

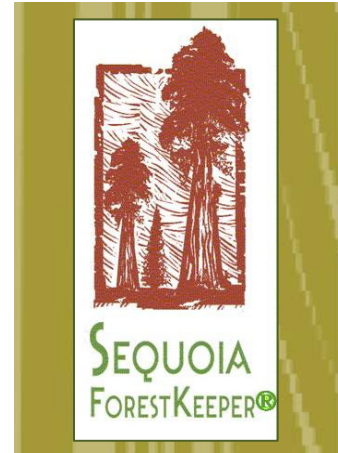
SIERRA CLUB



KERN-KAWEAH CHAPTER



*Because life is good.*



*VIA ELECTRONIC MAIL*

March 23, 2018

Rosedale-Rio Bravo Water Storage District,  
849 Allen Road,  
Bakersfield, CA 93324

Dan Bartel

[dbartel@rrbwsd.com](mailto:dbartel@rrbwsd.com)

**RE: Rosedale-Rio Bravo Water Storage District Notice of Preparation of Draft Environmental Impact Report**

Dear Mr. Bartel:

The Kern-Kaweah Chapter of the Sierra Club, Sequoia ForestKeeper®, Western Watersheds Project, and the Center for Biological Diversity (“Center”) (collectively “conservation groups”) thank you for this opportunity to submit comments on the **Rosedale-Rio Bravo Water Storage District (RRBWS) Notice of Preparation of Draft Environmental Impact Report**

<http://www.rrbwsd.com/wp-content/uploads/2018/02/Onyx-Ranch-South-Fork-Initial-Study-2-22-18.pdf> proposal to **fallow Onyx Ranch farm land in order to transfer stream flow water through the Isabella Reservoir and Dam to Bakersfield to expand your groundwater storage and extraction in Bakersfield.**

### **Project Description**

You indicate that RRBWS proposes to **change the point of diversion** and place of use for the appropriative water rights associated with these parcels, so that the water can be delivered in the RRBWS service area on the San Joaquin Valley floor and be used for irrigation and

groundwater recharge. You propose to reduce the diversion of water on the project site and convert the irrigated fields to lower water use crops or allow the fields to return to their native vegetative state. **The RRBWSD would then allow the water that would have been diverted on the project site to remain in the South Fork of the Kern River and flow downstream. This would result in a net increase in flows within the South Fork of the Kern River, and the Isabella Reservoir where the water would be released through the Isabella Dam and flow downstream in the lower Kern River until the water is diverted at the RRBWSD diversion point.** From there, the RRBWSD would deliver the water to recharge basins and channels within and near its service area west of the City of Bakersfield (City) in unincorporated Kern County within the San Joaquin Valley.

You held two meetings on March 6, 2018 regarding the proposal, unfortunately, many questions that were asked at that meeting were not answered.

## **GENERAL ISSUES OF CONCERN THAT MUST BE ADDRESSED IN THE DRAFT EIR**

### **Claimed Water Rights Must Be Confirmed**

The Draft EIR must disclose the historic chain of ownership of the acquired property in the South Fork Kern River Valley, the associated water rights, and the history of the continuous use of water rights for each of the Onyx Ranch and Smith Ranch parcels in question in this proposed transfer. The scoping notice and study provide only conclusions and no information or analysis of this key issue. Rosedale-Rio Bravo must prove that these are all appropriative rights and not in fact a mix of riparian right which cannot be transferred and appropriative which can be transferred. The DEIR must clarify and verify which source waters constitute the 14,000 acre-feet of claimed rights; are these appropriative, groundwater, or riparian waters or a combination?

