

3.12 Master Response on Project vs. Program Level Analysis

3.12.1 Introduction

Overview

This master response addresses the issues commenters raised on the project-level impact analysis conducted for Phase 1 of the Project versus the program-level analysis conducted for Phase 2 of the Project.

This master response is organized by the following subtopics:

3.12.2 EIR Program Level and Project Level Analysis

3.12.2 EIR Program Level versus Project Level Analysis

Summary of Issues Raised by Commenters

Commenters asserted that there is not enough detail in the analysis of Phase 2 to make meaningful conclusions about impact significance. In addition, commenters asserted that since Phase 1 creates storage capacity for Phase 2, the two phases should be analyzed as one Project.

Response

As defined by CEQA Guidelines section 15168, a program EIR is an EIR which may be prepared on a series of actions that can be characterized as one large project and are related either:

- Geographically;
- As logical parts in the chain of contemplated actions;
- In connection with rules, regulations, plans, or other general criteria to govern the conduct of a continuing program; or
- As individual activities carried out under the same authorizing statutory or regulatory authority and having generally similar environmental effects which can be mitigated in several different ways.

Further, CEQA Guidelines section 15165 requires preparation of a program EIR when an individual project is to be implemented in phases. Some EIRs combine program- and project-level analysis of phases of a project into one EIR. In this way, the initial phase of a planned series of actions can be evaluated in detail pursuant to CEQA Guidelines section 15161¹ and approved

¹ A Project EIR, as defined by CEQA Guidelines §15161, is an EIR that examines the environmental impacts of a specific development project. The Project EIR evaluates the detailed project including planning, construction, and operation.

for construction, while the later phase encompassing the larger intentions of the lead agency can be disclosed and described.

As described in Draft EIR Vol.1, Chapter 1 Introduction, the Project has two components that would be implemented by the Fenner Valley Mutual Water Company (FVMWC). The first Component—the Groundwater Conservation and Recovery Component (Phase 1)—has been sufficiently developed to a level of certainty that it is ready for detailed environmental impacts analysis associated with its implementation. Thus, a project level analysis can and has been performed for Phase 1. The first Component is being approved by the Project Participants and is analyzed in this Draft EIR at a project level. Phase 1 must be approved before Project Proponents can decide whether to proceed with the second Component. The second component—the Imported Water Storage Component (Phase 2) is still in the conceptual stage of development, and is being considered for implementation following completion of the first Component. There are no agencies currently committed to participate in Phase 2. In addition, the Imported Water Storage Component requires potential future approvals by agencies not yet identified under terms not yet negotiated. Because of this, Phase 2 is still in the conceptual stage and is primarily analyzed programmatically. If approved, Imported Water Storage Component facilities would be constructed after buildout of the groundwater recovery infrastructure, although the conveyance pipeline built for the Conservation and Recovery Component would be used both for export and import of water to and from the site.

In compliance with CEQA, the Draft EIR considered the impacts of each Component individually throughout Vol. 1, Chapter 4 Environmental Setting, Impact, and Mitigation Measures, as well as the cumulative effects of both Components operating in concert in the Draft EIR Vol. 1, Chapter 5 Cumulative Impacts. The impacts associated with Phase 1 would be temporally and physically separate from impacts identified for the potential Phase 2. The purpose of separating the analysis of the two components was to clarify to the public that the Imported Water Storage Component is not part of the present approval process primarily because it may, or may not, go forward. Unless and until further project-level details are developed, analysis at a project level would be incomplete. However, because some analysis of potential overall Project impacts can be accomplished from what is known, the second phase is subject to a broader (programmatic) level of review. Similarly, the alternatives analysis considered Phase 1 on a project level and analyzed Phase 2 programmatically.^{2,3} Alternatives to the two components were considered independently due to the different levels of review and the fact that the Imported Water Storage Component is subject to future review and approval by agencies not yet identified and a project description has not been fully developed.

