

Final

**Environmental Impact Report
for the
Milburn Pond Isolation Project**

State Clearinghouse No. 2020100145

June 2022



**State of California
Department of Water Resources**

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Abbreviations and Acronyms

CEQA	California Environmental Quality Act
cfs	cubic feet per second
DFW	California Department of Fish and Wildlife
DWR	California Department of Water Resources
EIR	Environmental Impact Report
MMRP	Mitigation Monitoring and Reporting Program
NMFS	National Marine Fisheries Service
NOP	Notice of Preparation
project	Milburn Pond Isolation Project
Reclamation	U.S. Bureau of Reclamation
SJRC	San Joaquin River Conservancy
SJRRP	San Joaquin River Restoration Program
SLC	State Lands Commission
USFWS	U.S. Fish and Wildlife Service
WCB	Wildlife Conservation Board

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Chapter 1. Introduction

1.1 Document Overview

This Final Environmental Impact Report (EIR) for the California Department of Water Resources (DWR) Milburn Pond Isolation Project (project) consists of the following information required in State California Environmental Quality Act (CEQA) Guidelines Section 15132:

- The Draft EIR (made available to the public on April 2, 2021);
- Comments and recommendations received on the Draft EIR either verbatim or in summary;
- A list of persons, organizations, and public agencies commenting on the Draft EIR;
- The responses of the lead agency (DWR) to significant environmental points raised in the review and consultation process; and
- Any other information added by the lead agency (such as a minor revision DWR has made to the Draft EIR).

This document, combined with the Draft EIR, comprises the Final EIR for the proposed project.

1.2 Document Organization

Chapter 1, “Introduction,” provides an overview and the organization of this Final EIR and summarizes the environmental review process.

Chapter 2, “Comments and Responses to Comments on the Draft EIR,” contains all comments verbatim as received during the Draft EIR public review period and presents responses to significant environmental points raised in the review and consultation process. All comment letters are labeled to correspond with an index table (Table 2-1, page 2-13) in Section 2.2. “Individual Comments and Responses.” Each individual comment is assigned a number that corresponds with the response to the comment. Also included are notes summarizing verbal comments received during a phone call and associated responses provided in the call.

Chapter 3, “Revisions to the Draft EIR,” presents specific changes that were made to the text of the Draft EIR in response to public comments and/or new and revised information. Revised text of the Draft EIR is reproduced in Section 3.2, “Draft EIR Corrections and Revisions.” Text changes are indicated by strikethrough (~~strikethrough~~) where text has been removed and by underline (underline) where text has been added.

Chapter 4, “References,” presents references cited in this Final EIR.

Chapter 5, “Report Preparers and Reviewers,” identifies the preparers and reviewers of this Final EIR.

1.3 Environmental Review Process

The environmental review process for the proposed project was initiated when the Notice of Preparation (NOP) of the proposed project EIR was published on October 8, 2020; a virtual public scoping meeting was held on October 22, 2020 to solicit input from the community and public agencies to be considered in the selection and design of project alternatives and on the scope and content of the EIR. The Draft EIR was circulated for a 45-day public review period that began April 2, 2021 and ended May 17, 2021.

This Final EIR is being released and sent to agencies who commented on the Draft EIR. Lead agencies are required to provide responses to the commenting agency's comments on a Draft EIR at least 10 days before the certification of the Final EIR (Section 15088[b] of the State CEQA Guidelines). After the 10-day agency review period, DWR will consider comments provided on the Final EIR and this document and the whole of the administrative record to determine whether the Final EIR should be certified as adequate under CEQA. If so, DWR will adopt a resolution certifying the Final EIR, pursuant to Section 15090 of the State CEQA Guidelines.

If the Final EIR is certified, DWR will consider approving the project. DWR will adopt findings of fact, pursuant to Section 15091 of the State CEQA Guidelines, for each significant environmental effect of the proposed project. For each significant environmental effect identified in the Final EIR, DWR must issue a written finding reaching one or more of three permissible conclusions. According to Section 15091 of the State CEQA Guidelines, the three possible findings are:

- Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the Final EIR;
- Such changes or alterations are within the responsibility and jurisdiction of another public agency and not the agency making the finding. Such changes have been adopted by such other agency or can and should be adopted by such other agency; or
- Specific economic, legal, social, technological, or other considerations, including provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or project alternatives identified in the Final EIR.

In addition, if DWR approves the project, DWR will adopt a mitigation monitoring and reporting program (MMRP), consistent with Section 15097 of the State CEQA Guidelines, that describes when each of the mitigation measures adopted for the proposed project will be implemented, identifies who is the responsible implementing party, and provides a mechanism for monitoring and reporting their implementation.

Chapter 2. Comments and Responses to Comments on the Draft EIR

This section of the Final EIR contains written and oral comments received on the Draft EIR during the public review period. In conformance with Section 15088(a) of the State CEQA Guidelines, written responses were prepared addressing comments on significant environmental points received from reviewers of the Draft EIR during the public review period, as well as all other comments for completeness. When there is significant public comment, CEQA allows lead agencies to summarize or consolidate responses to similar comments, as long as all significant environmental points are addressed.

There was an array of similar comments about particular topics that addressed different aspects of common issues. To present more cogent, integrated, and complete responses that address all aspects of these related comments, seven master responses were prepared. The master responses are a means of providing a broader context and more meaningful response than possible when making individual responses. In some cases, an individual comment may be answered by one or more of the master responses. The master responses are presented below before the individual comments and responses because the master responses apply to many comment letters and comments and respond to the most significant comments made by the public. Master responses are as follows:

- Master Response 1: Draft EIR Review Process
- Master Response 2: Project Justification
- Master Response 3: Alternatives Analysis
- Master Response 4: Recommended Seine Alternative
- Master Response 5: French Drains
- Master Response 6: Recreation Access Policies and Regulations
- Master Response 7: Alleged Road Purpose/Objective

Individual responses to comments that are addressed by a master response include reference to the master response where the comment is addressed. The responses to comments clarify and amplify text in the Draft EIR, as appropriate, but do not alter any of the conclusions in the Draft EIR.

2.1 Master Responses

2.1.1 Master Response 1: Draft EIR Comment Process

Comments addressed in this master response are: George-3, Lester-3, Lester-6, Lester-14, Lizak-9, Lizak-11, Lizak-15, Moosios-23, J Piersol-1.

Several members of the public expressed concern regarding compliance with CEQA procedural requirements, including notifying the public about the project and Draft EIR availability, accessibility of the Draft EIR, and comment submittal.

As indicated on page 1-3 of the Draft EIR, DWR distributed the NOP for the EIR, in accordance with the State CEQA Guidelines (Section 15082[c]), on October 8, 2020. The NOP invited comments on the scope and content of the EIR to be provided by November 6, 2021 and participation at a virtual public scoping meeting held October 22, 2020. The NOP was posted on the CEQAnet Web Portal on October 8, 2020 and on DWR's Web site on October 9, 2020. It was mailed to Fresno County and Madera County on October 9, 2020 and was sent electronically on October 8, 2020 to relevant State trustee and/or responsible agencies and Federal agencies that may have a role in approving or funding the proposed project. The NOP also was sent electronically on October 8, 2020 to local and regional interested parties and individuals and organizations that have requested to receive all DWR CEQA notices and/or information specific to the proposed project, as well as others that have requested to receive all DWR CEQA notices irrespective of a specific project. Notice of NOP availability and the scoping meeting also were published in the Fresno Bee on October 8, 2020. The virtual scoping meeting was held on October 22, 2020 to solicit input from the community and public agencies to be considered in the selection and design of project alternatives and on the scope and content of the EIR.

In compliance with State CEQA Guidelines Section 15087, notice of availability of the Draft EIR was sent on April 1, 2021 directly to all organizations and individuals who had previously requested to receive such notices, and a notice was published in the Fresno Bee on April 2, 2021. The notice of availability was also posted on DWR's Web site on April 2, 2021, and the notice of availability and Draft EIR were posted on the CEQAnet Web Portal on April 1, 2021. CEQA does not require DWR to directly notify all potentially interested parties regarding availability of the Draft EIR for the proposed project, but a concerted effort was made to notify all those parties that had expressed a previous interest in the project and/or DWR projects in general.

Because of a typographical error, the email address provided in the notice of availability and the Draft EIR (Karen.Dulik@water.co.gov) was incorrect. Those who attempted to send comments to the incorrect email address received a notice indicating their message could not be delivered. The phone number provided for Ms. Dulik was correct, however, and she was available to assist anyone who called her requesting her proper email address (i.e., a reasonable person receiving a notice that their message could not be delivered would see her phone number two lines above the email address in the contact information and call her). In addition, the Draft EIR provided a mailing address and fax number to which comments could be sent. Therefore, DWR did not violate State CEQA Guidelines by inadvertently providing an incorrect email address because there were multiple alternative means by which commentators could reasonably resolve the issue. One of the commentators called Ms. Dulik to obtain her correct email address, and numerous additional commentators determined the correct email address and submitted comments

electronically. No comments were received after the comment period ended. To DWR's knowledge, all parties desiring to submit comments on the Draft EIR were able to submit their comments and no parties were denied opportunities to submit comments because of the typographical error in the email address.

As indicated in the Draft EIR, a copy of the document was sent to the Central Branch of the Fresno County Library and the Madera Headquarters of the Madera County Library. Delivery confirmation for both of these documents was received. DWR was unaware of any difficulty accessing the document at either library until comments to that effect were received at the end of the comment period. It is not known why neither library made the document available to the public upon request. Individuals unable to access the Draft EIR electronically or at either library were able to call Ms. Dulik directly to request an alternative means of reviewing the document and/or submitting comments; her phone number was clearly presented with the library addresses in the Draft EIR and public notice of availability. However, no such request was received by Ms. Dulik.

The 45-day public review period for the Draft EIR complied with State CEQA Guidelines Section 15105 and provided agencies and the public adequate and reasonable opportunities to review and comment on the Draft EIR, as indicated by numerous agencies and individuals successfully submitting comments to DWR. Therefore, DWR does not intend to provide an additional review period for the Draft EIR.

2.1.2 Master Response 2: Project Justification

Comments addressed in this master response are: De Prima-2, George-2, George-5, Lester-2, Lizak-7, G Piersol-1, J Piersol-4, Spencer-4, Spencer-5.

The need for the proposed project has been summarized in the Project Background Report (DWR 2019a). This reach of the San Joaquin River exhibits degraded salmonid habitat caused by high sand content in the channel, lack of inundated floodplain, and a direct connection to Milburn Pond, the largest gravel pit pond on the San Joaquin River. Gravel pits can contribute to juvenile salmon mortality through entrainment, effects on water temperatures, and by providing habitat for predator species such as largemouth bass (SJRRP 2010). Studies on the Tuolumne River have shown that gravel pits and the habitat they support favor non-native predatory fish and predation losses in these habitats may be significant enough to affect salmonid populations (Goodell et al. 2014). According to San Joaquin River Restoration Program (SJRRP) scientists, "evaluations have demonstrated that the Milburn Pond poses a substantial risk to juvenile salmon of entrainment and serves as a source of non-native predatory fish species, which is a concern to the SJRRP and to the U.S. Fish and Wildlife Service as an Implementing Agency of the SJRRP" (USFWS 2019). The SJRRP has also stated that Milburn Pond's connection to the river "has been determined to be a population source of piscivorous predators to the river" (SJRRP 2019). DFW has also stated that "fisheries studies conducted by the [C]DFW as an implementing agency of the SJRRP have indicated that the Milburn Pond poses a high risk as a false migration pathway for Chinook salmon" (DFW 2019).

Moreover, the SJRRP Restoration Goal in the Stipulation of the Settlement in *Natural Resources Defense Council et al. v. Rodgers, et al.* is to restore and maintain fish populations in "good condition" in the mainstem of the San Joaquin River below Friant Dam to the confluence of the

Merced River. Paragraph 11(b)(3), the basis for SJRRP goals, states that one of the necessary improvements is “filling and/or isolating the highest priority gravel pits in Reach 1.” Milburn Pond is recognized by SJRRP scientists as one of the highest priority pits for isolation because of the reasons stated above; it, along with other high priority pits can be isolated or filled as part of SJRRP actions. The proposed project shares objectives of the Restoration Goal by improving floodplain habitat, reducing the pond's effect on river water temperature, reducing predation, and improving salmon migration. Therefore, the need for the project is justified and the overall project purpose is to increase native fish survival in the San Joaquin River by isolating gravel pits on the Milburn Unit from the San Joaquin River channel to prevent fish from passing between the river and Milburn Pond. Furthermore, and most importantly, the proposed project is supported by the U.S. Fish and Wildlife Service (USFWS), National Marine Fisheries Service (NMFS), U.S. Bureau of Reclamation (Reclamation), California Department of Fish and Wildlife (DFW), California Wildlife Conservation Board (WCB), and San Joaquin River Conservancy (SJRC).

The proposed project is intended to meet the project purpose stated above and the four stated goals in the Draft EIR, including reducing the movement of fish between Milburn Pond and the San Joaquin River and reducing the likelihood of future berm breaches. The proposed project would isolate the pond by repairing and strengthening the berm, thereby eliminating a significant amount of warmwater predator habitat from the San Joaquin River. As is evident from historical aerial photography, the pre-mining channel followed a long sweeping arc along the left bank that now consists of a small gravel pit and the breached berm between Milburn Pond and the river channel. Mining in the 1980s changed the flow patterns and channel path. As a result, high river flows in the 1990s, were directed into and eroded the berm. In addition, a breach occurred away from the channel, between Milburn Pond and a smaller in-channel pit. The proposed project would restore the main river flow to the historical channel, where it flowed long before miners created the gravel pits, while still allowing water to pass into Milburn Pond and maintain habitat in the ecological reserve. Furthermore, the methods used to isolate Milburn Pond from the San Joaquin River have been used successfully on other similar projects and are proven, effective methods to provide a low-flow water source to the pond and equalize the pond with the river during flood releases.

The Draft EIR indicates that berm improvements would include raising or lowering the berm crown elevation to 3 feet above the predicted 9,000 cubic feet per second (cfs) water surface elevation. Design refinements since the Draft EIR was issued have reduced the berm elevation to 3 feet above the 8,000 cfs level. This would reduce some construction-related project impacts because less berm fill material would be required, and North Milburn Avenue would not require raising. This change in berm elevation would not have a meaningful effect on flood flows because the frequency and probability of a flood event high enough to overtop the berm occurring is extremely similar for the two berm heights (approximately 3.02 percent probability of exceedance for 3 feet above the 8,000 cfs level and approximately 3.05 percent probability of exceedance for 3 feet above the 9,000 cfs level).

2.1.3 Master Response 3: Alternatives Analysis

Comments addressed in this master response are: SJRA-3, George-2, Lester-8, Moosios-3, Spencer-6.

A few commentors expressed concern that DWR did not do enough research into alternatives for pond isolation. Please refer to Master Response 4 (Recommended Seine Alternative) for specific response to the seine alternative recommended by several commentors.

CEQA requires that an EIR, in addition to analyzing the environmental effects of a proposed project, consider and analyze project alternatives that would reduce adverse environmental impacts (Public Resources Code Section 21061). Section 15126.6 of the State CEQA Guidelines indicates that an EIR must “describe a range of reasonable alternatives to the project ... which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project. ...” However, “[a]n EIR need not consider every conceivable alternative to a project.” (State CEQA Guidelines Section 15126.6[a]; *Citizens of Goleta Valley v. Board of Supervisors* [1990] 52 Cal.3d 553, 574 [Goleta].)

“There is no ironclad rule governing the nature or scope of the alternatives to be discussed other than the rule of reason” (State CEQA Guidelines Section 15126.6[a]). The rule of reason “requires the EIR to set forth only those alternatives necessary to permit a reasoned choice” and to “examine in detail only the ones that the lead agency determines could feasibly attain most of the basic objectives of the project” (State CEQA Guidelines Section 15126.6[f]). Moreover, “alternatives shall be limited to ones that would avoid or substantially lessen any of the significant effects of the project.” (State CEQA Guidelines Section 15126.6[f]; *North Coast Rivers Alliance v. Marin Municipal Water Dist. Bd. of Directors* [2013] 216 Cal.App.4th 614, 649-650; *Tracy First v. City of Tracy* [2009] 177 Cal.App.4th 912, 928-929.) An EIR does not have to consider alternatives “whose effect cannot be reasonably ascertained and whose implementation is remote and speculative” (State CEQA Guidelines Section 15126.6[f][3]). Further, “a lead agency may structure its EIR alternative analysis around a reasonable definition of underlying purpose and need not study alternatives that cannot achieve that basic goal” (*Bay Delta Proceedings*, supra, 43 Cal.4th at 1166).

Two project alternatives were adequately described and the potential environmental impacts of each was comprehensively analyzed in Chapter 6 of the Draft EIR. Each alternative lessened the environmental impacts of the proposed project to some degree, though both necessitated trade-offs among particular environmental impacts and benefits. The Draft EIR also summarized three additional alternatives that were considered and provided the basis for eliminating those alternatives from more detailed evaluation (see Section 6.2 of the Draft EIR, “Alternatives Considered but Rejected from Further Analysis”). This process of identifying, screening, and further evaluating potential project alternatives ensured the scope of the alternatives analysis was sufficient to “foster informed decision making and public participation,” and satisfy the standard articulated in the State CEQA Guidelines and case law for alternatives analysis.

Formulation of the Milburn Pond Isolation Project began in earnest in 2018 when DWR conducted a feasibility study to research potentially feasible alternatives. The Project Preliminary Design Report (DWR 2019b) considered various alternatives to isolate the ponds and improve salmon habitat in the river.

The following considerations were made in developing potential alternatives:

- Reducing hydraulic connection between the river and the ponds would help to maintain cooler river temperatures to support salmon.
- False migration pathways or stranding risk should be minimized during changes in flows.
- Berm repairs that are designed to overtop have the potential to increase the risk of stranding migrating adult salmon that may enter the ponds during high flows.
- Allowing for water infiltration from the river into the ponds would maintain the fisheries in the pond without impacting the river species.
- All alternatives considered for this project and area require approval by DFW, the landowner.

DWR researched multiple options for achieving the project purpose and objectives and solicited interested party input via meetings and discussions with State and Federal agencies associated with the SJRRP, as well as with a focus group of local interested parties. The focus group meeting with private individuals and representatives selected by SJRC was conducted on May 30, 2018. This outreach was used to communicate potential design options and receive feedback and suggestions.

Initial concepts evaluated by DWR in 2018 included a solid berm with French drains, an improved berm with an equalization saddle, and a culvert connection with fish screens. DWR provided an overview of these options and their advantages and disadvantages during the May 2018 focus group meeting. The first two options would isolate the pond in a way that precludes boat passage, while the third concept was intended to provide boat passage. However, as discussed in the meeting, the fish screen option was expected to have a much higher construction cost and intensive ongoing maintenance needs. For these reasons, the project team concluded this option was essentially infeasible.

Discussion at the May 2018 focus group meeting included suggestions for a combination of a saddle and culvert with fish screen that may reduce project costs. DWR later evaluated this suggestion and determined that while the addition of a saddle would allow for a smaller screen, the screen would still cost millions more dollars to construct and maintain than other options, including the proposed project. In addition, hydraulic conditions in the river and the river's interaction with Milburn Pond would likely prohibit gate operation at times, for safety and fish exclusion reasons, thereby limiting the potential benefits. DWR also evaluated a modified version of this option that included a solid barrier and gate that would not allow flow passage through the closed culvert, rather than a screen. The saddle would equalize the pond and river so the culvert could be used when the pond and river were in equilibrium. This was a more favorable option because it would not require an expensive and delicate fish screen; however, it would require an automatic gate with power and maintenance needs. A manual gate would not be feasible because of the likelihood for it to be left open. As with the previously evaluated options, boat passage would be limited to a small portion of the year when flows are low and stable and evaporation demands are low, to ensure safe operation and lack of flows through the gate. The project team determined that the limited additional cost, complexity, and liability of an automated gate system rendered this alternative infeasible.

Because DWR evaluated a range of reasonable alternatives in the Draft EIR and other proposed alternatives are economically infeasible, do not achieve most project objectives, and/or do not substantially lessen the significant environmental impacts of the project, the Final EIR, including the Draft EIR, need not evaluate additional alternatives further.

2.1.4 Master Response 4: Recommended Seine Alternative

Comments addressed in this master response are: SJRA-5, De Prima-3, Lester-8, Lester-12, Lizak-8, Moosios-4, Moosios-13, Moosios-18.

Several members of the public recommended using a mesh screen or net to isolate Milburn Pond; this is referred to as the Seine Alternative. Commentors felt that the Seine Alternative should be an option considered in the CEQA process. As described below, this concept also was recommended during the May 2018 focus group meeting and considered by DWR during preliminary project design.

A key project objective identified in the Draft EIR is to reduce the likelihood of future berm breaches during high-flow events to ensure the pond does not become reconnected to the river. To help meet this objective, DWR chose to allow Milburn Pond to fill during high flows because it would help equalize pressure on berms and minimize potential overtopping damage. Furthermore, the project design solution must ensure that pond fish do not mix with river fish via a solution that is durable and minimizes maintenance needs. This requires that under most hydraulic conditions, specifically any flows below a designated “flood release” flow currently recognized as approximately 9,000 cfs for project purposes, salmonids (including juveniles) would not be diverted from the river into the pond and piscivorous fish predators that live in the pond would not be able to reach the river channel.

DWR estimated flow rates of more than 1,500 cfs enter Milburn Pond during the rising limb of rapid flow increases, based on recent flood release patterns. This means that, in addition to the challenge of keeping fish from moving between the pond and river, the solution must be effective and stable during a very wide range of flow conditions. It also means that the water surface elevation changes significantly depending on the river flow, up to more than 12 feet, which must be accounted for in any solution. In addition, considering the current topography of the breach connecting the river to Milburn Pond, the breach width at high flows would be up to several times wider than at low flows. Therefore, it would be difficult for small, simple solutions to meet most or all of the project objectives in a feasible manner.

Debris that would travel with these higher flows also represents a design challenge. Small debris such as twigs, leaves, and algae and larger debris such as logs and tires would be a challenge for any barrier but is maximized with a flexible barrier such as a seine. In addition, large water volumes would need to flow in reverse through the connection when river flows subside, which means the barrier would need to work in both directions, potentially increasing its design complexity. All these challenges make a solution to separate fish in the pond and river a complex, difficult, and expensive undertaking, unless flow water is completely prevented from passing between them.

Beginning in early 2018, DWR solicited interested party input, including from a focus group of local interested parties, to communicate potential design options and receive feedback and

suggestions. During this process, Mr. Louis Moosios recommended, and DWR considered, using netting held by buoys to keep fish from passing between Milburn Pond and river, while allowing boats to pass over the netting. This approach appears attractive and makes sense in a debris-free controlled environment where flows through the seine are minimal and stable and the water column remains at a relatively constant depth. Unfortunately, the project site experiences much more variable flow conditions. From an engineering perspective, even if fish impingement can be avoided, this approach presents significant technical design challenges when considering the large variation in hydraulic conditions described above.

The width and overall size of the proposed net would need to be relatively large and able to handle significant changes in flow width and depth. An engineered culvert or channel structure constructed at the breach could help with the variable width issue, though it would greatly increase the cost of the facility. However, a significant problem is likely to result from debris passage into the pond. During high-flow periods, both large and small debris would likely encounter the seine netting. Small debris would be caught in the netting, reducing the net's ability to pass water over time. This could lead to structural failure from accumulated hydraulic pressure as the plugged net holds water back. Large debris passing through the breach may also add to the drag or damage the netting and allow fish to pass through. The seine would require substantial and regular maintenance. DWR's review determined that this type of facility would need to be manually removed before river flow increases, particularly before flood releases, and replaced after flows into Milburn Pond subside. A manually operated and high-maintenance option is undesirable, and the high potential for fish passage between the pond and the river during key flow events also means it would not meet project objectives during those periods, which could last weeks.

During the May 2018 focus group meeting, and via email in June 2018, DWR requested Mr. Moosios provide specific examples of his proposal that have been used effectively in similar applications that could demonstrate its feasibility. Mr. Moosios provided netting cost quotes in October 2019, but no detailed plan or similar real-world examples were provided. Although DWR was willing to evaluate the seine's feasibility further if given the additional information, because viable examples were not identified, DWR was not able to further evaluate this alternative. Therefore, based on the information available to DWR, it was determined that this alternative was technically infeasible and would not meet project objectives, and it was not carried forward for in-depth evaluation in the Draft EIR.

The more recent version of the seine concept described in the Draft EIR comments does not include any new aspects that would address the problems indicated above other than a statement that the height of the net would allow it to move with the water surface fluctuations. Simply stating that the application will be simple, maintenance easy and infrequent, and repairs cheap and quick, is not enough proof of feasibility.

Unfortunately, the commenters do not provide examples of this technology being used in similar situations. Therefore, implementation feasibility and long-term effectiveness are completely unknown. Unlike the equalization saddle that has been proven to work as designed, the seine concept is unproven and risky, likely requiring frequent repairs and maintenance and experiencing performance failures that would substantially reduce the likelihood of meeting project objectives.

In addition to these problems, the landowner and ecological reserve manager (DFW) expressed doubt during project development that a seine concept would work effectively and consistently for fish exclusion and indicated its preference for a solid isolation solution with minimal maintenance needs. In October 2019, DFW provided DWR with its recognized constraints related to recreation within the Milburn Unit of the ecological reserve. DFW expressed concerns about lack of funding and staffing to patrol the site, safety concerns regarding boating in shallow waters, and limitations on legal public access in the ecological reserve under California code. DFW management separately indicated via email a preference for a pit isolation type of alternative.

DWR evaluated the Seine Alternative recommended by the commentors and found that it was highly unlikely to achieve most project objectives and would have prohibitive maintenance needs and costs that render the Seine Alternative infeasible. Therefore, the Seine Alternative was not carried forward for more in-depth evaluation in the Draft EIR.

2.1.5 Master Response 5: French Drains

Comments addressed in this master response are: SJRA-2, Lester-5, Lizak-5, Lizak-13, Moosios-5, G Piersol-3.

Several commentors raised issues or questions about the use of French drains in the project design. These concerns are primarily based on observations of water color in ponds connected by French drains at other locations along the San Joaquin River. Specific concerns include water quality degradation in the ponds, leading to warmer and more turbid water and eventually death of surrounding trees and vegetation.

The objectives of the 2016 Sycamore Island Pond Isolation Project cited as evidence of this concern by several commentors did not include maintaining or improving pond water quality. For this reason, the type of modified French drains included in the proposed project were not included in that project. The French drain design used in the 2016 Sycamore Island Pond Isolation Project is a completely different application of the technology, with different objectives.

According to the Sycamore Island Pond Isolation Project design report (DWR 2015), the “Breach Fill” element, which replaced a section of berm that previously had been breached during floods, had only the goal of re-establishing the previous berm so that pedestrian and vehicle traffic could once again travel that route within SJRC’s Fresno County lands. Design goals did not include pond fish habitat or water quality improvements, but DWR added a French drain to ensure a minimal level of water source to the pond. The design of that drain was very different from what is being planned for the proposed Milburn Project’s modified French drain component. The Sycamore Island Pond Isolation Project French drain consisted of a trench filled with large river cobble and buried within the berm. During construction, engineers decided to increase the potential for water to pass more quickly through the berm by adding one perforated pipe within the drain. This pipe selection was based on available materials and the likelihood it would help reduce flow resistance. It was not meant to offset all losses to the isolated pond because the pond was previously completely cut off from the river before the berm was breached, and there was no goal for post-project conditions to be better than the pre-breach

conditions. However, DWR took extra measures to provide a water source where previously there was none.

The Sycamore Island Pond Isolation Project has met the design objectives for that project. Proof that the project improved conditions in the pond is clear when comparing post-project aerial photographs to pre-project aerial photographs, such as the Google Earth image from September 2009. Note that the “H pond” is not connected directly to the pond that was isolated as part of the Sycamore Island Pond Isolation Project, a fact that is supported by the visual color differences shown in various Google Earth images, including August 2017. Observations during frequent visits to the site by DWR confirm that the French drains operate as intended, and DWR is not aware of any trees having died as a result of the project. In addition, review of Google Earth images of the ponds from April 2021 does not indicate any pattern of tree mortality around them.