The RRBWSD Study says, “RRBWSD has acquired property and the associated pre-1914 appropriative water rights on the South Fork of the Kern River. The purpose of the proposed project is to enable the RRBWSD to change the point of diversion and place of use for certain water rights from lands in the South Fork Valley to a location downstream within the San Joaquin Valley floor.” And “The RRBWSD proposes to change the point of diversion and place of use for the water rights associated with these parcels so that the water can be delivered in the RRBWSD service area on the San Joaquin Valley floor and used for irrigation and groundwater recharge.” And “The net increase in water supplies to the RRBWSD’s service area as a result of the proposed project would help mitigate the shortages in RRBWSD’s contracted State Water Project (SWP) water supply from the State of California, which has steadily reduced due to environmental constraints in the Sacramento/San Joaquin Delta.” And “Currently, the RRBWSD’s service area, located in the westernmost portion of the City of Bakersfield and unincorporated Kern County, contains approximately 43,000 acres of agricultural and urbanized agricultural land. The present developed area is estimated to be 35,500 acres, with approximately 28,000 acres utilized for irrigated agriculture and

approximately 7,500 acres developed with urban uses. The urban development is primarily located in the eastern end of the RRBWSD's service area and is anticipated to increase as the City develops to the west."

RRBWSD cannot just claim water rights, but must document all claimed pre-1914 water rights on each of the properties. This would of necessity include a discussion of whether any non-use or abandonment may have occurred, including non-use for a period of five years or more. A third party, such as the State Water Resources Control Board, should verify the chain of custody, ownership and use, since the waters were allegedly appropriated and must also consider the extent to which some of the claimed appropriative water rights might in fact be riparian water rights associated with the parcels that cannot be transferred. A complete assessment must be performed to confirm all claimed pre-1914 appropriative water rights and proof provided that they have never expired or ceased to be exercised.

Therefore, further analysis of the foundational issue of water rights must be addressed in the Draft EIR.

The RRBWSD proposes to transfer water within the basin, albeit far downstream, through the South Fork of the Kern River. RRBWSD should not consider any alternative in the DEIR that would allow for a transfer of water out of the basin, bypassing the South Fork of the Kern River, such as a transfer to Indian Wells Valley. Transferring water out of the basin would have even greater environmental impacts than the proposal and, thus, is not a proper alternative under CEQA.

**The Draft EIR should provide the historic percentage of flow utilized by RRBWSD on these parcels to be fallowed compared to the total flow of the South Fork Kern River. This is important because RRBWSD cannot rely on historic flows of the South Fork Kern River to remain the same because neither snowpack nor South Fork flows are consistent, so current and future flows in the South Fork cannot be predicted, especially during California's drought.**

The RRBWSD Study says, "The RRBWSD has installed flow metering devices on some of its wells and, as a part of the proposed project, would have them installed on all wells accessed by the RRBWSD. For the existing conditions, the RRBWSD makes monthly pumping estimates for each year. With the implementation of the proposed project, the RRBWSD would post daily flow and diversion records on a monthly basis." And "For the purposes of the proposed project, the amount of water from the Onyx Ranch that may be left to flow in the South Fork of the Kern River to the Isabella Reservoir would be: the lesser of the amount available under the water rights under actual flow conditions; and the largest amount that was diverted in that same month of the year between 2009 and 2017 (excluding the year 2011)." And "If these other diverters would not be diverting the full 11.88 cfs of water, the remaining water would become available for the next entity with rights under the 1902 Decree. As a result, the amount available under the RRBWSD rights could increase up to the historic maximum for that month of the year between 2009 and 2017."

As noted above, further analysis of the amount of water available and the environmental impacts associated with the proposed transfer must be provided in the Draft EIR. The Draft EIR must provide the documented history of all the "water rights" mentioned in the RRBWSD "Study" for the Onyx Ranch South Fork Valley and San Joaquin Valley, RRBWSD cannot simply claim those rights or assume they exist.

The RRBWSD Study says, "The Onyx Ranch South Fork Valley Water Project (proposed project) involves changing the point(s) of diversion and place of use for certain South Fork of the Kern River water rights from lands in the South Fork Valley to lands on the San Joaquin Valley floor in Kern County (County)."

Therefore, further discussion, analysis, and clarification of the claimed "water rights" held by RRBWSD for the Bakersfield location(s), must be provided in the Draft EIR.

