfill Project (Project) consists of the construction, operation, and closure of the proposed Gregory Canyon Landfill in northern San Diego County on State Route 76 (SR 76), about three miles east of Interstate-15 (I-15) and two miles southwest of the Pala community.

The environmental effects of the Project have previously been the subject of an Environmental Impact Report, dated December 2002 (2003 Draft EIR), and a Revised Final Environmental Impact Report dated March 2007, which was certified by the San Diego County Department of Environmental Health (DEH) on May 31, 2007 (RFEIR) [SCH#1995061007].¹ The 2003 Draft EIR was the subject of a writ of mandate issued by the San Diego County Superior Court on January 20, 2006. DEH prepared the RFEIR to address the matters noted by the Court in the writ of mandate.

The RFEIR discussed and analyzed the use of recycled water from the Olivenhain Municipal Water District (OMWD) for the construction, operation and closure of the landfill. Following certification of the RFEIR, a motion to dissolve the writ of mandate was filed on June 1, 2007. On February 11, 2008, the motion to dissolve the writ of mandate was granted in part and denied in part. In the portion of the order denying dissolution of the writ, the Court's minute order stated that the 2003 Draft EIR and RFEIR were deficient because they did not adequately assess the environmental effects on existing OMWD recycled water uses caused from the use of OMWD recycled water at the landfill site. The Court's order further stated that the environmental review of the use of OMWD recycled water at the landfill site should include "an assessment of the baseline conditions pertaining to OMWD's use of recycled water and the impacts, if any, on the existing uses of OMWD's recycled water." The Court also indicated that the environmental review should provide a "meaningful discussion of the potential impacts of the OMWD contract on existing customers or existing uses of the recycled water." A copy of the Court's minute order is included as Appendix A.

¹ *To provide for consistency of terminology with prior environmental review documents for the Project, the December 2002 Environmental Impact Report is referred to as the 2003 Draft EIR and the Revised Final Environmental Impact Report is referred to as the RFEIR. The RFEIR, which incorporated the 2003 Draft EIR, comprises the full environmental review for the Project. The EIR was certified by the Department of Environmental Health on May 31, 2007.*

The purpose of this Addendum is to respond to the Court's direction by providing the baseline information and analyzing potential impacts to existing customers or existing uses of OMWD recycled water. This Addendum has been prepared with consideration of the 2003 Draft EIR and the RFEIR. These documents, and all others cited herein, are incorporated by reference pursuant to the California Environmental Quality Act (CEQA) Guidelines, 14 California Code Regulations, Section 15150, and are available for review during regular business hours at the offices of the County Department of Environmental Health at 9325 Hazard Way, San Diego.

2.0 CEQA AUTHORITY FOR THE ADDENDUM ANALYSIS DOCUMENT

CEQA and the CEQA Guidelines establish the type of environmental documentation that is required when changes to a project occur or new information arises after an EIR is certified. Section 15164(a) states that:

“The lead agency or a responsible agency shall prepare an addendum to a previously certified EIR if some changes or additions are necessary but none of the conditions described in Section 15162 calling for preparation of a subsequent EIR have occurred.”

In order to give a degree of finality to EIR documentation, Section 15162 of the CEQA Guidelines requires that a Subsequent EIR need only be prepared if:

- 1. Substantial changes are proposed in the project which will require major revisions of the previous EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects;*
- 2. Substantial changes occur with respect to the circumstances under which the project is undertaken, which will require major revisions of the previous EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects;*
- 3. New information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified as complete shows any of the following:*
 - a. The project will have one or more significant effects not discussed in the previous EIR or negative declaration,*
 - b. Significant effects previously examined will be substantially more severe than shown in the previous EIR,*

c. Mitigation measures or alternatives previously found not to be feasible would in fact be feasible, and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative, or

d. Mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative.

In the event these conditions arise, but only minor additions or changes to the previous EIR are necessary, a Supplemental EIR may be appropriate, pursuant to CEQA Guidelines Section 15163.

This Addendum evaluates the potential impacts on existing customers or existing uses of OMWD recycled water from deliveries to the landfill site. The Addendum considers whether any significant environmental impacts, which were not identified in the 2003 Draft EIR or the RFEIR, would result or whether previously identified significant impacts would be substantially more severe in light of that evaluation. It has been determined herein that none of the conditions requiring preparation of a Subsequent or Supplemental EIR have occurred. Thus, pursuant to CEQA, this Addendum is the appropriate document to address the potential impacts on existing customers or existing uses of OMWD recycled water from deliveries to the landfill site.

3.0 OMWD RECYCLED WATER INFRASTRUCTURE

The RFEIR provided some description of OMWD's recycled water facilities. This Addendum will provide additional information regarding OMWD's recycled water infrastructure, and the sources and current uses of OMWD recycled water. This information was obtained through a review of OMWD reference documents, as well as several meetings with senior executive staff at OMWD. A technical memorandum summarizing the information received from OMWD is included as Appendix B of this Addendum.²

Because OMWD uses imported water for potable purposes, OMWD's Comprehensive Master Plan (2006) states that OMWD has established a policy to pursue the use of recycled water when economically and technically feasible. As discussed in OMWD's Urban Water Management Plan (UWMP) (2005, updated 2008), the development of recycled water along with desalinated water will help meet demands during prolonged water shortages. OMWD's 2007

² *Battle, Keith, Memorandum Report on Olivenhain Municipal Water District Recycled Water System (2008).*

Water Rate Review Update described recycled water and desalinated water projects as a method of developing a “drought proof water supply.” See also, California Water Code Section 13555.2, where the legislature found that recycled water is an effective means of meeting the demands for new water caused by drought conditions or population increases in the state.

Recycled water provides a consistent alternative to potable water for landscape, irrigation and commercial/industrial uses because production of wastewater from showers, toilets, washing machines, sinks, etc., is not substantially affected by water shortages.³ Wastewater generated from these sources, which flows to a Water Reclamation Facility (WRF) and is treated to produce recycled water, is generally consistent throughout the year, without significant seasonal fluctuations. Approximately 30 to 40% of the potable water used at residences ultimately becomes wastewater, thereby providing a continual supply of recycled water.⁴

As shown in Figure 1 on page 5, the OMWD recycled water system is divided into the Northwest Quadrant and the Southeast Quadrant. The Northwest and Southeast Quadrants are physically separate recycled water systems that operate independently and use different sources of recycled water to provide service. The landfill site would obtain recycled water from the Southeast Quadrant.⁵ The Southeast Quadrant includes the communities of 4S Ranch, Santa Fe Valley, Rancho Santa Fe, Fairbanks Ranch, and the San Dieguito Valley. As the landfill site would obtain recycled water from the Southeast Quadrant, the following discussion is limited to the Southeast Quadrant.

In the Southeast Quadrant, OMWD’s physical recycled water facilities include the 4S WRF, three storage facilities, and a series of interconnected pipelines.

The 4S WRF has a maximum wastewater treatment capacity of 2,000,000 gallons per day (gpd), or approximately 2,200 acre feet per year (AFY).⁶ The 4S WRF provides treatment of wastewater from the 4S Ranch Sanitation District and the Rancho Cielo Sanitation District. In 2007, wastewater flows to the 4S WRF averaged 1,000,000 gpd from the 4S Ranch Sanitation District and 100,000 gpd from the Rancho Cielo Sanitation District, for an annual average flow of wastewater to the 4S WRF of 1,100,000 gpd, or approximately 1,232 AFY.⁷

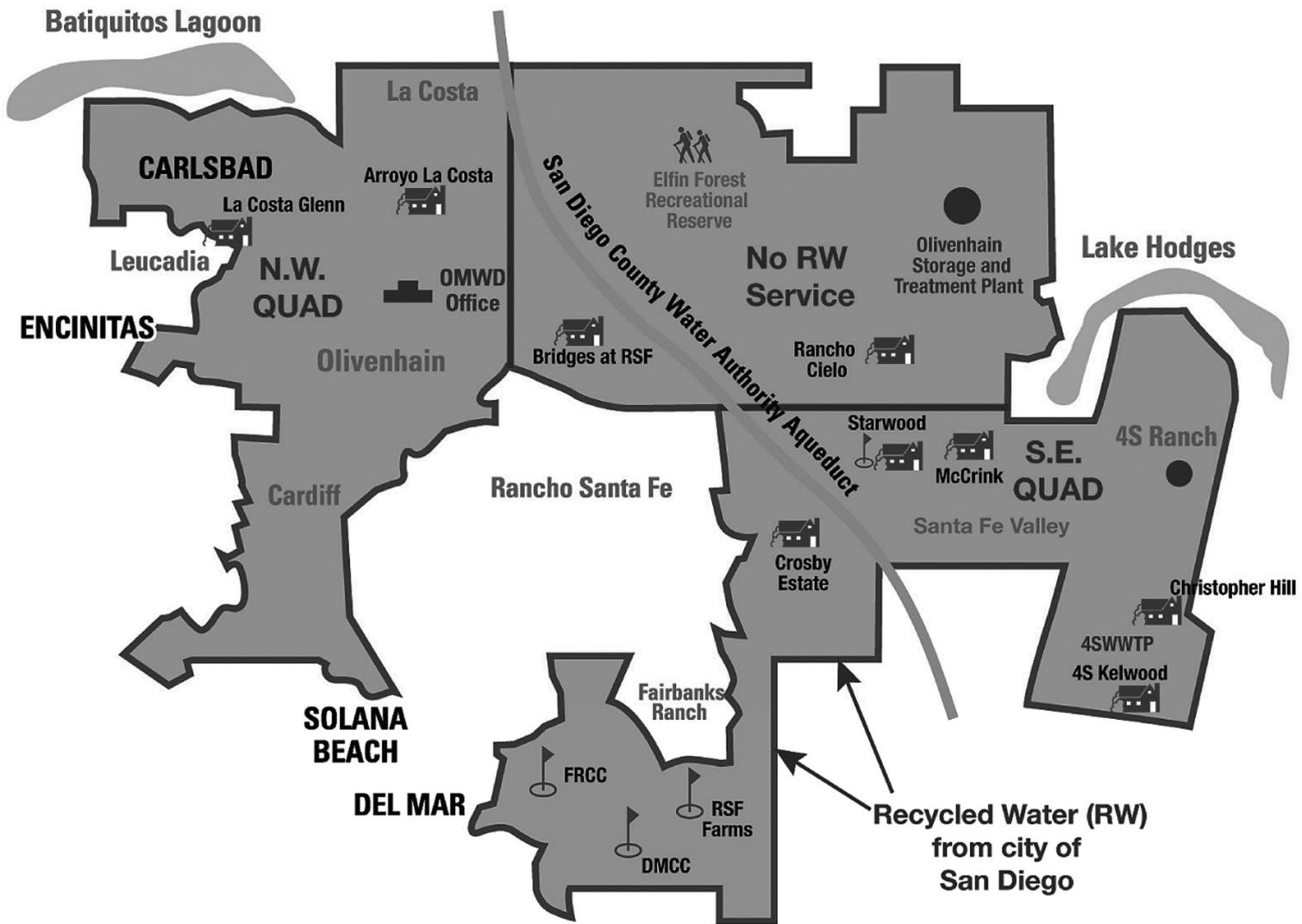
³ *Ibid.*

⁴ *OMWD, Urban Water Management Plan (2005, updated 2008).*

⁵ *Battle, Keith, Memorandum Report, op. cit.*

⁶ *1 acre foot equals 325,850 gallons of water.*

⁷ *Battle, Keith, Memorandum Report, op. cit.*



No scale

Figure 1
Olivenhain Municipal
Water District Areas

Source: Olivenhain Municipal Water District 2005 Updated Urban Water Management Plan, 2008.

OMWD stores recycled water in three places in the Southeast Quadrant. Table 1 on page 7 shows the facilities and capacity of the three storage areas in the Southeast Quadrant.

The OMWD recycled water system is connected by a series of dedicated purple pipelines. The purple pipelines convey recycled water between the facilities and carry recycled water to OMWD's recycled water customers. Figure 2 on page 8 shows the OMWD recycled water system in the Southeast Quadrant. The purple pipelines carry only recycled water, i.e. tertiary WRF effluent or tertiary WRF effluent supplemented with untreated water. Recycled water entering these pipelines cannot be used for potable purposes. The recycled water pipeline system is completely separate from OMWD's potable water supply system.⁸ Water entering the recycled water supply system pipelines must be used pursuant to Title 22, Division 4, Chapter 3, of the California Code of Regulations.

3.1 Recycled Water Supply – Tertiary WRF Effluent

OMWD relies on several sources of tertiary WRF effluent to supply its existing recycled water demands in the Southeast Quadrant. In addition to tertiary WRF effluent from the 4S WRF, OMWD purchases tertiary WRF effluent in the Southeast Quadrant from the Rancho Santa Fe Community Services District (RSFCSD) Santa Fe Valley WRF.⁹ The Santa Fe Valley WRF is located adjacent to the 3,000,000 gallon Santa Fe Valley Reservoir. Recycled water from the Santa Fe Valley WRF is delivered by pipeline to the Santa Fe Valley Reservoir. The Santa Fe Valley WRF has a maximum wastewater treatment capacity of 500,000 gpd, or approximately 560 AFY. In 2007, wastewater flows treated at the Santa Fe Valley WRF and delivered to OMWD averaged 100,000 gpd or 112 AFY.¹⁰ Under the contract between OMWD and RSFCSD, OMWD has the right to purchase up to 500,000 gpd or 560 AFY of tertiary WRF effluent, and has the first right to purchase all effluent produced by RSFCSD.

In addition, OMWD purchases tertiary WRF effluent from the City of San Diego North WRF. The effluent from the City of San Diego North WRF is delivered by pipeline to an existing OMWD recycled water pipeline in the San Dieguito area to the southwest of the Santa Fe Valley Reservoir.¹¹ The contract between OMWD and the City of San Diego is currently for

⁸ *California Water Code, Sections 13555.2 and 13555.3.*

⁹ *OMWD, Recycled Water Agreement (2004).*

¹⁰ *Battle, Keith, Memorandum Report, op. cit.*

¹¹ *Agreement between the City of San Diego and the Olivenhain Municipal Water District for Purchase of Recycled Water from the North City Water Reclamation Plant (2004); Battle, Keith, Memorandum Report on Olivenhain Municipal Water District Recycled Water System (2008).*

Table 1

OMWD Recycled Water Storage Facilities in the Southeast Quadrant

Facility	Capacity	
4S WRF storage pond	133,598,000	gallons (approximately 410 AF)
Thelma Miller Reservoir	1,000,000	gallons (approximately 3.07 AF)
Santa Fe Valley Reservoir	3,000,000	gallons (approximately 9.2 AF)
TOTAL STORAGE	137,598,000	gallons (approximately 422.27 AF)

AF = acre-feet

Source: OMWD Comprehensive Master Plan (2006); RFEIR.

up to 500 AFY of tertiary WRF effluent on a take or pay basis. OMWD currently uses all of its 500 AFY allocation.¹²

Table 2 on page 9 shows the current (2007) sources used to supply recycled water demands on an annualized basis in the Southeast Quadrant. As shown, OMWD presently receives or can produce 1,844 AFY of tertiary WRF effluent from the three identified sources for delivery as recycled water in the Southeast Quadrant.

3.2 Recycled Water Demand

Table 3 on page 9 shows OMWD's existing (2007) recycled water customers in the Southeast Quadrant as well as each customer's existing demand for recycled water.