Milburn Pond currently acts as a backwater with no flow-through connection at low flows. This currently causes conditions where algae blooms and cloudy water occur. This can quite clearly be observed in multiple Google Earth images (e.g., February 2018). The proposed project is not intended to prevent this phenomenon that occurs under existing conditions.

The proposed Milburn Pond Isolation Project modified French drain design has very different design criteria than the Sycamore Island Pond Isolation Project and a specific objective to minimize the potential for project-related impacts that would reduce pond or riparian habitat quality. Although the feature appears to be similar to what was built in the Sycamore Island Pond Isolation Project, the goals, and therefore the designs, are quite different. The Milburn modified French drain design incorporates features that would maintain a water source to the pond after it is isolated from the river. The design process included a review of estimated maximum water losses to the pond and incorporates a modified French drain feature to offset those losses by allowing water to pass from the river channel to the pond at the same rate. The result is expected to seasonally lower Milburn Pond water levels, approximately 2 feet or less, because the river connection point would be downstream of the current one and some head loss is expected through the drain structure. Water levels in the pond would change during the year in response to fluctuating river flows. These seasonal changes would alter habitat conditions at Milburn Pond and could result in vegetation composition changes over time. However, the overall habitat quality is not anticipated to be degraded, and may become more similar to conditions before the berm separating Milburn Pond from the river failed during flooding in 1994-1995.

As indicated on page 2-9 of the Draft EIR, a more appropriate comparison is to the design used in the Sycamore Island Fishing Pond Enhancement Project constructed in 2020. That successfully implemented project was designed to convey enough water to offset evaporation losses in the fishing pond during summer. After installing the modified French drain in 2020, the pond rose by several feet and the water quality appearance improved dramatically. As of June 2021, the appearance of the water in the pond remains much improved. The similar modified French drain design of the Milburn Pond Isolation Project is fully expected to be highly effective in achieving the purposes for which it has been designed.

2.1.6 Master Response 6: Recreation Access Policies and Regulations

Comments addressed in this master response are: SJRA-4, Lester-7, Lizak-8, Moosios-9, Moosios-11, J Piersol-3, Spencer-3.

Several comments addressed loss of public access to fishing and other recreation on Milburn Pond from the river and asserted that to deny this access would violate the law and conflict with SJRC's mission and policies. Concerns also were raised regarding loss of navigable water along the San Joaquin River.

Comments regarding loss of public access to Milburn Pond from the river refer to the case of *Gion v. City of Santa Cruz* (1970) 2 Cal.3d 29. In this case, the California Supreme Court held that private owners of certain coastal property who allowed the public to use the property for recreational purposes over a period of years thereby implied dedicated property rights to the public. The Legislature responded by enacting Civil Code Section 1009, which generally provides that "no use" of private noncoastal property after the legislation's effective date of March 4, 1972 will give rise to "a vested right" in the public to continue using the property permanently, unless the property owner makes an express, irrevocable offer to dedicate the property to public use. In *Scher v. Burke* (2017) 3 Cal.5th 136, the California Supreme Court resolved a dispute between the Courts of Appeal and held that Civil Code Section 1009 bars all use of non-coastal private real property, not simply recreational use of such property, from ever ripening into an implied dedication to the public after March 4, 1972. Under Civil Code Section 1009, implied dedication cannot be found unless a government entity improved or maintained the alleged public access and public access to the waterway can be demonstrated by evidence of public use and other acts occurring before March 4, 1972. Such evidence may include testimony from members of the public who used the land, from owners during the pertinent period, and perhaps documentary evidence.

In the case of the proposed project, the issue involves access to a pond that became available when the berm separating Milburn Pond from the river failed due to flood flows. If not for flooding in 1994-1995, the berm would not have been breached and the pond would not have become accessible from the river. There is no officially allowable public access from the river to the pond in the Milburn Unit of the San Joaquin Ecological Reserve, nor has there been since the reserve was established. Prior to the land being held by the State, it was a private gravel mining operation with no public access. The Milburn Unit was acquired with the intention that it would become part of a future parkway along the San Joaquin River (DFG 1987); this intention was reiterated in the initial reserve management plan (DFG 1990). The property was designated an ecological reserve by the Fish and Game Commission in 1990; in 1993, an overlook platform and interpretive signs were installed, but the area was never formally opened to the public. Visitor use on ecological reserves is limited to those that are compatible with the purpose of the property. The only permissible recreation on the Milburn Unit is fishing from boats and the shore at times and in places designated by DFW, although DFW has not designated any times or places for those activities to date. Only light-weight, hand-carried, non-gas-powered boats or other floating devices would be permitted in the ecological reserve (Cal. Code Regs. tit. 14 § 630 (h)) if DFW so allows. Formally opening the Milburn Unit of the San Joaquin River Ecological Reserve to public access would require a change to the Fish and Game Code and additional

funding for increased staffing to operate and maintain the site; DFW has indicated this is not something it is able to do at this time.

The mission of the SJRC is to acquire and manage San Joaquin River Parkway lands to provide low-impact recreation and educational opportunities while protecting wildlife of the San Joaquin River. As indicated in the Draft EIR, the SJRC is a responsible agency, and the project site is within the downstream portion of the Parkway Planning Area. However, SJRC policies do not override California Fish and Game Code restrictions on recreational use on DFW-managed ecological reserves, including the Milburn Unit. This is supported by the Parkway Master Plan (SJRC 2018) depiction of existing features at the Milburn Unit being limited to an ecological reserve and vista/overlook, as shown on Figure 2.3 of the Draft EIR. Notably, fishing is not included as an existing, planned, or opportunity feature in the Parkway Master Plan for the Milburn Unit. The only potential future feature shown for the Milburn Unit is restoration opportunity. These designations in the Parkway Master Plan highlight the ecological reserve status of the unit as a priority to the SJRC.

2.1.7 Master Response 7: Alleged Road Purpose/Objective

Comments addressed in this master response are: SJRA-3, Lester 13, Lizak-10, Moosios-6, Moosios-Keiffer-3, G Piersol-4, J Piersol-5.

Several commentors alleged that at least one purpose or objective of the proposed project is to build a road along the berm, and some cite similarities to the Sycamore Island Pond Isolation Project.

Existing roads would be used for project access. As described on pages 2-10 through 2-12 of the Draft EIR, the existing dirt access road around the west, south, and east sides of Milburn Pond would be improved for construction access and left in an improved state for DFW reserve managers to use for reserve management and maintenance. Other existing dirt and gravel roads on the project site may be improved for construction access and to allow material hauling, including along the crown of the existing and new sections of berm. The equalization saddle would include a maintenance road; however, this road would take the place of an existing road on the berm in that location. Newly constructed portions of the berm also would include a road for maintenance purposes, similar to that currently present on existing portions of the berm. This road is necessary to access, monitor, and maintain the saddle and berm but is incidental to the project purpose.

Milburn Avenue is an existing paved road that currently ends at the Bluff Pointe golf course parking area. This road may need improvements to ensure overtopping will not occur at flows less than the design flows. The road would not be extended or expanded as part of this project.

2.2 Individual Comments and Responses

Table 2.1 presents a code for each comment letter received, the author of the comment letter, the date of the comment letter, and the number of individual comments identified and addressed in each comment letter.

The written individual comments received on the Draft EIR and the responses to those comments are provided in this section. Each comment letter is reproduced in its entirety and is followed by the response(s) to the letter. Where a commenter has provided multiple comments, each comment is defined by a line bracket and an identifying number in the margin of the comment letter.

Table 2.1 Draft Environmental Impact Report Comment Summary Information

Comment Code	Commenting Entity	Author	Date	Number of Comments
DFW	California Department of Fish and Wildlife, San Joaquin River Restoration Program – River Unit	C. Walbridge, P, Ferguson, J. Gianetta	May 17, 2021	8
SLC	California State Lands Commission	Nicole Dobroski, Chief, Division of Environmental Planning and Management	May 17, 2021	15
DBMI	Dunlap Band of Mono Indians	Dirk Charley	April 5, 2021	3
SJRA	San Joaquin River Association	John Basila	May 15, 2021	5
S3 Group	Adjacent landowner	Austin Ewell	May 11, 2021	6
Carlton	Private citizen	Matt Carlton	May 16, 2021	1
Deprima	Private citizen	Emil De Prima	May 11, 2021	3
George	Private citizen	Roger George	May 17, 2021	6
Lester	Private citizen and attorney	Tyler H. Lester	May 17, 2021	14
Linkowski	Private citizen	Greg Linkowski	May 16, 2021	2
Lizak	Private citizen	Jessica Lizak	May 17, 2021	16
Moosios	Private citizen and local river guide	Louis Moosios	May 15, 2021	38
Moosios-Keiffer	Private citizen	Kristi Moosios-Keiffer	May 17, 2021	11
G Peirsol	Private citizen	Greg Peirsol	May 13, 2021	4
J Peirsol	Private citizen	Jeananne Peirsol	May 11, 2021	5
Spencer	Private citizen	Mike Spencer	May 18, 2021	7

Comment: DFW

Milburn Pond Isolation Project Draft EIR: CDFW-SJRRP Comments

Section	Page Number	Table Number	Comment	Commenter	
Executive Summary	3		A high-flow side channel is noted as a project element but neither of the two build alternatives described on page ES-4 or Chapter 6 include it.	C. Walbridge	DFW-1
Chapter 1	1		Funding source is noted as "DWR's San Joaquin River Restoration Program (SJRRP)." This is misleading because DWR is one of five state and federal agencies working on the SJRRP.	C. Walbridge	DFW-2
Chapter 3	47 and 48		The text incorrectly states that spring run Chinook Salmon do not currently occur in the SJ River; however, adult returns have been documented in this section of the river by the SJRRP in the last few years.	C. Walbridge	DFW-3
Chapter 3	48	Table 3.5.4	Pacific Lamprey and Kern Brook Lamprey are present at project site and adjacent San Joaquin River Reach. Confirmed by annual SJRRP rotary screw trap monitoring and described in annual monitoring and analysis reports.	P.Ferguson	DFW-4
Chapter 3	58 and 59		Change "Fish and Game" to "Fish and Wildlife" throughout.	C. Walbridge	DFW-5
Chapter 3	6		The text describes potential for incidental take of Swainson's hawk, white-tailed kite, and water birds; however, incidental take of white-tailed kite is illegal because it is a fully-protected species.	C. Walbridge	DFW-6
Chapter 3	69 and 73		The text states that anadromous fish will not be present during the dry season; however, adult SRCS will be holding in the SJ River during the dry season prior to spawning in late summer/early fall.	C. Walbridge	DFW-7
Chapter 3	66		Burrowing Owl Mitigation Measure 3.5.3a. 4th bullet point states passive exclusion will be conducted during the breeding season. It should <u>not</u> occur during the breeding season unless the biologist verified either of the stated conditions.	J. Giannetta	DFW-8

California Department of Fish and Wildlife, San Joaquin River Restoration Program – River Unit

May 17, 2021

Comment Code and Number	Comment Response
DFW-1	The alternatives purposely do not include the high-flow side channel in an effort to lessen at least one significant effect of the project by reducing the amount of material excavation and hauling and reducing ground disturbance extent.
DFW-2	DWR is one of the five Federal and State agencies, including Reclamation, USFWS, NMFS, and DFW, that are cooperating on the SJRRP. DWR’s portion of the SJRRP is managed out of the South Central Region Office and specific projects for the overall SJRRP are completed with funds allocated to DWR for SJRRP work. Because the proposed project would benefit the overall SJRRP, DWR has used its SJRRP allocation to partially fund project development.
DFW-3	Text has been updated to reflect recent documentation of spring-run Chinook salmon in this section of the river. See page 3-3 in Chapter 3.
DFW-4	Text has been updated to reflect known occurrence of Pacific lamprey and Kern brook lamprey at the project site. See pages 3-4 and 3-5 in Chapter 3.
DFW-5	Where listed in General Plan policies, “Fish and Game” has been updated to “[Fish and Wildlife].” Other uses include Fish and Game Commission, Fish and Game Code, in reference to past actions (with note that DFG is now DFW), and in reference to documents from before the name change; these remain as DFG, as this is the correct reference.
DFW-6	The impact analysis discloses what could occur if mitigation measures are not implemented. This could include nest failure and potential take, depending on the nest stage. However, mitigation measures are included to ensure nest failure and potential resulting take is avoided.
DFW-7	Text has been revised to acknowledge that spring-run Chinook salmon could be holding in the river during the dry season and could occur in the project vicinity. See page 3-8 in Chapter 3.
DFW-8	Text has been revised to indicate passive exclusion will not be conducted during the breeding season. See page 3-8 in Chapter 3.

CALIFORNIA STATE LANDS COMMISSION
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Established in 1938

JENNIFER LUCCHESI, Executive Officer
(916) 574-1800 Fax (916) 574-1810
California Relay Service TDD Phone 1-800-735-2929
from Voice Phone 1-800-735-2922

Comment: SLC

Contact Phone: (916) 574-1890

May 17, 2021

File Ref: SCH #2020100145

Ms. Karen Dulik
California Department of Water Resources
South Central Region Office
3374 E. Shields Avenue
Fresno, CA 93726

SENT VIA ELECTRONIC MAIL ONLY (Karen.Dulik@water.ca.gov)

Subject: Comments on Draft Environmental Impact Report (EIR) for the Milburn Pond Isolation Project, Fresno County

Dear Ms. Dulik:

The California State Lands Commission (Commission) staff has reviewed the Draft EIR for the Milburn Pond Isolation Project (Project), which is being prepared by the Department of Water Resources (Department). The Department, as the public agency proposing to carry out the Project, is the lead agency under the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.). The Commission is a trustee agency for projects that could directly or indirectly affect State sovereign land and their accompanying Public Trust resources or uses. Additionally, because the Project involves work on State sovereign land, the Commission will act as a responsible agency. A letter was previously submitted to the Department on the Project's Notice of Preparation on November 6, 2020, and Commission staff requested consultation on preparation of the Draft EIR as required by CEQA section 21153, subdivision (a), and the State CEQA Guidelines section 15086, subdivisions (a)(1) and (a)(2). No such consultation occurred.

SLC-1

Commission Jurisdiction and Public Trust Lands

The Commission has jurisdiction and management authority over all ungranted tidelands, submerged lands, and the beds of navigable lakes and waterways. The Commission also has certain residual and review authority for tidelands and submerged lands legislatively granted in trust to local jurisdictions (Pub. Resources Code, §§ 6009, subd. (c); 6009.1; 6301; 6306). All tidelands and submerged lands, granted or

SLC-2

ungranted, as well as navigable lakes and waterways, are subject to the protections of the common law Public Trust Doctrine.

As general background, the State of California acquired sovereign ownership of all tidelands and submerged lands and beds of navigable lakes and waterways upon its admission to the United States in 1850. The state holds these lands for the benefit of all people of the state for statewide Public Trust purposes, which include but are not limited to waterborne commerce, navigation, fisheries, water-related recreation, habitat preservation, and open space. On tidal waterways, the State's sovereign fee ownership extends landward to the ordinary high water mark, as generally measured by the mean high tide line, except for areas of fill or artificial accretion or where the boundary has been fixed by agreement or a court. On navigable non-tidal waterways, including lakes, the state holds fee ownership of the bed of the waterway landward to the ordinary low-water mark and a Public Trust easement landward to the ordinary high-water mark, except where the boundary has been fixed by agreement or a court. Such boundaries may not be readily apparent from present day site inspections.

SLC-2
cont.

The modification of existing berms along the northeastern portion of Milburn Pond and both adjacent to and within the River appear to be within Commission jurisdiction and will require a lease with the Commission. These comments are made without prejudice to any future assertion of State ownership or public rights, should circumstances change, or should additional information become available, and are not intended, nor should they be construed as a waiver or limitation of any right, title, or interest of the State of California in any lands under its jurisdiction. The lease application is available online at <https://www.slc.ca.gov/leases-permits>. If you have any questions specific to jurisdiction or lease, please contact Kelly Connor, Public Land Management Specialist II (contact information provided below).

Project Description

The Department proposes to isolate the abandoned gravel pit known as Milburn Pond to reduce the movement of non-native warmwater fish species into the San Joaquin River and to reduce the movement of native salmonids into the pond.

From the Project Description, Commission staff understands that the Project would include the following components that have potential to affect State sovereign land:

SLC-3

- **Berm Modifications**. The Project would fill existing berm breaches, strengthen weaker sections, raise the elevation of low-berm sections, and construct an equalization saddle. All these activities would occur along the north side of Milburn Pond, Pond 1, and Pond 2.
- **High Flow Channel Alignment**. The side channel would be 2,000 feet long and 150 feet wide, beginning inundation when the San Joaquin river flows exceed 4,000 cubic feet per second.
- **Erosion Measures**. The Project would include rock slope protection and biotechnical measures.

- Delineation Measures. The Project could include fencing, signage, and gates along currently unfenced portions of the San Joaquin River Ecological Reserve.

SLC-3
cont.

The Draft EIR identifies the proposed Project as the Environmentally Superior Alternative.

Environmental Review

Commission staff requests that the Department consider the following comments on the Project’s Draft EIR, to ensure that impacts to State sovereign land are adequately analyzed for the Commission’s use of the Draft EIR to support a future lease approval for the Project.

SLC-4

General Comments

1. Public Agency Approvals: Please have the Final EIR identify the Commission as both a CEQA responsible agency and a trustee agency. The DEIR only identifies the Commission as a trustee agency.

SLC-5

2. Deferred Mitigation: In order to avoid the improper deferral of mitigation, mitigation measures (MMs) must be specific, feasible, and fully enforceable to minimize significant adverse impacts from a project, and “shall not be deferred until some future time.” (State CEQA Guidelines, §15126.4, subd. (a)). When it is impractical or infeasible to develop the specific details of a mitigation measure during the EIR review process, the EIR should explain the reasons why it is impractical or infeasible, and the lead agency should commit to implement the mitigation, adopt a specified performance standard to be achieved by the mitigation, and identify the types of actions that may achieve compliance with the performance standard (State CEQA Guidelines, §15126.4, subd. (a)(1)(B)). For example, MM 3.5.1 requires the preparation of a relocation and monitoring plan to reduce the potential impact to Sanford’s arrowhead plant, without identifying a performance standard or clearly identified metrics that will be included in the plan to measure the efficacy of the measure in reducing the particular impact to a less than significant level. Recent case law continues to spotlight the importance of performance standards in properly formulated mitigation (*Save the Agoura Cornell Knoll et al. v. City of Agoura Hills et al.* (2020) 46 Cal.App.5th 665).

SLC-6

Commission staff requests that more specific information be provided in MMs 3.5.1, 3.5.3a, and 3.5.7 to demonstrate how the measures are going to mitigate potential significant impacts to less than significant.

Air Quality

3. Criteria Pollutant Mitigation: Mitigation Measure 3.4.2a requires the Department to reduce criteria pollutants for specific construction equipment and account for the reduction via San Joaquin Valley Air Pollution Control District’s (SJVAPCD) Rule 9510. However, the MM is lacking information as to how the reductions will occur.

SLC-7

This information is needed so that the public and other agencies can see if the proposed measure would be feasible mitigation. Mitigation Measure 3.4.2b is a good example of the level of appropriate detail.

SLC-7
cont.

Commission staff also recommends that MM 3.4.2b, a bulleted list of all SJVAPCD actions required under Regulation VIII for fugitive dust, be revised to clearly identify those measures that are related to the Project activities.

Biological Resources

4. Western Pond Turtle: Mitigation Measure 3.5.2 requires pre-construction surveys for aquatic, basking, and if relevant, nesting habitat for Western pond turtles that would occur 10 days before construction activities begin. Commission staff notes that Western pond turtles may come into the Project area from the adjacent river or other portions of Milburn Pond at any point during the 10-day period or even overnight during construction. Staff therefore recommends that MM 3.5.2 also include daily morning surveys prior to construction activities to ensure a less-than-significant impact.

SLC-8

5. Burrowing Owl: Mitigation Measure 3.5.3a establishes pre-construction surveys for burrowing owl burrows. If an occupied burrow is found, appropriate buffers would be set in consultation with the California Department of Fish and Wildlife (CDFW). However, the Draft EIR does not discuss what happens if an occupied burrow is discovered, and the Project cannot establish adequate buffer distances as required by CDFW. MM 3.5.3a notes that "[i]f it is not feasible to implement a buffer of adequate size and it is determined, in consultation with CDFW, that passive exclusion of owls from the area of direct disturbance is an appropriate means of minimizing impacts, an exclusion and passive relocation plan shall be developed and implemented in coordination with CDFW." Please see Commission staff's comment 2, above, regarding plan development without specific activities or performance criteria. Finally, Commission staff recommends that the last sentence in MM 3.5.3a be revised so that passive exclusion will NOT be conducted during the breeding season unless the birds have not begun egg laying or juveniles from the burrows are foraging and capable of independent survival.

SLC-9

6. In-Water Work Impacts: Page 3-69 acknowledges that various special-status species have the potential to occur in the Project area segment of the San Joaquin River, but that the impact is less than significant because: 1) the Project would occur during the dry season, 2) the disturbance acreage is small, and 3) in-water work associated with the upstream and downstream high-flow side channel connections would be minimized. However, the Draft EIR fails to provide further information or designs to demonstrate that having special-status species present would still result in a less than significant impact. Please clarify the types of activities occurring within the San Joaquin River to confirm the document's impact determination.

SLC-10

7. Riparian Vegetation Removal: Mitigation Measure 3.5.7 would develop a Habitat Restoration and Enhancement Plan in coordination with CDFW. Offsite

SLC-11

compensatory mitigation would be considered if on-site riparian habitat could not have increased acreage or improved ecological function. Please see Commission staff's comment 2, above, regarding plan development without specific activities or performance criteria. In addition, the offsite compensatory mitigation includes the possibility of enhancing or preserving riparian habitat elsewhere. Commission staff recommends that MM 3.5.7 be revised to only include creation or restoration of other riparian habitat, in accordance with the Court's decision regarding agricultural conservation easements (another form of preservation) in *King and Gardiner Farms, LLC v. County of Kern et al.* (2020) 45 Cal.App.5th 814. The Court decided that "[e]ntering into a binding agricultural conservation easement does not create new agricultural land to replace the agricultural land being converted to other uses. . . . The absence of any offset means a project's significant impact on agricultural land would remain significant after the implementation of the agricultural conservation easement."

SLC-11
cont.

Tribal Cultural Resources

8. Tribal Outreach: The Draft EIR notes that the Department sent one letter to each potentially affected Tribe, as identified by the Native American Heritage Commission, and has received one response as of the document's publication. Commission staff notes that the letter was mailed during an escalating COVID-19 crisis when many businesses and other organizations were shut down under shelter-in-place orders, and recommends that the Department reach out once more prior to Final EIR certification. This would ensure that potentially affected Tribes have the opportunity to comment on potentially significant impacts or provide input on mitigation measures.

SLC-12

9. Unanticipated Discovery: Mitigation Measure 3.6.1a states that unanticipated discovery of historical or archaeological resources would require the Department to develop and implement "appropriate protection and avoidance measures, where feasible." This measure purports to address a potential impact but does not appear to create an enforceable condition that reduces the impact's severity. A mitigation measure must minimize significant adverse impacts and be fully enforceable through permit conditions, agreements, or other legally binding instruments (CEQA Guidelines, §15126.4, subs. (a)(1) and (a)(2)). By including the phrase "where feasible", MM 3.6.1a is no longer an enforceable condition that would minimize the adverse impact. Commission staff recommends that the Final EIR state objective standards to define what is or is not "feasible," present alternate mitigation that can be used when the primary mitigation is not feasible, or analyze the Project activities as if those measures were not implemented to ensure that the worst-case scenario is evaluated.

SLC-13

In addition, Commission staff requests that MM 3.6.1a require preparation of an Unanticipated Discoveries Evaluation and Treatment Plan that includes a process for determining what procedures would be implemented for discoveries that cannot be protected in place.

10. Tribal Monitoring: Mitigation Measure 3.6.1a requires the Department to retain an archaeologist to assess any unanticipated discovery. It appears that this archaeologist would determine whether the resource was of Native American origin, and then potentially affected Tribes would be contacted. Commission staff recommend that monitoring be provided during Project-related ground disturbance activities, and requests that MM 3.6.1a be modified to require an archeological and a Tribal monitor (if requested by a culturally affiliated Tribe) onsite.

SLC-13
cont.

Hazards and Hazardous Materials

11. Spill Prevention and Control: Please have MM 3.9.1 provide more information regarding the Spill Prevention Control and Countermeasures Plan as it relates to in-water activities and impacts to the San Joaquin River. The Final EIR should identify how the spill will be controlled or remediated and provide examples of the technology or activities to be used.

SLC-14

Thank you for the opportunity to comment on the Draft EIR for the Project. As a responsible and trustee agency, Commission staff will need to rely on the Final EIR for the issuance of any new lease as specified above and, therefore, we request that you consider our comments prior to certification of the EIR.

Please send copies of future Project-related documents, including electronic copies of the Final EIR, Mitigation Monitoring and Reporting Program, Notice of Determination, and CEQA Findings when they become available. Please refer questions concerning environmental review to Alexandra Borack, Senior Environmental Scientist, at (916) 574-2399 or Alexandra.Borack@slc.ca.gov. For questions concerning archaeological or historic resources under Commission jurisdiction, please contact Jamie Garrett, Staff Attorney, at (916) 574-0398 or Jamie.Garrett@slc.ca.gov. For questions concerning Commission leasing jurisdiction, please contact Mr. Kelly Connor, Public Land Management Specialist II, at (916) 574-0343 or Kelly.Connor@slc.ca.gov.

SLC-15

Sincerely,



Nicole Dobroski, Chief
Division of Environmental Planning
and Management

cc: Office of Planning and Research
K. Connor, Commission
A. Borack, Commission
L. Calvo, Commission

California State Lands Commission

May 17, 2021

Comment Code and Number	Comment Response
SLC-1	<p>Text has been updated to specify SLC is a CEQA responsible agency, as well as a trustee agency; see page 3-1 in Chapter 3. GEI Consultants, Inc. staff, on behalf of DWR, consulted with SLC staff during preparation of the Draft EIR concerning records of shipwrecks that could occur in the project area. As there were no notable changes to the project description or other important developments to discuss with SLC staff during preparation of the Draft EIR, additional consultation did not occur. However, DWR will consult with SLC regarding the need for a lease authorizing encroachment onto land under SLC jurisdiction.</p>
SLC-2	<p>Comment noted; no further response is required.</p>
SLC-3	<p>Comment noted; no further response is required.</p>
SLC-4	<p>DWR has considered all SLC comments on the Draft EIR, as specified in the following responses.</p>
SLC-5	<p>Text has been updated to specify SLC is a CEQA responsible agency, as well as a trustee agency.</p>
SLC-6	<p>Mitigation Measure 3.5.1 (Minimize Potential Loss of Sanford’s Arrowhead) requires DWR to develop and implement a relocation plan that includes the specific components identified in the mitigation measure if plants would be impacted. This plan would be written and implemented in consultation with DFW, as both a regulatory agency and the landowner. To ensure relocation would succeed, DWR would work with DFW on the length of time for monitoring and the location for moving the plants. This would require a separate Memorandum of Understanding for accessing the San Joaquin River Ecological Reserve. Because this species was not positively identified in the project footprint at the time of release of the EIR, this consultation has not been completed and is ongoing. If individuals are found during focused surveys required prior to project construction, DWR will work with DFW to develop and implement the relocation plan. To address SLC concerns, Mitigation Measure 3.5.1 has been revised to specify a performance standard by which efficacy would be measured; see page 3-6 in Chapter 3.</p> <p>Mitigation Measure 3.5.3a (Conduct Focused Surveys for Burrowing Owls and Avoid Loss of Occupied Burrows and Failure of Active Nests) requires specific measures to avoid impacts on burrows occupied during the nest season and compensate for loss of any occupied burrow that may</p>

need to be destroyed. This measure has been revised to specify that the exclusion plan developed in consultation with DFW will include components identified in Appendix E of the Staff Report on Burrowing Owl Mitigation (DFG 2012); see page 3-8 in Chapter 3.