### **Environmental Condition of Recharge Areas and Impacts to those Areas Must Be Considered**

**The RRBWSD must discuss the water balance, not just where water is being removed from in the South Fork Kern River Valley, but also where the water is being transferred to, recharged, and sold in the Bakersfield area.**

The documents indicate that since 2013, RRBWSD has spread 14,000 acre-feet of surface water in the South Fork Kern River Valley where that infiltrating water maintained the groundwater level to just below the surface on your property, but during the drought the riparian forest died west of the RRBWSD property along Sierra Way because the river channel downstream of Onyx Ranch remained dry. The DEIR must explain where RRBWSD got the water to spread in those years, since the region, with the exception of the 2016-17 water year, was in a deep drought. Water was not distributed evenly across the region and caused many landowners to deepen their wells.

RRBWSD states it mixed groundwater and surface water to maintain business operations. What percentage of the water used was groundwater versus surface water? This should be disclosed in the DEIR.

RRBWSD, Renewable Resources Group, the previous landowner, also hardened the riverbed with concrete slabs and weirs that prevented natural river meanders and infiltration and hardened drainage ditches with concrete and plastic liners that prevented natural infiltration. The DEIR must disclose all infrastructure RRBWSD has put in and all of the actions it has taken to alter streambeds, streamside vegetation and stream flows.

The DEIR should also consider at least one alternative under which all of the hardening devices are removed to restore the natural ecological processes of a meandering South Fork Kern River.

## **Fully Allocated Water in the Isabella Reservoir and Competing Water Rights**

**The Draft EIR must address the Kern River Watermaster, Dana Munn’s statement, “Water rights structure does not allow moving water to Bakersfield.” and “Isabella Reservoir is fully allocated.”<sup>i</sup>**

The RRBWSD Study says, “While the water rights holders along the South Fork do not have a formal Watermaster organization, operations are coordinated and flow data is recorded and distributed among the parties on a weekly basis.”

When asked at the Kern River Valley Revitalization meeting on 4 March 2015 about Rosedale-Rio Bravo’s interest in transferring water through the Isabella Reservoir Kern River Watermaster, Dana Munn said, “Water rights structure does not allow moving water to Bakersfield.” and “Isabella Reservoir is fully allocated.” The DEIR must explain how the proposed project to transfer the claimed water rights interfaces with other water rights and water flow issues in the basin. These issues include whether flows can be stored in Isabella Reservoir and, if so, the impacts of increasing storage and flooding on other environmental values—including mitigation areas.

The project site analysis must fully consider the constancy of the water table depth in areas that would no longer have surface water, which is a critical measure of the health of the riparian forest and therefore, the fecundity of the wildlife that rely on the viability of the riparian forest. If the water table depth in the area of the riparian forest drops due to the fallowing of adjacent prime farmlands, the riparian forest may be severely impacted or die. Acoustic depth measuring devices that continuously up-load to a publicly-accessible website must be installed to determine, continuously monitor, and track water table depth throughout the project area and adjacent properties to verify the continued health of the riparian forest to inform other residents and water users in the Kern River Valley.

Therefore, further discussion and analysis of these environmental issues should be provided in the Draft EIR.

**The RRBWSD Project Draft EIR must establish a percentage of the flow from the Onyx Gauging Station, rather than a flow range or acre-foot volume, since there are other water-rights holders who are allocated flow from the Onyx Gauging Station and since flows, and the snowpack upon which flows are based, fluctuate.**

The RRBWSD Study says, “The South Fork, measured at the U.S.G.S. Onyx Gauge Station located at the upper end of the South Fork Valley, has an annual average flow of approximately 91,000 acre-feet. This flow ranges from zero cubic feet per second (cfs) to 14,000 cfs with annual discharge ranging from 10 cfs (in 1961) to 615 cfs (in 1969).<sup>ii</sup> Typically the monthly stream flow measured at this station is highest from March to June with peak flows in April.”

The RRBWSD Study says, “In addition, the following entities also have water rights along the Kern River downstream of the Isabella Dam: City of Bakersfield, Olcese Water District, North Kern Water Storage District, and Kern Delta Water District. Downstream of the RRBWSD, the Buena Vista Water Storage District and the Kern County Water Agency hold water rights to the Kern River.”

Therefore, further discussion and analysis of these issues should be provided in the Draft EIR.