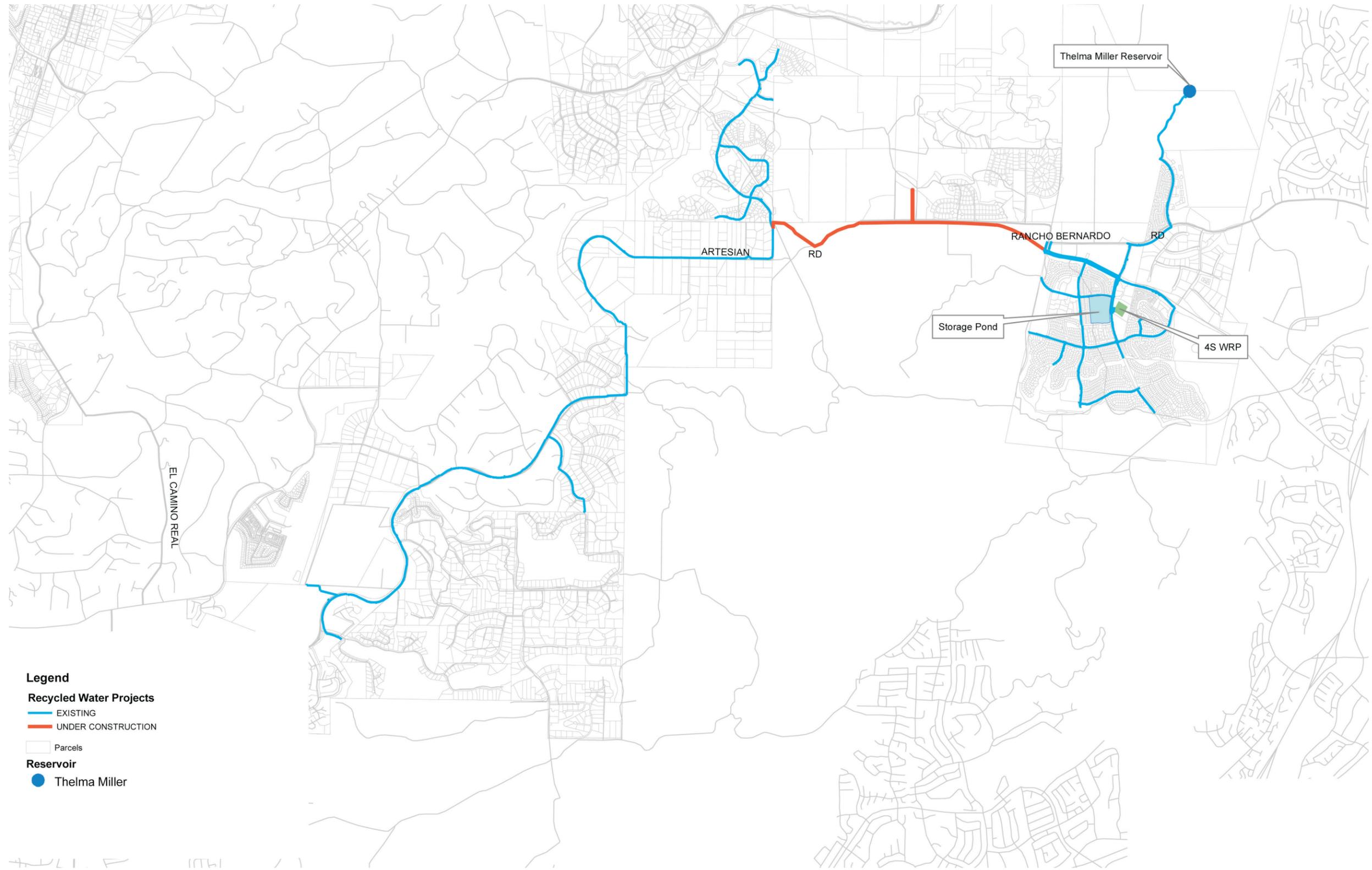
The use of recycled water by existing OMWD customers in the Southeast Quadrant is for landscape or golf course irrigation. As a result, the demand for recycled water is seasonal, with higher demand during summer months and lower demand during winter months.

3.3 Comparison of Supply and Demand

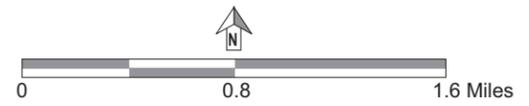
The above discussions and data presented in Tables 2 and 3 provide the annual supply and demand. As can be seen in comparing the totals in the tables, the current supply of tertiary WRF effluent and demand for recycled water is roughly balanced on an annualized basis. The supply of tertiary WRF effluent is adequate if deliveries to the landfill site are not considered, and supply is slightly less, approximately 49 AFY, than the demand when deliveries to the landfill site are added into the calculation.¹³ However, the approach of looking at annual demand

¹² *Battle, Keith, Memorandum Report, op. cit.*

¹³ *The percentage shortfall in supply of tertiary WRF effluent versus demand, on an annualized basis is 2.6% assuming deliveries of 193 AFY to the landfill site.*



- Legend**
- Recycled Water Projects**
- EXISTING
 - UNDER CONSTRUCTION
- Parcels**
- Parcels
- Reservoir**
- Thelma Miller



Source: Olivenhain Municipal Water District Comprehensive Master Plan, 2006.

Figure 2
Existing and Proposed Recycled
Water Facilities in the Southeast Quadrant

Table 2

OMWD 2007 Sources and Quantities of Tertiary WRF Effluent in the Southeast Quadrant

Source	Supply (AFY)
4S WRF	1,232
RSFCSD	112
City of San Diego North WRF	500
TOTAL	1,844

Source: Battle, Keith, Memorandum Report on Olivenhain Municipal Water District Recycled Water System (2008).

Table 3

OMWD's 2007 Recycled Water Customers in the Southeast Quadrant

Customer	Demand (AFY)
Del Mar GC	350
Morgan Run GC	100
Fairbanks Ranch GC	150
McCrink Irrigation	100
Starwood (Crosby) GC	250
Crosby Estate Greenbelt	100
4S Ranch	650
Total	1,700
Gregory Canyon ^a	193
TOTAL ANNUAL DEMAND	1,893

GC = golf course

^a *Project demand is based on maximum water usage estimates provided in the RFEIR, although the contracted amount of recycled water is 230 AFY.*

Source: Battle, Keith, Memorandum Report on Olivenhain Municipal Water District Recycled Water System (2008).

and supply is a simplification of the process as it does not take into account other factors, such as the seasonal demand fluctuations, climactic conditions, or storage losses of recycled water from evaporation from the storage ponds.¹⁴ The amount of any imbalance between supply of tertiary WRF effluent and demand for recycled water fluctuates during different years and during different times of the year.¹⁵

¹⁴ *Battle, Keith, Memorandum Report, op. cit.*

¹⁵ *Ibid.*

Because of these fluctuations, OMWD currently supplements its supply of tertiary WRF effluent with untreated San Diego County Water Authority (SDCWA) water.¹⁶ This supplementation allows OMWD to meet recycled water demands. OMWD estimates that recycled water deliveries during summer months contain between 20-40% untreated SDCWA water, depending on climatic conditions. During winter months, the percentage of untreated SDCWA water in recycled water deliveries is much smaller. There is typically no supplementation at all, or minimal supplementation in response to extreme weather events.¹⁷

On an annual basis, without considering deliveries to the landfill site, the amount of supplementation is expected to be between 17-34%, depending on climatic conditions. This annual supplementation estimate is weighted toward the higher summer month estimate of 20-40% supplementation, to reflect the fact that recycled water demand is higher during summer months.¹⁸

If deliveries to the landfill site are considered, the amount of supplementation is expected to be between 26-41%, depending on climatic conditions.¹⁹ The incremental increase in supplementation attributable to deliveries to the landfill site, beyond what would otherwise be required for OMWD to meet current recycled water demands from its other customers, would be between seven percentage points (at the highest percentage of overall supplementation without deliveries to the landfill site of 34%) and nine percentage points (at the lowest percentage of overall supplementation without deliveries to the landfill site of 17%).

Untreated SDCWA water used for supplementation is obtained from SDCWA's Pipeline 5, and delivered to the Santa Fe Valley Reservoir or the 4S WRF. All recycled water deliveries, whether supplemented or not, are delivered to customers via the same purple recycled water pipelines. OMWD charges its recycled water customers a uniform rate, whether or not the recycled water has been supplemented.²⁰ Supplementation is an included activity in OMWD's Master Reclamation Permit issued by the San Diego Regional Water Quality Control Board (RWQCB).²¹

¹⁶ *Based on a review of other WRFs in the San Diego County Region, the use of supplemented recycled water is a common practice. Supplementation occurs to improve the quality of the recycled water, or to provide sufficient recycled water during high seasonal demand periods. For instance, between 2002-2006, the Otay Water District WRF delivered recycled water to its customers with a percentage of supplementation between 59.4% and 72.5%. Regional Water Quality Control Board (RWQCB), Order No. R9-2007-0038 (2007).*

¹⁷ *Battle, Keith, Memorandum Report, op. cit.*

¹⁸ *Battle, Keith, Memorandum Report, op. cit.*

¹⁹ *Ibid.*

²⁰ *Ibid.*

²¹ *RWQCB Order No. R9-2003-0007 (2003).*

As a member agency of the SDCWA, OMWD is able to obtain untreated SDCWA water for supplementation, and is able to obtain sufficient water to meet the demands of its existing recycled water customers.²² OMWD's UWMP (2005, updated 2008) contains a review of SDCWA's regional water planning management calculations (contained in SDCWA's UWMP (2005, updated 2007)), which shows projected supply and demand calculations and sources of water. The OMWD UWMP (2005, updated 2008) concluded that it does not anticipate regional supply shortages due to water quality or supply challenges. The Metropolitan Water District (Metropolitan) Administrative Code (updated 2007) provides that Metropolitan is prepared to deliver additional supplies of untreated water to meet increased needs for domestic, industrial and municipal water of its member agencies.²³ The SDCWA UWMP (2005, updated 2007) identifies landscape irrigation as a commercial or industrial use. Because of the ability to obtain supplemental untreated SDCWA water, OMWD is able to satisfy recycled water demands from its existing customers, even with deliveries of recycled water to the landfill site.

3.4 Regulatory Framework

Water Code Section 1210 allows for delivery of either recycled water or supplemented recycled water to the landfill site, which is located outside the boundaries of SDCWA. Section 1210 provides that the owner of a wastewater treatment plant operated for the purpose of treating wastes from a sanitary sewer system shall hold the exclusive right to the treated wastewater as against anyone who has supplied the water discharged into the wastewater collection and treatment system.

This provision applies equally to recycled water that has been supplemented with untreated water, as supplementation is a typical part of the recycled water production and delivery system. Supplemented recycled water supplied by OMWD is stored in the same storage facilities and is placed in the same dedicated purple recycled water pipeline system, and those facilities are completely separate from OMWD's potable water supply system.²⁴ Both supplemented and non-supplemented recycled water entering these pipelines cannot be used for potable purposes, and must be used pursuant to Title 22, Division 4, Chapter 3, of the California Code of Regulations.

As noted earlier, OMWD's use of supplemented recycled water is an included activity in the 2003 Master Reclamation Permit issued by the RWQCB to OMWD. The RWQCB has

²² *Battle, Keith, Memorandum Report, op. cit.*

²³ *Metropolitan's Regional UWMP (2005) states that it can maintain 100% reliability in meeting direct consumptive demand under normal, single-dry and multiple-dry years. SDCWA, Urban Water Management Plan (2005, updated 2007).*

²⁴ *See California Water Code Sections 13555.2 and 13555.3.*

issued a number of other Master Reclamation Permits in recent years, including those issued to the City of Carlsbad, the City of San Clemente, Otay Water District, and Valley Center Water District. In each instance, the Master Reclamation Permit includes a standard condition authorizing supplementation. All of these permits require that both supplemented and non-supplemented recycled water be handled in the same way, and used in accordance with the same restrictions.

4.0 IMPACTS FROM RECYCLED WATER DELIVERIES TO THE LANDFILL SITE ON OTHER OMWD RECYCLED WATER CUSTOMERS

The Project has a binding contract with OMWD, which requires that upon request by Gregory Canyon, OMWD must deliver up to 244,000 gpd or 230 AFY of tertiary recycled water. However, as provided in the RFEIR, the maximum anticipated recycled water demand for the landfill site would be 205,000 gpd, or 193 AFY. This Addendum analyzes the impacts of deliveries at 193 AFY on existing customers or existing uses of OMWD recycled water.

The analysis of impacts from deliveries to the landfill site considers the following facts, among others:

- Without considering deliveries to the landfill site, the demands of OMWD's current recycled water customers are 144 AFY (approximately 128,550 gpd, or 8.5%) less than the available supply of tertiary WRF effluent on an annualized basis.
- Including deliveries to the landfill site, the demands of OMWD's current recycled water customers are 49 AFY (approximately 43,750 gpd or 2.6%) greater than the available supply of tertiary WRF effluent on an annualized basis.
- Taking other factors into consideration, such as seasonal fluctuations, climactic conditions or storage losses, OMWD supplements its tertiary WRF effluent to meet recycled water demands, even without deliveries to the landfill site. The percentage of supplementation is expected to be between 17-34% as an annual average.
- Taking the same factors into consideration but including deliveries to the landfill site, the percentage of supplementation is expected to be between 26-41% as an annual average.
- The percentage increase in supplementation attributable to deliveries to the landfill site would be between seven to nine percentage points.

OMWD's total recycled water deliveries, to serve its existing recycled water customers and the landfill site, are expected to include approximately 26 - 41% supplemented untreated SDCWA water annually. Supplementation with untreated SDCWA water will occur to meet the needs of OMWD's existing recycled water customers, with or without deliveries to the landfill site. As noted above, OMWD has the ability to obtain sufficient amounts of untreated water for supplementation from SDCWA.

In order to consider whether OMWD recycled water deliveries to the landfill site cause significant impacts to existing customers or existing uses of the recycled water, this Addendum analyzes all sources of recycled water available to provide service to OMWD's existing recycled water customers.²⁵

The majority, between 59 - 74% (including deliveries to the landfill site), of recycled water delivered annually to OMWD's existing customers is tertiary WRF effluent from WRF's either operated by or under contract with OMWD. These sources provide a consistent supply of recycled water because production of wastewater from showers, toilets, washing machines, sinks, etc., is not substantially affected by water shortages.²⁶ Wastewater flows to a WRF are generally consistent throughout the year, without significant seasonal fluctuations. OMWD, in its Recycled Water Frequently Asked Questions document, views these sources as reliable "even in times of drought when restrictions are placed on the use of potable (drinking) water."

Supplementation with untreated SDCWA water by OMWD would continue to occur to make up the remaining 26-41% increment.²⁷ To analyze this supply of untreated water from SDCWA to OMWD, this Addendum includes a review of the SDCWA UWMP (2005, updated 2007). The SDCWA UWMP quantifies the regional mix of existing and projected local and imported supplies necessary to meet demands within SDCWA's service area.

The SDCWA UWMP analyzes both current and projected water demands. As a member agency of SDCWA, OMWD's water demands are included in this analysis. The SDCWA then analyzes both current and projected water supplies. Those sources include the Imperial Irrigation Water Conservation and Transfer Agreement, the All-American Canal and Coachella Canal

²⁵ *OMWD has written recycled water delivery contracts with four of its current recycled water customers – 4S Ranch, Fairbanks Ranch Golf Course (GC), Del Mar GC, and Morgan Run GC. Three of the four agreements contemplate the use of supplemented recycled water. The Del Mar GC and Morgan Run GC contracts call for the delivery of "Raw/Reclaimed Water". The 4S Ranch contract defines "recycled water" as "either Title 22 tertiary treated water, raw water, or a blend of both". Neither the Fairbanks Ranch contract nor the Gregory Canyon contract describes the recycled water that can be supplied in similar terms. There are no written agreements with OMWD's remaining recycled water customers.*

²⁶ *Battle, Keith, Memorandum Report, op. cit.*

²⁷ *Ibid.*

lining projects, seawater desalination, surface water, groundwater, recycled water, and water supplied by Metropolitan through the Colorado River Aqueduct or the State Water Project.

The SDCWA UWMP includes a water supply and demand assessment under normal, single dry water year, and multiple dry water year scenarios. Under each of these scenarios, the UWMP concluded that projected supply is sufficient to meet projected demand, and that no shortages are anticipated within the 30-year planning period.

However, the SDCWA UMWP does acknowledge uncertainties in supply, particularly with respect to imported water from Metropolitan. In addition to climactic conditions (drought), available supply may be reduced because of apportionment of Colorado River water among the states bordering the river, endangered species considerations, water quality regulations, and assertion of preferential rights by the City of Los Angeles. Strategies to address these uncertainties were analyzed in the SDCWA UMWP, including short term water transfers, development of seawater desalination, maximizing development of recycled water and groundwater (including out of region conjunctive use), developing emergency storage and carryover storage facilities, and conservation through drought management planning. The SDCWA UMWP ultimately determined that this diverse mix of resources would buffer the unavailability of any single source and therefore, even if these uncertainties occur, projected supply will likely be sufficient to meet projected demand on a regional basis.²⁸

In 2008, SDCWA took a significant step toward drought management planning in the event of supply shortages through its development of a model Drought Ordinance. The model ordinance is intended to be adopted by member agencies and provides for a specific set of actions to respond to various stages of supply shortfalls. Measures include limitations on residential and commercial irrigation, limitations on washing of paved surfaces or vehicles, and maximizing the use of recycled water. However, the model Drought Ordinance contains an express provision that its limitations are not applicable to recycled water.²⁹ In addition, in the

²⁸ A recent news release published by SDCWA provides a brief status of actions taken in anticipation of changing water supply conditions in 2008, and discusses longer term plans and programs to diversify water supplies and increase long-term water supply reliability, including canal lining, water transfers, and developing new sources of supply such as recycled water, groundwater, and desalinated sea water. SDCWA, News Release – Governor’s Drought Declaration Underscores Urgent Call for Water Conservation: Water authority actions over past several years designed to increase conservation and prepare for potential shortages (June 4, 2008).