Mitigation Measure 3.5.7 (Minimize Riparian Vegetation Removal and Compensate for Unavoidable Removal) requires no net loss of riparian habitat function or acreage. This measure has been revised to specify that mitigation will be implemented within the affected watershed; see page 3-9 in Chapter 3.

SLC-7

Mitigation Measure 3.4.2a (Implement Construction Equipment Nitrogen Oxides and Particulate Matter Controls) has been revised to indicate potential means of meeting the required exhaust emission reductions; see page 3-2 in Chapter 3. Construction emissions may be reduced onsite by using add-on controls, cleaner fuels, or newer lower emissions equipment, thus generating less pollution. Additional strategies for reducing construction emissions may include:

- Providing sufficient commercial electric power to the project site to avoid or minimize the use of portable electric generators.
- Substituting electric-powered equipment for diesel engine-driven equipment.
- Limiting the hours of operation of heavy-duty equipment and/or the amount of equipment used at any one time.
- Minimizing idling time (e.g. 10 minute maximum).
- Replacing equipment that uses fossil fuels with electrically driven equivalents (if they are not run via a portable generator set).

Mitigation Measure 3.4.2b (Implement San Joaquin Valley Air Pollution Control District Regulation VIII Fugitive PM10 Prohibitions Best Management Practices) has been revised to specify which SJVAPCD measures required under Regulation VII apply to the proposed project; see pages 3-2 and 3-3 in Chapter 3.

SLC-8

Mitigation Measure 3.5.2 (Minimize Potential for Death and Injury of Western Pond Turtle) has been revised to require daily wildlife monitoring during construction, including a survey of the site and equipment for potential wildlife prior to the start of work each day; see page 3-7 in Chapter 3.

SLC-9

Mitigation Measure 3.5.3a (Conduct Focused Surveys for Burrowing Owls and Avoid Loss of Occupied Burrows and Failure of Active Nests) has been revised to indicate that passive exclusion will NOT occur during the breeding season. As indicated above in response to SLC 2, the measure has been augmented to specify that the exclusion plan developed in

consultation with DFW will include components identified in Appendix E of the Staff Report on Burrowing Owl Mitigation (DFG 2012). See revisions on page 3-8 in Chapter 3

- SLC-10 Page 3-69 of the Draft EIR specifies that in-channel work would be limited to approximately 0.3 acre and would occur when water levels are low. Therefore, the extent of work in inundated areas where special-status species could be present would likely be even smaller. As stated in the impact conclusion, based on the timing of the work and habitat conditions, very few individual native fishes are anticipated to be impacted, and impacts would primarily be associated with temporary displacement to similar adjacent habitat. This anticipated extent and level of potential disturbance of habitat and individuals of special-status species constitutes a less-than-significant impact.
- SLC-11 As indicated above in response to SLC 2, Mitigation Measure 3.5.7 (Minimize Riparian Vegetation Removal and Compensate for Unavoidable Removal) requires a performance standard of no net loss of riparian habitat function or acreage and has been revised to specify that mitigation must occur within the affected watershed. The measure has also been revised to exclude off-site habitat preservation. Off-site enhancement is retained, however, because much of the riparian habitat in the San Joaquin River watershed is infested with nonnative species or otherwise degraded, and enhancement of such habitat would be a meaningful form of compensation that could effectively contribute to ensuring no net loss of habitat function.
- SLC-12 Comment noted. DWR will take this into consideration.
- SLC-13 Mitigation Measure 3.6.1a (Implement Procedures for Inadvertent Discovery of Cultural Material) specifies that if avoidance is not possible, any necessary treatment/investigation will be developed in coordination with interested Native American Tribes providing recommendations to DWR and completed before project activities continue in the vicinity of the find. Given the numerous uncertainties of a potential inadvertent discovery, it is not realistic to define what is or is not feasible in advance. Because treatment/investigation is included in the measures, an alternative mitigation is available, if avoidance is not feasible. The measure already requires development of an inadvertent discovery plan before construction begins and implementation in the event of a discovery during project construction, however, Mitigation Measure 3.6.1a (Implement Procedures for Inadvertent Discovery of Cultural Material) has been revised to specify that the plan will include a process for determining what procedures would be implemented for discoveries that cannot be protected in place; see page 3-10 in Chapter 3.

Because of past disturbance to this area, the potential for archaeological resources is extremely low; however, DWR would have an awareness training that includes cultural issues. If necessary, an archaeological monitor would be onsite during ground disturbance, and although no Tribe has made the request to have monitors on-site, if a request were to be made, DWR would allow a tribal monitor to be present during ground-disturbing activities. Mitigation Measure 3.6.1a (Implement Procedures for Inadvertent Discovery of Cultural Material) has been revised to indicate this; see page 3-10 in Chapter 3.

SLC-14

For DWR projects, the Spill Prevention Control and Countermeasures Plan is a required submittal for the contractor. If a spill were to occur, work would stop, and the spill would be addressed immediately. Some examples of protection would be the use of booms, including deflection booms, to contain the oil or, more likely, a sorbent boom to absorb any oil or other spill. Most equipment would be limited to use on land. Any equipment used in the water would be limited to not go above the hubs of the tires (DFW requirement) or be equipped with biodegradable oils. Additionally, specific requirements in any permits acquired would be included in the Spill Prevention Control and Countermeasures Plan. Mitigation Measure 3.9.1 (Implement a Spill Prevention Control and Countermeasures Plan and Other Measures to Reduce the Potential for Environmental Contamination during Construction Activities) has been revised to include this additional information; see page 3-10 in Chapter 3.

SLC-15

DWR has considered all SLC comments in development of this Final EIR. Copies of the Final EIR, Mitigation Monitoring and Reporting Program, NOD, and CEQA Finding will be made available to SLC.

Comment: DBMI

On 5 April 2021 at 14:04 I received a phone call from Dirk Charley, member of the Dunlap Band of Mono Indians, on the Milburn Pond Isolation Project. He spoke with John Shelton of the San Joaquin River Conservancy recently and wanted to offer his thoughts. He wanted to let the Department know that the best consultation for tribes in this area of the San Joaquin River is with the Dumna Wo-wah Tribe and Table Mountain Rancheria. The Dunlap Band of Mono Indians did not have any comments.

DBMI-1

DBMI-2

He was in favor of the project. He also wanted to share that if there are any inadvertent discoveries, the Department should reach out to the Yokuts Nation, they would be the most likely descendants in this area.

DBMI-3

Karen Dulik

Dunlap Band of Mono Indians

April 5, 2021

Comment Code and Number	Comment Response
DBMI-1	As indicated on page 3-86 of the Draft EIR, DWR sent a letter inviting the Dumna Wo-wah Tribe and Table Mountain Rancheria to consult with DWR regarding the project, under DWR's Tribal Engagement Policy. Neither Tribe responded to the letter.
DBMI-2	Comment noted; no further response is required.
DBMI-3	DWR notes that the Dunlap Band of Mono Indians considers the Yokuts Nation the Most Likely Descendant and recommend they be contacted in the event of an inadvertent discovery. As indicated in Mitigation Measure 3.6.2 (Avoid Potential Effects to Previously Unknown Human Remains) of the Draft EIR, DWR will coordinate with the Native American Heritage Council regarding identification of the Most Likely Descendant (s), if an inadvertent discovery of Native American human remains is made on the project site during project-related construction activities or project planning.

Comment: SJRA

SAN JOAQUIN RIVER ASSOCIATION, INC

1625 Howard Rd #301 Madera CA 93637

A California Non-Profit Corporation

DIRECTORS:

Jon Basila, President

Robert Brewer, V-Pres.

Jeff Coulthard, Treasurer

Matt Diener

Louis Moosios II, Secretary

Frank Saviez

Mike Schafer

Brian Whelan

May 15, 2021

California Department of Water Resources

South Central Region Office

3374 E. Shields Ave

Fresno, CA 93726

Sent Via E-Mail (Karen.Dulik@water.ca.gov)

Re: Milburn Pond Isolation Project (State Clearinghouse No. 2020100145)

Dear Ms. Dulik:

On June 3, 1969, the San Joaquin River Association, a nonprofit Corporation, came into existence. From its inception, the San Joaquin River Association's purpose is and has been to protect and advance the interests (including protecting private property rights) of those affected by the flow of the San Joaquin River downstream of Friant Dam.

On behalf of the San Joaquin River Association, which has been recently apprised of the proposed project Milburn Pond Isolation Project (State Clearinghouse No. 2020100145), our board has discussed the matter and would like to weigh in on a less restrictive approach to solving the claimed problem that can hopefully assist in accommodating the diverse interests and competing concerns with minimal intrusion into the area.

In the first instance, we note that the proposal will very likely decimate the flora and fauna of the area and adversely impact the Madera side of the San Joaquin River as the erosion measures appear to be designed towards preserving the Fresno side to the detriment of the Madera side.

SJRA-1

SJRA-2

Our members are very concerned that the proposed modifications will give rise to higher turbidity levels and destruction of the Milburn Pond as we have seen with other ponds that have similarly placed "French drains."

The French drain system that was used at Sycamore Island Pond #46E and Palm and Nees, for instance, has failed in several ways. The watercolor difference between the river and the ponds, separated by French drains, reflect an unhealthy habitat plagued by mosquito infestation and extreme algae growth. Because the French drains isolate the water, they cause rotting algae and bacteria which can be transmitted through the air which adversely affect those who live and work in the area. The stagnant water is unpleasant to smell and unpleasant to the surrounding waters. This is, in effect, what will happen with the Milburn Pond on a much larger scale if the proposed action should be taken.

SJRA-2
cont.

As for the DWR's proposed alternative, the proposed DWR alternative to allow flow, and legal public navigation, a design which consisted of a road with screened culverts and a hinged screen for boat navigation, would only work during low flows. The design as a road first then an isolation design second accompanies an estimated cost of \$25 million. This proposal is very concerning, expensive, and will still have the net negative impact to the area and property values.

SJRA-3

There are less restrictive alternatives that do not include paving through the high and low water marks which by all appearances violate the California Constitution's prohibition against such action. (The proposed action requires obstruction of the free navigation through the high and low water marks of the river which violates California State Constitution, Article 10, Section 4 and contravenes California's basic public trust doctrine. Further, because the waterway that has been actively used for the last twenty years for ingress and egress through the River, the Pond is indeed a water way. See California Harbors & Navigation Code, Section 100: "Navigable waters and all streams of sufficient capacity to transport the products of the country are public ways for the purpose of navigation and of such transportation.")

SJRA-4

The San Joaquin River Association posits that at a cost of not more than \$50,000, which the Association would happily assist in raising, an efficient net could be designed and implemented to protect against the salmon entering the Milburn pond. This net design consists of a fish sein of appropriate size which would allow water to pass while isolating fish movement between river and Milburn area. The sein's weight line on the bottom and floats on top would allow boats to simply float over. The sein's height at tallest point should be 14' but could raise and lower from 0' to 14' depending on water flow fluctuations/changing water surface elevations and would expand and contract like an accordion. This alternative would not have any significant impact or require mitigation measures. All material and work could be done via watercraft at a comparatively nominal cost.

SJRA-5

The San Joaquin River Association respectfully submits that this is a common-sense approach to solving the claimed problem, and that this approach does not involve millions of dollars of taxpayer money that ultimately will harm one of our most precious resources in the Central

Valley. Minimally, this option should be explored to ascertain its efficacy before converting the San Joaquin River into a canal at the proposed location and destroying the Milburn Pond.

SJRA-5
cont.

Respectfully submitted on behalf of the Board of Directors of San Joaquin River Association, Inc.

San Joaquin River Association, Inc.
Jon Basila, President
Email: sjra@sjriver.com
P. O. Box 456
Madera CA 93637

San Joaquin River Association

May 15, 2021

Comment Code and Number	Comment Response
SJRA-1	Comment noted; no further response is required.
SJRA-2	See Master Response 5. The modified French drain that would be installed for the proposed project is different from the French drain that was installed for the Sycamore Island Pond Isolation Project.
SJRA-3	See Master Responses 3 and 7. The alternative described in the comment is not the proposed project. No fish screens are proposed, and the proposed project is estimated to cost a fraction of the amount cited in the comment.
SJRA-4	See Master Response 6.
SJRA-5	See Master Response 4.

Comment: S3 Group

Karen Dulik
Environmental Program Manager
California Department of Water Resources
South Central Region Office
3374 E. Shields Avenue
Fresno, CA 93726

May 11, 2021

Via email and U.S. Mail

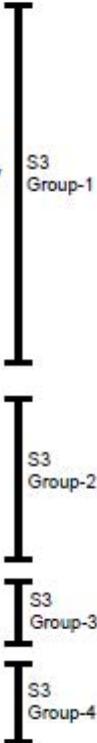
RESPONSE TO NOTICE OF PREPARATION FOR
THE MILBURN PROJECT ENVIRONMENTAL
IMPACT REPORT

Ms. Dulik,

This letter is written on behalf of S3 Group, LLC, owners of approximately 90 acres in Fresno County, with a street address of 7855 N. Valentine Avenue, Fresno, CA 93711.

This property includes an existing residence, out buildings and approximately 90 acres of walnuts and pistachios. The subject property is depicted on the attached maps. The S3 Group, LLC property is contiguous to the proposed Millburn Pond Isolation Project (Project). This letter is written more in the form of a request for information and clarification of the impact this Project may have on this S3 Group, LLC property rather than Project objection at this stage. We have the following thoughts and questions:

- While our client provided you with temporary access, what are the proposed plans for long term access to the Project site?
- Will the long-term access require crossing any portion of our client's property and, if so, with what kind, and frequency, of traffic would be involved?
- What would be the height and location of the proposed berms that are referenced?
- Also, we would like to know the height, type, and location of proposed fencing for the property.



- What is the possibility of flooding any portion of the S3 Group, LLC property as a result of the improvements you propose with this Project?
- The S3 Group, LLC property has both operational wells and rights to divert riverwater from the San Joaquin River. Does this proposed Project have rights to a water supply?
- Would the Project have an interest in some of the right to water from the S3 Group property? If so, please advise the quantity and timing for that need.
- Because of the client's right to divert water from the river system, we would like to work together on this, including withdrawing any water from the Project area.

S3
Group-5

S3
Group-6

We look forward to better understanding and working on this together for the benefit of your project and our S3 Group, LLC property.

Respectfully submitted,



Austin Ewell
Attorney at Law
President, Ewell Group
735 W. Alluvial Avenue Ste. 103
Fresno, CA 93711
Tel 559 437 1990
Fax 559 437 1992

CC: S3 Group, LLC c/o Lakhvir Sran
A. Ben Ewell, Jr.

Comment Code and Number	Comment Response
S3 Group-1	Comment noted; no further response is required.
S3 Group-2	DWR will not request long-term access to the project site, but may request access during the construction phases. Construction is expected to take one to two construction seasons, typically during summer and fall months, and may occur within the next 4 years. During this period, access for construction equipment and construction personnel vehicles may be requested. Occasional access over the longer term may be requested to allow monitoring and maintenance of the project features, although access from Milburn Avenue will also presumably be available as an option.
S3 Group-3	Figure 2.4 on page 2-7 of the Draft EIR shows the location of berms that would be constructed along the north side of Milburn Pond. The berms generally span from the northwest corner of S3 Group's property adjacent to Pond 2 to the northwest corner of Milburn Pond. The heights vary but would be similar to existing berm sections, with a crown 3 feet above the 8,000 cfs water surface elevation.
S3 Group-4	Fencing design is still under development but is likely to be similar to existing fencing around the ecological reserve, which is typically barbed wire or field fencing. Locations are expected to follow the boundary between ecological reserve lands and adjacent private lands. The location of the fencing is shown on Figure 2.4 (page 2-7) in the Draft EIR. DFW as the landowner would be consulted on the type of fencing and final height; the fencing would meet DFW requirements for wildlife passage.
S3 Group-5	Flood levels in the river would not increase with the project according to hydraulic model output.
S3 Group-6	DWR anticipates the contractor will need to supply water for dust control during construction, but the contractor will be responsible for obtaining a water supply and DWR will not identify or negotiate it on their behalf. Once the project is constructed it will be turned over to DFW as their property, and DFW will operate and maintain it as part of the Ecological Reserve maintenance operations already in place. Any water DFW uses for maintenance would not be part of the project. Withdrawal of water from the project area by S3 Group is outside of the scope of this project and is something that should be coordinated with DFW as the landowner.

Comment: Carlton

From: [Matt Carlton](#)
To: [Dulik, Karen@DWR](#)
Subject: Fwd: Milburn pond
Date: Sunday, May 16, 2021 7:16:48 PM

Sent from my iPhone

Begin forwarded message:

From: Matt Carlton <pjmattc@gmail.com>
Date: May 15, 2021 at 12:55:31 AM PDT
To: Matt <pjmattc@gmail.com>
Subject: Milburn pond

Hi there, my name is Matt Carlton, and I have learned about the closure that is being talked about for what we call Milburn Pond. While I am not an environmentalist or a scientist, I'm a business owner in Fresno, and I live in Madera. I have spent many many years on this stretch of the San Joaquin River with my kids and friends making memories that will last their lifetime. Over the years I've seen failed San Joaquin River restoration projects do their very best to destroy a beautiful part of our state. We used to fish for trout, but now the trout are no longer because the state and environmentalists have tried to say 5 to 6 fish a year, which has ruined a good part of the northern San Joaquin River below Friant Dam. While the state spends millions and millions on a handful of fish they turn around and foolishly allow the homeless to live in the riverbottom, vandalize property the riverbottom, pollute the river, and lower the quality of life for the river and the people who use it to recreate. So my letter is going to you with low expectations. There are several landowners and people who frequent the riverbottom who know the history and have solutions that can, and will push forward and accomplish the desired goals without ruining a truly unique and beautiful part of the state. There are a lot of people fleeing California, and decision making in policy such as this one of the factors. Those of us who like to fish, hunt, boat, and swim are not bad people. We believe the outdoors should be accessible and available to those who wish to use it and should not be locked up in a ridiculous attempt to save fish that have to be transported by truck, and essentially have no value toward restoring a run, but instead taking away from what the river has become in the last 60 years. Don't listen to me because again I don't have a science for the education I'm just a normal guy, with a normal family, and just hates to see bad policy ruining the state I love and was born in, I'll send a few photos that I always keep in my phone and another email where you can see how me, my family, just normal people enjoy the river bottom as it's managed today. Thank you for your time. Matt Carlton. 559-930-2138 if you have any questions

Carlton-1

Sent from my iPhone

Matt Carlton
May 16, 2021

Comment Code and Number	Comment Response
Carlton-1	Comment noted; no further response is required.

Comment: De Prima

From: [Emil](#)
To: [Dulik, Karen@DWR](#)
Subject: FW: Millburn Pond Enclosure
Date: Tuesday, May 11, 2021 2:55:14 PM

Sent from [Mail](#) for Windows 10

From: [Emil](#)
Sent: Tuesday, May 11, 2021 2:47 PM
To: [Karen Dulik](#); [Louis](#)
Subject: Millburn Pond Enclosure

Dear Karen- This e-mail is a response on my part, as how I feel about the States future proposal to “ dam” the Millburn Pond from the natural flowing San Joaquin River. I have lived in Fresno all my life, and since childhood have enjoyed the benefits of living so close to a natural wonder(The 2nd largest river in Calif). I have fished, explored, hiked, photographed,waded and swam in this beautiful gem of a river. Now I understand there is a proposal to dam off Millburn Pond from the rest of the river. The main reason, I understand, is to protect the survival of the “ ghost” salmon in the river... For your knowledge , as a child I watched my father and grandfather spear salmon in the river before Friant Dam was built. To this day I still have a spear in my possession that was used to do such. This is testimony to the fact that as the river ran wild, the salmon run was something that really happened. As our forefathers sought a way to conserve the precious water that flowed from the Sierra’s , Friant Dam was built.. From that day forward the natural salmon run diminished to a point, past, that no more salmon ever migrated from the ocean to their natural spawning beds.. I sincerely believe with climate change, and water restriction the efforts to mitigate a salmon run will never again happen as it did in many years past... Therefore I believe to dam Millburn Pond in the interest to protect the “ so called” future of a salmon is a gross mistake on all agencies involved. I have read a alternate proposal, using flutable fish sein that would inhibit movement of fish species from the river to the pond and vice versa. This is a very viable alternate and very less costly than the dam proposal. I think the DEIR should validly consider this alternate solution.

Sent from [Mail](#) for Windows 10

I have had the opportunity to use San Joaquin River Guide Service as a way to explore and navigate the River, as I do not get along very well in my old age(80 Yrs)... My guide, Louis Moosios , is the most knowledgeable person I have ever met when it comes down to water knowledge. He knows the river so well , he can navigate a boat in the dark without coming any way near a hazard. The State should definitely heed his immense knowledge about the river and use his alternate solution.... IT would be less costly , more environmentally friendly and serve the purpose, in favor of all those interested in this future proposal...Thank you for your consideration... If need be , I can be contacted for my comments: Emil De Prima. Ph 960-0382

De Prima-1

De Prima-2

De Prima-3

Emil De Prima

May 11, 2021

Comment Code and Number	Comment Response
De Prima-1	Comment noted; no further response is required.
De Prima-2	See Master Response 2.
De Prima-3	See Master Response 4.

Comment: George

Ms. Karen Dulik
California Department of Water Resources
South Central Region Office
3374 E. Shields Ave.
Fresno, Ca. 93726
Sent email) Karen.Dulik@water.ca.gov

Re: Milburn Pond Isolation Project (State Clearing House 2020100145)

Dear Ms. Dulik

I'm writing in regards to my concerns, and comments about the Milburn Pond Isolation project, after just recently finding about it.

My name is Roger George and I've been involved with the San Joaquin river area in one way or another since 1965. First as an avid young angler fishing the many ponds and backwaters (Milburn Pond) of the riverbottom , then later as the Fresno Bee's weekly Fishing Columnist with " Rogers Remarks" for the last 9 plus years. I'm also the Bee's Fishing Report editor- doing one of the largest fishing reports in California I'm also the sole official Millerton and San Luis State Parks fishing guide for the last 5 years. Early on , I was involved with promoting the San Joaquin River Restoration Project . I felt it seemed to be a great idea for more access , while preserving the incredible ecological diversity of the river bottom. A win win scenario if it was carried through as advertised I've always felt that the whole San Joaquin river bottom was a "jewel" that needed to be carefully maintained, but it's been obvious for many decades to those familiar with the river - that the Milburn Pond area was the undisputed " Crown Jewel" of the waterway. When I heard that there were efforts to isolate this unique area and that it was all due to the " possible" predation of any passing salmon through that area, I became concerned. Seemed that the river goals were being changed behind the scenes with "new outcomes" taking precedent over ecological goals- that weren't part of the original " keep it untouched " guidelines I had signed up for .

George-1

When I realized the plans were designed to isolate a now navigable area and put in a massive berm to keep a key part of the river from impacting any potential salmon from possible predation , it became evident to me that this kind of planning for the Milburn Pond would destroy the very untouched quality of the Pondering area. Milburn has been very carefully protected for a long time- but now let's change everything? Unconscionable

George-1
cont.

Putting in a huge berm is the very antithesis of what the planning for this area should be. Promoting access to the area while destroying its very ecological essence is counterproductive and wrong headed. A massive berm would completely change the very nature of the river. Unchanged? This idea needs to be carefully rethought with a top level consideration given to the preservation of a special environmental area . Barging ahead on a huge project that anticipates a salmon fishery that's yet to develop, during a long term drought, with no new anticipated water storage solutions to fuel a future run- all seem to be putting the horse before the cart. Additionally once it's done the impact will be irreversible.

It's been easy to see that the very lifeblood of the Milburn Pond area has been the flow of water into the pond from the cut in the levee on the main river. As I've witnessed on other ponds cut off from the river- Isolating the pond leads to one thing- algae and dead water. All the wildlife and fish leave the blighted area. The proposed plans to exercise such a massive change seem to be predicated on achieving an outcome that minimizes and discounts the preservation of this area , while making a major issue of keeping the predation of the salmon by the bass in a pondering area off the main river -a huge issue. Does that mean that all the backwaters and warm water fish in the river should also be removed. Seems to be the point. Destroying this whole area with a poor plan doesn't meet the smell test at all. Keeping the delicate , diverse and fragile environment that this area is known for- is a critical issue that needs to be addressed completely and clearly -before plans to protect a hopefully future fishery override this key directive.

George-2

I suggest that this project be completely rethought and considered. I feel that from what I've seen in the plans , and after talking to folks on the river who are carefully looking at the proposed project and it's true impact, this project needs much more input- as many projects do . There is too much at stake and too many unanswered outcomes .

We are dealing with a very fragile pristine ecosystem that's been preserved unchanged for many decades- this would be like taking a wrecking ball to it, hoping the plan worked . The proposed plan is overkill and irreversible and

flies in the face of the stated goals of the SJRRP. I also feel that due to COVID this last year that many folks have been out of touch more than usual with local issues. I know I certainly missed seeing this and getting on this sooner. Putting this project through under cover of darkness is not in the public's interest.

George-3

I don't have all the answers, but from what I understand I believe that there are certainly many other better ideas to be explored that could serve all of us better. Destroying an ecological preserve is the height of lunacy without a transcendent reason. Maybe one of those options is to do nothing for now while opening up more public comment. This is not the right plan, failing on many levels and it needs more input and thought before anything is done.

George-4

Questions:

1. Has the SJRRP gone from supporting the careful preservation of an ecologically sensitive preserve like Milburn Pond - to now suddenly allowing a massive project that completely changes everything - so there are no predator fish - according to the report. The very point of an ecological preserve is to keep its fragile balance intact. How does this huge project meet any ecological goals?
2. Is this entire project based on a top priority of keeping the bass etc in Milburn Pond from predating any salmon, putting the ecological preserve and its preservation as a very secondary goal.
3. If this kind of massive project is being done to remove possible warm water species from the Milburn Pond - will this same protocol be used throughout the river on other ponds? I would like to know

George-5

George-6

Thank you for your consideration

Roger George

Roger George

May 17, 2021

Comment Code and Number	Comment Response
George-1	Comment noted; no further response is required.
George-2	See Master Responses 2 and 3. The project area conditions are the result of decades of gravel mining followed by flood damage that connected the river to Milburn Pond approximately 26 years ago. As the landowner, DFW manages the area as an ecological reserve and supports pond isolation as part of that mission.
George-3	See Master Response 1. DWR met all CEQA requirements for noticing the public regarding this EIR during the public scoping period, holding a public scoping meeting via Zoom, and noticing the availability of the Draft EIR for public comment. DWR also notified interested parties during development of the initial evaluations in 2018, and public meetings at SJRC and WCB board meetings in 2019 included descriptions of the intended project and opportunities for public comment. It has never been DWR's intention to avoid or minimize public input to this project; to the contrary, DWR has invited public involvement from the initial project planning efforts and subsequently received many public comments on the proposed project, alternatives, and the Draft EIR.
George-4	DWR is not proposing to destroy the ecological reserve. DWR is working closely with DFW on this project as DFW is the landowner and operates and manages the ecological reserve in accordance with the Fish and Game Code.
George-5	See Master Response 2.
George-6	<p>The goal of this project is to prevent warmwater and predatory fish in Milburn Pond from entering the San Joaquin River, where they would prey on salmonids. Warmwater species would not be removed from the pond. As stated in the Draft EIR, one of the project objectives is to reduce movement of non-native fish from the pond to the river. DWR is not proposing to remove the pond habitat or the warmwater fish in it.</p> <p>As part of the SJRRP Program Environmental Impact Statement/EIR (Reclamation and DWR 2011), conservation measures were incorporated into the overall SJRRP Program. Conservation measure CVS-1 (i) (Central Valley Steelhead) states that: "The San Joaquin River channel shall be designed to decrease or eliminate predator holding habitat, in coordination with the NMFS."</p> <p>The SJRRP Salmon Conservation and Research Facility and Related</p>

Fisheries Management Actions Project EIR (SCH No. 2012111083) (DFW 2013) includes the potential for pond isolation projects in the upper reaches of the river below Friant Dam to reduce the potential predation of salmonids released into the river. DFW released the Draft EIR for public review in November 2013; the Final EIR was issued and the project was approved in June 2014. Two Addendums were written in 2016/2017 to include the Sycamore Island Pond Isolation Project.