### **Local Effects of Concern**

The South Fork Kern River is rural and pastoral with three, small, groundwater dependent communities. The economy is based on tourism and agriculture with small retail businesses and a substantial fixed-income retirement community. In the late 19<sup>th</sup> and early 20<sup>th</sup> centuries South Fork farmers took up arms to prevent the water theft from their lifeblood river. This insurgency has kept these communities alive for over 150 years.

Water quantity through the South Fork Kern River is not static and original water rights in the early 20th century measured the flow in miner’s inches not acre feet. Those who retain riparian water rights must have those rights measured as percentage of flow and not in acre feet because rainfall controls the river flow and volume, not the water “owners”. RRBWSD states that it is claiming appropriative rights, but much of the right is more likely riparian rights that are specific to the parcels and cannot be transferred. RRBWSD cannot transfer riparian right which are bound to the parcels.

Sheet flooding is natural and groundwater recharge happens as a result. The Gibboney Ponds on Onyx Ranch hold ecologically valuable shallow lake and marshland habitat that has a substantial Tricolored Blackbird colony on it. It appears that the RRBWSD proposal to remove water from this area would violate California Wetlands Conservation Policy (Executive Order W-59-93). The DEIR must disclose and fully analyze this issue and the impacts to wildlife as required under CEQA.

If 100-year-old+ unlined canals are hardened and farmlands are allowed, groundwater depletion will occur due to lack of recharge. The unlined canal recharge method replaced the natural river meander and sheet flooding from runoff that historically distributed water to the South Fork Kern groundwater basins. The DEIR must consider restoring the historic meander as an alternative to hardening canals.

Most of the riparian ecosystem is now unhealthy because river meander is no longer allowed, which is creating a decadent and dying forest that has less and less habitat value for riparian obligate species. Fremont cottonwood has a life span no greater than 125 years, making riparian systems old-growth in less than one human generation. No planting of riparian vegetation is necessary along natural water channels where native seed source is abundant, but water is absolutely essential either above or in shallow ground water tables for the marshes

and forests to thrive. Absolutely no chemical application of herbicides or pesticides should be permitted for the safety of wildlife and humans.

Because the proposal will increase instream flow in the spring when floods can occur and create a transportation nightmare for ingress and egress from South Fork communities, the DEIR must consider substantial improvement to transportation infrastructure (roads) at the RRBWSD's expense, as part of the needed mitigation for this project to be approved. The major Sierra Way artery and Fay Ranch Road will be flooded and impassible for months at a time. Those roadways already flood with greater than 965cfs flows in the South Fork Kern River measured at the Onyx gauging station.

The DEIR must also address that the prior landowner, Renewable Resource Group, without obtaining section 1602 permits, illegally hardened canals with concrete near the Chico Allotment, Nicholl Ditch, and Doyle Ranch Road, which reduced river water flow and it is unclear if and how much groundwater was pumped from their new deep well pumps to transfer groundwater to surface flow via irrigation canals and the river. As part of this proposed project RRBWSD must commit to not pump groundwater from those deep wells and put it in the river for transfer out of the basin.

#### **Loss of economic values in the South Fork of Concern.**

If the proposed project goes forward, it must mitigate impacts to local groundwater in the South Fork Valley from lack of infiltration, if farmland is fallowed. The DEIR must fully consider ways to mitigate these impacts, including restoring historic river meanders, restoration of streamside vegetation, or other means.

Without mitigation of impacts to groundwater, property values will plummet without groundwater and lives will be at stake. Digging deeper wells is an expense few residents can afford and well-deepening will eventually no longer be viable as the water table continues to drop with lack of surface recharge.

California Water Company rates, which are already the highest in California per capita due to their usurious meter charges in the Kern River Valley, will rise as they are forced to dig deeper and deeper wells.

South Fork farmland will disappear as there will be no water to farm and dry farming will fail as the water table drops. Tourists to the pastoral valley will no longer stop to admire the cattle of the South Fork Valley.

The riparian forest will become more decadent and most of it, not immediately adjacent to the static river corridor, will die. As the forest dies the bird life will become less abundant and the thousands of nature tourists that flock to the Kern River Valley throughout the year will no

longer find this area worth a stop. Birding is a quiet, non-consumptive sport that brings substantial revenue to the Kern River Valley during non-peak recreation seasons.