Even though the phasing of the Project is interrelated, Phase 1 of the Project is not dependent upon Phase 2 going forward – it can stand alone. Meaning, even though Phase 1 lowers the water table to retrieve and intercept groundwater as part of the Groundwater Conservation and Recovery Component and this would then facilitate the subsequent storage and retention of

² *In re Bay-Delta Programmatic Environmental Impact Report Coordinated Proceedings* (2008) 43 Cal.4th 1143, 1169.

³ CEQA Guidelines §15168(b)(4).

imported surface water for the second phase of the Project, this consequence is not an objective of Phase 1. Further, the lowering of groundwater is only one of many other factors which need to be developed. CEQA Guidelines section 15004 (b) provides that “[c]hoosing the precise time for CEQA compliance involves a balancing of competing factors. EIRs and negative declarations should be prepared as early as feasible in the planning process to enable environmental considerations to influence project program and design and yet late enough to provide meaningful information for environmental assessment.” Here, enough is known about Phase 2 that programmatic analysis could be undertaken and program-level mitigation measures provided to commit implementing agencies to further analysis and impact minimization. Future projects proposed under the second Component will be required to prepare subsequent environmental documentation in order to comply with CEQA.

Combining the two Components in one EIR provides for full disclosure of potential future actions and ensures consideration of cumulative impacts that might be slighted were the Components taken only individually. This transparency is beneficial to those reviewing the Project including Responsible Agencies and the public, by allowing an early overview of the concepts that, if Phase 2 proceeds, will be later analyzed at the detailed project level. The overview is provided for the envisioned second phase because it is not yet ready for detailed analysis. Separating the two components and analyzing only Phase 1 for this EIR, without any analysis of Phase 2, would provide less information to reviewers and the public.

The intent of Phase 1 is to capture the groundwater in the Fenner Valley (beneath the Cadiz Property) which without capture is eventually wasted to evaporation. The Project proposes to pump groundwater in excess of the average natural recharge to create the hydraulic gradient necessary to capture groundwater that otherwise would be lost to evaporation. This Component represents an important hydrologic tool necessary for recovering fresh water before it evaporates. Proposed Project pumping would occur from wellfields located in the Fenner Gap area at the downgradient end of the Fenner Watershed (see the Draft EIR Vol. 1, Chapter 3 Project Description, pp. 3-2 and 3-10). This location allows for the recovery of groundwater that is currently flowing from the upper end of the Watershed down into the Fenner Gap as well as groundwater that has already flowed past the Gap and is now flowing towards the Dry Lakes (see Draft EIR Vol. 1, Chapter 3 Project Description, p. 3-10). Once Phase 1 construction is complete and the Conservation and Recovery Component operational, one of the secondary benefits of Phase 1 will be facilitating additional storage capacity within the underground aquifer. Not only will this benefit the carry-over storage aspect of Phase 1 (where Participating Providers store their allotment of groundwater until they need it, such as in dry years), but it will also allow for additional storage capacity for use in Phase 2. Further, detailed information (other than what is currently described) about Phase 2 is not necessary for making an environmentally informed decision about whether to proceed with Phase 1⁴. Phase 1 can move forward without Phase 2 approvals or additional details. For this reason, Phase 1 is independent from Phase 2.

⁴ *No Oil, Inc. v. City of Los Angeles* (1987) 196 Cal. App. 3d 223

Additionally, because Phase 2 is evaluated at a program level in this EIR, the program level analysis makes this EIR a first tier document for Phase 2.⁵ Additional environmental review will be required to address Phase 2 details not evaluated in this Draft EIR. If Phase 2 proceeds, the appropriate level of environmental review will be conducted prior to its approval. Providing an EIR that combines program and project level analysis provides the most information to the Lead Agency, the public, and Project stakeholders while allowing for approval and implementation of Phase 1.

⁵ CEQA Guidelines § 15152.