Comment: Lester

TYLERH.LESTER | Attorney at Law

May 17, 2021

California Department of Water Resources
South Central Region Office
3374 E. Shields Ave
Fresno, CA 93726

Sent Via E-Mail (Karen.Dulik@water.ca.gov)

Ms. Dulik,

I am an attorney licensed to practice law in all state courts in the State of California. I write this letter in opposition to Milburn Pond Isolation Project. I do so on behalf of myself, and a group of concerned taxpayers. These taxpayers are California residents area for fishing, recreation, wildlife observation and for its scenic views. I am a resident of California. My principal residence is in Fresno.

Lester-1

GENERAL DESCRIPTION OF THE PROJECT: The proposed project would isolate the Milburn Pond from the San Joaquin River. The intended purpose is to increase native fish survival by reducing movement of non-native warmwater fish species from the pond to the river and movement of nativesalmonids from the river to the pond. However, no evidence has been provided that this pond is creating a problem for the salmonids. There are many reasons the Salmon project is failing. However, there is no evidence to establish that its failure is in any way related to the Milburn Pond. The idea that it is necessary to keep non-native warmwater fish species from entering the river is without merit. The river has large numbers of these non-native warmwater fish species.

Lester-2

PROCEDURAL OBJECTIONS AND EXTENSION OF COMMENT PERIOD: On behalf of myself, my clients, and the public at large, I respectfully request that you extend the comment period for an additional 45 days. The basis for an extension is based on the following: The notice provided by your office contains inaccurate information. The email address provided for you, Karen Dulik, Environmental Program Manager was incorrect. The notice states that public comments may be submitted to Karen Dulik and lists your email address as Karen.Dulik@water.co.gov. However, I am informed and believe that this is not your correct email address. I am informed and believe that your correct email address is Karen.Dulik@water.ca.gov. This error is extremely concerning as it is highly likely that members of the public have been unable to comment, or their comments will not be received due to this error. This failure to provide a correct email address is a violation of State CEQA Guidelines. Moreover, I am also informed and believe that the Draft Environmental Report was not available at the Fresno County Library. This is of great concern as members of the public have been unable to access the report and view attachments in person as promised. Further, I am informed at believe that South Central Regional

Lester-3

1233 W. Shaw Suite 100
Fresno, CA93711

Phone: 559-210-0320
Email: tlester@lesterlegal.net

Office located at 3374 E. Shields Ave. in Fresno is closed to the public. Therefore, individuals unable to email their comments would also be unable to deliver their comments and objections your office. I have attached a true and correct of the notice to this letter as attachment 1 and ask that it be incorporated by this reference. Further, we request additional time to allow for a thorough review of the detailed contents of the draft environmental impact report as required by section 15071 of the CEQA Guidelines. We were not given sufficient time to formulate a response. The notice states that Comments are due no later than 5 p.m. Pacific Daylight Time on Monday, May 17, 2021. In addition, we request an extension for public comment, as the notice (attachment 1) was not sent to, many of the individuals who use the area for recreation, own property on the San Joaquin River, or own property overlooking the Milburn Pond, and the owners of the golf course adject to the Millburn Pond. These individuals deserve to review the draft environmental impact report. Failure to provide these stake holders with notice violates their right to due process. I am informed and believe that these many of these individuals were not on notice.

Lester-3
cont.

STANDING: I have been accessing the Milburn pond from the San Joaquin for more than 10 years. I have been fishing and using the San Joaquin River for recreation for more than 35 years. My clients also use the Millburn Pond for recreation and fishing. The Milburn Pond is the most beautiful place in Fresno and the most magical place on the San Joaquin River. I was in the Millburn pond on March 20, 2021 of this year and saw three bald Eagles the Milburn Pond. I hope that they begin to use this as a nesting area in the future. I have been seeing more bald eagles on the river over the past few years. It is not uncommon to see large families of deer hidden away on one of several large islands. I have taken many people into the Milburn pond over the years, and they share a similar sentiment, they cannot believe they are in Fresno. I also have taken may out of town guests to the observation park over the Milburn Pond. It is a place that needs to be preserved and citizens deserve to have access to the area. The natural beauty of the area should not be disturbed.

Lester-4

PROPOSED FRENCH DRAINS HAVE BEEN PROVEN TO FAIL: I am aware of similar closures of parts of the San Joaquin River upstream from the Milburn Pond. I was once able to access these areas in my boat but am no unable to do so. They have been closed off using the same argument that has no basis in fact. When those projects were being proposed, California Department of Water Resources made similar promises regarding the effectiveness of the "French Drain". However, the "French Drains have proven to be a failure in the three ponds that were closed off near Palm and Nees. Attached hereto as Attachment 2 is a picture showing the difference between the clean blue water in the and the green stained water in the isolated ponds. There is no evidence that the Milburn Pond will not succumb to a similar fate. Therefore, the project will not only limit access to the pond to fisherman a nature enthusiast, but it will also destroy the views of the residents and sightseers above. The beautiful water will turn green as it did in the other ponds. This will also be harmful to the plants and animals in the area. If the algae get out of hand it will cause the oxygen to be reduced. The proposed "French Drains" will also cause the water levels in the Milburn Pond to be reduced. The reduction in the water levels in the Milburn would be harmful to the plants and animals. These areas in attachment 2 were not addressed by the draft EIR even though the projects are quite similar in design. Though the

Lester-5

Millburn area is significantly larger, and the impact of its failure will be significantly greater. There was not sufficient time to fully investigate this issue and consult with independent experts. Again, my clients and I request an extension for the public comment period for the reasons previously stated.

Lester-6

PUBLIC’S RIGHT TO ACCESS AND USE CALIFORNIA’S NAVIGABLE WATERS AND RIGHT TO FISH: The proposed project violates my constitutional and statutory rights, my clients’ constitutional and statutory rights, and the rights of the public at large. California’s promise to protect the public’s rights is also set forth in its constitution, statutes, and court decisions. The California Constitution directs the legislature to enact laws that broadly construe the public right to access and use state waters. Since 1879, the state Constitution has provided various additional protections for the public’s right to access and use the state’s navigable waterways. For example, Article X, section 4 states:

No individual or partnership, or corporation, claiming or possessing the frontage or tidal lands of a harbor, bay, inlet estuary, or other navigable water in this State, shall be permitted to exclude the right of way to such water whenever it is required for any public purpose, nor to destroy or obstruct the free navigation of such water; and the Legislature shall enact such laws as will give the most liberal construction to this provision, so that access to the navigable waters of this State shall always be attainable for the people thereof.

Additionally, Article I, section 25, adopted in 1910, protects the public’s right to fish upon and from state public lands and in the waters thereof and restricts the sale of state land without preserving access. Further, the right to fish has been held by the courts to constitute a privilege and subject to the state’s police powers to regulate. (See *Matter of Application of Parra*, 24 Cal. App. 33 (1914) and *Paladini v. Superior Court*, 178 Cal. 369 (1918).)

Under California law, the public has a general legal right to access and enjoy California’s navigable waterways at any point below the high-water mark. While there are several navigability tests under state and federal laws, a waterway is “navigable” for purposes of the California public right of navigation if it is “capable of being navigated by oar or motor propelled small craft.” The California Court of Appeal explained this test in *People ex rel. Baker v. Mack*: The streams of California are a vital recreational resource of the state. The modern determinations of the California courts, as well as those of several of the states, as to the test of navigability can well be restated as follows: members of the public have the right to navigate and to exercise the incidents of navigation in a lawful manner at any point below high-water mark on waters of this state which are capable of being navigated by oar or motor-propelled small craft.”

Lester-7

The public’s right to access and use California’s navigable waters is not, in general, affected by who owns the waterway’s bed and banks, be it a government entity or a private party. (See *Bohn v. Albertson*, 107 Cal. App. 2d 738 (1951); *Mack*, 19 Cal. App. 3d at 1050 (the question of title to the riverbed is not relevant); see also *Hitchings*, 55 Cal. App. 3d at 571, holding that the ownership is not determinative of public navigational rights). Public rights to access navigable waters may arise in a variety of ways. A right of way may be expressly dedicated to public use, impliedly dedicated through a long period of public use with the owner’s knowledge, or it may

arise by prescriptive use. If an offer of dedication is accepted by express act or implication, public rights are established. If a court finds that the public has used land without objection or interference for more than five years, it does not need to make a separate finding of "adversity" to find implied dedication. (See *Gion v. City of Santa Cruz* (1970) 2 Cal.3d 29.)

Lester-7
cont.

In the case of the Milburn Pond, the public has been able to access to the Milburn Pond from the San Joaquin River for approximately 24 years. I, personally, have been accessing the area for more than 10 years. The area which the DEIR calls Pond 2 has been connected to the San Joaquin River even longer. Cutting off the right to access this area would violate the law.

ALTERNATIVES: In addition to describing mitigation measures that would avoid or reduce the potentially significant impacts of the Project, the Department should identify and analyze a range of reasonable alternatives to the proposed Project that would attain most of the Project objectives while avoiding or reducing one or more of the potentially significant impacts (see State CEQA Guidelines, § 15126.6). C

California Department of Water Resources needs to explore additional alternatives that would not prohibit the public's right to access and use California's navigable waters. We request that the EIR address the feasibility of a sein/netting that could be used to screen out fish movement/isolate fish between the Milburn area and the flowing river. The design of the sein can be engineered to meet the needs of the area where it will be installed. My clients' and I join with the San Joaquin River Association, Inc. and others in support of the proposed alternative of the use of a fish sein of appropriate size. This would allow water to pass but isolate fish movement between river and Milburn area. The sein would have a weight line on the bottom and floats on top which would allow boats to simply float over. This alternative would not have any significant impacts or require mitigation measures. All material and workers would be done via watercraft at a comparatively nominal cost.

Lester-8

REQUEST FOR COMMENT FROM CALIFORNIA DEPARTMENT OF WATER RESOURCES:

My Clients and I request responses to the following inquires:

Lester-9

1. What is the correct email address for Karen Dulik?
2. Was the email address listed for Karen Dulik in the Notice of Availability of the Draft EIR incorrect?
3. What is the California Department of Water Resources position on the cause/causes of the discoloration in the water in the 3 isolated ponds pictured in Attachment 2?
4. Has the effectiveness of the "French Drains" in in the 3 isolated ponds pictured in Attachment 2 been studied?
5. Why were the 3 isolated ponds pictured in Attachment 2 not discussed in detail in the in the DEIR?

Lester-10

- | | | |
|-----|--|-----------|
| 6. | What is the basis of the claim that Bald Eagles are not often present in the Millburn Pond? | Lester-11 |
| 7. | Why was the use sein/netting not considered? | Lester-12 |
| 8. | Why does the California Department of Water Resources want to build a road as part of the Milburn isolation project? | Lester-13 |
| 9. | What was the procedure utilized to notify the public about this proposed project? | Lester-14 |
| 10. | What was the procedure utilized to notify the public about the Draft EIR and the public's ability to comment regarding the same? | |
| 11. | Was the Draft EIR available at the Fresno County Public Library for public viewing? | |
| 12. | Why were members of the public not able to view the draft EIR at the Fresno County Public Library? | |
| 13. | What process was used to determine the appropriate length of time that was given for public comment regarding the Draft EIR? | |
| 14. | Why was the public only given until May 17, 2021 to make public comments? | |

Respectfully Submitted,

Tyler H. Lester

ATTACHMENT 1



ATTACHMENT 2

Notice of Availability of the Draft Environmental Impact Report for the Milburn Pond Isolation Project

Notice is hereby given that a Draft Environmental Impact Report (DEIR) prepared by the California Department of Water Resources (DWR) is available for public review.

Project: Milburn Pond Isolation Project (State Clearinghouse No. 2020100145)

General Description: The proposed project would isolate an abandoned gravel pit known as Milburn Pond from the San Joaquin River channel to increase native fish survival by reducing movement of non-native warmwater fish species from the pond to the river and movement of native salmonids from the river to the pond.

Location: The project site is located in Fresno County and is bounded by the San Joaquin River to the north and the Fresno urban area to the south. Privately owned agricultural land and the San Joaquin Country Club are adjacent to the upstream portion of the project site, and the San Joaquin River Conservancy property currently leased to Bluff Pointe Golf Course and Learning Center is immediately downstream of the project site.

Impacts: Without mitigation, the proposed project would have significant or potentially significant impacts on air quality; biological resources; cultural resources and Tribal cultural resources; geology, soils and paleontology; hazards and hazardous materials; hydrology and water quality; recreation; and wildfire. Mitigation measures are proposed to reduce impacts to less-than-significant levels for all resources areas except recreation. No feasible mitigation measures are available to reduce the significant impact on water-based recreation opportunities associated with Milburn Pond. Therefore, this impact would be significant and unavoidable.

Review: The public review period for this DEIR begins April 2, 2021 and ends May 17, 2021. The DEIR is available at <https://ceqanet.opr.ca.gov/> by searching for State Clearinghouse No. 2020100145. The DEIR and all references cited in the DEIR also are available at <https://geiconsultants.sharefile.com/d-s914bbc9c098645c58ae6eb867a57d82c>.

Paper copies of the DEIR (including electronic files of all cited references) are available for review during walk-in business hours at:

Fresno County Public Library, Central Branch
2420 Mariposa Street
Fresno, CA 93721
Telephone: 559-600-7323

Walk-in library hours (at the time this Draft EIR was published):

10:00 a.m. to 6:00 p.m. on Tuesday and 10:00 a.m. to 4:00 p.m. on Friday and Saturday
(closed Sunday and closed to walk-in service Monday, Wednesday, and Thursday)

Madera County Library, Madera Headquarters
121 North G Street
Madera, CA 93637
Telephone: 559-675-7871

Walk-in library hours (at the time this Draft EIR was published):

10:00 a.m. to 6:00 p.m. on Monday and Wednesday, 10:00 a.m. to 3:00 p.m. on Saturday
(closed Sunday and closed to walk-in service Tuesday, Thursday, and Friday)

Public Meeting

DWR will not conduct a public meeting on the Draft EIR.

Submit Comments

Comments regarding the DEIR should be submitted in writing to:

Ms. Karen Dulik
California Department of Water Resources
South Central Region Office
3374 E. Shields Avenue
Fresno, CA 93726
Telephone: 559-230-3361
Fax: 559-230-3301
E-mail: Karen.Dulik@water.co.gov

Comments are due no later than 5 p.m. Pacific Daylight Time on Monday, May 17, 2021.

If comments are provided via email, please include the project title in the subject line, attach comments in Microsoft Word or Adobe Acrobat format compliant with Americans with Disabilities Act accessibility standards, and include the commenter's U.S. Postal Service mailing address.

PRIVACY NOTE: All comments received will be made available for public review in their entirety, including the names and addresses of the respondents. Individual respondents may request that their name and/or address be withheld from public disclosure. DWR will honor such requests to the extent allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment.

Tyler H. Lester
May 17, 2021

Comment Code and Number	Comment Response
Lester-1	Comment noted; no further response is required.
Lester-2	See Master Response 2 and responses to George-5 and George-6, above.
Lester-3	See Master Response 1. Although there was a typographical error in Ms. Dulik’s email address, Ms. Dulik was available at the phone number clearly listed in the NOA and EIR to assist individuals that were not able to locate her correct email address. Comments also could be submitted by postal mail and fax, despite the DWR office being closed due to COVID-19 restrictions. A copy of the EIR was sent to the Fresno County Library and the Madera County Library and delivery confirmation was received; it is unknown why the document was not made available to the public, and DWR was not aware of this issue until the end of the public review period. DWR also complied with State CEQA Guidelines regarding noticing and review of the Draft EIR. Therefore, DWR does not intend to provide an additional review period.
Lester-4	DWR acknowledges Mr. Lester’s appreciation of the project site and his observations of wildlife, including bald eagle. Although project construction would temporarily disturb the project site and require short-term access restriction, individuals would continue to have access to Milburn Pond via the pond overlook and from the north end of North Milburn Avenue.
Lester-5	See Master Response 5.
Lester-6	See Master Response 1. DWR has invited public input on the project since 2018. DWR does not intend to provide an additional public and agency review period for the Draft EIR.
Lester-7	See Master Response 6.
Lester-8	See Master Responses 3 and 4.
Lester-9	See Master Response 1 and response to Lester-3, above.
Lester-10	The color of the River West and Sycamore Island ponds shown in the comment letter attachment is likely due to algae. This condition is common in both connected and disconnected gravel pit ponds along the San Joaquin River. In addition, these particular ponds had the same conditions before the project was implemented, as shown in Google Earth images from March 2007, June 2009, August 2012, and March 2015. At

times, the gravel pit ponds have appeared quite clear of these affects as demonstrated in Google Earth images from March 2017 and May 2020. These conditions seem to occur on all river gravel pits, including Milburn Pond, that do not have river water flowing continuously through the pond.

For a discussion on the effectiveness of French drains on a past project, see Master Response 5.

The Sycamore Island and River West gravel pit ponds referred to in the comment were not discussed in detail because they are not relevant to key aspects of the proposed project.

Lester-11 As indicated on page 3-46 of the Draft EIR, the characterization that bald eagle is occasionally observed at Milburn Pond is based on observation data recorded at eBird.org.

Lester-12 See Master Response 4.

Lester-13 See Master Response 7. No new road is planned along the river. The existing Milburn Avenue would not be extended or improved. Dirt and gravel maintenance roads that currently exist around the southern and eastern edges of Milburn Pond would be improved by grading, drainage improvements, and gravel surfacing to allow construction access as well as long-term maintenance access. A construction road along the main berm separating the river from Milburn Pond would be left in place and new berm sections would have a similar road for maintenance purposes. This road is necessary to access, monitor, and maintain the saddle and berm but is incidental to the project purpose.

Lester-14 See Master Response 1.

From: [Greg Linkowski](#)
To: Dulik.Karen@DWR
Subject: Fwd: Document - May 16, 2021
Date: Sunday, May 16, 2021 2:07:46 PM
Attachments: [Doc - May 16 2021 - 1-19 PM.pdf](#)

Comment: Linkowski

Hi Karen, finally got the right email!

Sent from my iPhone

Begin forwarded message:

From: Greg Linkowski <greglinkowski@comcast.net>
Date: May 16, 2021 at 1:31:55 PM PDT
To: Karen.Dulik@water.co.gov
Subject: Document - May 16, 2021

Dear Ms. Dulik,

My name is Dr. Greg Linkowski, and over the last 10 years my family and I have enjoyed the oasis of the San Joaquin River and especially the Milburn pond with Mr. Louis Moosios as our guide. Catching and releasing largemouth and spotted bass, Croppie and sunfish have only been surpassed by the awesome beauty and wonder of the experience of just being on the pond. The Milburn pond is truly the jewel of the San Joaquin River.

Linkowski-1

Louis Moosios is my “go to doctor“ and guide of the San Joaquin River and Milburn pond. I trust his opinion as I was trusted with my opinions as an MD/radiologist at Kaiser Fresno for 24 years. Please do not repeat the same mistakes that were made by isolating the sycamore island and palm and Nees ponds. The 24+ million dollars that could be saved by adopting Mr. Moosios’s plan could be redirected to other greatly needed projects in our community.

Linkowski-2

My sincere hope is that the department of water resources would think outside the box of business as usual and partner with Louis Moosios in successfully sustaining the salmon restoration program without destroying the jewel of the San Joaquin River.

Gratefully,

Gregory Linkowski, MD

559 -907 -0271

The Milburn pond at sunset

Sent from my iPhone

Greg Linkowski
May 16, 2021

Comment Code and Number	Comment Response
Linkowski-1	Comment noted; no further response is required.
Linkowski-2	<p>DWR is not aware of what mistakes the commenter is referring to. The Sycamore Island Pond Isolation Project met its goals and objectives as planned. Note that the proposed project has different goals and objectives. DWR is not aware of the source of the commenter's \$24 million project cost, which is far in excess of the current project's cost estimate.</p> <p>See Master Response 4 for an explanation of why Mr. Moosios' plan would not meet project objectives and therefore is not a feasible alternative.</p>

Comment: Lizak

Ms. Karen Dulik
California Department of Water Resources
South Central Region Office
3374 E. Shields Ave
Fresno, CA 93726
Sent Via Email (Karen.Dulik@water.ca.gov)
Delivered by hand to address above

RE: Milburn Pond Isolation Project

Dear Ms. Dulik:

My name is Jessica and I was born and raised in Madera and have only ever lived here in the Central Valley. I live currently on a property directly on the San Joaquin River and have been here for the past 8 years. My husband’s family owns this land and has for nearly a century.

Regarding the proposed project to isolate the Milburn Area, I firmly and wholeheartedly object to this project as it is written in the draft EIR. I have a large list of reasons, and quite a few questions, regarding this proposed project.

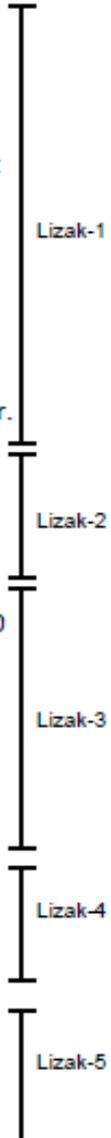
First of all, Pond 2 which is adjacent to the river and the Milburn area is a beautiful place. It is incredibly special to me as that is the location where my husband proposed to me while we were enjoying one of our most favorite activities; enjoying the outdoors and specifically the river. As such, this area has a magic to it that I personally would be devastated to see disappear.

Pond 2 has never been isolated from the river, at least not according to aerial photos dating all the way back to the 1930s. The area has changed since then of course, but it even is in Madera County, not Fresno County, according the historical maps.

I personally have enjoyed access via watercraft to Pond 2 and the Milburn area in excess of 100 times. We have taken friends there who have never fished before and helped them catch their first. I personally caught my first bass and first crappie there. In all the times I have visited the area, not one time have I seen a Salmon. Or anything that may have been a salmon.

In all my visits there, the wildlife I have seen are golden eagles, waterfowl of all kinds, baby geese, hawks, kestrels, even Osprey. My husband has seen bald eagles there. I’ve seen dozens of deer. Beavers, musk rats, and frogs, among other things. This is an incredibly diverse area and it is my firm belief that isolating this area from the river as it has been for decades will irreparably change the fauna of the area. Why on earth would you folks as environmentalists choose to do such a thing?

I believe this isolation as described in your EIR will be detrimental because I have seen myself what the so-called French Drains have done to the area of Palm and Nees. The water is much warmer, looks terrible, and many of the trees have mysteriously disappeared. It seems they



died from the decrease in water level and were removed, is that correct? The French Drains are visibly not allowing the water to equalize as they were engineered from the isolated ponds to the river. Has anyone been back to follow up on these locations? If so, have they reported their environmental impact findings to the public? If they have been back to check, and have not publicly reported their findings, why not?

Lizak-5
cont.

I find it hard to believe there are “no alternatives” to the massive isolation project as it is written. Your proposal calls for the placement via heavy equipment of hundreds of thousands of tons of NON-NATIVE materials, stuff that will have to be brought in on thousands of trucks from a long distance away. What environmental impact will this have on our valley? What impact will the bringing in of heavy machines and all these many many trucks have on the areas nearby the work site? If the Milburn area is considered a wildlife preserve, how can it possibly be beneficial to the wildlife to create such a major disruption?

Lizak-6

I suppose I can understand the argument about keeping the salmon out and preventing salmon from “getting lost” in this area. However, seems to me that a salmon would prefer to stay in colder water. Even though the Milburn area is connected to the river, because the water does not actively flow “through” the area (rather it has free access to enter/exit as river flows change) the Milburn area does stay a few degrees warmer particularly in summer. Shouldn’t a healthy salmon feel this change, and go back to the colder water of the flowing river channel?

Even then, if for the sake of this conversation, the babies do get lost. What are the odds there will be a significant number of them? I find it highly improbable that a significant number would make such a mistake. But if they did, for the sake of this conversation, would that not imply that the salmon you have chosen to inhabit this river are simply being “naturally selected” and those that are lost to predation are part of the natural evolution of the species?

Lizak-7

For that matter, these fish are in my opinion no longer native to this river. This water does NOT connect directly to the ocean as it did in centuries past, due of course to human intervention and changes to the river as it existed in its truly natural state. The strain of salmon that once came to this area from the ocean no longer exist. The simple fact that these animals are so heavily manipulated by humans is evidence the actual “natural” fish that once had a place here, simply do not anymore. Like it or not, the choices made by folks in our past changed the river to such an extent that things that once were native, no longer are. That being said, it seems expensive, time consuming, and frankly an irresponsible way to spend taxpayer money forcing a non-native fish to exist in this river. These animals are physically handled by people multiple times in their lives, many even wear a plastic tag. They arrive in trucks, require man-made traps to get them back to the ocean, and then get handled, tagged, and placed back on a truck to be fiddled with by people again.

So, the purpose is to isolate fish. Why then are the only alternatives so massive and obstructive? What about a mesh screen or net? Something that will simply stop the movement in or out of the area from fish? This area has been a legally navigable waterway, which Pond 2 has always been. Should there not be / have been a much broader outreach to the public? Why

Lizak-8

was the wrong email address given to send responses? Now that Covid is not as big of a problem, why can't there be a public outdoor meeting for comments, possibly at Sycamore Island? The fact alone that hundreds of loads of materials will be brought to the area which does have private land and home owners directly adjacent, nearby and within eyeshot/earshot of the area should have warranted a larger outreach to those who will be affected. Why was this not done? Why does this project "look" to be a massive road building project first and fish isolation project second?

Lizak-9

Lizak-10

The public outreach to share information about this proposed project has failed also in that it was not available AS STATED at the Fresno County Public Library. I went myself on May 5, 2021 at approximately 4:30 pm and spoke directly with Librarian Sandra Bisnett. I looked over all of the section of the library containing other EIRs and this one was not there. Ms. Bisnett verified this and checked their computer system as well. See attachment #1 for a signed Declaration stating as such.

Lizak-11

Regarding the proposed fencing near the area, what type will be used? Where exactly will this go? What impact will this have on the movement of land animals such as deer, coyote, and bobcat?

Lizak-12

The French Drains located at Palm and Nees demonstrate an inability for the water to correctly equalize between the isolated ponds and the river. In fact, one is many feet different in the elevation of the water at the surface. In excess of 6'. If this same outcome happens to the Milburn area, a very large percentage of this area will become exposed mud/sand flats as at the current flow of the river, a very large percentage of this area is 5 feet deep or less. Assuming the French drain performs the same as the one at Palm and Nees, the results will be a vast mud flat instead of a beautiful waterway. The water temperature in the remaining deeper zones will become much warmer than they are currently. The lack sufficient of fresh water influx (assuming comparable results to Palm and Nees) will degrade the water quality rapidly and soon whatever is left in the Milburn area will be a similar warm, green, visually ugly area. The trees on the shore that exist with the water at its current level will likely die. The entire look of this now beautiful and unique area will be changed for the worse. Birds who nest here and who rely on this amazing 250+ acre area will be forced to find a new home or migratory stop over.

Lizak-13

As a resident of the river, downstream from this project site, I have a few serious concerns about the introduction of so many hundreds of thousands of tons of materials to the river. Rivers sometimes do as they please and are excellent at taking material from one area and depositing somewhere else. At present, we are quite satisfied with the state of the river adjacent to our home. What mitigations will be in place to reduce/prevent the movement of sand/silt/rock from your project site to other locations downstream? This project has the potential to not only alter the landscape at the project site, but for miles downstream. What will you do for us as landowners if the non-native materials you introduce end up affecting our properties? What plans are in place to mitigate the movement of materials which could have a negative impact on animals, even the salmon? The potential for materials moving is serious and

Lizak-14

should be considered a legitimate concern. Have ALL residents adjacent to the river who may be directly affected by this project for years to come been notified of the draft EIR? If not, why?