### **Downstream uses of Concern**

If the proposed project goes forward, RRBWSD should prohibit use of any recharged groundwater for fracking. Water used for oil production and fracking is a tragedy of the commons because clean fresh water in a desert environment is more valuable than oil. Fracking encourages continued use of fossil fuels which are in part causing our forests to die because of climate change. Fracking pollutes the underground water resources and is a danger to the water drinking community. Growth of fracking contributes to an increase in GHG emissions and must be addressed.

The RRBWSD policy of not allowing any vegetation to grow on recharge ponds in the SJV has caused net loss of wetlands and marsh while eliminating native upland habitat. Kern County saltbush scrubland, alkali sink, and marshland are home to many endangered species. RRBWSD's denuded recharge ponds will eliminate endangered species habitat and will continue unregulated agricultural sprawl that is causing local extirpation and possibly the extinction of rare and federally-listed native species. Giant Kangaroo Rat, Tipton Kangaroo Rat, San Joaquin Kit Fox, Blunt-nosed Leopard Lizard, more wildlife, and many rare plant species are at the brink of extinction already. The DEIR must consider alternatives and mitigation measures that include restoration of habitat for native species in conjunction with recharge activities. Similar efforts have been successful in other areas, including the Kern Water Bank where riparian and upland vegetation supports various wildlife species.<sup>iii</sup>

Uncontrolled urban sprawl on prime Ag land that has eliminated native habitat and keeps pushing industrial agriculture further into native habitats where the agriculture community is essentially immune to regulation. The southern San Joaquin Valley is a natural desert; water storage schemes that benefit only agribusiness at the expense of dwindling species should not be approved.

### **SPECIFIC ISSUES OF CONCERN:**

**RRBWSD as the CEQA lead agency is a conflict of interest.** How can RRBWSD be the lead in CEQA? The district is controlled by parties with a vested interest in the decision which may violate the Public Trust Doctrine. Therefore, the lead agency should be an agency with no fiduciary ties to RRBWSD or local water agencies that might benefit from the proposed transfer.

Therefore: Approval of the Onyx Ranch Water Storage Project; Certification of the Final Environmental Impact Report as complete and final; and Adoption of the Mitigation Monitoring and Reporting Program (to include mitigation measures and Kern River Valley Specific Plan implementation measures) must be done by a separate agency. We suggest that another responsible agency such as the California Department of Conservation would be a more



appropriate lead agency and that SWRCB should confirm all claimed water rights before the DEIR is prepared or any water transfer is considered or approved and certainly before any final EIR certification.

The full impacts of this project should be discussed in the DEIR. The following categories were not checked for their impacts in the CEQA checklist yet this project will have adverse effects under most of these headings.

- Greenhouse Gas Emissions**
- Land Use/Planning**
- Mineral Resources**
- Noise**
- Population/Housing**
- Public Services**
- Recreation**
- Transportation/Traffic**
- Utilities/Service Systems**

We provide commentary on these and other significant issues under each heading whether discussed in the scoping document or not.

- I. Aesthetics – checked as having less than significant impact on the scenic vista**
  - a. Scenic quality of the South Fork Riparian Forest at Smith Ranch would be degraded with only 2/3 of the water reaching the lush riparian corridor and causing die-back of the scenic riparian forest.
  - b. Viewshed from Domeland Wilderness would be degraded by browning of the valley. Since the Project site is quite visible from the Domeland Wilderness of Sequoia National Forest and Bureau of Land Management and the changed crop conditions of crops to fallow ground could cause a substantial effect on the scenic vista from Domeland Wilderness, will further analysis of this environmental issue and the CEQA Environmental Checklist Form for Aesthetics be provided in the Draft EIR?
  - c. The RRBWSD Study says, “The project site is visible from the roadways within and adjacent to the site as well as the surrounding area. However, there are no designated scenic vistas within the Kern County General Plan or the Kern River Valley Specific Plan that include the project site.”
  - d. The RRBWSD Study also says, “The changes to the existing visual characteristics of the project site would be minimal and most likely not noticeable to residents and visitors to the South Fork Valley as they are typical changes that occur to agricultural land as a result of land fallowing and crop rotation. However, since the implementation of the proposed project has the potential to degrade the existing visual character or quality of the project site, the analysis of this environmental issue will be provided in the Draft EIR.”