²⁹ OMWD’s current Drought Ordinance No. 204 provides that in the case of the most severe scenario of a water emergency, irrigation of turf is prohibited except under certain circumstances, one of which is the use of recycled water. Golf course irrigation may continue, including irrigation with recycled water. OMWD UWMP (2005, updated 2008).

event there is any allocation of untreated SDCWA water, one criteria in making that allocation is to not penalize those member agencies that have developed local projects or instituted conservation measures, such as recycled water facilities, which may benefit OMWD.³⁰

A technical letter report attached as Appendix C analyzes potential long-term impacts to water supply from global climate change.³¹ The letter report also considers environmental concerns in the Bay-Delta area, along with regional, state and federal initiatives to address these concerns.³² Based on the information provided, the letter report indicates that sufficient information is not available to conclude that a potentially significant impact to OMWD's existing recycled water uses or existing customers would occur due to these concerns.

Based on available sources of tertiary WRF effluent and untreated SDCWA water, information received from OMWD, the SDCWA UWMP, the provisions of the SDCWA Drought Management Plan and model Drought Ordinance, and the information discussed in Appendix C, there is adequate recycled water to meet the demands of OMWD's existing customers or existing uses of recycled water after including deliveries to the landfill site. For that reason, OMWD is able to provide 193 AFY of recycled water to the landfill site without causing a significant impact on its existing customers or existing uses of recycled water.

5.0 CONCLUSION

This Addendum analyzes impacts on existing customers or existing uses of OMWD recycled water from deliveries to the landfill site. The analysis considers annualized recycled water supply and demand, as well as other factors that affect OMWD's real-world recycled water operations, such as seasonal fluctuations, climactic conditions and storage losses. This Addendum concludes that there is adequate recycled water to meet the demands of OMWD's existing customers or existing uses of recycled water after including deliveries to the landfill site, and that OMWD is able to provide 193 AFY of recycled water to the landfill site without causing a significant impact to its existing customers or existing uses of recycled water.

³⁰ SDCWA, *Drought Management Plan* (2006).

³¹ PCR Services Corporation, *Letter to Ms. Rebecca Lafreniere, Environmental Document for Gregory Canyon Landfill* (2008).

³² *One ongoing project to address water supply delivery impacts to the State Water Project due to environmental concerns in the Bay-Delta area is being undertaken by a consortium known as CALFED. Two of the CALFED project objectives are to improve habitats and ecological functions and to reduce the mismatch between Bay-Delta Water supplies and projected beneficial uses dependent on the Bay-Delta system. This mismatch occurs not because of a lack of water but rather from uneven distribution. In re Bay-Delta Programmatic Environmental Impact Report Coordinated Proceedings, (2008) ___ Cal.4th ___ (Case No. S138974, June 5, 2008).*

Based on the information presented in this Addendum, no significant environmental impacts that were not identified in the 2003 Draft EIR or the RFEIR would result, and no previously identified significant impacts would be substantially more severe in light of this analysis. It has been determined herein that none of the conditions requiring preparation of a Subsequent or Supplemental EIR have occurred. Thus, pursuant to CEQA, this Addendum is the appropriate document to address the potential impacts on existing customers or existing uses of OMWD recycled water from deliveries to the landfill site.

6.0 REFERENCES

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Regional Water Quality Control Board, Order No. R9-2002-0336, Master Reclamation Permit with Waste Discharge Requirements for the Production and Purveyance of Recycled Water for Valley Center Municipal Water District, Orchard Run Water Reclamation Facility, San Diego County (2002).

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San Diego County Water Authority, Drought Management Plan (2006).

San Diego County Water Authority, Model Drought Ordinance (2008).

San Diego County Water Authority, News Release – Governor’s Drought Declaration Underscores Urgent Call for Water Conservation: Water authority actions over past several years designed to increase conservation and prepare for potential shortages (June 4, 2008).

The Metropolitan Water District Administrative Code (updated 2007).

**APPENDIX A:
SAN DIEGO COUNTY SUPERIOR COURT
FEBRUARY 11, 2008 MINUTE ORDER**

because these documents contain information that contradicts Respondents' and/or Real Party's (hereinafter collectively referred to as "Respondents") claims about the amount of recycled water available. However, the fact that conflicting information may exist does not establish that the agency engaged in misconduct. Petitioners also fail to show that the evidence could not have been produced in the exercise of reasonable diligence or was improperly excluded at the administrative hearing. Because Petitioners have failed to establish any of the three grounds on which extra-record evidence may be considered, the request to admit these documents is denied.

Petitioners argue that 2006 Water Quality Monitoring Report should be admitted, because Respondents failed to address the data in the report, even though the report was completed prior to certification of the RFEIR. Petitioners argue that the omission of this report from the record constitutes agency misconduct. Again, however, the mere fact that the report is not in the record does not establish agency misconduct. Petitioners have failed to meet their burden on this point. Petitioners next argue that the report was dated April of 2007, which was months after the public comment period on the RFEIR closed (in August 2006). They argue that they therefore exercised reasonable diligence in discovering the document. However, they have failed to offer any details concerning their diligence. Again, they have failed to meet their burden. The record therefore shall not be augmented with the 2006 Water Quality Monitoring Report.

In their written submissions, Petitioners offer no argument specific to the other documents with which they seek to augment the administrative record. Their request is therefore denied as to the remaining documents.

Respondents' request to augment the administrative record or to admit extra-record evidence is also denied. Respondents ask the Court to admit "three short documents" to combat the extra-record evidence that Petitioners seek to introduce. Like Petitioners, Respondents have failed to show the evidence could not have been produced in the exercise of reasonable diligence or was improperly excluded at the administrative hearing. Respondents' request is also denied.

Petitioners' Request for Judicial Notice is GRANTED IN PART and DENIED IN PART. Petitioners ask the Court to take judicial notice of the same five documents identified above, as well as a "Notice of Permit Modification Gregory Canyon Landfill," a section of the Code of Federal Regulations, and a section of a San Diego County zoning ordinance. The request for judicial notice of the six documents that are not part of the administrative record is denied. Petitioners cite no authority for the proposition that such records may be examined pursuant to a request for judicial notice when it is not permissible to make them part of the administrative record.

City ordinances and federal regulations are the proper subjects of judicial notice under Evidence Code § 452(b), which permit judicial notice to be taken of "regulations and legislative enactments issued by or under the authority of the United States or any public entity in the United States." The request for judicial notice of the zoning ordinance and a section of a CFR is therefore granted.

In their supplemental reply, Petitioners ask the Court to take judicial notice of the Metropolitan Water District's administrative code and of an appendix to the California Water Code. These code sections constitute legislative enactments issued by public entities in the United States; judicial notice is thus appropriate pursuant to Evidence Code § 452(b).

Respondents' Motion to Dissolve Peremptory Writ is GRANTED IN PART and DENIED IN PART.

STANDARD OF REVIEW

The Court's 10/3/05 minute order ("Minute Order") granting in part and denying in part Petitioners' challenge to the Final EIR ("FEIR") identified several deficiencies in the FEIR. Respondents then adopted a Revised Final EIR ("RFEIR").

Where CEQA claims are involved, the standard of review is governed by Public Resources Code section 21168, which requires the Court to determine whether the challenged decision – the adoption of the RFEIR -- is supported by substantial evidence in light of the whole record. In applying the substantial-evidence test, the Court determines whether the lead agency's record contains relevant information that a reasonable mind might accept as sufficient to support the agency's determination. Any and all reasonable doubts must be resolved in favor of the agency's determination, and a decision cannot be overturned even if the opposite conclusion is more reasonable. *Western States Petroleum Assn. v. Superior Court* (1995) 9 Cal.4th 559, 572. See also 14 CCR § 15384(a) ("Substantial evidence' as used in these guidelines means enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached. Whether a fair argument can be made that the project may have a significant effect on the environment is to be determined by examining the whole record before the lead agency. Argument, speculation, unsubstantiated opinion or narrative, evidence which is clearly erroneous or inaccurate, or evidence of social or economic impacts which do not contribute to or are not caused by physical impacts on the environment does not constitute substantial evidence."); *Laurel Heights Improvement Assn. of San Francisco, Inc. v. Regents of the University of California* (1988) 47 Cal.3d 376, 393 ("A court may not set aside an agency's approval of an EIR on the ground that an opposite conclusion would have been equally or more reasonable. A court's task is not to weigh conflicting evidence and determine who has the better argument when the dispute is whether adverse effects have been mitigated or could be better mitigated. We have neither the resources nor scientific expertise to engage in such analysis, even if the statutorily prescribed standard of review permitted us to do so.").

The petitioner has the burden to prove the agency's decision is not supported by substantial evidence. CCP § 1094.5; Pub. Res. Code ("PRC") § 21168. The EIR is presumed adequate and the petitioner has the burden of proving otherwise. *Al Larson Boat Shop, Inc. v. Board of Harbor Commissioners of the City of Long Beach* (1993) 18 Cal.App.4th 729, 740. The Court cannot exercise its independent judgment or re-weigh the evidence upon which the agency relied in making its decision. A court may not set aside an agency's approval of an EIR on the ground that an opposite conclusion would have been equally or more reasonable. *Greenebaum v. City of Los Angeles* (1984) 153 Cal.App.3d 391, 401-402. "CEQA does not, indeed cannot, guarantee that these decisions will always be those which favor environmental considerations." *Laurel Heights*, supra, at 392-393.

WATER SUPPLY

The parties first address the issue of water supply.

The Court's Minute Order found that Respondents improperly relied on "a non-existent appropriative right and undocumented riparian rights" to conclude there was sufficient water for the project. Exhibit A/Minute Order at p. 6.

The RFEIR no longer relies on riparian or appropriative rights. Instead, it states that the two proposed sources of water for the project are recycled water and on-site percolating groundwater. AR:114440. It states that the principal source of water would be recycled water purchased from the Olivenhain Municipal Water District ("OMWD") pursuant to a contract that would provide the project with up to 230 acre-feet per year ("AFY") of water for a term of 60 years. *Id.*

Petitioners argue that, with respect to the use of recycled water, the RFEIR is inadequate because: (a) it fails to identify and analyze the baseline amount of water available from OMWD and the impacts to OMWD's costumers from the sale of the water for 60 years; (b) it fails to identify and analyze the need for OMWD to obtain approvals before it can sell recycled water blended with potable water outside its service area; (c) it fails to identify and analyze the fact that the use of the Santa Fe Valley Reservoir and Pump Station ("Santa Fe Facility") violates the Santa Fe Valley Specific Plan; (d) OMWD did not participate in the CEQA process, and the OMWD Agreement was not made available for public

comment; (e) the analysis of the impacts of using on-site percolating groundwater to supply the "operational needs" of the project was flawed because it used inflated and internally inconsistent rainfall values to artificially increase the "safe yield" of the bedrock aquifer from which the water would be pumped and used inflated "recharge area" numbers; and (f) the RFEIR failed to properly analyze the impact of using contaminated groundwater.

a. Impacts on OMWD customers; baselines. With respect to the water to be supplied by OMWD, the EIR states:

Olivenhain has entered into a written contract with the project agreeing to supply up to 244,000 gpd of water daily and up to 230 acre-feet of water per year. Olivenhain has determined that it has adequate recycled water available to serve these volumes of water to the project without adversely affecting recycled water supplied to its other customers. The amount of recycled water committed to the project, 244,000 gpd, is substantially less than the 2,000,000 gpd output from its wastewater treatment plant. Accordingly, the use of recycled water for project construction activities will not result in any impacts to the available supply of recycled water within Olivenhain.

AR:114453.

In light of the written contract with OMWD, the Court is satisfied that the RFEIR properly addresses the existence of an adequate water supply for the project. The executed agreement with OMWD appears to satisfy the criteria in the two recent appellate decisions addressing water supply issues: Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova (2007) 40 Cal.4th 412 and Santa Clarita Organization for Planning the Environment v. County of Los Angeles (2007) 157 Cal.App.4th 149.

However, the Court believes there is a difference between adequately addressing the existence of a proposed water supply and adequately addressing the environmental effects, if any, of using the proposed water supply. In a related case handled by this Court, Riverwatch v. Olivenhain Municipal Water District, Case No. GIN054668, this Court rejected Petitioners' argument that a CEQA review was required before OMWD could properly enter into the water supply agreement for this project. Instead, in accordance with Concerned McCloud Citizens v. McCloud Community Services Dist. (2007) 147 Cal.App.4th 181, this Court determined that the execution of the water supply agreement did not constitute the approval of a project under CEQA and that any required CEQA review would be accomplished when a project was approved.

This Court's ruling in Case No. GIN054668 is on appeal before the Fourth District Court of Appeal.

Consistent with this Court's ruling in Case No. GIN054668 and with the Concerned McCloud Citizens case, the Court believes that the assessment of the environmental impacts for the Gregory Canyon Landfill project must include an assessment of the environmental impacts, if any, associated with the project's proposed use of the recycled water provided under the OMWD contract. This includes an assessment of the baseline conditions pertaining to OMWD's use of recycled water and the impacts, if any, on the existing uses of OMWD's recycled water.

In this regard, the RFEIR appears to be deficient. The RFEIR states that OMWD is committed to providing 244,000 gpd from its existing output, but there is no indication of the potential impacts of this use. It is not clear whether the 244,000 gpd of recycled water that are committed to the project are being diverted from other uses and/or other customers, or come from another source of recycled water obtained by OMWD, or come from excess recycled water that otherwise is not used. The RFEIR simply states, in a conclusory fashion, that "the District has determined that it has adequate capacity to serve this recycled water to the project without impacting other recycled water users and has agreed to provide this recycled water to the project for a period of 60 years based upon an executed contract." AR:114441. There are no facts in the record to support the conclusion that OMWD can provide water to this project without impacting other recycled water users.

The RFEIR need not provide a perfect accounting of the current and anticipated future uses of OMWD recycled water, but it needs to provide enough information to enable decision makers to evaluate the pros and cons of the project. Vineyard Area Citizens for Responsible Growth, supra, at 431. The absence of any meaningful discussion of the potential impacts of the OMWD contract on existing customers or existing uses of the recycled water fails to meet this standard.

In response to Petitioners' assertions concerning this alleged inadequacy of the RFEIR, Respondents refer to the Court's attention to Comment No. 080-107. That response provides:

As indicated in Section 4.15, the Olivenhain Municipal Water District presently provides recycled water in both the northwest and southeast areas of its service territory to a variety of agricultural, residential, golf course, and commercial users. However, the amount of recycled water produced by Olivenhain's treatment plant substantially exceeds its delivery commitment to the project of up to 244,000 gpd and 230 AFY. The recycled water system completed by OMWD has the ability to produce 2,200 acre-feet per year of recycled water.

OMWD has determined that it has adequate capacity to provide this recycled water to the project without impacting other recycled water users and has agreed to provide this recycled water to the project for a period of 60 years based upon an executed contract

AR:116008. However, while the response states that the amount of recycled water that OMWD can produce substantially exceeds its delivery commitment to the project, it says nothing about the actual amounts required by its current customers and says nothing to support the bare conclusion that OMWD has adequate capacity to provide this amount to the project without impacting its other customers.

Therefore, the Court believes that the writ should not be discharged unless and until these deficiencies are cured.

b. The need for OMWD approvals to sell blended water. The landfill project is located in the Pala Basin. AR:114459. The Pala Basin Water Quality Objectives ("WQO") for total dissolved solids ("TDS") provide a limit of 900 mg. of TDS per liter of water. However, OMWD water-quality data included in the RFEIR indicates the average level of TDS in its recycled water is 917 mg. of TDS per liter – exceeding the Pala Basin's water quality objectives. AR:114459. To address the issue of whether contaminant levels at the project will exceed the WQO of the Pala Basin, the RFEIR states that the effluent from OMWD "may be blended with imported water prior to delivery to the project, which would reduce contaminant concentrations." AR:115149. The RFEIR then discusses the use of an on-site water-treatment plant which could remove TDS. The RFEIR finally states: "This provides substantially more than enough RO-treated recycled water to blend with the up to 205,000 gallons of recycled water received from OMWD, prior to application on the landfill site, to meet anticipated standards. The County believes that the project is readily capable, considering both potential blending at OMWD and the use of the already planned RO water treatment facility, of meeting anticipated water quality standards that may be included in the revised OMWD Master Reclamation Permit." AR:115149.

Petitioners argue that the RFEIR was required to address the issue of whether the project will require approvals from the San Diego County Water Authority and the Metropolitan Water District if recycled water is blended with potable water before delivery to the project. Petitioners' Brief at 6:6-17. However, in their opposition papers, Petitioners fail to explain the circumstances under which such approvals could be required by these other agencies. They do not discuss any rules, regulations, or other authorities governing the Water Authority or the Metropolitan Water District that would apply to the blending of potable water with recycled water before delivery to the project. They thus failed in their opposition to establish that the RFEIR was required to address approvals from these other agencies or that the RFEIR is deficient because it does not address Petitioners' unsupported suggestion that such approvals are required.