Lizak-15

In closing, I feel as though this project has been rushed into and is being only looked at from one point of view. There are many factors and many lives to consider, both human and animal. And plant lives for that matter! This is a significant ordeal, and should not be taken lightly. I again wish to object to this project as written and ask that more alternatives be proposed at the very least, if not cancelling this thing altogether. It is my belief that the river as it exists now is beautiful, healthy, and introducing the salmon is a pet project that should also be re-evaluated for its unnatural interventions by humans. Those of you involved with this project must become better stewards of our environment and better stewards of my tax money.

Lizak-16

Respectfully,



Jessica Lizak

Milburn Pond Isolation Project (State Clearinghouse No. 2020100145)

I, Jessica Lizak, am an individual over 18 years of age and a resident of the State of California. I transact business in both Fresno County and Madera County. My principal residence is in Madera County. I have personal knowledge of the information contained in this declaration and if called to testify I would testify to the same.

On May 5, 2021, at approximately 4:30PM, I attempted to view the Draft Environmental Impact Report for the Milburn Pond Isolation Project at the Fresno County Public Library, Central Branch located at 2420 Mariposa Street Fresno, CA 93721.

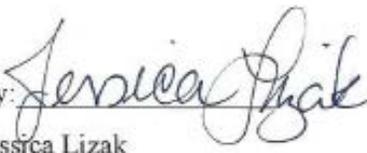
I am an interested party to the project as I fish in the Milburn Pond and utilize that area for recreation. This proposed project will prevent me from accessing the Milburn Pond, if approved.

When I arrived at the library, on the above date and time, I spoke with Librarian Sandra Bisnett regarding viewing the Draft Environmental Impact Report for the Milburn Pond Isolation Project. With the assistance it was determined that the document was not able to be viewed at the library. I reviewed the notice provided by Ms. Karen Dulcin of the Department of Water Resources. The notice stated that the document could be viewed that Fresno County Public Library, Central Branch.

I request that the document be made available for public viewing and the comment period be extended to allow for myself and other members of the public to view the document.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed in Madera County California.

Dated: May 17, 2021

By: 
Jessica Lizak

Jessica Lizak

May 17, 2021

Comment Code and Number	Comment Response
Lizak-1	Comment noted; no further response is required.
Lizak-2	The gravel mining pit referred to as Pond 2 did not exist before the late 1950s. A 1957 aerial photo of the area shown in DWR's Milburn Pond Habitat Restoration Project Background Report (DWR 2019a) clearly shows agricultural land in the location of Pond 2. The alignment of the proposed berm described in the Draft EIR is very similar to the alignment of the left bank of the channel in the 1957 photo. Pond 2 is located in Fresno County according to current Fresno County tax maps.
Lizak-3	Comment noted; no further response is required.
Lizak-4	See Master Response 2 for a discussion of the project purpose and justification.
Lizak-5	See Master Response 5.
Lizak-6	Most of the material for the project would be obtained onsite. Gravel mining in the 1960s, 70s, and 80s created the gravel pits we now call Milburn Pond, Pond 1, and Pond 2. The total estimated gravel and soil removed from these pits by heavy machinery and haul trucks is on the order of 10 million cubic yards. Trucking in 3.5 cubic yards for every 1,000 cubic yards originally excavated and hauled away to repair some of the problems that mining caused could be argued is a relatively modest measure. Impacts of material import are addressed in the air quality, noise, and transportation impact analyses of the Draft EIR.
Lizak-7	See Master Response 2.
Lizak-8	See Master Responses 4 and 6.
Lizak-9	See Master Response 1. There was a typographical error in Ms. Dulik's email address in the NOA and EIR. However, Ms. Dulik was available at the phone number provided to assist individuals that were not able to locate her correct email address. DWR complied with State CEQA Guidelines regarding noticing and review of the Draft EIR and is not required to hold a public meeting.
Lizak-10	See Master Response 7. No new road is planned along the river. The existing Milburn Avenue would not be extended or improved. Dirt and gravel maintenance roads that currently exist around the southern and eastern edges of Milburn Pond would be improved by grading, drainage

improvements, and gravel surfacing to allow construction access as well as long-term maintenance access. A construction road along the main berm separating the river from Milburn Pond would be left in place and new berm sections would have a similar road for maintenance purposes. This road is necessary to access, monitor, and maintain the saddle and berm but is incidental to the project purpose.

- Lizak-11 See Master Response 1. A copy of the EIR was sent to the Fresno County Library and delivery confirmation was received; it is unknown why the document was not made available to the public, and DWR was not aware of this issue until the end of the public review period.
- Lizak-12 Fencing design is anticipated to be like existing fencing around the ecological reserve, which is typically barbed wire or field fencing. DFW as the landowner would be consulted on the type of fencing and final height. As described on pages 2-10 and 2-12 and shown on Figure 2.4 (page 2-7) of the Draft EIR, new permanent fencing would be limited to the boundary between the Hansen Unit and the adjacent orchards to the south (north of Bluff Pointe Golf Course). This type of fencing would have a very minor effect on wildlife movement between the river and agricultural areas to the south. Because the fencing would be roughly parallel to and a minimum of 300 feet from the San Joaquin River, it would not affect wildlife movement along the river; the fencing also would meet DFW requirements for wildlife passage.
- Lizak-13 See Master Response 5 and response to Lizak-5, above.
- Lizak-14 Most of the material used in the proposed project would come from the site and is already within the existing floodway. Measures to reduce erosion of new features created as part of the project would be incorporated, particularly to protect new berm sections. Materials used in construction of the modified French drains, equalization saddle, and erosion protection are the only non-native materials planned, and they are designed to be stationary.
- Lizak-15 See Master Response 1. DWR complied with State CEQA Guidelines EIR noticing requirements. Notice of availability of the Draft EIR was sent directly to all organizations and individuals who have previously requested to receive such notices, and notice was published in the Fresno Bee. CEQA does not require DWR to directly notify all potentially interested parties regarding availability of the Draft EIR.
- Lizak-16 Discussions for this project and potential alternatives have been ongoing since the breach occurred in the 1990s. DWR has been working with DFW, Reclamation, WCB, and SJRC on this and other projects along the San Joaquin River since the early 2000s. Salmon introduction is not part of this project and therefore is not evaluated as part of this EIR.

Comment: Moosios

May 15, 2021

Ms. Karen Dulik
California Department of Water Resources
South Central Region Office
3374 E. Shields Ave
Fresno, CA 93726
Sent Via E-Mail (Karen.Dulik@water.ca.gov) Edit: Karen.Dulik@water.ca.gov

Re: Milburn Pond Isolation Project (State Clearinghouse No. 2020100145)

Dear Ms. Dulik:

This correspondence is to provide comments concerning the draft environmental impact report issued for the Milburn Pond Isolation Project.

My name is Louis Moosios. Before I start with my comments, questions, concerns and project design ideas, I believe it is important to share my background and history with the Milburn area along with other parts of the river. Please see Attachment #11 for a detailed declaration of my expertise in relevant fields.

My family has owned property along the San Joaquin River for 95 years. The property we own now is as close as one-quarter mile west, and my home is about 1 mile west of the Milburn area. My grandfather and my father, who was born 1921, spent a lifetime learning about the river before there was mining or even the Friant Dam. Their knowledge was passed on to me and I have been learning and loving all parts about this beautiful river for as long as I can remember. I recall fond memories beginning in 1980. I have spent an immeasurable amount of days on the river, including more than one thousand days in the Milburn area, enjoying all types of activities including me helping thousands of others to enjoy the area. Around 2008, I began guiding people on the river, which eventually led to me becoming a U.S. Coast Guard Master Captain and obtaining a California Guide's License. I started a business that I still run today called San Joaquin Guide Service. Since owning this, I have had the pleasure of helping thousands of other people experience the river, 99% in the Milburn area, since it is the "gem" of the San Joaquin River.

As a guide, I have been interviewed by the Fresno Bee on multiple occasions and once by Al Jazeera. I have been asked all sorts of questions about the river, from individuals and organizations including the San Joaquin River Restoration Program (SJRRP). All the questions were answered truthfully, and I would try to help in any way I could to try to protect and promote this beautiful river.

Moosios
-1

pg. 1

I am also a California Licensed General Contractor and a California Licensed Aquaculturist. All three of these professional licenses, along with my experience on the river make me more than qualified to give my professional opinion.

When I was first going to meetings about the SJRRP, I was asked what I thought about reintroducing King Salmon back into the river. I indicated it was a good thing as long as it did not adversely affect other parts of the river. Since then, I have seen huge changes in the river. The overall health of the river has been in a steady decline over the past 10 years. The amount of people who enjoy the river has been continuously declining as well. The river is becoming more and more sterile, which should be researched. The amount of wildlife in and around the river has declined so much that it is hard to recognize it compared to just 10 years ago. In the past, just about anywhere you looked or listened to, you would see a large amount of birds, fish, frogs, and mammals. Now, it's hard to see a fish or even hear a bird or frog.

Moosios
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cont.

Years ago, at the beginning of the restoration program, questions were asked if anything would change with regards to accessing areas of the river and fishing. We were told that the restoration would not take away public access and any types of fishing. The SJRRP, SJRC, and DFW have said that the restoration program will benefit the river and those who enjoy it. In my professional opinion, more damage has been done than good, including the stopping of trout plants in the river with no real mitigation to improve angling for fishermen anywhere else that would even come close to matching what the trout fishing once was in the river. The other major damage done in the river was so called pond isolating that occurred at Sycamore Island Pond #46E and Palm and Nees. (See attached photo #1) That project's alleged main purpose was to allow emergency vehicles to get quicker access to Sycamore Island. I doubt any emergency vehicles or ambulance would even use it, nor do they even know about its location.

The other alleged reason for that project was to help the salmon restoration program. I doubt there is any evidence those two pond isolations saved even 1 salmon. Those pond isolations are talked about in this Milburn Pond Isolation Project as if there was a success with regards to the "French drains" that were used there. The French drains that were used at Sycamore Island Pond #46E and Palm and Nees failed in several ways, some of which you can see in attachment #1. You can clearly see the water color difference between the river and the ponds which are separated by French drains. The water color in the river is a nice clean healthy blue color where the water in the isolated ponds are a green/brownish color. This picture is worth a thousand words. That green color is extreme algae growth. That amount of algae very easily can become toxic, not only for the animals that live in it, but any animals or humans that come into contact with it, let alone drink from it or eat a fish from that water. Those French drains isolated the waters because they do not have sufficient water exchange from the river and may even cause health problems because they are pools of rotting algae and bacteria which can be transmitted through the air and adversely affect those who live and work in the area.

Moosios
-2

The other issue with those French drains is they are not working as the DWR said they would in equalizing pond water. Elevation with river water elevation again as evidence in picture

pg. 2

Attachment #1. The problem with the difference in water elevations is that not only does water become stagnant when isolated, it actually draws up groundwater continually condensing it through evaporation. This groundwater draw is a huge problem in Central California. In fact, this evaporation may take up to 1" per day which can equal hundreds of acre feet of water per year gone from our groundwater supply every year. These areas of the river should be helping our groundwater supply by having clean river water flowing into them they would actually recharge our groundwater not draw from it. These now isolated areas of the river which lie below the high-water mark and are actually below the low water mark have been wrongly taken away from the general public who have enjoyed these areas since before California was a state and now only a select few are capable of freely enjoying this area of the river which is wrong and should be corrected.

Moosios
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cont.

The DWR has not done a thorough job in researching alternative isolation designs. The only alternative DWR came up with that would continue allowing legal public navigation was a design which basically consisted of a road with screened culverts and a hinged screen for boat navigation that would only work during low flows. The problem with this design is it's a road design first then a isolation design second because of the addition of nonrequired road the cost estimates skyrocketed to \$25 million. The DWR needs to look at goal of the project, not a wish list request for roads. There are alternatives that do not have or need any roads that could accomplish the goal of this project very quickly at a cost of \$30,000 to \$35,000. This design would consist of a fish sein (See attachment #3) of appropriate size which would allow water to pass but isolate fish movement between river and Milburn area (attachment #4). The Moosios Alternative sein would have a weight line on the bottom and floats on top which would allow boats to simply float over. The sein height at tallest point would be 14' but would raise and lower from 0' to 14' depending on water flow fluctuations/changing water surface elevations in would expand and contract like an accordion. This alternative would not have any significant impacts or require mitigation measures. All material and workers would be done via watercraft. Hand operated tools would be used to install the post that would anchor sein in place. Personnel needed would be less than 5. Onsite construction would take 3 days. There would need to be occasional inspection/cleaning the same as DWPs current plan of only as needed when there are significant water flow/elevation changes of river this would occur via watercraft, no land-based vehicles onsite. This design would get rid of the need for all heavy construction equipment/trucks as there would be no need to bring in thousands of tons of non-native materials to the area. These fish screens/seins could also be monitored remotely via cellular/solar camera.

Moosios
-3

Moosios
-4

I write about the French drains a lot because it is hard to explain the damage they are causing to the river and not seeing the damage in person. All I can do is write and show the attached (# 1) picture which is worth a thousand words. The DWR is planning on using the French drain system at the Milburn area. This will more than likely cause the same pond water quality issues that now exist at Sycamore Island pond (42 E) and Palm and Nees, but on a march larger scale since the Milburn area is 8-10 times the size.

Moosios
-5

The only true benefit that really was not discussed during open public meetings about the French drains at Palm and Nees and Sycamore Island is that they allowed the SJRC to use them as a trail to get over a body of water. This was mostly hidden from the public but it is now a fact as the SJRC have a trail over those French drains which cost tax payers millions of dollars which that goal of having a trail over those bodies of water simply could have been completed with a simple foot bridge except a foot bridge would not fit the type of project needed to be completed for an emergency vehicle access and a foot bridge most likely would not have received the funding from the same source as French drains project. More proof in this can be seen in Attachment #1. As there is another body of water that remains connected to the river through a breach, why was a French drain not put there? My belief is the project designers know it benefits the river and there was no need to build a road at that location.

Moosios
-6

The DWR is trying to do the same thing on the Milburn project. They are using the salmon as an excuse to build road/levee/French drains over a body of water. Evidence of this is shown as every project alternative that was "researched" ALSO has a road going over the area where water-based access now occurs; except for Pond #1 (as seen in Attachment #6). At Pond #1 (in my opinion) the designers of the project must know isolating this pond will not truly benefit Salmon so if no road is "needed" at the Pond #1 breach, there is no "need" for isolation. The Milburn project "stated" goal is to isolate Milburn pond/prevent fish moving between the flowing river and Milburn area, NOT to build a road, so it seems at least one non-road alternative should be part of the discussion. Because of this, the SJRRP should not agree to this project as currently designed.

Even if the French drains work as DWR describes, which based on other nearby existing drains they do not, the current planned location for the French drain is ¼ mile away from where water currently is connected to the Milburn area. The difference in elevation is one foot, if this plan goes forward most likely the surface water elevation within the 250+ acre Milburn area will be lowered by 1' on average depending on CFS flows. This would cause a lot of environmental damage since the Milburn area has remained unchanged for decades. 50-80% of the trees growing along the shoreline and riparian areas will be starved for water and eventually die, which is a terrible loss of habitat. The lowering of the Milburn pond will also make water quality much worse and the smell from the mud that has not seen sunlight in decades will last for years. This lowering of the water elevation will probably only take 1% of surface water acreage but may take as much as 15-20% of total water capacity for the Milburn area since most of the area averages only 4' deep. This is a big issue on many levels that should not be supported because of the drastic environmental harm it will cause. At this time, the Milburn area, which lies mostly below the actual low waterline has not changed in the past 24 years and if no structural changes are made, will not change in the future. The lowering of the Milburn surface water area should be at least more thoroughly analyzed.

Moosios
-7

The EIR is wrong in stating that there has only been public access to the project area since 1995. The attached map (#5) shows in red the historic low water line and in red the high-water lines from 1938 between those areas. Per the state lands commission, the public has always been able to access portions of the Milburn area because they lie between the low and high-water

Moosios
-8

marks. Even more, state lands says that “as a river changes, whether naturally or artificially, this dictates where those boundaries have moved or whether they are fixed based on historic flows of the river.” A good example to discuss is what the DWR calls pond #2. This area has always been part of the flowing river. Historical photos from 1937 (attachment #6) show the river during low flows actually flowing through this area. In fact, the area at pond #2 is not even in Fresno County, it is actually in Madera County and has always been part of the natural channel of the river. Even when mining operations began, that reconfigured the river greatly. Those miners never even built a berm completely isolating pond #2 from the flowing river. On the north side of pond #2, DWR proposes to build dam/levee. There has never been one in the past. This example of pond #2 can easily be seen through historical photos (#6). Many parts of the Milburn area are below the high water mark that state lands uses these other low and high-water marks are important but they are not only what should be looked at. The fact is the river naturally took back most all of the Milburn area because it lies within the floodplain. In fact, most of the Milburn area lies in elevation below the low water mark which makes it all open to the public. The public has been continuously using all parts of the Milburn area at water line for the past 24 years and should be able to continue using it.

In 1997, the river naturally began flowing back where it had previously before mining operations modified the floodplain. The river took the line of least resistance from east to west with 90% of the river water flowing through the Milburn area, actually flowing through where Milburn Avenue was and is located. This area had always been below the highwater mark and never should have been built up above the elevation it had been in the past. Past highwater marks data from 1938 (#5) that SLC uses clearly shows several areas of Milburn Avenue to be below the highwater mark making it state land commissioner’s jurisdiction and also public use. Milburn Avenue should be lowered to what it was in 1938 to allow the river to flow freely over its natural floodplain.

The EIR claims that most of the Milburn area lies above state lands commission (SLC) highwater mark. This is a very important issue since it may set a precedent for this river and other areas of the state. Most of the Milburn area lies beneath the actual low water line that is a simple fact since water has been continuously naturally connected to the flowing river for decades. The DWR is trying to say that most of the Milburn area project is not within the public trust easement and this is not true. The SLC says that “as a river changes, whether naturally or artificially, this dictates where those boundaries have moved”. What the DWR is claiming with this project is that it does not matter if the river changes high and low water lines, which it has in the Milburn area. What does matter is where those water lines were when mapped before natural or artificial changes were made to the Milburn area. This precedent will cause large legal battles all over the state with regards to property lines, public trust easements, and property ownership titles.

This project as planned will stop public navigation to an area of the second largest river in California. This act will be breaking multiple state and federal laws (attachment #2). The Milburn area is not only enjoyed through navigation by the general public but commerce takes place within the Milburn area because I am a CA licensed guide and I take 90% of my clients

Moosios-8
cont.

Moosios-9

into the Milburn area. If this project moves forward as planned, it would be blocking commerce on a navigable waterway which is illegal.

Moosios-9 cont.

The DWR is picking and choosing what maps they want to use that best help achieve their goals. When it comes to county lines, the DWR is claiming that the county line is much further north than what the actual historical county line is. In the area of Pond #2 as seen on attachment #5, it can clearly be seen that Pond #2 is within the Madera county, NOT Fresno county. More evidence of this is shown on the attachment #6, site history in the center of the bottom photo in which you can clearly see a channel of the river that flows south then west then back north again, just as the county line shows on attachment #5. The mining operation in the area knew this and that's why no levee was ever built on the north side of Pond #2. Note that a channel of the river flows north at Pond #2 does not make it automatically Fresno county; that channel was manipulated by the miners' so Pond #2 is still actually in Madera county. If this obvious abuse of mapping is allowed to go forward it may set a precedent moving forward in similar situations on this river and throughout the state.

Moosios-10

The San Joaquin River Parkway (SJR) Master Plan says, "do not construct levees (elevated flood protection structures) in Parkway." This is exactly what this project is planning. So, there should be no support for this project by the SJRP.

The San Joaquin River Conservancy (SJRC) Master Plan states that ONE of the main goals is to increase public access along the river between Friant Dam and Highway 99 but this project taking away 250+ acres of navigable water access that the public has used for decades is wrong. There is only approximately 1,000 acres of navigable water between Friant Dam and Highway 99 which if this project moves forward would remove ¼ of that. This fact alone should cause the SJRC to not support this project let alone all of the other damage this project will cause the environment.

Moosios-11

I am confident that I know more about the Milburn area than any other person and I have almost certainly spent more time in the Milburn area than anyone else. Learning every day something new, not only above the water but also below it. Neither myself, nor any of my clients or guests fishing off of any of my boats has ever seen, caught or otherwise witnessed a chinook salmon within the boundary of the Milburn area, among the thousands of other fish I've seen or caught within the proposed project area. The Milburn area of the river simply does not cause any more Salmon mortality than anywhere else on the river. The salmon are just being used as an excuse to have a very large and expensive wish list project completed in one of the most unique areas of California. This DEIR has purposely not shown current photos where the project plans to construct the dams/levees/French drains such as the attachment #7, which is the best, most current photo we can take where they plan to do the work. This is a beautiful area that will forever be changed to look more like the area shown in attachment #8, which is the actual picture of the damage done by the French drain at Sycamore Island. This project is not going to forever alter a small section of river, the project plans to damage a large section, completely destroying a beautiful riparian area (see attachment #9) which is a photo of the pond (at the eastern edge of the project which is planned to be filled in,) this area will look

Moosios-12

more like a canal or seawall/jetty than a natural river. I am so sure that anyone that has control whether this project moves forward or not would vote not to allow it to progress if they were able to see the project area firsthand, either with me guiding them or someone else that truly understands what is at stake.

Moosios-
12
cont.

There IS an alternative to this project that can meet the project goals and NOT destroy the look and usability of the area. A map (attachment #4) shows the Moosios Alternative. The main goal of this project (as stated in the DEIR) is to stop movement of fish between the Milburn area and the flowing river. This goal can be accomplished relatively easily with not even 1% of the cost of the proposed plan in the DEIR.

The design would include the use of a fish sein (attachment #3) shows an example of a sein. The sein would be used to screen out fish movement/isolate fish between the Milburn area and the flowing river. Seins have been used for thousands of years to control fish movement throughout the world. In fact, the DWR and CADFW use them on many projects to isolate/control fish movements. The design of the sein can be engineered to meet the needs of the area where it will be installed. The basic design is a woven mesh of whatever size hole is appropriate that has as many weights as needed on the bottom to keep the sein on the river floor. On the top of the sein, there are floats, spaced as needed to keep the sein at the water's surface. The sein will be attached on either side of the waterway where fish movement needs to be isolated by installing an anchor post. The sein will need to be 14' tall at its highest point which is no problem. The sein will be able to expand and contract vertically with changes in water depth, which will change with river flows. The sein will only have water flowing through it occasionally when river flows change because the Milburn area is only connected to the river in two locations adjacent to each other when flows are under 7,000 CFS. When the river flows are above that, from 7,000-12,000 CFS there is another area that outflows 20-100 CFS back into the flowing river but the sein can easily handle that amount of water movement. When flows are above 12,000 CFS, which is very rare, the seins would have more pressure on them, but the flows would easily go through or around them.

Moosios-
13

Even if there was a 100-year flood that may cause damage, the seins could easily be repaired in the field or replaced with a new unit at a very reasonable cost.

The benefits of using a sein to accomplish the project's stated goals are as follows:

1. Purchase and installation costs estimated at \$25,000-\$35,000 depending on design, which is less than 1% of the current DEIR project cost.
2. With little maintenance, will last 15-20 years
3. Can be monitored remotely via cellular/solar cameras
4. Installation would only take 2-3 days with 4 workers
5. All onsite equipment and materials would be brought in via watercraft. Would also be maintained via watercraft.
6. Current public navigation/access would continue because watercraft could simply float over the sein

pg. 7

7. There would be no need for a large road, dam, levee, or channel building project as the DEIR plan describes, which plans show would need to move 200,000-300,000 cubic yards of material and cause all other forms of environmental harm.

Moosios-13
cont.

Another alternative I would suggest is pointed out on attachment #4; the NW section of the Milburn area has a low spot that when river flows exceed 7,000 CFS water flows from the Milburn area back into the current main river channel. Even when river flows at 12,000 CFS this location has less than 100 CFS flowing over it. Currently, this area is protected by existing riprap material; ¼-1 ton rocks. By adding another 150 tons of the same riprap it would secure this area for decades.

The benefits would be:

1. Low cost of \$5,000-\$6,000
2. Continues allowing the river to flow through its natural floodplain
3. Existing roads would be used to deposit materials
4. Work would be completed in two days

Moosios-14

Negative factors include:

1. Not much has changed in the area over the past 40 years so there really is no current need
2. It would not directly benefit the salmon

The last and what may be most controversial alternative I have that is shown on attachment #4 is the equalization berm on Milburn Avenue. I do not recommend this alternative, but I do believe it should be analyzed further. This area has historically been below the high-water mark making it SLC domain. Currently the levee that is in place has been built up higher than what was there naturally. A 200-300 foot wide equalization berm that would allow water to flow when the river exceeds 8,000 CFS would greatly improve this natural floodplain. If equalization berm was installed, I would recommend also installing a 24" screened culvert not only to improve the water quality both in the Milburn area but also Liddell areas of the floodplain. The culvert would be installed at an elevation equal to the surface water elevation when the river flows are at 350 CFS.

Moosios-15

Benefits:

1. Returns both Milburn and Liddell areas of the river back to a more natural floodplain
2. Would on average every 5-7 years flush out the Milburn and Liddell areas creating higher water qualities
3. The 24" screened culvert would continuously create better water quality in the area by allowing flows
4. Relative low cost of \$60,000-\$80,000 as compared to DEIR Project

Negative impacts:

1. Access to floodplain areas north of equalization berm may be interrupted during flood events.

pg. 8

Attachment #10 has some questions regarding this project that need to be answered.

In conclusion, I am thankful I was able to comment on the Milburn Isolation project. I hope the information I have given will help those who make the decisions on whether this project moves forward or not vote that is not to be given additional funding because the current design is flawed, and that the environmental impact report is lacking vital information and, in some instances, using old/incorrect/cherry picked data to get a desired outcome. I would also like anyone to call me that would like to better understand the Milburn area, an area I often refer to as the "hidden gem on the San Joaquin River." This project should not be undertaken lightly and the decision making needs due process to be carried out.

Moosios-
16

Sincerely,

Louis Moosios
7215 Road 35
Madera, CA 93636
Cell: (559) 351-9500
Email: lmoosios@hotmail.com



CITIZENS' RIGHTS TO CALIFORNIA WATERWAY USE

The public's right to use California waterways is guaranteed by the United States and California Constitutions and affirmed by California Legislative Codes. Both Federal and California case law further define and affirm these rights.

United States Constitution - Freedom of navigation and the public's right to use rivers are guaranteed by the Commerce Clause. The congressional Act admitting States to the Union requires that "all the navigable waters within said State shall be common highways and forever free."

California State Constitution, Article 10, Section 4 - Forbids individual, joint and corporate landowners from obstructing free navigation. It provides that "the Legislature shall enact such law as will give the most liberal construction to this provision, so that access to the navigable waters of this State shall be always attainable for the people thereof." It also forbids landowners "to exclude the right of way to [navigable] water whenever it is required for any public purpose."

California Public Resources Code, Section 6301 - States the "California State Lands Commission has exclusive jurisdiction over all ungranted tidelands and submerged lands owned in the state and the beds of navigable rivers, streams, lakes, bays, estuaries, inlets and straits, including tidelands and submerged lands or any interest therein, whether within or beyond the boundaries of the State as established by law"

California Civil Code, Section 830 - States the State's ownership of tidelands, submerged lands and beds of navigable waterways includes lands laying below the ordinary high water mark of tidal waterways and below the ordinary low water mark of non-tidal waterways. The area between the ordinary high and low water marks on non-tidal waterways is subject to a "public trust easement" which is also under State Lands Commission jurisdiction.

California Public Trust Doctrine - Restricts the kinds and uses for which state lands may be utilized. These uses typically include public uses of waterways for navigation, commerce, fisheries, recreation and environmental protection. The State Lands Commission reviews projects affecting tidal and non-tidal waterways for consistency with the public trust doctrine.

