

INDIAN WELLS VALLEY WATER DISTRICT

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November 15, 2013

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Subject: Fremont Valley Preservation Project as Proposed by AquaHelio Resources, LLC
Draft Environmental Impact Report

Dear Ms. Oviatt:

Thank you for the opportunity to comment on subject Draft Environmental Impact Report (DEIR). I am the President of the Board of Directors of the Indian Wells Valley Water District (IWWVD), a County water district serving water users in the City of Ridgecrest and portions of unincorporated Kern County in the Indian Wells Valley, northerly of the proposed Fremont Valley Preservation Project (Project). I am writing this letter on behalf of the Board of Directors of IWWVD, whose comments and concerns regarding subject DEIR are set forth in the following paragraphs.

I. INADEQUATE INFORMATIONAL DOCUMENT

The fundamental goal of the California Environmental Quality Act (CEQA) is to fully inform the public and the decision makers as to the environmental consequences of a proposed project and to assure members of the public that government officials are making informed decisions. Accordingly, CEQA requires an EIR to disclose the details of the proposed project. The subject DEIR fails to meet this goal as it lacks candor, analysis, and accurate information. The DEIR hides and obscures details of the Project. Examples of this include, but are not limited to, (i) the actual goals or reasoning for the Project, (ii) where banked water will be obtained, (iii) where or to whom extracted water, both banked and native, will be sold or transferred, (iv) whether or not native groundwater will be transferred out of the watershed and/or Kern County, (v) participation of institutional partners, and (vi) a complete analysis of the environmental impacts of all aspects of the Project. Two of these topics are discussed in further detail below.

A. Participation of Institutional Partners

The DEIR lists several institutions as potential partners for the Project, and the conceptual basis of the Project appears to rest on the participation of several of them. In particular, the principal source of water for the banking program would appear to be the L.A. Aqueduct, owned and operated by the City of Los Angeles Department of Water and Power (LADWP), and transmission facilities owned and operated by the Antelope Valley/East Kern Water Agency (AVEK), which would appear to be essential for distributing water recovered from the banking program and extracted native water. The U.S. Air Force and Kern County are listed as significant users of water produced by the Project. The following paragraphs list specific questions regarding these institutional partners.

1. LADWP

LADWP is listed in the DEIR as a significant potential partner in the water banking facility. However, LADWP's comment letter dated December 6, 2012 states that the water diversion necessary for the proposed water bank is "incompatible with LADWP's mission to supply water to the City" [of Los Angeles], and "not feasible" for water supply reasons. What commitments has LADWP made with respect to participation in this project? If none, is the project still feasible?

2. AVEK

AVEK is listed in the DEIR as a significant potential partner in the water banking facility, and a potential provider of water transmission facilities. What commitments has AVEK made with respect to participation in this project? If none, is the project still feasible?

3. U.S. Air Force

The DEIR states that approximately 7,500 AF/Yr of the 114,000 AF/Yr of native water extracted as part of the project will be delivered to Edwards Air Force Base. What commitments has the U.S. Air Force made with respect to participation in this project?

4. Kern County

The DEIR states that approximately 14,000 AF/Yr of the 114,000 AF/Yr of native water extracted as part of the Project will be delivered to Kern County for use within Fremont Valley. Where and to what use does the County plan to put this water supply? What are the potential environmental impacts of such use? Is this water being sold to the County? Does the County have any legal right to acquire and use this water other than as part of this project?

B. Failure to Analyze Potential Impacts of Ancillary Facilities

The DEIR describes various ancillary facilities that would be required to implement the project as described, e.g. connecting to existing transmission facilities and construction of new transmission facilities to supply extracted water to Edwards Air Force Base, the China Lake Naval Air Weapons Station, and other users. To avoid piecemealing the analysis, the DEIR should include a full analysis of the environmental impact of such facilities.

The DEIR describes the Project as involving extraction of 114,000 AF/Yr of native groundwater. However, the DEIR states that it is "not intended to provide any necessary review that may be required under CEQA for conveyance improvements needed to move native water" (DEIR 3-42). Yet in the very next sentence it states that the DEIR is intended as CEQA review for conveyance improvements needed to move banked water. As banked water is proposed to be mixed with native water, it is impossible to distinguish between the two. This is improperly piecemealing CEQA review. Full analysis and review of environmental impacts resulting from the transfer of native water, and construction of facilities to do such, should be included in the DEIR. Throughout the DEIR the extraction of native water is separated from the proposed banking project. This is further illustrated by the fact that the GEI model only considers extraction of banked water. The DEIR includes no groundwater model considering the impacts of native groundwater extraction. Such piecemealing significantly hinders the ability to consider environmental impacts of the project.