In their supplemental reply, Petitioners argue that the Water Authority and the Metropolitan Water District both prohibit the use of water outside their boundaries without approval. They cite Metropolitan Water District Administrative Code § 4509 and § 3104(b) and Water Code Appendix § 45-5(11). Petitioners fail to explain the relevance of these code sections to the blending of potable water with recycled water. In their supplemental reply, they simply cite these code sections and offer no analysis whatsoever. It does not appear that these code sections are necessarily applicable to the project.

At the hearing on the pending motion, Petitioners presented additional argument concerning the rules and regulations of the Water Authority and the Metropolitan Water District. From the arguments presented by counsel at the hearing, it appears to the Court that the Respondents disagree factually with the Petitioner's assertion that the project will necessarily require blended water that will fall within the rules and regulations cited by Petitioners.

The Petitioners bear the burden of establishing a deficiency in RFEIR. On this record, Petitioners have failed to carry that burden.

c. Santa Fe Valley Specific Plan. Several comments on the RFEIR challenged the use of OMWD's Santa Fe Valley Reservoir and Pumping Station as the site from which water would be distributed to the landfill project. The comments suggested that the use of the facility as a water distribution site was not addressed in the Santa Fe Valley Specific Plan ("SFVSP") and that any such use therefore violates that plan and should have been discussed in the RFEIR. See, e.g., AR:115709 (letter from representative of Bel Etage-Savenna Homeowners Association: "The OMWD selling of water was never within the Neighborhood Specific Use Plan nor was a Commercial Trucking Operation referenced in the plan filed with the County of San Diego. The Association and other residents located along these roads were provided the Neighborhood Specific Use Plan. A commercial trucking operation was never disclosed within this Plan or to these residents."); AR:115801-115802 (letter from representative of Maranatha Chapel: "RPDEIR contains no discussion regarding the project's use of recycled water on the Santa Fe Valley Specific Plan. Nor does it discuss the authority under which the Water District is entitled to truck recycled water to the Landfill. [¶] If the reclaimed/recycled water from the Water District Reservoir is to be diverted to the Gregory Canyon Landfill, an amendment to the Santa Fe Valley Specific Plan is needed and the RPDEIR should address the amendment's impacts.").

However, the Court agrees with Respondents' argument that distribution of water from the site is contemplated by the Santa Fe Valley Specific Plan and that nothing in the Plan dictates or restricts the distribution methods. Petitioners have failed to meet their burden of showing a deficiency in this regard.

d. OMWD's failure to participate in the CEQA process with respect to the Agreement. Petitioners argue that the RFEIR is deficient because, while the RFEIR states that recycled water from OMWD would be the principal source of water for the project, a copy of the OMWD Agreement was not included in the draft EIR for public review. Petitioners argue that Respondents' failure to allow public comment on the document precluded informed decision-making and informed public participation. However, as Respondents pointed out in their responses to comments, the OMWD Agreement is a public document and is thus available for public review. Petitioners have failed meet their burden of establishing that the draft EIR was deficient because the Agreement was not attached. They have failed to establish that informed decision-making and public participation were precluded because a document otherwise available to the public was not attached to the EIR. The RFEIR shall not be invalidated on this ground.

Petitioners next argue that that the RFEIR is inadequate because OMWD did not consult with the lead agency with respect to the project. Public Resources Code § 21153(a) provides in relevant part:

Prior to completing an environmental impact report, every local lead agency shall consult with, and obtain comments from, each responsible agency, trustee agency, any public agency that has jurisdiction by law with respect to the project, and any city or county that borders on a city or county within which the

project is located unless otherwise designated annually by agreement between the local lead agency and the city or county . . .

The fact that OMWD reached an agreement to provide water to the subject project establishes that some consultation took place. In addition, Respondents have established that OMWD was given the opportunity to provide additional input and comments beyond the OMWD agreement. Petitioners have failed to meet their burden of establishing that Section 21153(a) was violated.

e. Analyzing the "safe yield" for groundwater; the size of the "recharge area". Petitioners next object to the RFEIR on the ground that its claim that the bedrock aquifer wells on the site can supply the operational needs of the project is not supported by substantial evidence in the record.

The RFEIR states that the secondary source of water for the project is "percolating groundwater from bedrock wells." AR:114450. It further states:

Pump testing indicates that these wells have the capacity to produce a sustained yield of approximately 43,200 gallons of water per day over the life of the project. However, the safe yield analysis completed by GLA [GeoLogic Associates] would limit this to 27 gpm or 38,880 gallons per day. Thus, these bedrock wells are capable of providing most, if not all, of the operational water needs of the project.

AR:114450. The RFEIR states that the GLA performed a "safe yield" calculation to determine a reasonable level of pumping that could be performed on the project site that would not exceed the amount of groundwater flowing into the bedrock on the project site. AR:114453. In calculating the "safe yield," GLA used an average rainfall figure of 25 inches per year at the site. Id. The RFEIR states that the assumed rainfall of 25 inches was based on rainfall data from the Lake Henshaw dam gauging station. Id. at n. 21.

However, a portion of the original FEIR states:

Precipitation data were adjusted to a conservative 50-year annual average of 18 inches, with a minimum yearly total of 4.40 inches and a maximum yearly total of 24.79 inches. The annual average precipitation value was evaluated for consistency by reviewing data compiled by Wright et al, (1991) from 116 rainfall stations throughout the county and presented on a map prepared for the County of San Diego Department of Public Works. On this map, the Gregory Canyon site falls between the 15- and 18-inch average annual precipitation of 16 inches in this part of the county.

AR:47217. Additionally, another consultant on the project indicated that "the nearest rain gauges in the vicinity of the project for which there is sufficient available data are in Fallbrook, approximately 10 miles northeast of the project." AR:115475 (letter from URS Corp. to U.S. Army Corps of Engineers). This consultant states that, during the 30-year period between 1974 and 2004, the three years where the median annual rainfall was between 29 and 37 inches were "years of extreme rainfall." Id. This conflicts with the RFEIR's determination that average rainfall at the site was 25 inches per year.

In their responses to comments, Respondents explained why they chose one of several conflicting numbers on average rainfall in the area. The explanation is as follows:

There is no long-term precipitation gauging station in the vicinity of the Gregory Canyon Landfill site. Stations located near the site with a sufficient precipitation history include rain gauges in Fallbrook, at Lake Henshaw dam, and in Escondido. As a result, precipitation data used for the project can be extrapolated from any of these locations, taking into account a range of criteria, as appropriate to the intent of the data. The leachate analysis . . . used a synthetic data set generated by combining data from three Escondido stations to create a 60-year precipitation history with an average annual rainfall of 18.9 inches, and a maximum yearly total of 34.8 inches for the site. The URS median rainfall and rainfall pattern discussion relied upon rainfall data from the Fallbrook gauging station primarily because it was

the closest rain gauge to the site with a reasonable record of data of rainfall patterns. The analysis focused on rainfall patterns and not necessarily actual rainfall amounts at the site, so use of a gauge close to Gregory Canyon provides an appropriate representation of rainfall patterns. Each of these analyses requires a different approach and used precipitation data for different purposes.

For the safe yield evaluation, the San Diego County Water Authority Lake Henshaw gauging station was selected. This data was utilized since the station records are readily available, and records are well documented over the last 42 years. This data set is most appropriate for the safe yield calculation, as its purpose was to evaluate the ability to use groundwater from the fractured bedrock formation over a period of many years. The normal annual rainfall at Lake Henshaw dam is currently reported as 25.27 inches. For the safe yield calculation 25 inches of rainfall and a 5 percent infiltration rate were used. If the Fallbrook station precipitation data is used, the average value of 17.5 inches is recommended, rather than the median precipitation value. The average value is preferred to encompass the range of highest and lowest rainfall events over the 30 year period, as opposed to the statistical median value, which represents the middle value in a population of 30 values. The re-calculated safe yield with the more conservative average precipitation value of 17.5 inches derived from the Fallbrook station and the resulting pumping rate for safe yield with the Gregory Canyon catch basin is approximately 18.8 gpm or about 30.3 AFY. For the project, water that is not supplied from the site's percolating water can be provided using imported recycled water. The analysis contained in the Revised Partial Draft EIR presents a worst-case scenario and assumes that all water is trucked to the site. Therefore, if it is determined that the safe yield is less than 43.55 AFY provided in the Revised Partial Draft EIR, the amount of trucked recycled water may increase but would not exceed the assumption of a maximum of 205,000 gallons of water per day that would be trucked to the site. . . .

...
Finally, the safe yield analysis used Lake Henshaw rainfall data primarily because . . . the data provides thorough documentation of rainfall over the past 42 years. Given the purpose of the safe yield analysis, which is to evaluate groundwater production over an extended period, this more complete data set was the most useful.

AR:115594-115595, 115596.

This response explains why data from the Lake Henshaw station was used: because the "data set is most appropriate for the safe yield calculation, as its purpose was to evaluate the ability to use groundwater from the fractured bedrock formation over a period of many years." Petitioners do not argue that Respondents were required to use the Fallbrook data. Instead, they simply argue that there was an internal inconsistency in the RFEIR because of the different numbers from different stations and argue that the response to comments on these issues "did little more than dismiss opponents' concerns." However, the response quoted above provides a detailed explanation of the internal inconsistency and provides a plausible rationale for the use of the Lake Henshaw data. The response sufficiently addresses the opponents' concerns. The RFEIR shall not be invalidated on the basis of the different rainfall numbers available for the safe-yield analysis.

Petitioners also assert that Respondents used conflicting numbers as to the drainage area and have failed to adequately explain that conflict. Respondents argue that Petitioners' assertions regarding a decrease in the "recharge" area was adequately addressed in the RFEIR in Response to Comment No. 022-126, which provides in relevant part:

In the 2003 Draft EIR, it is recognized that when the landfill has reached completion the liner system and cover would effectively eliminate infiltration over the landfill footprint. In addition, it is recognized that as the landfill construction progresses to completion (e.g., following completion of the last phase of clay liner construction) less water would be required to support the project. The safe yield calculation provides a starting point prior to the initial construction. Recognizing that there would be a reduction in

the area of infiltration as the landfill is constructed, it is proposed that the safe yield also would be reduced by the amount of area that is removed from infiltration. As an example, the safe yield can be expressed as a function of the area (e.g. 27 gpm/415 acres = 0.065 gpm/acre). If the site area is reduced by 100 acres, the associated yield would be 20.5 gpm (0.065 gpm/acre x 315 acres). Any project needs that could not be met from water on site would be met through the use of recycled water.

For the project water supply, a totalizer meter will be installed to evaluate the combined groundwater extracted from the bedrock wells so that the calculated safe yield is not exceeded. Since the safe yield calculation is based on average rainfall value over time, the amount of water pumped should represent the average safe yield. Each water supply well will be equipped with dedicated pumping equipment and level controls that will cycle the pump on and off so that only water present within the controlled levels within the producing bedrock zone is extracted (i.e., if there is less infiltration, less water will be available for pumping). In this way, the pumping system will accommodate the site conditions over time.

AR:115596-597.

The Court is satisfied that Respondents have adequately addressed this issue.

f. The use of groundwater monitoring wells to provide water for on-site use. Petitioners next argue that the RFEIR fails to discuss the potential impacts of using groundwater monitoring wells as water-production wells. They argue that wells will initially be sampled quarterly for pollutants (or for the "constituents of concern" (COCs) identified in the federal regulations) but, once operations begin, an analysis for COCs will occur only once every five years. They argue that, given this sampling infrequency, the RFEIR should have discussed the impacts that could result if the liner leaks and contaminated groundwater is used at the site.

With this argument, Petitioners seem to be challenging, at least in part, the effect that liner leaks might have on water quality. However, as Respondents point out, the Court previously rejected Petitioners' challenge to the Final EIR based on water-quality issues. Exhibit A/Oct. 3, 2005 Minute Order at p. 7 (internal citations omitted) ("Respondents correctly point out the potential for the project to impact groundwater quality in the area was fully evaluated in the Final EIR. Petitioners' further challenge to the water quality impacts of the Final EIR based on an understated potential for groundwater contamination and an overstatement of the effectiveness of lined landfills rests on comments of Dr. Lee. The Court finds Dr. Lee's opinions do not render the EIR defective. There is significant information in the environmental documents to inform the public and decision makers concerning groundwater issues resulting from the liner design. The EIR is adequate, and the Court denies Petitioners' writ as to water quality issues."). Petitioners are not entitled to challenge the RFEIR on issues previously raised and rejected in their challenge to the FEIR.

Petitioners also argue that the RFEIR should have addressed the environmental impact that could result from taking COC samples from groundwater production wells. However, they fail to adequately explain how taking samples from those wells could impact water quality such that further analysis in the RFEIR was required.

Petitioners attempt to rely on GeoLogic's "Water Quality Monitoring Report" to show that COCs have recently been found in the proposed monitoring/production wells. For the reasons explained above, however, this report is not part of the administrative record and cannot be considered by the Court in ruling on this matter.

MITIGATION MEASURES

On the issue of mitigation, the Court's Minute Order stated: "The plain language of Proposition C indicates that any open space offered as mitigation to adverse impacts resulting from the project must be included as additional mitigation to Proposition C's requirement that not less than 1,313 acres be

dedicated as open space." The Minute Order establishes that, to the extent the RFEIR provides for open space as a means of mitigation, Respondents cannot use the 1,313 acres of open space required by Proposition C; they must set aside additional open space.

Petitioners argue that, rather than use off-site acreage to mitigate the impacts to biological resources, Respondents chose to "create or enhance habitat" in the 1,313 acres of open space already required by Proposition C. Petitioners argue that such actions by Respondents violate CEQA and Proposition C. The Court disagrees.

With respect to open space, Proposition C provided in relevant part:

It is the intent of this initiative measure:

...

D. To provide that at least 1313 acres of the Gregory Canyon site will be dedicated as permanent open space to create a substantial preservation area for sensitive habitat and species.

...

The project will include the following components:

...

B. Dedicated Open Space

The remaining 1413 acres of Gregory Canyon site shall be dedicated as permanent open space to the County of San Diego, the Pala Band of Mission Indians, another public agency, or a Resource Conservation Group for long-term preservation of sensitive habitat and species. The actual amount of acreage dedicated may be adjusted as necessary to accommodate construction and operation of the Project. The open space area shall not be less than 1313 acres as a result of any adjustment.

AR:47850, 47851.

On the issue of mitigation, Proposition C provided in relevant part:

R. Additional Mitigation Measures

Mitigation measures included as part of any subsequent environmental review of the Project shall be included as additional mitigation measures for the Project. The Applicant shall submit a mitigation and monitoring program meeting state and federal law to the Integrated Waste Management Board for review and approval as part of the solid waste facilities permit.

AR:47855.

Petitioners argue that these provisions must be interpreted to mean that, if some of the 1,313 acres set aside as "Prop C open space" did not provide proper habitat for "sensitive habitats and species," then those acres either could not be used to satisfy the 1,313-acre requirement of Proposition C or the habitat in those areas must be created or enhanced in order to provide the quality of habitat that the proponents of Proposition C promised to provide. They argue that Respondents' creation or enhancement of habitat on these 1,313 acres is not additional mitigation.

However, neither Proposition C, nor the Minute Order, suggests such an interpretation. Proposition C requires 1,313 acres of open space to be set aside "to create a substantial preservation area for

sensitive habitat and species." Contrary to Petitioners' argument, Proposition C does not state that if the 1,313 acres chosen for open space do not already provide a "proper habitat," those acres cannot be used to satisfy the open-space requirement. It does not state that habitat in those areas must be created or enhanced to assure compliance with Proposition C. Proposition C simply requires 1,313 of permanent open space to create a "substantial preservation area for sensitive habitat and species." It does not require Respondents to create or enhance the habitat in those 1,313 acres or suggest that particular areas of open space must be selected. As Respondents point out, Proposition C requires 1,313 acres of open space, not 1,313 acres of habitat. Because Respondents were not required by Proposition C itself to create or enhance the habitat in those 1,313 acres, they were permitted under Proposition C to create or enhance the habitat in those areas as part of their mitigation program.

Additionally, the Minute Order stated that "several of the measures identified in the Final EIR to mitigate significant biological impacts of the Landfill project relied upon acreage already required to be preserved as open space under Proposition C" and that the mitigation measures set out in the Final EIR were inadequate. It stated, "The plain language of Proposition C indicates that any open space offered as mitigation to adverse impacts resulting from the project must be included as additional mitigation to Proposition C's requirement that not less than 1,313 acres be dedicated as open space." Thus, the Minute Order simply indicates that, to the extent Respondents were relying on the dedication of open space as mitigation, they could not rely on the 1,313 acres already required by Proposition C to be dedicated as open space. The order did not state that additional actions that constitute mitigation – i.e., habitat creation or enhancement – could not take place on the 1,313 acres. Petitioners' argument on this point is therefore without merit.