California Harbors & Navigation Code, Section 100 - States that "Navigable waters and all streams of sufficient capacity to transport the products of the country are public ways for the purpose of navigation and of such transportation."

Clean Water Act & San Francisco Bay Basin Plan - The Clean Water Act requires that every effort be made to improve the beneficial uses of area waterways. The Basin Plan lists all of the waterways and tributaries draining into the basin as well as their **beneficial or potential beneficial uses**. Contact and non-contact water recreation are

two of the many beneficial uses listed in the plan. The WWCC is requesting that the Regional Water Quality Control Board, the agency responsible for the Basin Plan, list contact and non-contact recreation, which includes boating, as beneficial uses for all of the area's major streams.

Federal Case Law

Daniel Ball, 77 U.S. (10 Wall.) 557,563 (1870) A stream is navigable in fact when it is used, or susceptible of being used, in its ordinary condition, as a highway for commerce, over which trade or travel are or may be conducted. **Transportation of people or recreational use is considered to meet the description of travel** (Navigability of Inland Waterways, Univ. of Calif. Davis Vol. 16:579).

Churchill Co. v. Kingbury (1918) 174 P. 329, 178 C. 554) State's title to land under navigable waters extends, not only to land underlying the part of navigable waters over which navigation may be conducted but to the entire bed, in particular to the land covered and uncovered by the ordinary rise and fall of the tide, stream or lake.

State of Arizona v. State of California (1931) 51 S. Ct. 522, 283 U.S. 423, 75 L. Ed. 1154, Whether a stream is navigable in law depends upon whether it is navigable in fact.

U.S. v. 412.715 Acres of Land, Contra Costa County, Cal. (D.C. 1944) 53 F. Supp. 143. Title to the banks and bed of a navigable stream are subject to the "navigation servitude" which is the public right of navigation for the use of the people at large.

Colberg Inc. v. State ex rel. Dept. of Public Works (1967) 62 Cal. Rptr. 401, 432 P. 2d 3, 67 C.2d 408, certiorari denied 88 S. Ct. 1037, 390 U.S. 949, 19 L. Ed. 2d 1139. State holds all of its navigable waterways and lands lying beneath them as trustee of the public trust for the benefit of the people.

California Case Law

People ex. Rel. Baker v. Mack, 19 Cal. App. 3rd. 1040, 1050, 97 Cal Rptr. 448, 454 (3rd Dist. 1971) (**Fall River Case**) (**California State Test of Navigability**). **Members of the public have right to navigate and to exercise incidence of navigation in a lawful manner at any point below high water mark on waters which are capable of being navigated by oar or motor propelled small craft.**

Hitchings v. Del Rio Woods Recreation and Parks District, 55 Cal. App. 3d 560, 567, 127 Cal. Rptr. 830, 834 (1st Dist. 1976) (**Russian River Case**). On streams which have the physical capability to float small craft but which are not navigable as a matter of Federal law, restrictions on public recreational travel on the stream may be invalid under State law. **Passing the state test is sufficient proof of navigability.**

People ex. rel. Younger v. County of El Dorado 96. Cal App. 3d 493; 157 Cal. Rptr. 815 1979 (**American River Case**). El Dorado Ordinance making it unlawful to float,

swim or travel on a 20 mile section of the South Fork of the American River was ruled as unconstitutional on appeal because it denied the right of the public to the use of and access to a navigable stream.

Bess v. County of Humbolt (App. 1 Dist. 1992) 5 Cal. Rptr. 2d 399, 3 Cal. App. 4th 1544). (**Van Duzen River Case**) **The fact a river is navigable only seasonally does not require that river to be designated “non-navigable.” Under California State Law, if a river was susceptible to navigation as a highway for public passage at the time California came into the Union, a public right of way existed without regard to ownership of the stream bed. The ability of present day small water craft, which are similar to water craft in use at the time of Statehood to navigate the river is evidence that the river was navigable at the time of Statehood. The public has a right to use a navigable river and the riverbed up to the high water mark for navigational, fishing, recreational and other permitted purposes.**

Troutwine Family Trust v. County of Nevada, CA Aug. 10, 1994, Case No. A49952 Superior Court of Nevada County, CA (**Yuba River Case**). Yuba River is navigable and the public has a right to boat the river. **Rivers may be used by the public up to the high water mark for various recreational purposes. Recreational purposes include, but are not limited to fishing, hunting, bathing, swimming, boating (which includes portage, scouting, brief rests, anchoring and standing on the bottom), scenic enjoyment and general recreational purposes.**

September 1994

Lawrence M. Johmann
Western Waters Canoe Club

Attachment #3





Figure 2. Project Extents

Site History

We reviewed historical aerial photos to evaluate the site history. Prior to Friant Dam being built, this portion of the river appears unmined and to have had a relatively wide main channel with many gravel/sand bars and smaller side channels (Figure 3).



Figure 3. 1937





Questions to Environmental Impact Report

1. Has there been any discussion regarding possible benefits/negative impact having roads along the river of Milburn area? If so, who was involved in those discussions and did those discussions help the DWR decision to not use a soft fish screen/barrier? Moosios-17
2. Why was a soft fish screen/sein/barrier not used as an option for this project as described on attached (Attachment #4, project alternative)? Moosios-18
3. Since salmon have been re-introduced, what has been the verified salmon deaths caused by the Milburn area being connected to the river? Moosios-19
4. Why does the EIR now show mapping of low and high-water marks both historically and current? Moosios-20
5. Why does the EIR not show mapping of Madera-Fresno county line? Moosios-21
6. Why does the EIR now show mapping of current legal public accessible areas of Milburn area that the DWR is planning on taking away from our community? Moosios-22
7. What studies have been conducted with regards to repairing the Milburn area back to the way it was before mining operations, basically removing and or lowering levees, including Milburn Avenue to the same elevation they were pre-mining? Did those studies show the benefits to salmon mainly to the areas of a healthy floodplain environment for salmon to grow strong eating invertebrates? Moosios-23
8. Why was the EIR not placed at the Madera and Fresno public libraries when notice of availability said it would be at those locations?
9. Why was there not more effort in notifying the general public that this project will be taking away 25% of legal public accessible navigable water from Friant to Highway 99 on the San Joaquin River. This is also the largest legally accessible body of water that lies within the city limits of Fresno.
10. Why were most landowners/agencies near the Milburn area not notified of this projects potential damage to the ecosystem and floodplain for miles both up and downstream of project areas?

11. What has state lands commission said about this project taking away such a large part of California from public access, much of which has always lied beneath the low and high water marks. Now because as the river changes, whether naturally or artificially, this dictates where those boundaries have moved, which means the SLC should want to keep this area open to the public correct?

12. What has the City of Fresno and Madera County said about:

- a. Removing access to the largest publicly accessible body of water in the city?
- b. The potential health concerns with likely poor water conditions created by project which could also affect air quality in the area because of high algae/bacteria, fish dying, and low oxygen?
- c. The potential water draw on the groundwater supply?
- d. The tons of air pollution this project with cause?
- e. The overall degradation of habitat quality and ecological values?
- f. The mining of aggregate within Fresno City and Madera County?
- g. The historical significance since public has always had public access to area of project?
- h. The potential damage created downstream of project area?
- i. The project will not follow the city's general plan or Madera county, especially because it takes/blocks access to an area of Fresno City that Fresno's low income minorities have instead of adding new access?
- j. As project is designed, it would block Fresno fire boat rescue team from accessing a large part of the river. Is this not a safety concern?
- k. As this project is designed, it would block alternative transportation in the way of boating, kayaking, paddle boarding, or canoeing a navigable waterway. Why is there no mitigation?
- l. This project as currently designed would significantly increase wildfire danger. Currently, the project area is separated by navigable open water. These areas are planned to be covered where grass and other fire fuels will grow, which will cause the natural fire breaks that exist now to be lost. What concerns are there on this issue?
- m. The natural aesthetics of the area that will be forever changed to look more like a canal than a natural river; why are these not concerns?
- n. Fresno City's General Plan and Madera County's General Plan goals are to conserve wildlife habitats, not build roads and dams, especially through one of the most unique areas of Fresno and Madera counties, what have those counties commented?

13. Page 119 of EIR, first paragraph, clearly states "increased salmonids rear on seasonal inundated floodplains when available". Increased growth rate through floodplain rearing is now understood to be a key element in the success of out-migrating juvenile salmon (Jettres et al. 2008, Sommer et al. 2001) The Milburn area is the largest

Moosios-24

Moosios-25

Moosios-26

floodplain along the entire SJR where salmon exist. Why are there not more studies on opening up Milburn area to allow salmon to more easily swim in and out, or through?

14. Page 19 of EIR, third paragraph, talks about (Hills Ferry Barrier) at the confluence of Merced River with the San Joaquin River since the early 1990s to prevent salmon going where unwanted. This same type of fish barrier can work in Milburn area, especially because there are not continuous flows. It seems DWR does not want to do this because it does not build a road or block public navigation. Why would the same barrier not work in the Milburn area?

Moosios-27

15. Page 63 of EIR, first paragraph, talks about the French drain system at Sycamore Island Fishing Pond Project. That project is different than the Milburn Project in many ways but most importantly, it does not block the publics' navigability or block a naturally created free flowing connection with the river. A better comparison is the two French drains that were completely roughly three years ago, six miles upstream of Milburn area at Sycamore Island and Palm and Nees Isolation Projects. See attached photo (#1). It is clear to see color differences of water from one side of French drain to the other. Have there been studies before and or after French drains were installed studying levels of dissolved oxygen, bacteria, pH, algae, temperature, invertebrates, fish, reptiles, amphibians, plants, surface water elevation? If not, why?

Moosios-28

16. What type of above and underwater mapping has been done and what guarantees will there be especially to landowners downstream that this project as designed will not cause any changes to river channel, such as bank erosion and/or sediment accumulation?

Moosios-29

17. Page 124 of the Clean Water Act says during review of a project, USACE must ensure compliance with applicable federal laws, including EPA's Section 404(b)(1) Guidelines. USACE regulations require the impacts on waters of the United States, including wetlands, be avoided and minimized to the maximum extent practical, and that unavoidable impacts be compensated. (33CFR320.4) The reason I point out the above is that this project does not follow all state and federal laws with regards to navigation. See Attachment #2, which explains Freedom of Navigation. The DWR is saying the only way to ensure navigation is to build a hard fish screen which would cost \$25 million. This is a ridiculous inflated price, probably made even higher because the DWR is trying to build a road around Milburn area.

Moosios-30

- a. Did DWR research a hard fish screen that did not have a road on top of it? If so, what was the estimated cost?
- b. Did DWR research a soft fish screen? See Attachment #3 If so, what was the cost?
- c. If this Milburn Project was to plan on moving forward, how would the blocking of a navigable waterway be compensated with the same type?

d. Was the DWR advised during preliminary planning how to design a soft fish screen that would accomplish project's goal but still allow public navigation?

18. What impacts will this project as designed have on endangered green sturgeon that will be in the Milburn area once the SJRRP is fully implemented since the Milburn pond is a prime habitat area for them?

Moosios-31

19. Why is this proposed project wanting to fill in the beautiful pond/riparian area that exists at the far east end of the project area since this does not cause any harm to salmon? It is not even connected to the river unless flows exceed 14,000 CFS. This pond/riparian area is an important habitat area for many species including endangered species.

Moosios-32

20. Who did the DWR send notice of preparation of EIR to, on or about October 8, 2020?

Moosios-33

21. Why are there not current photos of project area where French drain(s) may be installed, and photos of similar project areas showing what area will likely look like after project completion?

Moosios-34

22. Much of the funding for this project so far has come from proposition funds such as Prop 1 which was voted for by the public to improve public access and conserve water, but this project's current design will have the opposite result and stop public access within the city limits of the 5th largest city in California. And, as other similar projects/French drains have shown, this will not conserve water but actually draw water away. What answers does the DWR have regarding its funding so far from those propositions? Should that money be given back before this project progresses any further?

Moosios-35

23. What type of fencing is proposed, and will it hinder natural movements of animals such as deer that may be young or wounded?

Moosios-36

24. Why is the "aesthetics" not listed as a "significant and unavoidable" consequence, since one of this projects' main goals is to be a major road building project (where there are no current roads)? It's a levee building project that will be using potentially hundreds of thousands of tons of materials that are not seen in the project area currently, which will not allow the same amount of plant growth especially on French drain/dams. And, most importantly, the aesthetics will be completely changed because the public will no longer be allowed to enter the are to enjoy the area as they currently enjoy it?

Moosios-37

25. Page 197 3.11.2 of the DEIR: Regulator setting state lands commission 2nd paragraph states: "Most of the remainder of the area where project construction would occur is between the ordinary low- and high-water marks and therefore within a public trust easement. However, much of the overall project site, including most of the Milburn Pond, is above the ordinary high-water mark". (California State Geoportals 2020)

Moosios-38

The above comment about “most of the Milburn pond is above the ordinary high-water mark” is FALSE. The water level is equal from where the water enters the Milburn area to the furthest area ¼ mile away in the SW corner. Surface water level is flat and all water in the Milburn area is equal to river elevation at connection point. The DEIR is using mapping most likely from the 1930s, which is almost 100 years ago. The facts now are that most of the Milburn area that has legal public access is actually below the current low-water mark. Why has the DWR not updated the current high and low water marks in the area?

DECLARATION OF LOUIS MOOSIOUS REGARDING EXPERT OPINIONS
IN OPPOSITION TO MILBURN POND ISOLATION PROJECT
(STATE CLEARINGHOUSE NO. 2020100145)

I, Louis Moosious, am an individual over 18 years of age and a resident of the State of California. I transact business in both Fresno County and Madera County. My principal residence is in Madera County. I have personal knowledge of the information contained in this declaration and if called to testify I would testify to the same.

I am a California State Licensed Aquaculturalist. I obtained my license through the California Department of Fish and Wildlife. I have held this license for approximately 10 years.

I have worked in the aquacultural industry for more than 30 years. For the past ten years I have owned and operated an aquacultural facility raising a variety of species of fish. This facility is located in Madera County adjacent to the San Joaquin River.

As an aqua-culturalist, I am experienced in water quality control, fish isolation, fish management, and maintaining healthy fish stocks.

As part of my responsibility in running the facility, I am required to isolate fish movement. To do so, I use a device called a sein. A sein is a netting that has multiple weights along the bottom and floats along the top. The weights keep the netting in contact with the bottom and the floats keep the netting in contact with the water surface. Based on my experience, I am familiar with aqua-cultural industry practices and standards. The sein is the most common and most utilized method of fish isolation used in my industry. It is utilized by the Department of Fish of Wildlife and the Department of Water Resources.

It is my expert opinion that a sein would function very well to achieve the primary goals of this project. The sein would be used to screen out fish movement/isolate fish between the Milburn area and the flowing river. The design of the sein can be engineered to meet the needs of the area where it will be installed. I have outlined the basic design and the benefits of using a sein to accomplish the project's stated objectives are outlined further in the materials I have submitted herewith.

As an aquaculturalist, I have specific expertise in water quality management. I am required to evaluate, prevent, and resolve issues with pond water quality. I evaluate water quality with both water testing and visual analysis. I am familiar the markers of poor water quality and conditions not conducive to the preservation of aquatic life. I can access the algae content of a particular pond or waterway through visual inspection. Algae is especially important to the health of a marine environment. It provides needed oxygen to the water. However, too much algae can cause catastrophic problems to the marine environment. When a body of water lacks inflow of fresh water and remains stagnant it causes the water to develop higher temperatures. This can cause extreme algae growth creating a toxic environment in both the water and the adjacent area.

I have outlined my concerns regarding the impact of isolating the Milburn area from the San Joaquin River in my comments submitted herewith. These opinions are based on my observations of the San Joaquin River, the use of French drains in other projects along the river and their failure to achieve their intended results. It is my opinion that the isolation will most likely cause the Milburn area environment to be negatively impacted and the water quality compromised.

I have been fishing and recreating on the river for over 40 years. I am a California State Licensed Fishing Guide. This license was issued by the department of fish and wildlife. I have held this license for approximately 12 years. I have a 50-ton Master Captain's License issued by the United States Coast Guard. 90% of my clients are taken to the Milburn area. I have outlined my experience as a fishing guide and the use of the Milburn area by my clients in the materials submitted herewith.

I am a general contractor licensed by the State of California. I have held that license for 8 years. I own and operate a construction business that utilizes heavy equipment including bulldozers, excavators, backhoes, scrapers, water trucks, and dump trucks. I am also certified in welding. In my capacity as a general contractor, I build and maintain hundreds of fishponds. I have designed built miles of water holding structures. I am well versed in alternatives to these structures. I advise clients regarding these alternatives.

With the expertise outlined herein above, I have worked with both the Department of Fish and Wildlife and the Department of Water Resources to build fish isolation projects on the main channel of the San Joaquin River at multiple locations. These projects successfully achieved the goals of fish isolation without preventing the ability of individual citizens to navigate the river. I have reviewed the proposed Environmental Impact Report. The report states that there are no alternatives, which would allow continued navigation between the San Joaquin River and the Milburn Area. This is not the case. There are viable alternatives that would allow continued navigation. I have explained these alternatives in the materials submitted herewith.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed in Madera County California.

Dated: May 17, 2021

By: 
Louis Moosious

Louis Moosios

May 15, 2021

Comment Code and Number	Comment Response
Moosios-1	Comment noted; no further response is required.
Moosios-2	See Master Response 5.
Moosios-3	See Master Response 3.
Moosios-4	See Master Response 4.
Moosios-5	See Master Response 5 and response to Moosios-2, above.
Moosios-6	<p>See Master Response 7. The scope of the proposed project and available funding did not allow for all ponds in the River West and Sycamore Island area to be isolated as part of that project. Ponds chosen for isolation in the SJRRP and by SJRC as part of that project were based on agency and program priorities.</p> <p>According to SJRRP fisheries experts, Pond 1 is a source of negative impact on salmonids; it provides habitat for warmwater predator species and is directly connected to the river channel. The elimination of Pond 1 may occur under Phase 2 of the Milburn Habitat Restoration and Improvements Project, which would include other channel and floodplain improvements. These details are available in the preliminary design documentation developed by DWR for SJRC and WCB in 2019 and presented in the public SJRC board meetings.</p>
Moosios-7	<p>See Master Response 5. According to surveys and hydraulic modeling conducted by DWR, the water surface difference between these two locations at low flows is approximately 0.7 feet. There would also be expected head loss through the modified French drains of 1 to 2 feet at maximum flow rates. The pond would maintain a lower elevation during low river flows than it currently does but would not dry up. There is no evidence that “environmental damage” would occur because of these lower water surface elevations, which would be temporary and in response to fluctuating river flows that would also typically increase pond levels during part of the year. Seasonal changes in pond levels would alter habitat conditions at Milburn Pond and could result in vegetation composition changes over time. However, the overall habitat quality is not anticipated to be degraded. The commenter provides no support for the assertion that trees would die. Reduction in the pond volume is not an adverse environmental impact in itself.</p>

- Moosios-8 Current State Lands Commission (SLC) maps (California State Geoportal 2021), dated April 1992, show the legal high and low water lines that denote the boundaries for state sovereign lands and public trust easement. DWR recognizes these maps as the only existing documentation showing the locations of these boundaries and has based all related statements in the Draft EIR on these maps. SLC did not comment on the Draft EIR statement that the majority of the overall project site, including most of Milburn Pond, is above the ordinary high-water mark. Unless and until SLC releases updated maps or makes a ruling regarding boundaries within the project area, DWR will continue to develop the project with the understanding that the boundaries shown on these maps are the legal boundaries.
- Moosios-9 See Master Response 6.
- Moosios-10 DWR reviewed Federal, State, and County records, including survey work, maps, and government code to confirm the location of the San Joaquin River and the County line. All materials reviewed agree with the physical location of the San Joaquin River and the boundary of the river, as fixed after the April 1992 mapping by SLC (California State Geoportal 2021). DWR has not selected particular maps to meet a specific objective but has interpreted data from survey work completed by State and Federal agencies and based representation of the County line on government code and approved/filed surveys. The County line shown on Figures 3.3.1 and 3.5.1 of the Draft EIR is consistent with that shown on the April 1992 SLC maps and supported by other State and Federal surveys and California Code, Government Code Section 23120. The pedigree of the County line generated by Google Earth and shown in Attachment 5 provided by the commentor is unknown and does not follow the middle of the San Joaquin River, as described in California Code, Government Code Section 23120.
- Moosios-11 See Master Response 6. The proposed project does not include constructing any levees, which by definition would be flood control structures designed to keep flood waters out. The proposed berm improvements are not intended to protect any lands from flood impacts, as they are designed to allow flood waters to pass through and over the berm and saddle.
- Moosios-12 See Master Response 2. The fisheries agencies, including DFW, support the proposed project. As the landowner and manager of the ecological reserve, DFW has supported plans to restore the berm on the property.
- Moosios-13 See Master Response 4 and response to Moosios-4, above.
- Moosios-14 The alternative proposed in this comment does not appear to be a complete alternative and does not appear to meet any of the goals or objectives established for the project.

- Moosios-15 The elements described by the commenter do not comprise a complete alternative and would not meet project objectives. The addition of a Milburn Avenue equalization saddle to the project described in the Draft EIR was considered by DWR in early project development, as indicated in Appendix B of the Preliminary Design Report (DWR 2019b). Analysis of this option concluded that a saddle in that location would not significantly benefit the project, as it would not achieve project goals better than a solid berm and would have substantially higher costs. In addition, it would cause access to local lands and businesses to be cut off during high flows, which was a concern for Bluff Pointe Golf Course managers. It also could increase project maintenance costs and allow warm off-stream water to re-enter the river more frequently, degrading river habitat for salmonids.
- Addition of a culvert may benefit water quality in Liddell Pond, but that is not an objective of the proposed project. Liddell Pond is also outside the project area, and other impacts to that area would need to be considered, if added. A culvert addition would introduce some negative impacts to river water temperatures, as well, because water flowing into Liddell Pond would presumably re-enter the river downstream. The project costs would be higher with this option because additional modified French drains would be required to make up for the losses through this culvert to Liddell Pond, unless it was placed above the 350 cfs elevation and only operated at higher flows; however, that would eliminate most of its assumed benefits.
- Moosios-16 DWR will consider comments provided by Mr. Moosios and all other comments received during the Draft EIR review period before deciding whether to certify the EIR and approve the project.
- Moosios-17 See Master Response 7. No new road is planned along the river. The existing Milburn Avenue would not be extended or improved. Dirt and gravel maintenance roads that currently exist around the southern and eastern edges of Milburn Pond would be improved by grading, drainage improvements, and gravel surfacing to allow construction access as well as long-term maintenance access. A construction road along the main berm separating the river from the pond would be left in place and new berm sections would have a similar road for maintenance purposes. This road is necessary to access, monitor, and maintain the saddle and berm but is incidental to the project purpose.
- Moosios-18 See Master Response 4.
- Moosios-19 DWR does not have data on salmon deaths, and the project design is not based on preventing a specific number of losses. Rather, it is based on supporting the SJRRP and contributing to achieving its goals. As discussed in Master Response 2, studies on the Tuolumne River have shown that gravel pits and the habitat they support favor non-native

predatory fish, and predation losses in these habitats may be significant enough to affect salmonid populations (Goodell et al. 2014). Milburn Pond has specifically been identified as posing a substantial entrainment risk to salmon as a false migration pathway and predation risk as a source of predatory fish (DFW 2019, SJRRP 2019, USFWS 2019).

- Moosios-20 See response to Moosios-8 and Moosios-10, above. SLC maps (California State Geoportal 2021) show the legal high and low water lines upon which DWR has based the Draft EIR analyses. Although a map of these lines is not provided, the California State Geoportal source of the maps is cited on page 3-127 of the Draft EIR, and a readily accessible website address is provided on page 8-13. The County line is shown in the Draft EIR on Figures 3.3.1 and 3.5.1; this line is consistent with that shown on the current SLC maps.
- Moosios-21 See Master Response 6 for a discussion of the legal issues related to public accessibility. Project-related changes in public accessibility would be limited to water-based access to Milburn Pond at the breach locations shown in Figure 2.2 of the Draft EIR.
- Moosios-22 DWR estimates restoring the area to pre-mining condition would require importing approximately 10 million cubic yards of fill material, and concluded this would not be supported by SJRRP, DFW, WCB, or SJRC. DFW, the landowner, does not support completely filling Milburn Pond, which would destroy existing ecological reserve habitat, as the commenter suggests.
- Moosios-23 See Master Response 1. DWR complied with all relevant State CEQA Guidelines noticing requirements.
- Moosios-24 The SLC did not comment on the proposed project's impacts on water-based recreational access (see "Comment: SLC" on pages 2-16 to 2-21 above). As indicated on page 3-127 of the Draft EIR, most of the overall project site, including most of Milburn Pond, is above the ordinary high-water mark, based on current maps available on the SLC website (California State Geoportal 2021).
- Moosios-25 Neither the City of Fresno nor Madera County submitted comments on the Draft EIR.
- Moosios-26 Milburn Pond is a pond, not a floodplain. Ponds and floodplains are very different riparian features. Floodplains are defined as lands that are flooded only during higher river flow magnitudes, and most often associated with floods, hence the name floodplain. Floodplains are often or usually completely dry, as opposed to ponds that, at least in the context of Milburn Pond, are always inundated regardless of the neighboring river hydrology. The key word in the commenter's quote of the Draft EIR is

“seasonal,” which means the areas must only be inundated part of the year to be beneficial to salmonids in this context.

- Moosios-27 The type of barrier mentioned in the comment only prevents large fish from passing. The Hills Ferry Barrier is designed for returning, spawning adults. It has no effect on smaller juvenile fish, which also need to be kept from entering the pond.
- Moosios-28 See Master Response 5 for an explanation of why the application at the Sycamore Island Pond Isolation Project is completely different and not applicable to Milburn Pond, while the 2020 Sycamore Island Fishing Pond Enhancement Project is a much better example of how the modified French drains would be designed to operate for Milburn Pond.
- DWR is not aware of any water quality studies performed before and after subdrain-type connections were made between the river channel and ponds on the San Joaquin River. DWR has not performed studies because a subdrain connection performs very similarly to an open channel connection in single-connection ponds, allowing water to slowly pass into them to make up for losses due to seepage and evapotranspiration. Because the effective water transfer is essentially the same, any seasonal changes to water quality would be similar whether the water enters through an open connection or a subdrain. Observations of many gravel pit ponds connected to the San Joaquin River through Google Earth imagery show algae blooms even when they are connected by open water, and this process is not intended to be changed or eliminated by the installation of a drain connection.
- Moosios-29 DWR used Lidar, photogrammetry, and bathymetric survey data to create surface models of the dry land and underwater surfaces. The river naturally changes over time, with sediment constantly eroded and deposited under the influence of river flows. DWR does not intend to cause this natural process to stop as a result of the project. However, the project would be designed to resist flow-induced changes to the constructed elements, within the design flow regime.
- Moosios-30 DWR is unaware of a “soft fish screen.” If the commenter is referring to a seine net alternative, see Master Response 4 for an explanation of why it is not a feasible alternative. A fish screen would need to operate during rapid flood increases, which means inflow through it to Milburn Pond would be occasionally relatively very large. The approximate flow capacity needed is on the order of 1,500 cfs. The estimated rough cost of a standard fish screen for high-flow capacity can be estimated based on past installations of the same size. An example is the Sutter Mutual Water Company fish screen that had a capacity of 960 cfs and cost approximately \$21 million to construct (CALFED undated).