II. INADEQUATE PROJECT DESCRIPTION

Under CEQA, an EIR must contain an accurate and consistent project description (14 Cal Code of Regs. §15378(a)), including the accurate and concise location, boundaries, objectives, and characteristics of the Project. The DEIR fails to meet this standard, as it fails to describe, define, and explain important necessary terms and components of the Project. Examples of this include the following:

A. Export of Native Water from the Fremont Basin and Kern County

The DEIR is vague and contradictory about the export of native groundwater from the Fremont Basin and Kern County, which would require a Conditional Use Permit (CUP). In some instances, the DEIR states that there is no intention to perform such export or apply for such a CUP; in other instances, the application for a CUP is assumed.

B. Local Demand

The DEIR states that up to 114,000 AF/Yr of native groundwater will be extracted and distributed as part of the Project. Other than Edwards Air Force Base and Kern County, what water users within the Fremont Valley have been identified? What commitments have they made with respect to participation in this project? Is there sufficient committed demand to justify the extraction and distribution of 114,000 AF/Yr of native groundwater within the Fremont Valley?

The DEIR states that the export of native groundwater outside Kern County or the Fremont Valley will require a Conditional Use Permit (CUP), but that no such export is currently planned and no such CUP is being sought at this time. Are all the proposed facilities being designed only for distribution of recovered banked groundwater within Kern County and the Fremont Valley? Is it possible that the facilities being designed to export water from the groundwater banking project could be used to export native groundwater, in the event that sufficient demand for the native groundwater produced as part of this project cannot be found within the Fremont Valley? If so, then the environmental impacts of exporting such anticipated quantities of native groundwater outside the Fremont Valley and Kern County must be analyzed in the DEIR.

C. Amount of Native Groundwater Extracted

The project description states that “up to 114,000 AF/Yr of native water” will be extracted (DEIR 3-2). However, in the Groundwater Management, Monitoring and Mitigation Plan (GMMMP) attached to the DEIR as Appendix B, it appears that the initial extraction of native groundwater will be 114,000 AF/Yr but that additional native groundwater could be extracted in “increments of a minimum of 114,000 AF/Yr” (GMMMP ES4.2.5 & ES4.2.6). The DEIR must analyze the potential impacts of any additional extractions exceeding 114,000 AF/Yr.

D. Origin of Banked Water

The DEIR fails to identify or describe from where the water to be banked will be obtained or the environmental impacts of moving such water to the Project site. What are the impacts of storing this undefined imported water to the Fremont Valley? This essential element of the Project should be thoroughly described and analyzed.

E. Project Objectives

The objectives of the project are not clearly defined. The first objective listed is to benefit the economy of Kern County by serving water to Southern California water agencies (DEIR 3-53). How does this benefit the economy? Other objectives state that the purpose of the project is to provide LADWP and AVEK with water banking resources. However, as stated above, there is no indication that the Project is compatible with the objectives of, or desired by, LADWP or AVEK. Furthermore, the objectives do not demonstrate any compelling reason to extract native groundwater. The DEIR's vague and ill-defined discussion of the project objectives does not comply with CEQA.

III. INADEQUATE DESCRIPTION OF THE ENVIRONMENTAL SETTING AND BASELINE CONDITIONS

An EIR must describe the environmental setting for a proposed project to establish the baseline by which impacts are determined (14 Cal. Code of Regs. §15125). This should include the physical environmental conditions in the vicinity of the project from both a local and regional perspective. Two examples follow.

A. Native Groundwater Supply

The known quantity of surface recharge to the Koehn Lake area (15,000-17,000 AF/Yr) is significantly lower than the amount of native groundwater proposed to be extracted (114,000 AF/Yr). Figure 3-8 of the DEIR implies that the Koehn Lake area may also be recharged by subsurface flows (underflows) from other, surrounding aquifers, such as the Indian Wells Valley to the north. Is this the assumption of the DEIR? Does the DEIR assume a connection between the Koehn Lake area and Indian Wells Valley aquifers? If yes, what is the amount of underflow from each basin to the Fremont Valley. If underflows from surrounding basins are assumed to be available to help make up the 114,000 AF/Yr of water proposed to be extracted from the Koehn Lake Area, please provide the evidence supporting such an assumption. If there is no underflow recharge from surrounding basins, then the 114,000 AF/Yr extraction of native groundwater would represent mining of the aquifer, which should be anticipated to exert a significant effect on groundwater levels and on groundwater quality, including impacts to the Indian Wells Valley basin and other surrounding and tributary aquifers.