Petitioners next challenge the mitigation measures proposed in the RFEIR on the ground that the RFEIR fails to establish any criteria for ensuring proper mitigation through the creation or enhancement of habitat. However, the 2003 Draft EIR's Biological Mitigation section was deemed adequate by the Court, with the exception of limited Proposition C issues. Petitioners fail to meet their burden of establishing that the RFEIR is deficient with respect to mitigation measures, particularly in light of the previous determination by the Court.

Petitioners next challenge the mitigation measures proposed in the RFEIR on the ground that certain conclusions in the RFEIR regarding enhancement areas are unsupported. On this issue, the RFEIR provides:

The recent biological work completed by URS included an evaluation of potential habitat creation and enhancement areas located on the landfill site. From its GIS maps and fieldwork, URS identified 212.6 acres of potential mitigation areas located on site. This area excludes the easements for Pipelines Nos. 1 and 2, and proposed Pipeline No. 6. These available areas for habitat creation or habitat enhancement are shown on Exhibit 4.9-6. These creation and enhancement areas on site are consistent with historic vegetation communities that probably existed on site prior to farming operations that occurred on the project site.

The habitat creation and enhancement areas are generally located along the north side of the San Luis Rey River in areas that are currently developed and contain highly disturbed lands that were part of the old dairy operations on site or lands on the south side of the San Luis Rey River that were part of cattle grazing. These areas are shown on Exhibit 4.9-6 as habitat creation areas for coast live oak woodland and coastal sage scrub and/or for riparian transitional habitat. Of the 212.6 acres on site available for mitigation (outside of the pipeline easements), 155.5 acres is available for habitat creation on-site.

AR:114415.

Petitioners argue that the RFEIR does not include the information that provides the basis for URS's identification of 212.6 acres of potential mitigation and for URS's determination that the "creation and enhancement areas on site are consistent with historic vegetation communities that probably existed on

site prior to farming operations." However, the URS "Biological Technical Report for Gregory Canyon Landfill CEQA Update" (AR:114827-114853) explains how URS identified the 212.6 acres of potential mitigation. See AR:114832 (stating that, based on an inspection of the areas, as well as an inspection of the soil and topography, URS determined that the total area available onsite for creation of vegetation communities is 159.1 acres; that 7.1 acres for enhancement were available within the existing mixed southern willow scrub/mulefat scrub communities; and that 50 acres within the San Luis Rey River floodway riparian zone were also available for enhancement, primarily through removal of exotic species.). Its report further stated that, again based on an inspection of the areas, their soil, and their topography, the areas were very likely historic vegetation communities prior to farming and that "[t]he combination of soil type, topography, and availability of sunlight and water [currently on site] are such that they could successfully sustain these vegetation communities." AR:114832. This constitutes "substantial evidence" – i.e., "enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached" (Association of Irrigated Residents v. County of Madera (2003) 107 Cal.App.4th 1383, 1391) – to support the conclusion that 212.6 acres for potential mitigation are available and that creation or enhancement of habitat would be consistent with historic vegetation communities that likely existed on the same site.

IMPACTS ON ARROYO TOAD HABITAT

The original EIR noted the following with respect to the project's impacts on the arroyo southwestern toad:

Impact 4.9-4: Significant impacts resulting in the loss of approximately 306 acres of potential arroyo southwestern toad upland habitat within 2.0 kilometers of the river would occur from construction of the landfill and related facilities, construction of the upland portions of the access road, new grading for the on-site haul road, use of the two borrow/stockpile areas, habitat disturbance from the landfill gas and groundwater monitoring wells, and access road improvements for the San Diego Gas and Electric tower/line relocation . . .

MM 4.9-4: The project preserves approximately 243 acres of sandy upland habitat adjacent to toad breeding habitat on site in addition to approximately 970 acres of other upland habitats. This preservation, in combination with the habitat enhancement program described in MM 4.9-18, would mitigate impacts to the loss of potential toad upland habitat.

AR:47433. The "Impact 4.9-4" section of the RFEIR states that the project would result in the loss of 17.5 acres of suitable toad habitat, rather than the 306 acres of potential toad habitat identified in the FEIR. AR:114421.

The RFEIR explains that this change was made because, in analyzing issues for the RFEIR, URS reexamined the project's impacts on the upland arroyo toad habitat, based on prior biological technical studies completed for the project and based on new arroyo toad surveys completed by URS in 2005, and reached different conclusions. AR:114408.

In its more recent Biological Technical Report, URS explains that it reevaluated impacts using the assumptions and methodology from the 2003 Draft EIR and Final Biological Technical Report. AR:114835. It states:

The USFWS [U.S. Fish and Wildlife Service] (1999) states that arroyo toad upland habitat generally refers to non-riparian habitat up to two kilometers away from breeding habitat. . . . [T]he total acreage impacted by the landfill is 308.6 acres. If the riparian-associated vegetation communities that were identified in the 2003 Draft EIR are subtracted from this total . . . [.] the assumed total arroyo toad upland habitat impacts are 305.8 acres, which if rounded up, appears to correspond to 306 acres of potential arroyo toad habitat referred to in the 2003 Draft EIR and Final Biological Technical Report.

The approximately 306 acres of potential toad upland habitat indicated in the 2003 Draft EIR and Final Biological Technical Report that would be affected by construction of the landfill and related facilities is unlikely to represent actively, or even casually used arroyo toad upland habitat. The 2003 Draft EIR and Final Biological Technical Report, which combine data gathered since 1989, do not report arroyo toads as occurring farther than approximately 0.5 miles from the San Luis Rey River. Furthermore, the data from these studies show that the arroyo toad point locations are strongly associated with the soil types mentioned in the 2003 Draft EIR . . . in specific locations onsite where the preferred soil conditions are actually present. In addition, surveys conducted by URS in 2005 did not detect arroyo toads in the uplands beyond the San Luis Rey River flood plain. Therefore, arroyo toads are most likely distributed within 0.5 miles of the San Luis Rey River where appropriate soils are present

AR:114835. URS determined that the soils present in the uplands beyond the floodplain were not suitable for arroyo toad burrowing, because the toad burrows only into fine sands. Id. The URS determined, based on photos, soil maps, and property boundaries, that the areas of suitable arroyo toad upland habitat totaled, at most, 17.5 acres. AR:114836. It used the number of acres regarding suitable habitat, rather than the 306 acres of potential habitat, and thus determined a maximum of 17.5 acres of suitable upland habitat could be impacted by the project.

Petitioners object to these new conclusions by URS (and by Respondents) first on the ground that Respondents failed to properly consider the comments of other toad experts and the USFWS regarding the inadequacies of the surveys and the soil data. They argue that Respondents' decision – to require mitigation for impacts only to suitable-habitat acreage, rather than potential-habitat acreage – is based entirely on the rationale of Gregory Canyon's consultant (URS) and contradicted by the recommendation of USFWS and the previous FEIR. However, "[t]he court does not have the duty of passing on the validity of the conclusions expressed in the EIR, but only on the sufficiency of the report as an informative document. It is also well established that [disagreement] among experts does not make an EIR inadequate. . . . Stated differently, the issue is not whether the studies are irrefutable or whether they could have been better. The relevant issue is only whether the studies are sufficiently credible to be considered as part of the total evidence that supports the [agency's] finding" Laurel Heights Improvement Assn. of San Francisco, Inc. v. Regents of the University of California (1988) 47 Cal.3d 376, 409. The fact that Gregory Canyon's consultant disagrees with the recommendations of USFWS and the analysis in the previous FEIR does not render the RFEIR inadequate.

Petitioners argue that Respondents cannot rely on inadequate surveys to reduce the size of the impacted toad habitat. They argue that Respondents were required to conduct surveys during the period when arroyo toad adults occupy upland habitats and were required to locate adult females, juveniles, or sub-adults. First, however, the RFEIR relies, at least in part, on the same surveys conducted for the 2003 Draft EIR. See AR:114408 (RFEIR):

Project impacts upon upland arroyo toad habitat have been reexamined by URS based upon both prior biological technical studies completed for the project and based upon new arroyo toad surveys completed by URS in 2005. The final biological technical report (Helix 2002) determined that the project could result in the loss of approximately 306 acres of potential toad upland habitat based upon the assumption that any upland habitat disturbance within 2.0 kilometers of the river channel on site would be significant but also concluded that when suitable arroyo toad upland habitats were considered, the potential loss of toad upland habitat used for burrowing would be reduced to approximately 32 acres. Given this apparent discrepancy between potentially impacted arroyo toad upland habitat and suitable arroyo toad upland habitat impacted by the project, URS was requested to reevaluate project impacts to suitable upland arroyo toad habitat based upon both prior biological technical reports for the projects and new arroyo toad surveys completed by URS in 2005.

The final biological technical report completed by Helix in 2002 which combines survey data gathered since 1989 does not report arroyo toads as occurring farther than approximately 0.5 miles from the San

Luis Rey River. Data from prior biological technical studies for the project indicate that the arroyo toad habitat is generally confined to areas that contain fine sand in the following soil types . . .

Id. See also AR:115606-115608 (Response to Comment No. 022-152). These portions of the administrative record indicate that Respondents considered past surveys as well as new survey data. The arguments by Petitioners indicate the more recent studies "could have been better." But, in light of the fact that Respondents considered past surveys and data, in addition to the new surveys and data, when reaching their conclusions, it cannot be said that their studies are not "sufficiently credible" to support their findings.

Petitioners next argue that certain arroyo toad experts challenged the RFEIR's definition of what constitutes a suitable arroyo toad habitat, because it was based on "a soil profile that has been documented clearly throughout the Arroyo Toad literature as its breeding habitat," not its upland habitat. AR:115365. In their Responses to Comments, Respondents state: "County DEH staff does not concur with comments that the [RFEIR] failed to consider the suitability of other soil types and the potential presence of toads in dense vegetation. The Biological Technical Report, which is contained in Appendix B of the [RFEIR], identified each of these other soil types and noted that they were generally shallow soils in steep areas with a hard texture and numerous rock outcrops. This information, supplemented by the various field observations, formed the basis for the conclusion that these areas were unsuitable upland arroyo habitat." AR:115607. Both the Response and the Biological Technical Report itself (see AR:114834-114837) indicate that numerous soil types were analyzed to determine if they were appropriate for arroyo toad "burrowing." AR:114835. (Arroyo toads burrow into fine sands to avoid desiccation and predation. AR:114835.) These portions of the administrative record indicate that Respondents analyzed soil profiles of all types to determine whether soils in certain areas provided proper burrowing – not solely breeding – grounds. Again, Respondents' studies are "sufficiently credible" to support their findings.

Petitioners next argue about the age of the soil data used by Respondents, because it was more than 40 years old. AR:115365 (comment stating, "This misinterpretation of Arroyo Toad occurrence data is further exacerbated by the use of outdated soil data from the Natural Resource Conservation Service."). However, Petitioners do not show that 40-year-old soil data is no longer valid, such that Respondents' conclusions can be questioned on this ground.

Petitioners next argue that the RFEIR examined only those areas that would be impacted by the "footprint" of the project and deleted findings from the FEIR regarding the effect that various activities – including increased traffic on State Route ("SR") 76 – would have on individual toads.

Respondents argue that Exhibit 4.9-5 of the RFEIR identifies the impact area for suitable arroyo toad upland habitat and that the potential-impact areas on that exhibit include the stockpile, access road, SR 76, and the haul road. The Court is not persuaded that Petitioners have established that the RFEIR is insufficient in this regard.

Petitioners next argue that the RFEIR fails to consider the impacts on the toads from the additional pumping of groundwater on site. See AR:115065 (Comment):

. . . [I]t is well established that groundwater pumping can have a negative effect on aquatic amphibian species.

The arroyo toad requires shallow pools (less than 12 inches) with clear water for breeding. In addition, reproductive success of the arroyo toad is dependent upon the duration of breeding pools, such that breeding pools must remain long enough to sustain the development of their egg masses, larvae, and metamorphs. Therefore, arroyo toad survival and reproductive success may be particularly susceptible to the decreased summer low-flow rates, reduced surface ponding, and reduced perennial stream habitat that may result from increased groundwater pumping.

Id. The following response was provided:

Section 4.3 of the 2003 Draft EIR contains a detailed discussion of impacts from pumping of wells located in the Pala Groundwater Basin, which is generally located underneath the San Luis Rey River, at a rate of up to 193 AFY to meet all needs of the project, and concludes that with incorporation of mitigation measures[,] project impacts would not be significant. This portion of the 2003 Draft EIR was not overturned by the Court or included in its writ. The Revised Partial Draft EIR discusses pumping of less water, 43.55 AFY to meet some of the needs of the project, from a fractured bedrock formation which does not overlie the Pala Groundwater Basin or the San Luis Rey River. The conclusion of no significant impact reached in the 2003 Draft EIR would apply equally to the proposed use of groundwater from the fractured bedrock formation. This is because the fractured bedrock fracture flow system is a tributary to the Pala Basin. For the purpose of analyzing impacts to water supply, pumping of water from the bedrock fracture flow system is considered the equivalent of pumping from the Pala Basin itself. See Response to Comment No. 007-1 for additional information regarding the project's legal right to use percolating groundwater.

AR:115097-115098 (emphasis added).

Petitioners fail to meet their burden of establishing that this response is insufficient. In addition, Judge Anello's prior determination concerning the sufficiency of the analysis of the impacts of groundwater pumping in the 2003 Draft EIR appears to preclude Petitioners from re-litigating the issue now.

Petitioners next argue that Respondents failed to provide an adequate response to a comment regarding mitigation measures to be undertaken for the arroyo toad. The Comment states:

Mitigation measures 4.9-3a and 4.9-3b should include performance criteria stated in terms of Arroyo Toad population size as measured by a credible monitoring protocol. As currently stated, the measures would relieve the project from all responsibility for the persistence of the species as long as certain habitat modifications were undertaken. In the very real possibility that the toad is extirpated by project activities, no further mitigation would be required of the project applicant. Because the mitigations are habitat based without population size standards, these measures provide absolutely no protection for the species itself.

AR:115382.

In response, the RFEIR states that the Wetland Mitigation and Habitat Enhancement Plan included in Appendix L of the 2003 Draft EIR contains a discussion of success criteria. AR:115614. Respondents are not legally required to adopt the success criteria advocated by Petitioners. Petitioners have failed to meet their burden of establishing that the RFEIR is inadequate in this regard.

TRAFFIC

In its ruling on the original writ petition, the Court found that Respondents erred by failing to consider a 2003 Traffic Needs Assessment study that Respondents were aware of at the time the project was approved but that was not addressed in the FEIR or in a subsequent or supplemental EIR. The Court found that the study indicated that development projects on the Pala, Pauma, Rincon, and San Pasqual reservations could cause SR 76 to operate below an acceptable level of service ("LOS") with respect to traffic. The Court found: "If traffic had increased such that the Level of Service was at unacceptable levels one month after certification of the EIR in February 2003, then the Final EIR is inadequate to put the public and decision maker on notice of the potential impacts. Re-study is required to determine appropriate mitigation." Exhibit A/Minute Order at p. 8.

In response to the Court's order, Respondents conducted a new traffic study. That study used actual

traffic counts (as compared to the projected traffic counts that formed the basis for the 2003 study) and determined that the 2003 study was "less reliable" than the 2006 study conducted by Darnell & Associates. The RFEIR discusses Levels of Service and the number of car/truck trips that would be permitted on the roadways leading to and from the project. To ensure that the project would not result in an increase from LOS D, the RFEIR proposes the following:

The primary mechanism chosen to assure compliance with these limitations is an early warning system, whereby the landfill operator would notify waste-haulers to curtail deliveries as needed to maintain a LOS D or better once a specified percentage of the daily or hourly traffic limits is reached. The percentages chosen for the notice triggers were developed based on a conservative estimate of the number of commercial waste vehicles present on SR 76 east of I-15 at the time the notification is issued. This assures no waste collection vehicle that begins the trip along SR 76 east of I-15 to the landfill is turned away (and required to travel back on SR 76 to another disposal facility) before its load of waste is discharged.

AR:114358.

Petitioners object to the traffic information contained in the RFEIR on several grounds: (a) it does not address the fact that an irrevocable offer of dedication of 54 feet of roadway is insufficient for SR 76; (b) the traffic analysis is "confusing and self-contradictory"; (c) the traffic mitigation measure suggested in the RFEIR is "inadequate and illusory"; (d) because the project has been revised to include trucking of water, the RFEIR should have discussed the issue of trucks and their accident rates; and (e) the proposed mitigation measures for traffic impacts violate Proposition C.

a. Irrevocable offer of dedication.

In its comment on the RFEIR, Caltrans stated:

Caltrans disagrees with the proposed Irrevocable Offer of Dedication of 54 feet. As the owner operator of State Route 76 Caltrans request[s] that the property owner provide a total half right of way of 77 feet for SR-76 along the frontage of this property. Caltrans Concept Report for SR-76 shows a future need for a 4-lane conventional highway. Preserving the right of way can be accomplished by obtaining from the County of San Diego an Irrevocable Offer of Dedication (IOD). This width may vary after Caltrans reviews a detail[ed] engineering analysis for the frontage improvements in order to accommodate the traffic impact of this development. It should be noted that all proposed development improvements, including landscaping and equestrian trail easements, must be located outside the right of way IOD.