- Moosios-31 As indicated on page 3-2 of the Draft EIR and in accordance with State CEQA Guidelines Section 15125, the environmental setting subsection for each resource area, including biological resources, is based on the physical environmental conditions (i.e., the environmental baseline) at the time the NOP was published on October 8, 2020. The environmental baseline is the basis for the impact analysis. Therefore, potential future conditions on the project site after the SJRRP has been fully implemented (expected 2030 or later) is not an appropriate basis for evaluating potential impacts of the proposed project on green sturgeon and would also be too speculative for project-level evaluation. Potential cumulative impacts on green sturgeon of implementing the proposed project in combination with full implementation of the SJRRP would be minor. If following full implementation of the SJRRP, green sturgeon occur in the San Joaquin River upstream of the confluence with the Merced River, this occurrence would likely be uncommon (SJRRP 2010). In addition, Milburn Pond provides poor habitat for spawning, which primarily occurs along cool sections of river, in deep pools with small- to medium-sized gravel, cobble, or boulder substrate (NMFS 2015). Lack of access to Milburn Pond would not have a substantial adverse effect on green sturgeon and would not make a cumulatively considerable incremental contribution to a significant cumulative impact on green sturgeon.
- Moosios-32 No ponds at the far east end of the project area would be filled.
- Moosios-33 The NOP was published in the Fresno Bee on October 8, 2020 and was posted on DWRs website. In addition, it was sent directly to Fresno County, Madera County, relevant State trustee and/or responsible agencies, and Federal agencies that may have a role in approving or funding the proposed project. The NOP also was sent to local and regional interested parties and individuals and organizations that have requested to receive all DWR CEQA notices and/or information specific to the proposed project.
- Moosios-34 Photographs of the location where the modified French drains would be installed on the project site and the Sycamore Island Fishing Pond Enhancement Pond Project modified French drain are provided in Section 3.2, “Draft EIR Corrections and Revisions.”
- Moosios-35 Total project development funding so far has been 47.6 percent from SJRRP and 52.4 percent from WCB. SJRRP funding is meant to further salmon restoration goals of the SJRRP, including pit isolation. WCB funding is from SJRC bond funds from the Water Quality, Supply, and Infrastructure Improvement Act of 2014, Section 79731(g), which states funds “... shall be allocated for multibenefit water quality, water supply, and watershed protection and restoration projects for the watersheds of the state...”, and the California Clean Water, Clean Air, Safe Neighborhood Parks, and Coastal Protection Fund, Section 5096.650(b)(5), which states

funds are provided "... to the conservancies in accordance with the particular provisions of the statute creating each conservancy for the acquisition, development, rehabilitation, restoration, and protection of land and water resources ...". The SJRC Board and WCB both approved funding for development of the project, essentially as described in the EIR. SJRC includes in its goals support for SJRRP restoration goals.

Moosios-36

Fencing design is still under development but is likely to be similar to existing fencing around the Ecological Reserve. DFW as the landowner would be consulted on the type of fencing and final height. As indicated on pages 2-10 and 2-12 of the Draft EIR, new permanent fencing would be limited to the boundary between the Hansen Unit and the adjacent orchards to the south (north of Bluff Pointe Golf Course). The location of the fencing is shown on Figure 2.4 (page 2-7) in the Draft EIR. This type of fencing would have a very minor effect on wildlife movement between the river and agricultural areas to the south. Because the fencing would be roughly parallel to and a minimum of 300 feet from the San Joaquin River, it would not affect wildlife movement along the river; the fencing also would meet DFW requirements for wildlife passage.

Moosios-37

See Master Response 7. No new roads are being constructed as part of the proposed project. A construction road along the main berm separating the river from Milburn Pond would be left in place and new berm sections would have a similar road for maintenance purposes. This road is necessary to access, monitor, and maintain the saddle and berm but is incidental to the project purpose. The existing access road along the bluff would be graded for use during construction and for operations and maintenance by DFW. No new levees would be built with the proposed project, DWR is reconfiguring the berms at the upstream end of the Milburn area. The overall aesthetics of the area would not be changed due to the project; native vegetation including trees and shrubs would be planted post construction and some invasive weed management would occur. Most of the materials used for the project would be borrowed from onsite areas.

Moosios-38

DWR does not have jurisdiction over SLC mapping. DWR is using the latest available SLC mapping dated April 1992 and available on their website (California State Geportal 2021).

From: [Kristi K Dulik, Karen@DWR](#)
To: [Dulik, Karen@DWR](#)
Subject: Milburn pond restoration
Date: Monday, May 17, 2021 12:12:15 PM

Comment: Moosios-Keiffer

Karen Dulik
California Department of Water Resources
South Central Regional Office
3374 East Shields Ave
Fresno, CA 93726
Sent Via Email (Karen.Dulik@water.ca.gov)

RE: Milburn Pond Isolation Project

Dear Ms. Dulik

I am writing in the concern of the plan to isolate the Milburn pond from the flow of the San Joaquin River. My family and myself have owned property on the river since 1933 and four generations have had the pleasure of utilizing the environmental uses and beauty of the river. Without much detail, I can tell you we have spent countless hours in the river and enjoying its beauty.

Moosios-Keiffer-1

I understand the plan is to damn the entry into the unit to not allow public access to a beautiful point on the river where people can enjoy the natural resources the river provides. I understand also that there have been other suggestions regarding the damn like structure and that if the concern truly is the salmon that only temporary/retractable structures would need to be in place. The river has changed much since my fathers story of pre-Friant of salmon fishing but the one thing that concerns me the most is the irrelevance of concern for the beauty, functional use, and public use. This plan would bring hundreds of thousands of tons of foreign materials to reinforce the Fresno bank of the river. I this would build up a structure that would be higher than the flood plane tremendously forcing more water on the Madera side of the river and also causing massive amounts of erosion. Have these concerns been brought to the committees attention? What liability is there to the DWR for these potential damages to my property?

Moosios-Keiffer-2

The high waters would traditional flow through the Liddel pond allowing the waters to have a natural flow through the flood plane. This also makes a concern for the damming at such a large body of water and the risk for mismanagement of those waters and the possible retention breaks that could occur and the liability of such. Who would be liable for the mismanagement of this project and its consequences? The more committees sit and concern themselves with the health of the river the less unhealthy the river seems to get.

Moosios-Keiffer-3

The other areas of the river that have been cut off by other means become cesspools of algae, mosquitoes and other contaminants. Not having the natural filtration of the running water leads to an unattractive environment for nearly all living things.

This river has changed over my lifetime as well. With the additions of more golf courses there has been a change in the smaller spiciest living in the river that affects the ecosystem of the entire river. If truly concerned of the ecosystem as a whole in the river I literally believe there are bigger fish to fry (sorry for the pun). The Milburn unit, if you or others have actually visited and not just made judgements from your armchairs is a unique atmosphere for the rookeries that have established themselves. With the larger predictor birds nesting in the area I would want to believe they would have protections from such unhealthy conditions this plan will construct. This seems to be a project that has more intentions of use than what is being construed. I believe the public and other landowners that will be affected by these changes need to know the true intentions of this grandiose project (ie: road?). These concerns go far beyond the river. It goes deeply into the resources of the state for the materials that would need to be utilized, the amount of trucking and use of fossil fuels for the materials to be harvested, transferred and placed. Have any of the communities that will be affected adversely been notified of the pending actions (large machinery uses, large amount of increased traffic and the blatant amount of increased air pollution this will bring to the entire San Joaquin Valley's already horrible air quality.

Moosios-Keiffer-4

I hope these comments and those of others concerned will be shared with the committee to bring the best outcome to what I perceive as an extremely flawed plan. Also, if you could respond to my questions that would be much appreciated. Having spent years in the design business and believe these plans should include aesthetic drawings in details as well to share with the community and myself for an accurate portrayal of the end result.

Moosios-
Keiffer-5

Sincerely,
Kristi Moosios-Keiffer

Sent from my iPhone

From: [Kristi K](#)
To: Dulik_Karen@DWR
Subject: Fwd: Milburn Unit
Date: Monday, May 17, 2021 1:49:17 PM

Karen Dulik
California Department of Water Resources
South Central Regional Office
3374 East Sheila Ave
Fresno, CA 93726
Sent Via Email (karendulik@water.ca.gov)
Delivered by hand to address above.

Ms. Dulik

> I want to take the time to express many of the concerns for the damming of the Milburn unit. To preface, I own property nearby on the river that has been in the family since 1933. We have four generations that have been able to enjoy the river and it's resources and beauty. The stories my grandmother and father have shared with me over the years will be those that I will continue to pass to my children and so on. They will know what the river is, was and will never be again. My family and I enjoy the river and the natural beauty that surrounds it many ways.

Moosios-
Keiffer-6

>

> This project concerns me for the lack of transparency I have seen in documentation. There is not one rendering of the final project that would be aesthetically clear to someone who wasn't an engineer. I believe anyone would need this to make a clear point to the public for a trustworthy marketing if the committees truly wanted the public to be informed.

Moosios-
Keiffer-7

>

> The damming of the unit will turn into a cesspool of water high in algae, densifying pollutants and more of a mosquito haven. You can access photos to see other non flowing water units to see the algae blooms and the unhealthy waters that would impact the current environment of the unit. The rookeries of predatory large birds including the Bald Eagles that nest in the unit should be a grave concern. These species need clean water and a healthy environment to thrive. Not allowing a steady stream of flow in the unit will amplify any existing runoff from adjacent properties and neighborhoods without any movement to help with filtration of the pollutants causing even more harm to the natural wild animal populations we see in there.

Moosios-
Keiffer-8

>

> Major concerns for the impact of the natural flow of the river are also a concern. With a large wall on the Fresno bank of the river diverting all flow to the Madera side of the river will force all debris, water, erosion to occur mainly in the Madera bank and impacting the natural flow of the river long term. If the salmon are truly a concern, the first duty of the water board should be the overall health of the river not just an isolated project. What I see as a damn would change the flow, add erosion, and be more of a detriment than a asset to the salmon. The water in a high volume year would send excess water through the Liddell unit and natural flow out without much impact. Once the water is restricted and the volume of water increases, who is responsible for the losses sustained once a breach in the wall or the Liddell unit occurs? Who is liable for the impact of erosion that will occur?

Moosios-
Keiffer-9

>

> It is my understanding that this is not a year round necessity for the salmon as you are implying it to be. I would believe the same impact to protect the salmon could be made on a seasonal basis with modified gates that would accomplish the same professed desired outcome without the impact this wall will make on its surroundings.

Moosios-
Keiffer-10

>

> The impact of hundreds of thousands of tons of non native material brought into this area is also of grave concern. The idea of this amount of product being resourced trucked and constructed would make a huge impact on the surroundings, the roadways, and neighborhoods nearby. Have these people been notified of such a project to be able to have a say in what will impact their surroundings? The idea that an unnecessary project causing more air quality concerns in an already heavily polluted environment just seems unjust and unreasonable. This would include the mining for construction materials, transport and heavy equipment for construction.

Moosios-
Keiffer-11

>

> I don't believe all transparency is being delivered. This appears to be more of a roadway than a diversion of a

species that cannot even naturally enter the river from a salt water inlet. Considering my family hopes to continue our ancestors enjoyment of the San Joaquin river for generations to come, I would hope you can see why my concerns would be of such need to express such opinions. This plan will impact generations not just a few years.

Moosios-
Keiffer-11
cont.

>

> Kristi Moosios-Keiffer

>

> Sent from my iPhone

Kristi Moosios-Keiffer

May 17, 2021

Comment Code and Number	Comment Response
Moosios-Keiffer-1	Comment noted; no further response is required.
Moosios-Keiffer-2	Approximately 35,000 tons of materials would be trucked in from other sources. The remaining construction material would be obtained onsite. Under existing conditions, after floodwaters fill the pond, nearly all river water flows through the river corridor under all but the most catastrophic flooding conditions. The construction of the pit isolation berm would not substantially change conditions in the river channel and would not cause in-channel erosion that would not already occur under current conditions. The commenter’s premise is incorrect. Under very high flood conditions, which for project purposes would be flows at least 3 feet higher than the 8,000 cfs level, many of the existing berms begin to be overtopped, including the berm beneath Milburn Avenue. The last time that happened was in 1997. All new berms built as part of the proposed project would adhere to the same maximum berm elevation. That means river flow magnitudes under current conditions would overtop Milburn Avenue into Liddell Pond similar to under project conditions.
Moosios-Keiffer-3	See Master Response 7.
Moosios-Keiffer-4	Local and regional jurisdictions and agencies were sent the NOA of the Draft EIR, including Fresno County, Madera County, and the San Joaquin Valley Air Pollution Control District.
Moosios-Keiffer-5	All comments and responses will be part of the Final EIR, which will be publicly available.
Moosios-Keiffer-6	DWR acknowledges Ms. Moosios-Keiffer’s connection to and appreciation of the San Joaquin River.
Moosios-Keiffer-7	Renderings are not required by CEQA.
Moosios-Keiffer-8	<p>The project would not change the flow of water through Milburn Pond at flows below those that currently overtop the existing berms. As can be seen from Google Earth aerial images (see Master Response 5), the pond sometimes experiences algae growth and cloudy water under current conditions. The project would not prevent that existing natural cycle from continuing.</p> <p>Under existing conditions, after floodwaters fill the pond, nearly all river water flows through the river corridor under all but the most catastrophic flooding conditions. Constructing the pond isolation berm would not</p>

change conditions in the river channel substantially, and therefore would not result in channel erosion that would not already occur under current conditions.

The commenter's premise is incorrect. Under very high flood conditions, which for project purposes would be flows at least 3 feet higher than the 8,000 cfs level, many of the existing berms begin to be overtopped, including the berm beneath Milburn Avenue. The last time that happened was in 1997. All new berms built as part of the proposed project would adhere to the same maximum berm elevation. That means river flow magnitudes under current conditions would be unchanged and would overtop Milburn Avenue into Liddell Pond.

Moosios-Keiffer-9 See Master Response 4 for an explanation of why the proposed project is the most effective and cost-effective alternative to meet most of the project objectives.

Moosios-Keiffer-10 Approximately 35,000 tons of materials would be trucked in from other sources. The remaining construction material would be obtained onsite. Section 3.4, "Air Quality," and Section 3.8, "Greenhouse Gas Emissions," in the Draft EIR disclose the anticipated project-related impacts of the proposed project, including material transport and project construction and operation. Mining is not addressed, because construction materials would be obtained from commercial sources; impacts associated with mining of such materials are the responsibility of the mine owner and/or operator. In compliance with State CEQA Guidelines Sections 21092 and 15087, Local and regional jurisdictions and agencies were sent the NOA of the Draft EIR, including Fresno County, Madera County, and the San Joaquin Valley Air Pollution Control District. Additionally, the NOP was published in the legal section of the Fresno Bee on October 8, 2020, and was posted on DWRs website.

Moosios-Keiffer-11 See Master Response 7.

Comment: G Peirsol

From: gpeirsol@aol.com
To: Dulik.Karen@DWR
Subject: MILBURN POND ISOLATION PROJECT (STATE CLEARINGHOUSE # 2020100145)
Date: Thursday, May 13, 2021 5:43:53 PM

MILBURN POND ISOLATION PROJECT (STATE CLEARINGHOUSE # 2020100145)
Ms. Karen Dulik
California Department of Water Resources
South Central Region Office
3374 E. Shields Avenue
Fresno, CA 93726
Karen.Dulik@water.ca.gov

May 13, 2021

RE: Comment regarding the DEIR for the above named project

Dear Ms. Dulik:

As I understand it, Milburn Pond was created in 1995 when flooding on the San Joaquin River filled in an old gravel pit, a natural act of nature. It has flourished in this natural state up to the present day supporting naturally occurring fish populations like bass, blue gill, and crappie that also exist in the River itself.

The argument that isolating Milburn Pond will protect the salmon from predators and the salmon are somehow the only naturally occurring fish in the San Joaquin River system is totally flawed. The statement in the "Notice" says this isolation would "increase native fish survival by reducing movement of **non-native** warmwater fish species from the pond to the river and movement of native salmonids from the river to the pond." Where's the science that supports this?

Once Friant Dam was created, it changed the whole ecology of the River. To compound this, man has altered the course of the River from one end to the other. So, a "native" species (salmon) and "non-native" species, like bass have become one = native. And, salmon are no longer *natural* in many places without man's interventions like trucking and hatcheries.

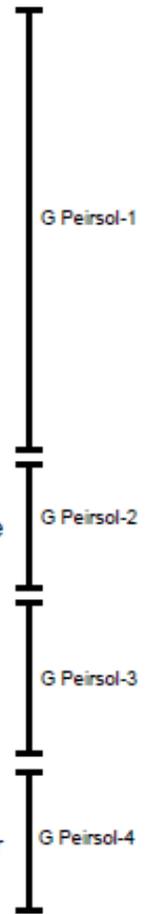
Stopping the natural flow of the "non-native" species from the River to the Pond, upsets the established eco-system (of deer, raccoons, etc.) not to mention disrupting if not destroying the beaver habitat.

And, perhaps, the biggest travesty is the proposed use of French Drains. Look at the isolation of Sycamore Island Pond. The color speaks for itself – green versus blue like the River. French Drains generally don't work unless properly maintained as the silt gathers in the rock (gravel drain) and the rock loses its permeability.

After reviewing the proposed project, I am convinced that the goal is to isolate the Pond, not to "save the salmon" but to provide a roadway that would benefit the San Joaquin River Conservancy at the expense of the public who enjoy a variety of recreational activities on Milburn Pond and have done so for decades.

Sincerely,

Gilbert W. Peirsol



Greg Piersol
May 13, 2021

Comment Code and Number	Comment Response
G Piersol-1	See Master Response 2. Gravel mining in the 1960s, 70s, and 80s created Milburn Pond and the surrounding gravel pits. The pits began filling with groundwater immediately after miners stopped dewatering them. Later, in 1995 and 1997, floods breached the berms that had until then isolated the pond from the river.
G Piersol-2	Section 3.5, “Biological Resources,” of the Draft EIR acknowledges that the project would disturb wildlife habitat during construction and result in permanent habitat changes. However, the proposed project would not result in a significant impact on common species, such as those mentioned by Mr. Piersol (i.e., deer, raccoon, beaver), based on the thresholds of significance listed on pages 3-60 and 3-61. Specifically, the project would not substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, or threaten to eliminate an animal community. In addition, implementing the proposed project would not stop water flow between the San Joaquin River and Milburn Pond.
G Piersol-3	See Master Response 5. DWR is incorporating in its design the means to allow maintenance of the modified French drains when necessary.
G Piersol-4	See Master Response 7.

Comment: J Peirsol

From: jpeirsol@aol.com
To: Dulik, Karen@DWR
Subject: COMMENTS RE MILBURN POND ISOLATION DEIR
Date: Wednesday, May 12, 2021 8:24:13 AM

Dear Ms. Dulik,

Glad I was able to finally reach you. It's interesting that your email address is incorrect on the "Notice". I've copied my letter as written - that is why your email address remains uncorrected. Thank you for your response - Jan Peirsol

J. Peirsol-1

MILBURN POND ISOLATION PROJECT (STATE CLEARINGHOUSE # 2020100145)

Ms. Karen Dulik
California Department of Water Resources
South Central Region Office
3374 E. Shields Avenue
Fresno, CA 93726
Karen.Dulik@water.co.gov

May 11, 2021

RE: Comment regarding the DEIR for the above named project

Dear Ms. Dulik:

Per the *Notice of the Availability of the Draft Environmental Impact Report for the Milburn Pond Isolation Project (NOTICE)*, I am offering comments relative to this report and to the unconscionable effects to a vital and beloved recreational area on the San Joaquin River, Milburn Pond, this action would have.

J. Peirsol-2

My family and families like we have enjoyed access to this beautiful, calm area on the San Joaquin River for fishing, canoeing, swimming, and relaxation. Never have we seen a dead salmon floating on the serene waters or even in the waters. The fish we catch are always "catch and release" and the joy of our kids and grandkids is immeasurable = memories forever.

This project should not happen and the reason why is stated in the "Notice of Availability of the DEIR..." sent to the public:

• **Impacts:** Without mitigation, the proposed project would have significant or potentially significant impacts on air quality; biological resources; cultural resources and Tribal cultural resources; geology, soils and paleontology; hazards and hazardous materials; hydrology and water quality; recreation; and wildfire. **Mitigation measures are proposed to reduce impacts to less-than-significant levels for all resources areas except recreation. No feasible mitigation measures are available to reduce the significant impact on water-based recreation opportunities associated with Milburn Pond. Therefore, this impact would be significant and unavoidable.**

J. Peirsol-3

After referencing the following published data (more examples available on request), it is evident that laws would be broken and mission statements would be lies should the members of the state and local agencies to include SJRC vote to move forward on this project:

Per the internet, this is a partial explanation of the "Settlement Act":

"March 2009, the [San Joaquin River Restoration Settlement Act](#) was passed to implement the "[Settlement](#)." There are two main goals that came out of the Settlement (which later became the goals of the San Joaquin River Restoration

Program):

1. Restoration Goal – To restore and maintain fish populations in “good condition” in the mainstem San Joaquin River below Friant Dam to the confluence of the Merced River, including naturally reproducing and self-sustaining populations of salmon and other fish.”
2. Water Management Goal – To reduce or avoid negative water supply impacts on all of the Friant Division long-term contractors that may result from the Interim and Restoration flows provided for in the Settlement.

Per the SJR Conservancy, the Mission Statement reads:

The San Joaquin River Conservancy is a regionally governed agency created to develop and manage the San Joaquin River Parkway, a planned 22-mile natural and recreational area in the floodplain extending from Friant Dam to Highway 99. The Conservancy’s mission includes acquiring approximately 5,900 acres from willing sellers; developing, operating, and managing those lands for public access and recreation; and protecting, enhancing, and restoring riparian and floodplain habitat.

PUBLIC RESOURCES CODE - PRC

DIVISION 22.5. SAN JOAQUIN RIVER CONSERVANCY [32500 - 32538]

(Division 22.5 added by Stats. 1992, Ch. 1012, Sec. 1.)

CHAPTER 1. General Provisions [32500 - 32506]

(Chapter 1 added by Stats. 1992, Ch. 1012, Sec. 1.)

32501.

The Legislature hereby finds and declares that the San Joaquin River, its broad corridors, and its prominent bluffs constitute a unique and important environmental, cultural, scientific, agricultural, educational, recreational, scenic, flood water conveyance, and wildlife resource that should be preserved for the enjoyment of, and appreciation by, present and future generations.

(Added by Stats. 1992, Ch. 1012, Sec. 1. Effective January 1, 1993.)

CHAPTER 2. The San Joaquin River Conservancy [32510 - 32520]

(Chapter 2 added by Stats. 1992, Ch. 1012, Sec. 1.)

32510.

The San Joaquin River Conservancy is hereby established in the Resources Agency to acquire and manage public lands within the San Joaquin River Parkway, which shall consist of the San Joaquin River and approximately 5,900 acres on both sides of the river between Friant Dam and the Highway 99 crossing. Approximately 1,900 acres of the parkway shall be located in Madera County and 4,000 acres in Fresno County, of which approximately 1,250 acres are already in public ownership. The conservancy shall acquire and manage these lands in the parkway to provide a harmonious combination of low-impact recreational and educational uses and wildlife protection through the preservation of the San Joaquin River, existing publicly owned lands, the wildlife corridor, and natural reserves.

(Amended by Stats. 1994, Ch. 605, Sec. 1. Effective January 1, 1995.)

The above clearly point out the avowed intent of both the State Government and the SJR Conservancy to preserve and provide lands for public recreational use not to take them away for the reason stated under “General Description” in the NOTICE as identified in the next paragraph.

It is wrong to move forward on the preposition (totally unfounded) that by closing the pond it would, per the NOTICE: “increase native fish survival by reducing movement of non-native warmwater

J. Peirsol-
3
cont.

J. Peirsol-
4

fish species from the pond to the river and movement of native salmonids from the river to the pond.”

If this is true, “Show me the Science”. Milburn Pond has no significant impact on the salmonids. Not one shred of evidence has been presented to that effect. Not one dead salmonid has been observed floating in the Milburn Pond by any of my acquaintances nor by the river guides who are on the river every day. Nor have they been seen swimming, nor have they been caught by a fisherman.

J. Peirsol-
4
cont.

And, lastly, we, the public, are not dumb. We recognize this project for what it is. San Joaquin River Conservancy wants to connect their waterway trail and this pond isolation does it for them.

J. Peirsol-
5

The focus should be on Recreational activities and the enjoyment we all experience being on the San Joaquin River including Milburn Pond.

Do not move forward on this Project.

Sincerely,

Jeananne Peirsol

Jeananne Peirsol
15649 Mark Road
Madera, CA 93636
559-645-4717
gpeirsol@aol.com

Jeananne Piersol

May 11, 2021

Comment Code and Number	Comment Response
J Piersol-1	See Master Response 1. Although there was a typographical error in Ms. Dulik's email address, Ms. Dulik was available at the phone number listed in the NOA and EIR to assist individuals that were not able to locate her correct email address.
J Piersol-2	DWR acknowledges Ms. Piersol's appreciation of and observations while recreating in the project area and opinions regarding the project effects.
J Piersol-3	See Master Response 6.
J Piersol-4	See Master Response 2.
J Piersol-5	See Master Response 7.

Comment: Spencer

Ms. Karen Dulik
California Department of Water Resources
South Central Region Office
3374 E. Shields Avenue Fresno, CA 93726
Telephone: 559-230-3361
Fax: 559-230-3301
E-mail: Karen.Dulik@water.co.gov

Re: Draft Environmental Impact Report for the Milburn Pond Isolation Project

I am writing today in strong opposition of the Milburn Pond Isolation Project because the project has no clear scientific basis in concluding access to the pond alone decreases smolt populations, the damage to recreation is clearly defined and irreparable despite California law protecting access, the motivation for the project appears more about social class status than salmon, and there is a clear solution to the problem that benefits both the salmon restoration efforts and increases recreational opportunity.

Spencer-1

The Draft Environmental Impact Report for the Milburn Pond Isolation Project states the purpose of the closure is "...to increase native fish survival by reducing movement of non-native warmwater fish species from the pond to the river and movement of native salmonids from the river to the pond." This same argument was attempted by the Coalition for a Sustainable Delta. Despite forcing a settlement with the California Department of Fish and Wildlife to review regulations governing the number and size of striped bass, which this group of Central Valley water districts blamed for declining salmon populations, the scientists at the University of California at Davis concluded that "...striped bass predation is not the primary cause of the decline of salmon and other listed fish species" (Understanding predation impacts on Delta native fishes, Posted on May 22, 2016 by UC Davis Center for Watershed Sciences). In other words, "non-native warmwater fish species" such as Striped Bass, Black Bass, and Spotted Bass are not the problem, and because of this conclusion no change to the regulations on striped bass fishing in any California river containing salmon has been changed.

Spencer-2

Despite no conclusive evidence to validate that Milburn Pond's isolation would have an impact on salmon populations, the California Department of Water Resources own report here concludes:

"No feasible mitigation measures are available to reduce the significant impact on water-based recreation opportunities associated with Milburn Pond. Therefore, this impact would be significant and unavoidable."

The community's ability to make full use of this section of the San Joaquin River's recreational opportunities would be eliminated. This is not in doubt. This is the real consequence of the agency's test of unsound theory. Kayakers, rafters, inner-tubers, and boaters will be cut off from this popular destination which clearly runs counter to our laws covering the public's right to access waters and the California Department of Water Resources responsibility to, "ensure that all navigable waters within or adjacent to their borders remain open and free to navigation...." (CAL. GOV'T CODE § 39933; see also id. §§ 39901, 54090-54093; Lane v. City of Redondo Beach, 49 Cal. App. 3d 251, 257 (1975)). I can navigate from the San Juaquin River into Milburn Pond which makes that section of the river navigable water which means by law this agency must protect my right, the public's right, to do so.