The DEIR cites a figure of 10,000,000 AF of groundwater in storage in the deep aquifer (below 600 feet below ground surface) in the Koehn Lake area, and suggests that even more water may be available below 10,000 feet below ground surface. Has any drilling been performed to support this estimate of deep groundwater quantities? Do the Project proponents anticipate extracting any of this deep groundwater as part of the native groundwater extraction program? If so, please provide evidence that such deep groundwater is of suitable water quality for any anticipated use, and that extraction of water from elevations below 10,000 feet is technologically feasible.

Since the Project is a "proposed industrial, manufacturing, or processing plant...occupying more than 40 acres of land," and the County of Kern has determined that the Project is subject to the California Environmental Quality Act, Sections 10910 and 10912 of the California Water Code (as amended by Senate Bill No. 610) require that a Water Supply Assessment be prepared for the Project. A Water Supply Assessment is required as part of the DEIR.

B. Narrow Focus of Hydrologic Study Area

Section 4.9.2 of the DEIR completely dismisses consideration of water demands outside the Koehn Lake Area, where such demands may result in cumulative impacts in combination with those of the Project; and may, additionally, be adversely impacted by the Project.

IV. FAILURE TO PROPERLY ANALYZE ENVIRONMENTAL IMPACTS OF THE PROJECT

An EIR must analyze all environmental impacts of a proposed project. We believe that the DEIR fails to adequately analyze all of the impacts as described in the following.

A. Inadequacy of Analysis of Impact on Water Supply

The DEIR does not provide sufficient data with respect to the existing aquifer, proposed water banking supplies, and proposed water banking and native groundwater demands in order to effectively evaluate the potential environmental impacts of the Project. The DEIR does not include a groundwater model pertaining to native water extraction, or attempt to quantify future impacts of the overall project to groundwater levels or quality in any way. In its August 19, 2013 letter, GEI states that future testing is required “to determine additional unknown data and address any unknown potential impacts of native groundwater production beyond the available 10,500 to 12,500 AFY” (DEIR Appendix “H”). This data should be fully compiled and analyzed as part of the DEIR.

B. Inadequacy of Analysis of Impact on Water Quality

The analysis of impacts that may occur to groundwater quality as a result of operation of the water facilities is inadequate. Water quality impacts to the aquifer can occur as a result of the water banking operation from the introduction of imported water into the aquifer, and as a result of re-wetting dry soils that may contain salts from evaporation. Localized groundwater quality can be impacted by extraction activities that modify the existing groundwater flow gradients.

C. Inadequacy of Analysis of Impact of Ancillary Facilities

The analysis of impacts that may result from the construction and operation of facilities ancillary to, but necessary for, the successful operation of the Project as described is inadequate. Such facilities include connections to existing transmission facilities and construction of new transmission facilities to supply extracted water to Edwards Air Force Base, the China Lake Naval Air Weapons Station, and other users. To avoid piecemealing the analysis, the DEIR should include a full analysis of the environmental impact of such facilities.

D. Inadequacy of Analysis of Impact to Surrounding Aquifers

The analysis of impacts that may occur to tributary and surrounding aquifers, such as the Indian Wells Valley and the other subunits of the Fremont Basin, is inadequate. Figure 3-8 of the DEIR implies that the Koehn Lake Area may be partially recharged by underflows from surrounding aquifers, such as the Indian Wells Valley to the north. Potential impacts of the Project on such tributary aquifers must be addressed.

V. INADEQUATE DISCUSSION OF CUMULATIVE IMPACTS AND RELATED PROJECTS

The DEIR does not include an analysis of the cumulative impacts of the project on the aquifer as coupled with the present and future projected groundwater extraction and use of other groundwater producers in the Fremont Basin outside the Koehn Lake Area, such as the Mojave Public Utility District and the California City Community Services District.

VI. FAILURE TO SUFFICIENTLY PROPOSE, DEVELOP, AND ADDRESS MITIGATION MEASURES

The paragraphs below describe several instances where the mitigation measures proposed in the DEIR do not adequately address the potentially significant impacts of the Project.