AR:115134.

In response to this comment, the RFEIR states:

[T]he scope of the comments submitted during the public comment period on the Revised Partial Draft EIR should be limited to sections or portions of sections included in this document that were revised from the 2003 Draft EIR. . . . For the comments received during this recirculation period, County DEH staff need only respond to those that relate to the sections or portions of sections of the Revised Partial Draft EIR that were revised from the 2003 Draft EIR.

With respect to the proposed Irrevocable Offer of Dedication (IOD), the proposed width has not changed from the mitigation requirements in MM 4.5-6 of the 2003 EIR. This portion of the 2003 Draft EIR was not overturned by the Court or included in its writ. The County has concluded that the 108-foot right of way would be adequate for construction of a four-lane major highway with a bike lane, provided there is no parking. The County has also determined that there should be no parking in this area, so as to minimize the potential for human presence in the habitat conservation areas located immediately adjacent to the SR 76 on the landfill site.

AR:115137.

Petitioners assert that the RFEIR is inadequate because the Caltrans comment indicates that the irrevocable offer of dedication of 54 feet is "insufficient" and that a dedication of 77 feet is "necessary." Petitioners' Joint Opposition to Respondents' Motion to Dissolve the Peremptory Writ at p. 20. Therefore, according to Petitioners, "the RFEIR should have either proposed an additional dedication or analyzed the impacts of failing to insure the appropriate dedication." *Id.*

Petitioners have overstated the substance of the Caltrans comment and, in reliance on that overstatement, have reached an incorrect conclusion. Caltrans did not state that 54 feet is "insufficient" and 77 feet is "necessary." Without reference to any legal requirements, Caltrans made a "request" for 77 feet. Caltrans went on to say that the actual width of the road "may vary after Caltrans reviews a detailed engineering analysis for the frontage improvements in order to accommodate the traffic impact of this improvement." At this point, it appears that the exact width of the offer of dedication necessary to complete any future widening of SR 76 is unknown to Caltrans or to any other party pending the preparation of a detailed engineering analysis.

In this context, the fundamental legal requirements associated with EIRs should be remembered. "Technical perfection is not required; the courts have looked not for an exhaustive analysis but for adequacy, completeness and a good-faith effort at full disclosure." *Rio Vista Farm Bureau Center v. County of Solano* (1992) 5 Cal.App.4th 351, 368 (citing CEQA Guidelines § 15151). "An evaluation of the environmental effects of a proposed project need not be exhaustive, but the sufficiency of an EIR is to be reviewed in light of what is reasonably feasible." *Id.*

Applying these legal requirements to this issue, the Court is satisfied that this portion of the RFEIR passes muster. The Caltrans comment was duly considered and responded to by the authors of the RFEIR. It is not "reasonably feasible" for the authors to provide an "exhaustive analysis" of the proposed road dedication (beyond that already provided) when Caltrans itself has indicated that its requirements "may vary" in the future, after a detailed engineering analysis is completed.

b. Confusing and self-contradictory traffic analysis. Petitioners next argue that the traffic analysis is confusing and self-contradictory. They argue that the RFEIR claims that the "primary mechanism" for ensuring that traffic on SR 76 east of I-15 is maintained at "LOS D or better" will be to limit the number of vehicles going to the proposed landfill in the afternoon. The RFEIR also admits that all segments of SR 76 will operate at LOS F in the year 2030 with or without the project. Petitioners argue that, if the primary mechanism for addressing traffic impacts will not address those impacts, the RFEIR should so state and consider alternative forms of mitigation.

However, as Respondents point out, the 2030 analysis relates to cumulative impacts. It states that, even if the project did not go forward, traffic on SR 76 would operate at an unacceptable LOS F level. AR:114368. Respondents are not required to mitigate all cumulative impacts. See *Napa Citizens for Honest Gov't v. Napa County Bd. of Supervisors* (2001) 91 Cal. App. 4th 342, 364 ("Mitigation measures must be roughly proportional to the impacts of a project."). Petitioners do not suggest that the mitigation proposed by Respondents is not roughly proportional to the project's impacts.

c. Inadequate and illusory mitigation. Petitioners next argue that the "primary" traffic mitigation measure – "an early warning system, whereby the landfill operator would notify waste-haulers to curtail deliveries as needed to maintain a LOS D or better once a specified percentage of the daily or hourly traffic limits is reached" (AR:114358) – is inadequate and illusory. They argue that there is no way to ensure that the landfill operator will actually provide sufficient warning to limit trucks on SR 76. They argue that nothing ensures that the landfill operator has correctly counted the vehicles and nothing prevents the waste-haulers from ignoring the warning. They argue that Respondents rejected the suggestion that a fine should be imposed for violating the warning.

In the response to comments regarding this purportedly inadequate and illusory mitigation measure, the RFEIR states:

(AR:115703-704) Mitigation Measure MM 4.5-2 is based on County DEH staff experience from its oversight of the Otay Landfill, which at times approaches its available daily disposal capacity. A program similar to the one proposed in MM 4.5-2 is in place at Otay Landfill to ensure that the facility does not exceed the daily trip cap. All of the haul trucks have contact with their company either via a 2-way radio or a cell phone. This is standard procedure in order for the truck operators to report accidents, problems with trash collection, road blockage, etc. In terms of implementation of MM 4.5-2, once 95 percent of the maximum daily traffic limit is reached, the landfill operator will immediately notify commercial waste haulers. To ensure that the notification program is implemented, waste contracts will contain the restrictions with which the company and its haulers need to comply in accordance with MM 4.5-3. Therefore, notice would be provided to the contracted companies who would then in turn contact the drivers. The location of the drivers will be disclosed and trucks will be rerouted as appropriate. Therefore, trucks would not be required to wait until the next hour and would not be waiting in the travel lanes along SR 76. The requirements contained in MM 4.5-2 and MM 4.5-3 will be incorporated as conditions of the Revised Solid Waste Facility Permit for the project, and will be routinely reviewed by the LEA.

(AR:115558-559) The percentages chosen for the notice triggers [i.e., the time when waste-haulers are notified to curtail deliveries as needed to maintain an LOS D or better] were developed based on a conservative estimate of the number of commercial waste vehicles present on SR 76 east of I-15 at the time the notification is issued. This assures that no waste collection vehicle that begins the trip along SR 76 east of I-15 to the landfill is turned away (and required to travel back on SR 76 to another disposal facility) before its load of waste is discharged. MM 4.5-3 requires that each contract for waste delivery at the landfill shall notify the customer of the peak hour traffic restrictions, shall require that the customer cooperate in good faith in scheduling deliveries to adhere to peak hour restrictions, and shall implement a notification system whereby the customer would be directed to use alternative disposal facilities as needed to assure compliance with peak hour traffic restrictions.

AR:115703-704; 115558-559.

Contrary to Petitioners' argument, these responses indicate that the waiting requirements will be incorporated into the Solid Waste Facility Permit and will thus be enforceable. That some waste-haulers might ignore the warning or ignore the provisions in their contract does not make the mitigation measure illusory. It simply means that enforcement action – on the permit or on the contracts – will be required if waste-haulers do not comply with the permit or their contract. Petitioners fail to explain why this situation is different than any other in which compliance by individuals is expected.

d. Water trucks and their accident rates. Petitioners next argue that because the project has been revised to include trucking of water, the RFEIR should have discussed the issue of trucks and their accident rates.

The starting point for analyzing this contention is Judge Anello's prior ruling on the issue of traffic safety. Judge Anello's order stated: "[T]he Final EIR fully analyzed impacts on SR-76. The EIR includes an extensive evaluation of this issue in both the Final EIR and in project traffic studies. Petitioners cite no traffic studies or expert opinion to support their contention that safety impacts on SR-76 are underestimated. The EIR is presumed adequate and the Petitioner has the burden of proving otherwise. Here, Petitioners have not sustained their burden to establish the Final EIR is inadequate as to traffic safety." Minute Order at p. 8.

Petitioners now argue that water-truck safety and accident rates should have been discussed in the RFEIR. However, Respondents point out that the solid waste permit limits the project to a total of 2,085

trips per day and "a total of 675 trucks per day from all sources including the trucking of recycled water. When the project reaches a total of 2085 daily trips or 675 trucks per day from all sources, the project will be required to close down for that day. On days when more trips are utilized for recycled water, fewer trips will be available from other sources." AR:114532. These numbers of trips and trucks are the same numbers used for the analysis in the FEIR. AR:114351. Petitioners fail to explain why new study on this issue is required when the number of trucks remains the same. They fail to show that the water-truck trips somehow alter the previous safety analysis, when the total number of truck trips remains the same. Petitioners have thus failed to meet their burden of establishing the RFEIR is deficient on the issue of traffic or truck safety.

e. Proposed mitigation measures for traffic impacts. Petitioners next object to Mitigation Measure No. 4.5-4, which provides:

At the commencement of operation, the project applicant shall pay the County's Transportation Impact Fee to fund its fair share of improvements to address cumulative impacts. The Regional Transportation Plan (RTP) adopted by SANDAG includes freeway build-out over the next 30 years including the necessary improvements to SR 76 and its intersections with Highway 395 and I-15. The project will receive a credit against this fee for the value of monetary and non-monetary contributions to improvements of SR 76 undertaken by the project as a project design feature or mitigation in accordance with and consistent with Proposition C and County policies and procedures.

AR:114380.

Petitioners argue that Respondents are required by Proposition C to realign a portion of SR 76 and contribute to the widening of SR 76 and therefore are not entitled to a credit for work already required by Proposition C. Petitioners' argument as to the requirements of Proposition C is accurate. That is, Proposition C requires that "mitigation measures included as part of any subsequent environmental review of the Project shall be included as additional mitigation measures for the Project." AR:47855. Thus, Respondents are required to both pay the fee to fund their share of cumulative impacts and make contributions to the improvement of SR 76 as part of their mitigation program. Because they are required to do both, they are not entitled to a credit for contributions made as part of their mitigation program. However, Respondents state that they added the "consistent with Proposition C" language to MM 4.5-4 to ensure that there would be no conflict with Proposition C and to ensure that, if giving a credit in certain circumstances would conflict with Proposition C, then no credit will be given.

Respondents' proffered interpretation of this mitigation measure is reasonable. Under such an interpretation, Respondents would not receive a credit for undertaking mitigation measures already required by Proposition C. Under this interpretation, then, Mitigation Measure 4.5-4 does not violate Proposition C.

THE SOLID WASTE FACILITIES PERMIT ("SWFP")

In Petitioners' final challenge to Respondents' claim that they have complied with the writ, Petitioners argue that Respondents have failed to comply with the Court's order that Respondents set aside their decisions approving the SWFP and a revised SWFP.

In the writ, the Court ordered Respondents to, among other things: (1) set aside the June 2, 2004 decisions approving the solid waste facility permit, Statement of Overriding Considerations, and Mitigation Monitoring and Reporting Program for the project; (2) set aside the October 8, 2004 decisions approving a revised solid waste facility permit and Supplemental Statement of Overriding Considerations for the project; and (3) suspend all activity associated with the project that could result in any change or alteration to the physical environment until Respondents reconsidered their decisions and brought those decisions into compliance with the requirements of CEQA and Proposition C. Exhibit B/Peremptory Writ of Mandate at 2:9-22.

Petitioners concede that Respondents on 2/27/06 officially rescinded the decisions approving the SWFP and the revised SWFP. Opposition at 22:24-25. They argue that Respondents were also required to rescind an SWFP permit issued on 12/17/04.

Respondents were ordered to set aside the 6/2/04 and 10/8/04 decisions approving the SWFPs. They did this. They were not ordered to set aside the 12/17/04 "issuance" of the permit. Whether the 12/17/04 permit is valid – despite the fact that the discretionary decisions allowing the permit were rescinded – is not at issue in this motion to dissolve or discharge the writ. It appears to the Court that, if Respondents attempt to take action based on an invalid permit, Petitioners may attempt to challenge that action (and that permit) at that time. However, because the 12/17/04 permit (or, more precisely, the issuance of the permit) was not the subject of the writ issued by this Court, the permit's validity is not properly at issue in this motion to discharge the writ.

The minutes are the order of the Court. No formal order is required.

The clerk is directed to give notice of this order to all parties.

**APPENDIX B:
BATTLE, KEITH, MEMORANDUM REPORT ON
OLIVENHAIN MUNICIPAL WATER DISTRICT RECYCLED WATER SYSTEM (2008)**

MEMORANDUM REPORT ON OLIVENHAIN MUNICIPAL WATER
DISTRICT RECYCLED WATER SYSTEM

PREPARED FOR: COUNTY OF SAN DIEGO DEPARTMENT
OF ENVIRONMENTAL HEALTH

FOR

GREGORY CANYON LANDFILL PROJECT

July 2008

Prepared by:
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This report was prepared to provide additional documentation regarding the infrastructure and operations comprising the Olivenhain Municipal Water District (OMWD) recycled water system, including a review of the supply and demand for recycled water. This report also includes a comparison between OMWD recycled water supply and demand, with and without deliveries to the Gregory Canyon Landfill (GCLF). This report was developed in response to the February 11, 2008 minute order issued by the San Diego County Superior Court regarding the Final Environmental Impact Report for the GCLF project.

I currently work as a consultant for Public Policy Partners, based in Solana Beach, CA. In addition, I serve as a Director of the Fallbrook Public Utilities District and have been appointed to the Association of California Water Agencies (ACWA) Communication Committee, Energy Committee, Local Government Committee, Water Management Committee and Water Quality Committee, and in that capacity have gained a thorough working knowledge of recycled water infrastructure and operations. I have a B.S degree in Biological Sciences from the University of California, Santa Barbara.

I. INFORMATION RECEIVED FROM OMWD

In preparing this report, I obtained relevant information from the following senior staff and legal counsel for OMWD, some or all of whom attended three meetings on February 28, 2008, March 11, 2008 and March 31, 2008: Ms Kimberly Thorner, Executive Director; Mr. George Briest, Chief Engineer; and Mr. Wesley Peltzer, General Counsel.

OMWD recycled water infrastructure, supply and demand is described in several published documents, including the OMWD Comprehensive Master Plan (2006), the OMWD Urban Water Management Plan (2005, updated 2008), and the OMWD 2007 Rate Review Analysis (2007, adopted 2008). My meetings provided me with updated information developed since these various reports were published.

A. OMWD Recycled Water Infrastructure

Consistent with the policy established in its 2006 Comprehensive Master Plan, OMWD has pursued the use of recycled water when economically and technically feasible. OMWD staff indicated that recycled water provides a consistent alternative to imported water for landscape, irrigation and commercial/industrial uses because production of wastewater from showers, toilets, washing machines, sinks, etc., does not change significantly during water shortages. Wastewater generated from these sources used to produce recycled water is generally consistent throughout the year, without significant seasonal fluctuations.

The OMWD recycled water system is divided into the Northwest Quadrant and the Southeast Quadrant. The Northwest and Southeast Quadrants are physically separate systems that operate independently and use different sources of recycled water to provide service. GCLF would obtain recycled water from the Southeast Quadrant.

Physical facilities within the Southeast Quadrant include the 4S Water Reclamation Facility (WRF), three covered or uncovered storage areas, and a series of interconnected pipelines.

The 4S WRF has a maximum capacity of 2,000,000 gallons per day (GPD), or approximately 2,200 acre-feet per year (AFY). The 4S WRF serves the 4S Ranch Sanitation District and the Rancho Cielo Sanitation District. With respect to both Sanitation Districts, all existing and proposed wastewater collection facilities have been identified and already have been or will be implemented by developers. Based on wastewater production data for 2007, wastewater flows to the 4S WRF average 1,000,000 GPD from the 4S Ranch Sanitation District and 100,000 GPD from the Rancho Cielo Sanitation District, producing an annual average of 1,100,000 GPD or approximately 1,232 AFY of tertiary WRF effluent. At build out, projected to occur in 2020, flows from the 4S Ranch Sanitation District are projected at 1,250,000 GPD and flows from the

Rancho Cielo Sanitation District are projected at 350,000 GPD, for an annual average of 1,600,000 GPD or approximately 1,792 AFY of tertiary WRF effluent.

Recycled water (i.e. tertiary WRF effluent or tertiary WRF effluent supplemented with untreated water) is stored in the 4S WRF storage pond (capacity of 133,598,000 gallons or approximately 410 acre-feet (AF)), the Thelma Miller Reservoir (capacity of 1,000,000 gallons or approximately 3.07 AF) or the Santa Fe Valley Reservoir (3,000,000 gallons or approximately 9.2 AF).