Spencer-3

Milburn Pond is hardly the only single-entrance, backwater pond on the San Joaquin River. In fact, there is one literally between Milburn Pond and the River. Why then is this agency looking only to eliminate the public's right to access this one pond? Fresno has a long history of segregating the poor from the affluent. Our history of red-lining and urban flight has been well chronicled and documented. Part of

Spencer-4

that history is still being written as the public's right to access the San Joaquin is being thwarted by monied interests and wealthy property owners upriver. In this case, the homes above Milburn Pond, according to a search on Zillow.com, run from \$400,000 to over \$2 million from past sales data, and none are up for sale in this inflated market which means values are significantly higher. With a quarter of the city's population living in poverty and the median household income at \$50,000 (US Census 2019), it is clear most of the city's residents can not afford the view of Milburn Pond from the bluffs above, but with the river access, anyone with an inner tube can. Singling this one spot on the river out from all the others like it seems to be a continuation of what everyone who grew up in Fresno understands and George Orwell wrote about in *Animal Farm*: All animals are equal, but some animals are more equal than others. If this agency sanctions the closure without good science, which it doesn't have, and in contradiction to the law, which it would be, there will be one more instance for the history books of a governing body in this area sheltering the well-to-do and locking out those who are not.

Spencer-4
cont.

Those suggesting the closure will say that the smolt end up being trapped in the Milburn Pond where they are eaten. This is true. It is also true that they are ambushed and eaten in eddies, slow moving flats, backwaters, and anywhere the river narrows to form a funnel for predatory fish to prey on migrating smolt. The bass are in the river and spawn in the river- the closure will not affect the bass population and even if it did, another predator would take its place. There are too many variables to conclude that one pond on one section of a 200-mile trek (usually without enough cold water to sustain salmon naturally anyway) should be closed to public access to save salmon populations. These were the conclusions of the Davis scientists and the reason no action was taken on the delta striper regulations by Fish and Wildlife. But if those pushing this agenda persist that the pond poses a significant danger to the young salmon, then the solution is not a closure of the upper end of Milburn Pond but the opening of the bottom end. If the concern is really about the salmon and not protecting the views of the wealthy, create a channel down river to let the smolt back out. This is what happens at Sycamore Island and other ponds on the river and since no one is trying to close those off, the double-open pond must be an acceptable arrangement. If this is really about salmon, why isn't this option included in the project's scope?

Spencer-5

Spencer-8

Thank you for taking the time to hear my concerns and I hope you will consider what I have had to say. There is no conclusive evidence that a closure of the Milburn Pond access route alone will have any meaningful benefit to salmon populations but the harm to lawful recreation for all citizens regardless of economic standing is clear and acknowledged in the department's draft EIR. Without study of adding a lower access channel to the pond to address the fears of trapped salmon while improving and promoting public access, this plan is tragically incomplete and reeks of classism. Because of these issues, I believe the Milburn Pond Isolation Project is untenable as currently written and should not proceed.

Spencer-7

Sincerely,

Mike Spencer

fullsink@me.com
3412 E. Balch Ave.
Fresno, CA 93702

Mike Spencer

May 18, 2021

Comment Code and Number	Comment Response
Spencer-1	DWR acknowledges Mr. Spencer's opposition to and opinions regarding the proposed project.
Spencer-2	See Master Response 2.
Spencer-3	See Master Response 6.
Spencer-4	See Master Response 2. The SJRRP has collected data and conducted reviews that indicate Milburn Pond is a high priority gravel pit for isolation on the river, and it is clearly the largest. Isolating these ponds from the river is a high priority for the SJRRP in its efforts to improve habitat for salmonids. However, this pond has not been singled out and is not the first gravel pit pond to be isolated by the SJRRP. The public can access views of the pond from the bluff park on Milburn Avenue. The project would not affect the public's access to that park.
Spencer-5	See Master Response 2.
Spencer-6	See Master Response 3 regarding the alternatives evaluation process. If salmon smolts enter Milburn Pond, they could be preyed upon by the non-native fish species, and it is unlikely they would find a downstream exit channel, even if one were provided. The existence of other gravel pit ponds on the river with flow-through conditions as stated by the commenter does not mean those pits are harmless to fish. The fact that they have not been modified yet does not mean they will not be in the future. Some may be identified as higher priority by the SJRRP and future projects may isolate them.
Spencer-7	DWR will consider comments provided by Mr. Spencer and all other comments received during the Draft EIR review period before deciding whether to certify the EIR and approve the project. As indicated in Section 6.2, "Alternatives Considered but Rejected from Further Analysis," of the Draft EIR, an alternative that would maintain boat passage through the berm was considered during the conceptual design process but rejected for a variety of reasons.

Chapter 3. Revisions to the Draft EIR

3.1 Introduction

This section presents specific text changes made to the Draft EIR since its publication and public review. The changes are presented in the order in which they appear in the Draft EIR and are identified by the Draft EIR page number. Text deletions are shown in strikethrough (~~strikethrough~~) and text additions are shown in underline (underline).

3.2 Draft EIR Corrections and Revisions

3.2.1 Executive Summary

Section ES.8, “Summary of Environmental Impacts and Mitigation Measures”

See below Section 3.2, “Draft EIR Corrections and Revisions” for changes to mitigation measures also presented in Table ES.1 (pages ES-7 through ES-35).

3.2.2 Chapter 1

Section 1.3, “Agency Roles and Responsibilities”

Page 1-2 is revised as follows:

A CEQA responsible agency is a State agency, board, or commission or any local or regional agency other than the lead agency that has a legal responsibility for reviewing, carrying out, approving, or permitting aspects of a project. Responsible agencies must actively participate in the lead agency’s CEQA process and review its CEQA document. This EIR will be used by responsible agencies, such as the California Department of Fish and Wildlife (DFW), State Lands Commission (SLC), and Central Valley Regional Water Quality Control Board (CVRWQVB), as a substantial basis in deciding whether to approve or permit project elements over which they have authority.

3.2.3 Chapter 2

Section 2.3.1, “Project Elements”

Page 2-9 is revised as follows:

Figure 2.5 shows the location in the existing berm separating Milburn Pond from the San Joaquin River, where the equalization saddle and modified French drains would be installed. **Figure 2.6** shows the post-project conditions where the modified French drain was installed as part of the Sycamore Island Fishing Pond Enhancement Pond Project. **Figure 2.7** shows the Sycamore Island Pond Isolation project equalization saddle.

Figure 2.5. Location where Milburn Pond Equalization Saddle and Modified French Drain would be Installed



Source: California Department of Water Resources

Figure 2.6. Modified French Drain Installed at Sycamore Island



Source: California Department of Water Resources

Figure 2.7. Equalization Saddle Installed at Sycamore Island



Source: California Department of Water Resources

3.2.4 Chapter 3

Section 3.4, “Air Quality”

Pages 3-31 and 3-32 are revised as follows:

Mitigation Measure 3.4.2a: Implement Construction Equipment Nitrogen Oxides and Particulate Matter Controls.

DWR will reduce exhaust emissions for construction equipment greater than 50 horsepower used or associated with the proposed project by the following amounts from the Statewide average as estimated by CARB:

- 20 percent of the total NO_x emissions
- 45 percent of the total PM₁₀ exhaust emissions

Emissions accounting methods will be as described in SJVAPCD Rule 9510.

Construction emissions may be reduced on site by using add-on controls, cleaner fuels, or newer lower emissions equipment, thus generating less pollution. Additional strategies for reducing construction emissions may include:

- Providing sufficient commercial electric power to the project site to avoid or minimize the use of portable electric generators.
- Substituting electric-powered equipment for diesel engine-driven equipment.
- Limiting the hours of operation of heavy-duty equipment and/or the amount of equipment used at any one time.
- Minimizing idling time (e.g., 10-minute maximum).
- Replacing equipment that uses fossil fuels with electrically driven equivalents (if they are not run via a portable generator set).

Timing: During construction activities.

Responsibility: DWR.

Mitigation Measure 3.4.2b: Implement San Joaquin Valley Air Pollution Control District Regulation VIII Fugitive PM₁₀ Prohibitions Best Management Practices.

All projects are subject to SJVAPCD rules and regulations in effect at the time of construction. Control of fugitive dust is required by SJVAPCD Regulation VIII. DWR will implement or require its contractor to implement all SJVAPCD measures (SJVAPCD 2004) listed below ~~that apply to the proposed project:~~

- Apply water to unpaved surfaces and areas.
- Use non-toxic chemical or organic dust suppressants on unpaved roads and traffic areas.
- Limit or reduce vehicle speed on unpaved roads and traffic areas.
- Maintain areas in a stabilized condition by restricting vehicle access.
- Install wind barriers.
- During high winds, cease outdoor activities that disturb the soil.
- Keep bulk materials sufficiently wet when handling.
- Store and handle material in a three-sided structure.
- When storing bulk material, apply water to the surface or cover the stage pile with a tarp.
- Do not overload haul trucks (overloaded trucks are likely to spill bulk materials).
- Cover haul trucks with a tarp or other suitable cover. Or, wet the top of the load enough to limit visible dust emissions.
- Clean the interior of cargo compartments on emptied haul trucks prior to leaving the site.
- Prevent trackout by installing a trackout control device.
- Clean up trackout at least once a day. If along a busy road or highway, clean up trackout immediately.
- Monitor dust-generating activities and implement appropriate measures for maximum dust control.

Timing: During construction activities.

Responsibility: DWR.

Section 3.5, “Biological Resources”

Page 3-47 is revised as follows:

Reintroduction of spring-run Chinook salmon is currently under way as part of the SJRRP. The Restoration Goal is to restore and maintain fish populations in “good condition” in the mainstem

San Joaquin River below Friant Dam to the confluence with the Merced River. ~~The first release of juvenile spring-run Chinook salmon occurred in 2014, and 2016 was the first year in which fish released in 2014 may have returned as adults. Returning adults have not been documented from any of the juvenile release groups. Adult spring-run Chinook salmon do not currently occur in the project vicinity, but they have potential to occur in future years.~~ In recent years, adult spring-run Chinook salmon have returned to the lower SJRRP restoration area reaches and been trapped and transported to Reach 1, in which the project site is located (Sutphin and Root 2021). In addition, juveniles of spring-run Chinook salmon have been documented in Reach 1 following successful spawning by released adults (Hutcherson et al. 2019). This reintroduced population is designated as a 10(j) nonessential experimental population by NMFS, meaning it has been determined not to be essential for the continued existence of the species; regulatory restrictions are considerably reduced under this designation.

Table 3.5.4 on page 3-48 is revised as follows:

Table 3.5.4. Status of Special-status Fish Species with Historic or Current Presence on the Project Site or Adjacent San Joaquin River Reach

Life Cycle	Common Name	Scientific Name	Federal/State Listing ¹	Status
Anadromous	Central Valley Spring-run Chinook Salmon	<i>Oncorhynchus tshawytscha</i>	T/T	Present <u>Absent</u> ²
	Central Valley Fall-run Chinook Salmon	<i>Oncorhynchus tshawytscha</i>	-/SSC	Present
	Steelhead	<i>Oncorhynchus mykiss</i>	T/SSC	Absent
	White Sturgeon	<i>Acipenser transmontanus</i>	-/SSC	Absent
	Green Sturgeon	<i>Acipenser medirostris</i>	T/-	Absent
	River Lamprey	<i>Lampetra ayersi</i>	-/SSC	Unknown
	Pacific Lamprey	<i>Entosphenus tridentata</i>	-/SSC	Present <u>Unknown</u>
Riverine	Sacramento Hitch	<i>Lavinia exilicauda exilicauda</i>	-/SSC	Present
	Sacramento Splittail	<i>Pogonichthys macrolepidotus</i>	-/SSC	Present
	Central California Roach	<i>Lavinia symmetricus symmetricus</i>	-/SSC	Present
	Hardhead	<i>Mylopharodon conocephalus</i>	-/SSC	Present
	Riffle Sculpin	<i>Cottus gulosus</i>	-/SSC	Unknown
	<u>Kern Brook Lamprey</u>	<u><i>Lampetra hubbsi</i></u>	<u>-/SSC</u>	<u>Present</u>

Notes:

¹ SSC = California Species of Special Concern, T = Threatened

² Central Valley spring-run Chinook salmon are a focus of San Joaquin River Restoration Program reintroduction activities and are designated by the National Marine Fisheries Service as a 10(j) non-essential experimental population.

Page 3-49 is revised as follows:

Pacific lamprey (*Entosphenus tridentata*) is a California species of special concern. Adult Pacific lamprey passage into the upper San Joaquin River reach adjacent to the project site is likely only feasible in high-flow years, when passage through or around instream barriers is possible. Adults captured in the upper reach during the 2017-2018 sampling season likely moved up the San Joaquin River during spring flood conditions in 2017 (Hutcherson et al. 2019). Dry conditions in 2012 through 2016 likely precluded adult passage into upstream reaches of the river. Therefore, juvenile lamprey captured in the 2017-18 field season were likely 5-year-old progeny from adults that moved into the reach during flood conditions in 2011 (Hutcherson et al. 2019). This species has been found in the San Joaquin River (USFWS 2017), but individuals are likely blocked from the project site and upstream areas by existing fish barriers in most years. However, some individuals may migrate through the project area in years of high spring flows and have potential to spawn in the area. Individuals unable to emigrate due to lack of sufficient flows likely perish at the end of wetted sections of the river in April and May.

Page 3-50 is revised as follows:

Kern Brook Lamprey

Kern brook lamprey (*Lampetra hubbsi*) is a non-anadromous California species of special concern. Only six or seven isolated populations of this species are known, including a population in the San Joaquin River (Moyle 2015). Kern brook lamprey were captured in the upper reach of the San Joaquin River during the 2017-2018 sampling season (Hutcherson et al. 2019).

Principal habitats of Kern brook lamprey are silty backwaters of large rivers in foothill regions of the western Sierra Nevada. Temperature requirements are not known but they are present almost entirely in reaches where summer temperatures rarely exceed 75 degrees Fahrenheit, suggesting a cool-water requirement. Kern brook lamprey life history is poorly known, but if comparable to that of other non-predatory brook lampreys, individuals would live for approximately 4-5 years as ammocoetes before metamorphosing into adults in fall. Adults presumably over-winter and spawn the following spring (Moyle 2015).

Page 3-54 is revised as follows:

The Migratory Bird Treaty Act (MBTA) (16 USC, §703, Supplement I, 1989) prohibits killing, possessing, or trading in migratory birds, except in accordance with regulations prescribed by the Secretary of the Interior. This act encompasses whole birds, parts of birds, and bird nests and eggs. The MBTA is administered by USFWS, but there is no process for obtaining project-related take authorization under the MBTA. In December 2017, the Department of the Interior Solicitor's Office Released Opinion M-37050, which determined that the legal scope of the MBTA applies to intentional take of migratory birds and concluded that take of birds resulting from an activity is not prohibited, when take of birds is not the underlying purpose of the activity. In January 2021, USFWS issued a Final Rule (86 FR 11341165) adopting the conclusion of M-37050 in a regulation defining the scope of MBTA. In this rule, USFWS determines that MBTA prohibitions on pursuing, hunting, taking, capturing, killing, or attempting to do the same, apply only to actions directed at migratory birds, their nests, or their eggs.

Page 3-58 is revised as follows:

- **Policy OS-D.1.** The County shall support the “no-net-loss” wetlands policies of the US Army Corps of Engineers, the US Fish and Wildlife Service, and the California Department of Fish and ~~[Wildlife]Game~~. Coordination with these agencies at all levels of project review shall continue to ensure that appropriate mitigation measures and the concerns of these agencies are adequately addressed.

Page 3-59 is revised as follows:

- **Policy OS-E.1.** The County shall support efforts to avoid the “net” loss of important wildlife habitat where practicable. In cases where habitat loss cannot be avoided, the County shall impose adequate mitigation for the loss of wildlife habitat that is critical to supporting special-status species and/or other valuable or unique wildlife resources. Mitigation shall be at sufficient ratios to replace the function, and value of the habitat that was removed or degraded. Mitigation may be achieved through any combination of creation, restoration, conservation easements, and/or mitigation banking. Conservation easements should include provisions for maintenance and management in perpetuity. The County shall recommend coordination with the US Fish and Wildlife Service and the California Department of Fish and ~~[Wildlife]Game~~ to ensure that appropriate mitigation measures and the concerns of these agencies are adequately addressed. Important habitat and habitat components include nesting, breeding, and foraging areas, important spawning grounds, migratory routes, migratory stopover areas, oak woodlands, vernal pools, wildlife movement corridors, and other unique wildlife habitats (e.g., alkali scrub) critical to protecting and sustaining wildlife populations.
- **Policy OS-E.2.** The County shall require adequate buffer zones between construction activities and significant wildlife resources, including both onsite habitats that are purposely avoided and significant habitats that are adjacent to the project site, in order to avoid the degradation and disruption of critical life cycle activities such as breeding and feeding. The width of the buffer zone should vary depending on the location, species, etc. A final determination shall be made based on informal consultation with the US Fish and Wildlife Service and/or the California Department of Fish and ~~[Wildlife]Game~~.

Pages 3-62 and 3-63 are revised as follows:

Mitigation Measure 3.5.1: Minimize Potential Loss of Sanford’s Arrowhead.

DWR and its construction contractor(s) will implement the following measures to reduce potential effects on Sanford’s arrowhead:

- Within 1 year before ground-disturbing project activities begin, a qualified botanist shall conduct at least two focused surveys of suitable habitat for Sanford’s arrowhead in and within 50 feet of the project disturbance footprint. The surveys shall be conducted during the specific blooming period for Sanford’s arrowhead (May – October). If no individuals are found, no further mitigation is required.
- If Sanford’s arrowhead is detected, impacts shall be avoided wherever possible by implementing a protective buffer around occupied habitat. A 50-foot buffer shall be

implemented where feasible; where not feasible, the maximum buffer feasible shall be implemented. If feasible, given the site conditions, a protective barrier shall be installed and maintained during construction activities to minimize impacts on occupied habitat that will be preserved adjacent to the construction footprint. If a barrier is not feasible, the avoidance area(s) shall be clearly marked with high-visibility flagging, stakes, and/or other means.

- If direct loss of Sanford's arrowhead plants cannot be avoided, a relocation and monitoring plan shall be developed and implemented in consultation with DFW, as both a regulatory agency and the landowner. To ensure relocation is successful, DWR will work with DFW to identify the relocation site and success monitoring protocol. The relocation and monitoring plan shall outline methods for relocating unavoidable Sanford's arrowhead plants to other areas of suitable on-site habitat that will not be subject to project impacts, including potential future project phases. The plan shall include details about relocation methods, receptor site preparation, transplant survival criteria, post-transplantation monitoring, remedial measures, and long-term protection and management. If at least 50 percent of the transplants (based on occupied acreage/density) do not survive through at least 1 year after transplantation occurs, remedial habitat enhancement, such as invasive weed control, will be implemented to improve the habitat suitability and likelihood for the on-site Sanford's arrowhead population to increase in the long term.

Page 3-64 is revised as follows:

Mitigation Measure 3.5.2: Minimize Potential for Death and Injury of Western Pond Turtle.

DWR and its construction contractor(s) will implement the following measures to reduce potential for death or injury of western pond turtle during project construction:

- A qualified biologist shall conduct a focused survey for western pond turtle in suitable aquatic and basking habitat within the construction footprint 10 days before onsite construction activities begin. If construction activities would begin during the pond turtle nesting season (March through August), surveys shall also include suitable nesting habitat within the construction footprint.
- If a pond turtle nest is found, it shall remain undisturbed, if feasible, until the eggs have hatched.
- Before on-site project activities begin, all on-site project personnel shall attend a training program conducted by a qualified biologist. The program shall address special-status species that could occur on the project site and include a discussion of species identification, life history, general behavior, habitat, and sensitivity to human activities; State and Federal legal protections; and required avoidance and minimization measures. All on-site personnel also shall be provided contact information for the project biologist.

- A survey for western pond turtle shall be conducted before construction work in suitable pond turtle habitat begins each day. If a pond turtles ~~are~~ discovered in the construction area before or during construction activities, it shall be allowed to move out of the area on their own.

Pages 3-66 and 3-67 are revised as follows:

Mitigation Measure 3.5.3a: Conduct Focused Surveys for Burrowing Owls and Avoid Loss of Occupied Burrows and Failure of Active Nests.

To minimize potential effects of project construction and maintenance on burrowing owl, DWR will ensure that the following measures are implemented, consistent with the *Staff Report on Burrowing Owl Mitigation* (DFG 2012).

- A qualified biologist shall conduct focused surveys for burrowing owls, in accordance with Appendix D of the *Staff Report on Burrowing Owl Mitigation* (DFG 2012). At a minimum, surveys shall be conducted during the breeding season of the year in which ground-disturbing project activities begin, and one survey shall be conducted within 10 days before on-site project construction or maintenance activities begin.
- If occupied burrows are observed, protective buffers shall be established and implemented. A qualified biologist, in consultation with DFW, shall determine the appropriate buffer for each occupied burrow; the buffer will depend on type and intensity of project disturbance, presence of visual buffers, and other variables that could affect susceptibility of the owl(s) to disturbance. A qualified biologist shall monitor the occupied burrows during project activities and adjust buffers, if needed, to ensure their effectiveness.
- Before on-site project activities begin, all on-site project personnel shall attend a Worker's Environmental Awareness Program (WEAP) conducted by a qualified biologist. The program shall address special-status species that could occur on the project site and include a discussion of species identification, life history, general behavior, habitat, and sensitivity to human activities; State and Federal legal protections; and required avoidance and minimization measures. All on-site personnel also shall be provided contact information for the project biologist.
- If it is not feasible to implement a buffer of adequate size and it is determined, in consultation with CDFW, that passive exclusion of owls from the area of direct disturbance is an appropriate means of minimizing impacts, an exclusion and passive relocation plan shall be developed and implemented in coordination with CDFW. This plan shall be developed and implemented in accordance with Appendix E of the *Staff Report on Burrowing Owl Mitigation* (DFG 2012). Passive exclusion will not be conducted during the breeding season (February 1 – August 31), unless a qualified biologist verifies through noninvasive means that either (1) the birds have not begun egg laying or (2) juveniles from the occupied burrows are foraging independently and are capable of independent survival.

- If passive exclusion is conducted, an artificial burrow creation, monitoring, and maintenance plan shall be developed and implemented in coordination with DFW and in accordance with Appendix E of the Staff Report on Burrowing Owl Mitigation (DFG 2012). ~~e~~Each occupied burrow that is destroyed will be replaced with at least one artificial burrow on a suitable portion of the project site that will not be subject to project impacts, including potential future project phases.

Page 3-69 is revised as follows:

Project construction would occur during the dry season, when water levels are relatively low, and the extent of in-water disturbance would be minimized. Anadromous and fish (excluding lamprey) ~~are not anticipated to be present in the project area when in-water work would occur.~~ Resident native species and lamprey could be present in and adjacent to in-water work areas. ~~Pacific and river H~~Lamprey ammocoetes could occur in the substrate and water column and potentially be impacted by in-water work. Native ~~resident~~ fishes (such as Chinook salmon, hitch, and hardhead) can make seasonal or daily migrations that could be disrupted by project construction. Direct impacts associated with instream construction activities could include mortality and disturbance that displaces fish from the immediate surrounding areas. However, work in the San Joaquin River channel, where these species are most likely to occur, would be limited to approximately 0.3 acre associated with erosion protection the and upstream and downstream connections for the high-flow side channel. Erosion protection may consist of rock placement, biotechnical planting, or a combination of the two. If rock placement is included, it is anticipated to be placed by approximately two excavators operating from outside the inundated area. In addition, high-flow channel excavation would likely occur well above the area that would be inundated during construction, and approximately two excavators would be used to pull back material at the connection points to the river channel, rather than entering the channel The remaining in-water work would primarily be limited to Milburn Pond, where habitat conditions for special-status species are poor. Based on the timing of the work and habitat conditions where most in-water work would occur, very few individual native fishes are anticipated to be impacted, and impacts would primarily be associated with temporary displacement to similar adjacent habitat. Therefore, this impact would be **less than significant**.

Page 3-71 is revised as follows:

Mitigation Measure 3.5.7: Minimize Riparian Vegetation Removal and Compensate for Unavoidable Removal.

DWR and its construction contractor(s) will implement the following measures to minimize and compensate for riparian vegetation removal:

- Impacts on riparian vegetation outside the construction footprint shall be avoided by installing and maintaining a protective barrier, if feasible given the site conditions. If a barrier is not feasible, the avoidance area(s) shall be clearly marked with high-visibility flagging, stakes, and/or other means.
- An on-site Habitat Restoration and Enhancement Plan shall be developed and implemented in coordination with DFW land managers. The benefit of increased acreage or improved ecological function of on-site riparian habitat resulting from plan

implementation will be considered before additional compensatory measures are proposed.

- If implementing the on-site Habitat Restoration and Enhancement Plan would not ensure no net loss of riparian habitat function or acreage, additional compensation shall be provided by otherwise creating, restoring, or enhancing, or preserving riparian habitat elsewhere within the San Joaquin River watershed at a sufficient ratio to ensure no net loss of habitat function or acreage. The appropriate ratio shall be determined in coordination with DFW during the FGC Section 1602 permitting process.

Section 3.6, “Cultural Resources and Tribal Cultural Resources”

Pages 3-87 and 3-88 are revised as follows:

Mitigation Measure 3.6.1a: Implement Procedures for Inadvertent Discovery of Cultural Material.

If an inadvertent discovery of buried or otherwise previously unidentified historical resources, including archaeological resources (e.g., unusual amounts of shell, animal bone, any human remains, bottle glass, ceramics, building remains), is made at any time during project-related construction activities or project planning, DWR, with input from other interested parties, will develop and implement appropriate protection and avoidance measures, where feasible. If such resources are discovered during project construction, all work within a 100-foot-radius of the find shall cease. DWR shall retain a professional archaeologist meeting the Secretary of the Interior’s Professional Standards for Archaeologists to assess the discovery and recommend what, if any, further treatment or investigation is necessary for the find. Culturally affiliated Native American Tribes will also be contacted concerning resources of Native American origin. In addition, DWR will allow a monitor from a culturally affiliated Tribe to be present during ground-disturbing activities. Avoidance is the preferred mitigation measure for cultural resources. If avoidance is not possible, any necessary treatment/investigation shall be developed in coordination with interested Native American Tribes providing recommendations to DWR and shall be completed before project activities continue in the vicinity of the find. The final disposition of archaeological, historical, and paleontological resources recovered on state lands under SLC jurisdiction will be approved by SLC. An inadvertent discovery plan shall be developed before construction begins and shall be implemented in the event of a discovery during project construction. This plan shall include a process for determining what procedures would be implemented for discoveries that cannot be protected in place.

Section 3.9, “Hazards and Hazardous Materials”

Pages 3-112 and 3-113 are revised as follows:

Mitigation Measure 3.9.1: Implement a Spill Prevention Control and Countermeasures Plan and Other Measures to Reduce the Potential for Environmental Contamination during Construction Activities.

In addition to compliance with all applicable Federal, State, and local regulations, DWR will implement the measures described below to further reduce the risk of accidental spills and protect the environment.

- **Prepare and Implement a Spill Prevention Control and Countermeasures Plan.**
A written SPCCP will be prepared and implemented. The SPCCP and all material necessary for its implementation will be accessible onsite prior to initiation of project construction and throughout the construction period. The SPCCP will include a plan for the emergency cleanup of any spills of fuel or other material. Construction personnel will be provided the necessary information from the SPCCP to prevent or reduce the discharge of pollutants from construction activities to waters and to use the appropriate measures should a spill occur. In the event of a spill in waters, work will stop, and the spill will be addressed immediately with equipment such as a deflection boom to contain the spill and a sorbent boom to absorb the spilled material. ~~and~~ DFW and CVRWQCB will be notified within 24 hours of an in-water spill.

Chapter 4. References

Chapter 1. Introduction

No references cited.

Chapter 2. Comments and Responses to Comments on the Draft EIR

CALFED. Undated. CALFED Bay-Delta ERP Panel Review Selection Panel Review Form. Applicant Organization: Sutter Mutual Water Company. Proposal Title: Sutter Mutual Water Company Tisdale Positive Barrier Fish Screen Pumping Plants. Available: https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKEwinoPLooIz0AhU6JDQIHcA_BTYQFnoECAwQAQ&url=https%3A%2F%2Fnm.dfg.ca.gov%2FFileHandler.ashx%3FDocumentID%3D5310&usg=AOvVaw3F03tLub6ZS9s3_aixEIDs. Accessed December 1, 2021.

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