A. Inadequacy of Proposed Mitigation for Impact to Water Quality

The proposed mitigation measures include no performance standards which would trigger specific actions to be taken to address impacts that may occur to groundwater quality as a result of operation of the water facilities. As you pointed out in your letter to IWVWD dated December 9, 2011 providing comments on IWVWD's Water Supply Improvement Program DEIR, mitigation measures must include performance standards which would trigger specific actions to be taken by the project proponent. The DEIR improperly defers the formulation of mitigation measures to a proposed committee.

There is no commitment in the DEIR to providing water treatment facilities (other than disinfection) in the event of degradation of groundwater quality, or if the quality of banked water is deteriorated by contact with poor quality groundwater; nor is there any analysis of potential environmental impacts of the construction and operation of such water treatment facilities and disposal of treatment residuals.

B. Inadequacy of Proposed Mitigation for Impact to Water Supply

The proposed mitigation measures set forth in Section 4 of the DEIR are reactive rather than preventive with respect to impacts on groundwater levels, and will not be effectively implemented until such a time as impacts have already begun to occur. The DEIR presents no evidence that the proposed mitigation measures will be able to either prevent or reverse environmental impacts that may result from the operation of the water facilities. Further, it is unclear whether the mitigation measures proposed for operation of the banking recovery wells will also be applied to operation of the native water extraction wells. There appears to be no legitimate reason to defer the formulation of mitigation measures until after the project is approved.

One of the proposed mitigation measures includes providing an alternate source of water in the event that water levels drop to unacceptable levels in off-site wells as a consequence of operations. The potential environmental impacts of providing an alternate source of water to owners of impacted offsite wells (presumably involving either construction of pipelines or frequent trips by a water delivery truck) has not been analyzed in the DEIR. As you pointed out in your comment letter to IWVWD dated December 9, 2011, potential environmental impacts associated with future potential corrective actions identified in the mitigation measures must be analyzed.

The GMMMP included as Appendix B of the DEIR is vague, and does not set forth clear performance standards which would trigger specific actions.

VII. INADEQUATE DISCUSSION OF POTENTIAL AREAS OF CONTROVERSY

An EIR must identify and summarize areas of controversy known to the Lead Agency including issues raised by agencies and the public (14 Cal. Code Regs. § 15123(b)(2)). The DEIR is incomplete and misleading in that it fails to sufficiently address the public controversy involving the Project's use and potential exportation of native groundwater outside of the Fremont Basin and Kern County. The DEIR acknowledges that Kern County Ordinance Chapter 19.118 prohibits transferring native water outside of Kern County and/or the watershed (DEIR, Page 4.9-18). However, the DEIR is at best non-committal, and at worst deceptive, regarding the intent to export native groundwater outside of Kern County and/or the watershed. Rather than address this known controversy, the DEIR attempts to dismiss it by claiming that a CUP to transfer native water out Kern County and/or the watershed is not being sought "at this time". The DEIR fails to adequately discuss and assess this known controversy. This omission presents a misleading and incomplete impression of the Project, thereby inhibiting the public from properly evaluating the Project and its environmental effects.

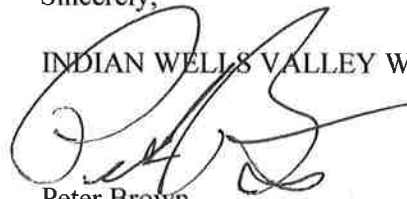
VIII. FAILURE TO PROPERLY CONSIDER ALTERNATIVES TO THE PROJECT

The DEIR does not consider a reasonable range of feasible alternatives to avoid or minimize environmental impacts. The DEIR conspicuously fails to consider alternative locations for the project. One or more alternatives in which native groundwater extraction is entirely eliminated should certainly be evaluated. Furthermore, the vague descriptive characterizations of the Project and its purposes improperly constrict the analysis of alternatives and whether any identifiable alternative might be feasible.

In conclusion, IWWVD not only has grave concerns regarding the environmental impacts of the Project, but with respect to the purposes and objectives of the project itself, especially given the precedent that adoption of such a document would set with respect to any potential future groundwater management projects in eastern Kern County. IWWVD does not believe the DEIR complies with the legal requirements or the spirit of the California Environmental Quality Act.

Sincerely,

INDIAN WELLS VALLEY WATER DISTRICT



Peter Brown
President

DFS/btt
178-1P1-FREMONT COMMENT-L1

cc: Kern County Supervisor, District 1, Mick Gleason
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