The OMWD recycled water system is connected by a series of purple pipes to convey recycled water between the facilities and to recycled water customers. These pipelines carry only recycled water (i.e. tertiary WRF effluent or tertiary WRF effluent supplemented with untreated water). OMWD charges its recycled water customers a uniform rate, whether or not supplementation has occurred.

B. Recycled Water Supply

OMWD relies on several sources of tertiary WRF effluent for use as recycled water. The 4S WRF currently produces an annual average of 1,100,000 GPD or approximately 1,232 AFY. The amount of recycled water from the 4S WRF is expected to gradually increase with buildout of OMWD's service area, projected to occur in 2020, to an annual average of 1,600,000 GPD or approximately 1,792 AFY.

In addition to tertiary WRF effluent from the 4S WRF, OMWD purchases tertiary WRF effluent in the Southeast Quadrant from the Rancho Santa Fe Community Services District (RSFCSD) WRF. This recycled water is delivered by pipeline to the Santa Fe Valley Reservoir. The RSFCSD WRF has a capacity of 0.5 MGD, or approximately 560 AFY. Current deliveries average 100,000 GPD or 112 AFY. Anticipated future deliveries with projected buildout are 200,000 GPD or 224 AFY.

OMWD also purchases tertiary WRF effluent in the Southeast Quadrant from the City of San Diego North WRF. This recycled water is delivered by pipeline to an existing OMWD recycled water pipeline in the San Dieguito area to the southwest of the Santa Fe Valley Reservoir. Because of elevation changes and hydraulic constraints, this recycled water cannot reach the Santa Fe Valley Reservoir, and is used by recycled water customers in the San Dieguito area. The contract is currently for up to 500 AFY (approximately 450,000 GPD as an annual average), then up to 400 AFY (approximately 360,000 GPD as an annual average) beginning in 2010, and then up to 300 AFY (approximately 270,000 GPD as an annual average) beginning in 2020, on a take or pay basis. Currently, OMWD uses all of its 500 AFY allocation. OMWD's capacity reservation and take or pay obligation decreases to 400 AFY in 2010 and 300 AFY in 2020 to compensate for projected increased wastewater flows to the 4S WRF from continued buildout. The initial term of the agreement between OMWD and the City of San Diego is twenty years, with a twenty year extension.

The total current supply of tertiary WRF effluent from these sources is approximately 1,844 AFY. Based on anticipated increases in wastewater flows to the 4S WRF and RSFCSD WRF, and with a reduction in the capacity reservation at the City of San Diego North WRF, anticipated future production of recycled water from these sources would be approximately 2,316-2,416 AFY.

Finally, OMWD utilizes untreated, raw San Diego County Water Authority (SDCWA) water for supplementation. This water is obtained from Connection 04 on SDCWA's Pipeline 5. Supplementation is used to meet recycled water customer needs due to factors such as seasonal demand fluctuations, climactic conditions, or storage losses of recycled water from evaporation from the storage ponds. Untreated SDCWA water can be delivered to the 4S storage pond or the Santa Fe Valley Reservoir.

OMWD estimates that current recycled water deliveries during summer months contain 20-40% supplemented untreated SDCWA water, depending on climatic conditions. During the summer of 2007, the average use of untreated water for supplementation

averaged approximately 1,000,000 GPD. Sources of tertiary WRF effluent were 1,646,000 GPD, assuming deliveries from the City of San Diego North WRF were at the annual average GPD. In fact, daily deliveries from this WRF adjust to meet both summer and winter peak demands, and would be higher in the summer. As a result, the percentage of supplementation during the summer of 2007 is estimated at approximately 37.8%, but in reality was likely lower.

During winter months, the percentage of supplemented untreated SDCWA water in recycled water is much smaller. During winter months, there is often no supplementation at all, or minimal supplementation in response to extreme weather events.

As a member agency of the SDCWA, OMWD has the ability to obtain untreated SDCWA water for supplementation, and is able to obtain sufficient water to meet current demands of its existing recycled water customers. OMWD is aware of ongoing efforts by SDCWA to provide a reliable long-term source of water for the region. In particular, OMWD is aware of the model Drought Ordinance prepared by SDCWA, and indicated its intent to adopt its own Drought Ordinance.

In any given year, the supply of untreated water available to OMWD from SDCWA is dependent on a number of factors including rainfall, droughts, and the amount of water generally available in storage for both the Metropolitan Water District and the SDCWA. Due to existing drought conditions, the Metropolitan Water District has recently declared there is no surplus water and OMWD's water supply for agricultural customers in the Interruptible Agricultural Water Program (IAWP) is currently being curtailed by 30%. The IAWP reduction does not affect the supply of untreated SDCWA water for recycled water supplementation, since landscape irrigation is considered a commercial use and not an agricultural use. The model Drought Ordinance is currently at a stage encouraging a cutback of 10% on water usage. Based on the most recent water supply and demand analysis completed for the Metropolitan Water District and the SDCWA, a mandatory cutback of 10% of water use for OMWD may be required in the future. However, the precise amount of and impact from this potential cutback is uncertain, as under the model

C. Recycled Water Demand

Current (2007) recycled water customers and demand in the Southeast Quadrant are set forth below.

OMWD's 2007 Recycled Water Customers in the Southeast Quadrant

Customer	Demand (AFY)
Del Mar GC	350
Morgan Run GC	100
Fairbanks Ranch GC	150
McCrink Irrigation	100
Starwood (Crosby) GC	250
Crosby Estate Greenbelt	100
4S Ranch	650
Total	1,700
Gregory Canyon	193
TOTAL ANNUAL DEMAND	1,893

GC = golf course

Drought Ordinance, the SDCWA can allocate more untreated water to member Districts that have active water conservation programs.

GCLF demand is based on the maximum water usage estimate of 193 AFY provided in the Revised Final Environmental Impact Report for the GCLF project (2007), although the contracted amount between OMWD and GCLF is 230 AFY.

The use of recycled water by current OMWD customers is for landscape or golf course irrigation. As a result, the demand for recycled water is seasonal, with higher demand during summer months and lower demand during winter months. This is one reason for supplementation with untreated SDCWA water.

OMWD has recycled water delivery contracts with only some of its current recycled water customers – 4S Ranch, Fairbanks Ranch GC, Del Mar GC and Morgan Run GC.

OMWD is continuing its efforts to expand the use of recycled water within its District, and has identified several potential new or increased uses of recycled water. Those include Rancho Santa Fe Farms GC (150 AFY), Fairbanks Ranch GC (500 AFY), and a group of residential subdivisions known as the “Bernardo Lakes HOAs” (including the Savannah and Bel Etage subdivisions) (40 AFY). Assuming all of these projects come to fruition, the total projected recycled water demand would be approximately 2,390 AFY without including deliveries to GCLF, and approximately 2,583 AFY if deliveries to GCLF of 193 AFY are included.

II. COMPARISON OF RECYCLED WATER SUPPLY AND DEMAND

Based on OMWD’s published reports and information obtained from OMWD personnel, I conducted the following comparison of current and projected recycled water supply and demand.

By comparing supply and demand information, on an annualized basis the current supply of recycled water is sufficient using tertiary WRF effluent if deliveries to GCLF are not included. Supply is less than demand by approximately 49 AFY if deliveries to GCLF at 193 AFY are included. The imbalance between supply and demand is approximately 2.6% if deliveries to GCLF at 193 AFY are included.

However, the approach of looking only at annualized supply and demand information does not reflect current OMWD operations, as it does not take into account other factors, such as the seasonal demand fluctuations, climactic conditions, or storage losses of recycled water from evaporation from the storage ponds. The amount of any imbalance between supply and demand fluctuates during different years and during different times of a year.

As discussed above, OMWD estimates that current recycled water deliveries during summer months contain 20-40% supplemented untreated SDCWA water, depending on climatic conditions. During winter months, the percentage of supplemented untreated SDCWA water in recycled water deliveries is much smaller. During winter months, there is often no supplementation at all, or minimal supplementation in response to extreme weather events.

My review of OMWD supply and demand information, and information received about OMWD's operational experience, indicates that the percentage of supplemental untreated SDCWA water in total recycled water deliveries on an annual basis, without including deliveries to GCLF, would be approximately 15-35%, depending on climatic conditions. This annual estimate is closer to the peak demand season percentages (20-40%) to reflect the fact that most recycled water deliveries occur during the peak demand summer months. Supplementation would continue to occur with or without recycled water deliveries to GCLF.

A review of one published report calculating seasonal fluctuations was used to confirm this analysis as published information is not available for OMWD. The Otay Water District Water Resources Master Plan (2002) found that peak demand during summer months is approximately 2.16 times the annual average demand. Based on that information, approximately 80-85% of annual recycled water deliveries would occur during the summer months. When the 20-40% OMWD summer supplementation estimate is adjusted downward by 15%, which is the approximate percentage of winter deliveries, this provides an annual supplementation estimate of 17-34%. This estimate of 17-34% has been used in performing the remaining calculations included in this report.

Based on the 17-34% estimate of supplementation without deliveries to GCLF, the percentage of supplementation by OMWD with deliveries to GCLF included can be calculated. At the current demand of 1,700 AFY without deliveries to GCLF, and at supplementation of 17-34%, the amount of untreated SDCWA water used for supplementation would be between 289-578 AFY. When deliveries of 193 AFY to

GCLF are added to these amounts, the amount of untreated SDCWA water used for supplementation would be between 482-771 AFY. By dividing these figures by the recycled water demand of 1,893 AFY (including deliveries to GCLF), approximately 26-41% of untreated SDCWA water will be used for supplementation when deliveries to GCLF are included.

Based on this same estimate, the incremental increase in supplementation attributable to deliveries to GCLF would be the difference between 26% and 17%, nine percentage points, and the difference between 41% and 34%, or seven percentage points.

In the longer term, and similar to the current situation, annualized recycled water supply would be generally adequate using tertiary WRF effluent if deliveries to GCLF are not included (2,316-2,416 AFY supply vs. 2,390 AFY demand), and there would be a shortfall of approximately 167-267 AFY if deliveries to GCLF at 193 AFY are included. The imbalance between supply and demand is approximately 6.9-11.5% if deliveries to GCLF at 193 AFY are included. Supplementation would continue for the reasons discussed above, with or without deliveries to GCLF. The percentage of deliveries to GCLF compared with overall projected future OMWD recycled water demand would be smaller, approximately 7.5%, with deliveries at 193 AFY.

OMWD projects that both supply and demand for recycled water will increase over the longer term. This would cause an increase in the amount of untreated SDCWA water required for supplementation on a purely volumetric basis, but is not expected to materially increase the percentage of untreated SDCWA water in overall recycled water deliveries. While the percentage shortfall between recycled water demand and tertiary WRF effluent supply (including deliveries to GCLF) would increase, the percentage of the overall recycled water demand attributable to GCLF would be reduced somewhat. When projecting the percentage of supplementation by OMWD in the longer term, these figures tend to balance out such that deliveries to GCLF would not be expected to create a material increase in the percentage of supplementation required to meet OMWD's overall recycled water demands.

In order to confirm the above analysis, the methodology for estimating annual supplementation in the current scenario was applied to the longer term scenario. The 17-34% estimate of supplementation without deliveries to GCLF was used as the starting point in making this calculation, as this estimate continues to be accurate in the longer term scenario because of the similarity to the current situation, as discussed above. At the projected demand of 2,390 AFY without deliveries to GCLF, and at supplementation of 17-34%, the amount of untreated SDCWA water used for supplementation would be between 406-813 AFY. When deliveries of 193 AFY to GCLF are added to these amounts, the amount of untreated SDCWA water used for supplementation would be between 599-1006 AFY. By dividing these figures by the recycled water demand of 2,583 AFY (including deliveries to GCLF), approximately 23-39% of untreated SDCWA water will be used for supplementation when deliveries to GCLF are included.

**APPENDIX C:
PCR SERVICES, LETTER TO MS. REBECCA LAFRENIERE
ENVIRONMENTAL DOCUMENT FOR GREGORY CANYON LANDFILL (2008)**



July 14, 2008

Ms. Rebecca Lafreniere
COUNTY OF SAN DIEGO
Department of Environmental Health
9325 Hazard Way
San Diego, California 92123

Re: ENVIRONMENTAL DOCUMENT FOR GREGORY CANYON LANDFILL

Dear Ms. Lafreniere:

PCR has reviewed the letters dated March 6, 2008 and April 2, 2008, from Walter E. Rusinek to the San Diego County Department of Environmental Health (DEH) regarding the Revised Environmental Impact Report for the Gregory Canyon Landfill. More specifically, PCR has reviewed the attachments to the letter and has the following comments to offer.

The attachments can be divided into three categories: 1) Olivenhain Municipal Water District (OMWD) documents; 2) global warming and climate change relative to water supply; and 3) Delta smelt in the Sacramento-San Joaquin River Delta (the Delta). These issues are discussed in more detail below.

1) OMWD DOCUMENTS

The OMWD documents consist of:

- Rules and Regulations Governing the Use of Recycled Water (Effective June 9, 2003)
- 2005 Urban Water Management Plan
- 2005 Urban Water Management Plan (updated January 23, 2008)
- Comprehensive Master Plan, February 2006
- 2007-2008 Budget
- 2007 Goals & Objectives
- OMWD Reusing Resources
- OMWD Recycled Water Frequently Asked Questions
- OMWD Information Brochure on Recycled Water
- Master Reclamation Permit with Waste Discharge Requirements for the Production and Purveyance of Recycled Water for Olivenhain Municipal Water District 4-S Ranch Wastewater Treatment Plant, San Diego County, California Regional Water Quality Control Board, San Diego Region, Order No. R9-2007-007 (2003)
- WaterReuse Association, San Diego Regional Chapter Newsletter, Vol. 1, October



The first ten documents listed above were reviewed as part of the follow up effort to respond to the recent court order for the Gregory Canyon Project. These documents include OMWD's Urban Water Management Plan (2005, updated 2008), Comprehensive Master Plan, Budget, Goals & Objectives, Rules and Regulations Governing the Use of Recycled Water, Reusing Resources, Recycled Water Frequently Asked Questions, Information Brochure on Recycled Water and the Master Reclamation Permit for the Production and Purveyance of Recycled Water. The last item on the list, the WaterReuse Association Newsletter, contains information regarding OMWD's 4S Ranch Water Recycling Facility. The information is consistent with information obtained from meetings with OMWD as part of the follow up research conducted by Mr. Keith Battle. The one page document does not contain any new information regarding the 4S Ranch Water Recycling Facility or the use of recycled water.

2) GLOBAL WARMING AND CLIMATE CHANGE

- Climate Change and Water Supply Reliability, California Energy Commission, Public Interest Energy Research (2005)
- An Overview of Hydrology and Water Resources Studies on Climate Change: the California Experience, John Dracup and Sebastian Vicuna, University of California, Berkeley
- California's Water: A Crisis We Can't Ignore, Frequently Asked Questions, Association of California Water Agencies (September 2007)
- Our Changing Climate: Assessing the Risks to California, Summary Report, California Climate Change Center (July 2006)
- Warming Climate Brings Reduction of Key Water Supply in the Western United States, Scripps Institution of Oceanography, News Release (December 11, 2001)
- Lake Mead Could Be Dry by 2021, Scripps Institution of Oceanography, News Release (February 12, 2008)
- Global Warming Will Reduce Future Water Supply, Study Finds, U.S. Department of State (November 17, 2005)
- The Effects of Climate Change on Water Resources in the West: Introduction and Overview, Climatic Change, in review (December 2002)
- Potential effects of global warming on the Sacramento/San Joaquin watershed and the San Francisco estuary, Geophysical Research Letters, Vol. 29, No. 18, American Geophysical Union (2002)
- Climate Change in California, California Department of Water Resources (June 2007)
- Climate change threatens California water supply, Reuters (May 9, 2007)
- Background: The Greenhouse Effect and California, Air Resources Board, California Environmental Protection Agency
- Recent Research on the Effects of Climate Change on the Colorado River, Intermountain West Climate Summary (May 2007)



The documents above address the issue of global warming and climate change relative to water supply. Global warming and climate change have recently begun to be addressed in environmental documents, although at this time there are no accepted thresholds of significance.¹ PCR has researched global warming and climate change relative to the California Environmental Quality Act (CEQA). The information provided below, which is based on our research, is offered to assist the County of San Diego (County) in understanding the issue regarding water supply that is being raised.

Climate change is generally defined as the shift in the average weather, or trend, that a region experiences. The natural phenomena (e.g., temperature, rainfall) that together form the climate of a particular region, vary from day-to-day and year-to-year. Climate change cannot be represented by single annual events or individual anomalies. That is, a single large flood event or particularly hot summer is not an indication of climate change, while a series of floods or warm years that statistically change the average precipitation or temperature over time may indicate climate change.

Although climate science is a relatively new field of inquiry, much has been learned in recent years. The variation in climate can be a result of natural, internal processes or in response to external forces from both human and non-human causes, including solar activity, volcanic emissions and greenhouse gases (GHG). GHGs are contributed to the atmosphere by both natural and anthropogenic (non-human) sources.

Many scientists believe that human activities are changing the composition of the atmosphere, and that increasing the concentration of GHGs will change the planet's climate; however, they are not sure by how much it will change, at what rate it will change, or what the exact effects will be. The U.S. Environmental Protection Agency maintains a website summarizing recent scientific evaluations and current news on the climate change issue, including information from the Intergovernmental Panel on Climate Change (IPCC) and the National Oceanic and Atmospheric Administration: <http://epa.gov/climatechange/index.html>.

On June 1, 2005, Governor Schwarzenegger issued Executive Order S-3-05 (Executive Order), which addresses global warming at the state level. The Executive Order establishes GHG emission reductions for California and requires biennial reports on potential climate change effects

¹ On June 19, 2008, the Governor's Office of Planning and Research ("OPR") published a Technical Advisory report, entitled "CEQA and Climate Change: Addressing Climate Change Through California Environmental Quality Act (CEQA) Review." The report, which is intended to be guidance on the steps lead agencies should take to address climate change in CEQA documents, suggests a recommended approach to analyzing the issue in CEQA documents. However, the report does not include thresholds of significance, similar to the approach taken under CEQA for all types of potential impacts, leaving that determination to the discretion of a lead agency. PCR has reviewed OPR's report and believes that the information provided herein to DEH remains accurate.



on several areas, including water resources. Table 1 shows target GHG emission reductions established in the Executive Order. In addition, the Executive Order states that the Secretary of the California Environmental Protection Agency (CalEPA) shall coordinate these efforts to meet the targets with various other agencies.

Table 1

Target GHG Emission Reductions Established in Executive Order S-3-05

Year	Target
2010	Reduce GHG emissions to 2000 levels
2020	Reduce GHG emissions to 1990 levels
2050	Reduce GHG emissions to 80 percent below 1990 levels

Source: Executive Order S-3-05.

In September 2006, Governor Schwarzenegger approved Assembly Bill (AB) 32, which is known as the California Global Warming Solutions Act of 2006. AB 32 recognizes that the potential adverse impacts of global warming include the exacerbation of air quality problems, a reduction in the quality and supply of water to the state from the Sierra snowpack, a rise in sea levels resulting in the displacement of thousands of coastal businesses and residences, damage to marine ecosystems and the natural environment, and an increase in the incidences of infectious diseases, asthma, and other human health-related problems.

In June 2006, the California Department of Water Resources (DWR) published a Technical Memorandum Report, entitled *Progress on Incorporating Climate Change into Planning and Management of California's Water Resources* (Report), in response to the Executive Order (DWR 2006a). The Report describes progress made incorporating the possible effects of climate change into existing water resource planning, and management tools and methodologies. Some preliminary results on the potential effects of climate change were presented. While the analyses presented used the most current scientific techniques and were reviewed by experts, the study results were preliminary. The Report incorporated several assumptions, reflected a limited number of climate change scenarios, and did not address the likelihood of each scenario. Policy implications of climate change and recommendations to respond to the future demands for water were identified as beyond the scope of the Report. The Report acknowledged that there are substantial uncertainties regarding the effects of global warming on State Water Project (SWP) supplies and suggested additional analysis to reduce this uncertainty.



The Report covered a wide range of topics addressing climate change and its potential impact on California's water resources, including:

- Causes of climate change and the potential threat to California's water resources, and measures that could be taken to adapt to or mitigate the effects of climate change.
- Background and approach used for the climate change analyses included and the climate change scenarios used in the Report.
- Potential impacts of the selected climate change scenarios on SWP and Central Valley Project (CVP) operations. Results presented included changes in reservoir inflows, delivery reliability, and annual average carryover storage. It also discussed the interaction of various regulatory and operational conflicts such as water allocations, flood control, in-stream flow requirements, and water quality requirements. The Report also presented the implications for possible changes to operations that could mitigate the effects of climate change. However, as stated in the Report, these operational changes were left for future work.
- Potential impacts to Delta water quality and water levels, including effects of modified Delta inflows and exports on compliance with water quality standards and the implications of sea level rise.
- Implications of global warming for managing floods.
- Potential increases in crop water use due to global warming, and application of analysis tools to assess changes in estimated net irrigation requirements for crops.

In addition, the Report included directions for further work to incorporate climate change into California's water resources management. This included probability estimates of potential climate change scenarios in order to provide policymakers with ranges of both impacts and the likelihoods associated with those impacts.

Based on the information provided in the Report, Table 2 provides a summary of the potential future effects of global climate change on California's water resources and the consequences of those effects.

In December 2007, DWR issued its Draft 2007 Delivery Reliability Report (Draft Report). The Draft Report is distinguished from earlier SWP Delivery Reliability reports because it included estimates of the potential reductions to SWP delivery reliability due to future climate changes. The Draft Report included an evaluation of SWP deliveries under four different future climate change scenarios. The Draft Report utilizes the same scenarios that were analyzed in the 2006 Report discussed above. The Draft Report estimates climate change impacts to SWP deliveries by interpolating between future studies which assume no climate change and studies which assume



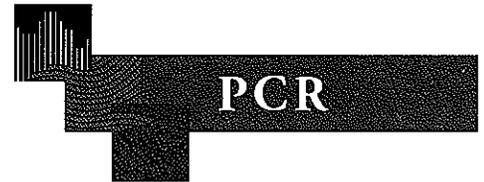
Table 2
Potential Effects of Climate Change
on California's Water Resources and Expected Consequences

Potential Water Resource Impact	Expected Consequence
Reduction of the State's Average Annual Snowpack	Potential loss of 5 million acre-feet or more of average annual water storage in the State's snowpack Increased challenges for reservoir management and balancing the competing concerns of flood protection and water supply
Changes in the Timing, Intensity, Location, Amount, and Variability of Precipitation	Potential increased storm intensity and increased potential for flooding Possible increased potential for droughts
Long-term Changes in Watershed Vegetation and Increased Incidence of Wildfires	Changes in the intensity and timing of runoff Possible increased incidence of flooding and increased sedimentation
Sea Level Rise	Inundation of coastal marshes and estuaries Increased salinity intrusion into the Sacramento-San Joaquin River Delta Increased potential for Delta levee failure Increased potential for salinity intrusion into coastal aquifers (groundwater) Increased potential for flooding near the mouths of rivers due to backwater effects
Increased Water Temperatures	Possible critical effects on listed and endangered aquatic species Increased environmental water demand for temperature control Possible increased problems with foreign invasive species in aquatic ecosystems Potential adverse changes in water quality, including the reduction of dissolved oxygen levels
Changes in Urban and Agricultural Water Demand	Changes in demand patterns and evapotranspiration rates

Source: DWR 2006a.

2050 emissions (DWR 2007). The scenarios considered include the use of two global climate models (PCM and GFDL) and two GHG emission scenarios, a lower and a medium-high scenario. The emission scenarios used were those developed by the IPCC.

The climate change scenarios analyzed in the Draft Report project a general warming trend for California. Three of the four scenarios project modestly drier climates for California, while one scenario projects a minor precipitation increase. For each of these scenarios, the inflows into the model were adjusted using perturbation ratios to reflect the climate change future as compared to historical climate. The perturbation ratios are simply modifiers to historical inflows to reflect the effects of climate change.



While the studies incorporate assumptions about climate change, they do not account for sea level rise or the expected accompanying increase in Delta salinity because the tools to evaluate this impact of climate change have not yet been completed (DWR 2007). Future sea level rise associated with climate change could increase the salinity in the Delta as higher ocean tides push saline water further inland (DWR 2007). If Delta water quality standards remain the same, SWP pumping could become more restricted, at least under some hydrologic conditions (DWR 2007). See below for a discussion regarding SWP pumping.

With the completion of the Draft Report, local water agencies and the local purveyors are better able to determine to what extent their supplies will be affected by global climate change. However, it is anticipated that climate change science and the ability to project changes and system responses to climate change will continue to carry significant uncertainty for some time. The 2005 UWMP, Volume 1, Chapter 4 of the California Water Plan, "Preparing for an Uncertain Future," lists the following potential impacts of global warming, based on more than a decade of scientific studies on the subject:

- Global warming may produce hydrologic conditions, variability, and extremes that are different from what current water systems are designed to manage;
- Global warming may occur too rapidly to allow sufficient time and information to permit managers to respond appropriately; and
- Global warming may require special efforts or plans to protect against surprises or uncertainties

While climate change is expected to continue through at least the end of this century, the magnitude and nature of future changes are uncertain. This uncertainty makes the analysis of future water supply and demand speculative, if not impossible, especially where the relationship between climate change and its potential effect on water demand is not well understood (DWR Report, 2006, at pg. 2-54). In addition, the implications of global warming relative to the water supply are very long-term, the empirical implications remain highly speculative, and the solutions are broader in scale than at a local level.

In summary, the effects of climate change on water supply are uncertain and research in the climate change field is ongoing. In addition, given that the research indicates that the effects would be several years out, there is time for planning to take place to resolve the water supply issue. As indicated in the paper entitled Climate Warming and Water Supply Management in California (A Report From: California Climate Change Center, March 2006), "California's diverse and complex water management system has considerable long-term physical flexibility. Californians have



become adept at developing and integrating many diverse water supply and demand management options locally, regionally, and even statewide. The mix of options available to respond to climate change, population growth, and other challenges is only likely to increase in the future with development of water supply and demand management technologies, such as improved wastewater and desalination treatment methods and water use efficiency improvements.” The paper entitled *Climate Change in California* (DWR, June 2007) points to the Integrated Regional Water Management (IRWM) plans as a primary strategy to achieve reliable, high quality water supplies and to protect and enhance the environment. The DWR indicates that IRWM can foster cooperation among communities and can help to build a diversified portfolio of water supply alternatives. The article indicates that “this approach will help regions find the best solutions to the effects of climate change in their local area.”

Based on the documents reviewed, the uncertainty of the effects on water supply, the fact that any impacts could be years away, the availability of time for planning to address these effects, and the considerable long-term flexibility of California’s water management system, sufficient information is not available to conclude that a significant impact to existing customers or existing uses of OMWD recycled water would result from global climate change, and more specifically on the supply of untreated water to supplement recycled water deliveries to existing recycled water customers of OMWD.

Finally, it should also be noted that water conservation is a key strategy to address these concerns. The Gregory Canyon Landfill project and other OMWD recycled water customers, are practicing water conservation due to their use of recycled water.

3) DELTA SMELT

- *Natural Resources Defense Council (NRDC) v. Kempthorne*, 2007 WL 4462395 (E.D. Cal.)
- *NRDC v. Kempthorne*, 506 F.Supp.2d 322 (E.D. Cal. 2007)
- “Federal judge orders massive cut in water supply deliveries from the Bay Delta – California faces unprecedented water crisis as early as 2008, San Diego County Water Authority,” News Release (August 31, 2007)
- “Ruling to cut into waterflow to region,” San Diego Union-Tribune (September 1, 2007)

The above items relate to the impacts of pumping water in the Delta on the Delta smelt, a threatened species under the Endangered Species Act (ESA). The Delta smelt was listed as a threatened species by the U.S. Fish and Wildlife Service (FWS) in 1993. In 1994, the FWS designated critical habitat for the Delta smelt, which includes all waters and submerged lands within the Delta, including CVP and SWP pumping facilities. The FWS reviewed the listing status for the



Delta smelt and concluded on March 31, 2004 that the species still faces a "high degree of threat" and should remain listed under the ESA.

In Spring 2007, various environmental groups sought to halt the operation of water pumps in the Delta to protect the Delta smelt and other endangered fish species living in the Delta. In May 2007, a federal court invalidated the Biological Opinion issued by the FWS, which had held that the Delta smelt were in "no jeopardy" from operational changes of the SWP in the Delta (*NRDC v. Kempthorne*, 506 F.Supp.2d 322). On May 31, 2007, DWR voluntarily shut down the SWP's pumps for 17 days in an effort to protect the Delta smelt. In an August 2007 oral decision, the federal court agreed to institute interim protective measures that restrict water operations in the Delta, including reducing the amount of water being pumped out of the Delta between the end of December and June. In December 2007, the federal court issued an interim remedial order, requiring the FWS to revise its Biological Opinion by September 15, 2008, and conditioning Delta operations on various requirements.

Given these recent federal court actions, the amount of water that the Metropolitan Water District (MWD) will be able to supply to Southern California in the near future is uncertain. The Los Angeles Department of Water and Power estimates that MWD may receive 20 to 30 percent less water from the SWP as a result of this interim remedial order. However, this remedial order sunsets in September 2008, at which time a new Biological Opinion will govern operations of the Delta. At this time, it is not known how the future Biological Opinion will impact MWD's ability to supply water to Southern California.

At present, both the California state government and MWD are evaluating Delta operations and options to address Delta smelt impacts and other environmental concerns. The Governor's Delta Vision Process and the Bay-Delta Conservation Plan are both focused on finding and implementing long-term solutions for the Delta. MWD is actively engaged in improving Delta water operations. In May 2007, MWD's Board adopted a Delta Action Plan as a framework to address water supply risks in the Delta both for the near- and long-term. The near- and mid-term actions outlined in the Delta Action Plan are intended to implement measures to reduce fishery and earthquake related risks, such as aggressive monitoring, ecosystem restoration, local water supply projects, and emergency preparedness and response plans.

In response to recent developments in the Delta, MWD is also engaged in identifying solutions that, when combined with the rest of its supply portfolio, will ensure a reliable long-term water supply for its member agencies. In the near-term, MWD will continue to rely on the plans and policies outlined in its Regional Urban Water Management Plan (RUWMP) and Integrated Water Resources Plan to address water supply shortages and interruptions (including potential shut downs of SWP pumps) to meet water demands. Campaigns for voluntary conservation, curtailment of



replenishment water and agricultural water delivery are some of the actions outlined in the RUWMP. If necessary, reduction in municipal and industrial water use and mandatory water allocation could be implemented.

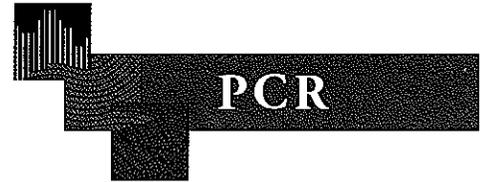
As discussed above, the new Biological Opinion in the NRDC case, to be issued by September 2008, may impact MWD's ability to supply water to Southern California in the future, however that impact cannot be determined at this time. Restoring the Delta's water capacity is a high priority for MWD, the Governor and the California Legislature; extensive plans are already underway for improving the operation of the Delta's water pumps while also protecting the Delta smelt and other endangered fish species. In June 2007, MWD's Board of Directors adopted an Action Plan to implement immediate near-term actions to stabilize the Delta and mid-term and long-term actions to find an ultimate solution to the Delta's sustainability. The Governor has made the Delta and statewide water policy a high priority by establishing the Delta Vision Process and the Bay-Delta Conservation Plan, and the California Legislature is using Senate Bill 27 to find a long-term water supply solution for the Delta. As a result of these plans, MWD's water supply may be restored to previous levels in the next few years.

Finally, a consortium of affected parties known as CALFED has been engaged in a process of reconciling endangered species and water supply resources within the Bay-Delta since 1994. The goals of the Programmatic Environmental Impact Statement/Report (PEIS/R) prepared for the CALFED project include both improvement and enhancement of ecological functions and reduction of the mismatch between Bay-Delta water supplies and project beneficial uses. This mismatch occurs because 75% of the state's natural runoff occurs north of Sacramento, while 75% of the net water demand occurs south of Sacramento. The mismatch is the critical problem, not the lack of water. The PEIS/R included a review of a number of alternatives, and identified a preferred alternative that included conveyances and facility improvements.² The CALFED process has been the focus of the most ambitious projects to resolve the mismatch of supply and demand.

Because of the lack of factual evidence indicating a probability that these endangered species will have significant effects on water supply, and because of the ongoing and substantial efforts occurring at the regional, state and federal level to address the endangered species concerns and their effect, if any, sufficient information is not available to conclude that a significant impact to existing customers or existing uses of OMWD recycled water would result from endangered species concerns in the Bay-Delta area, and more specifically on the supply of untreated water to supplement recycled water deliveries to existing recycled water customers of OMWD.

² *The PEIS/R recently was upheld by the California Supreme Court and determined to be adequate under CEQA. In re Bay-Delta Programmatic Environmental Impact Report Coordinated Proceedings (2008) ___ Cal.4th ___ (Case No. S138974, June 5, 2008).*

Ms. Rebecca Lafreniere
COUNTY OF SAN DIEGO
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The above, which is based on PCR's research and review of the materials submitted, is offered to assist DEH in understanding the issues being raised. If you have any questions regarding the above, please do not hesitate to contact me.

Sincerely,

PCR SERVICES CORPORATION

A handwritten signature in cursive script that reads "Luci Hise-Fisher".

Luci Hise-Fisher, AICP
Associate Principal