- e. There will be a significant impact to the viewshed from Highway 178 and the communities of Onyx and Weldon with degradation to the riparian forest and marshland.
- f. Further discussion and analysis of these issues should be provided in the Draft EIR.

**II. Agriculture Resources – checked**

- a. What percentage of South Fork Valley agricultural acreage will be fallowed?
- b. How will the loss of Williamson Act tax relief affect the local ranching and farming families? Will this force them to sell their land and or water rights due to increase in taxation and reduced value of ranchland with less water?
- c. Will the Draft EIR provide mitigation for the loss of any Prime Farmland in the form of the acquisition of other, equivalent Prime Farmland on a one-to-one or better ratio?
- d. The RRBWSD Study says, “The proposed project would result in changes to the crops, use of the agricultural fields, and the amount of grazing on the project site. The implementation of the proposed project would not convert Prime Farmland, Unique Farmland, or Farmland of Statewide Importance to a non-agricultural use. However, since the proposed project would alter the amount of irrigation to agricultural crops on the project site, the analysis of this environmental issue will be provided in the Draft EIR.”
- e. Therefore, further analysis of this environmental issue should be provided in the Draft EIR.

**III. Air Quality – checked**

- a. Will the Draft EIR analysis thoroughly disclose, discuss, analyze, and fully consider any land use changes that enable livestock grazing or overgrazing to create dust?
- b. The RRBWSD Study says, “Potentially significant impact. The implementation of the proposed project has the potential to conflict with or obstruct implementation of the applicable air quality plan due to the creation of fugitive dust from irrigated fields that are converted to non-irrigated crops, fallow agricultural land, native vegetation, and/or the grazing of livestock.
- c. Fallow fields will increase particulate matter, but we do not see how the impact is currently being measured or any reasonable mitigation offered to replant native upland vegetation.
- d. Fugitive dust of fallowed fields that continue to be grazed will increase as the vegetative cover is removed.
- e. Loss of forest and vegetative cover will decrease particulate matter capture and increase heating of the valley.
- f. Further discussion and analysis of these issues should be provided in the Draft EIR.

**IV. Biological Resources – checked**

- a. Have biological surveys been conducted on the entirety of Onyx Ranch and Smith Ranch and by certified biologists familiar with local flora and fauna?

- b. Over half of the land in the South Fork Kern River has been preserved to conserve endangered species habitat in the riparian forest and adjacent marshlands. How is this project going to mitigate loss of habitat for the Tricolored Blackbird, Western Yellow-billed Cuckoo, Southwestern Willow Flycatcher, alkali mariposa lily, Hoover's woolly sunflower, and all of the other riparian and wetland obligates that will suffer under this drastic change of environment.
- c. The water table dropped in the 2011-2016 drought as water upstream was manipulated to stop the flow of the river to the Forest Service property by the reservoir. This resulted in the water table dropping and the riparian forest dying along Sierra Way and throughout the Kern River Preserve and South Fork Wildlife Area; this die-off should be mitigated as it was a direct result of upstream manipulation by Rosedale-Rio Bravo Water Storage District and these earlier actions appear to have been tied to this proposed water transfer project.
- d. The hardening of ditches and removal of riparian vegetation along manmade canals without CEQA was a "take" of riparian rights-of-ways that became natural mitigation after the loss of much of the meandering river riparian corridor going back 150 years. This hardening of ditches and removal of riparian vegetation along manmade canals has directly resulted in loss of biological resources as well as harmed the aquifer and must be considered in the EIR.
- e. Areas where Onyx Ranch, Renewable Resource Group, and now RRBWSD are currently spreading water (Gibboney Fields just east of Audubon Kern River Preserve (KRP)/California Department of Fish and Wildlife (CDFW) Sprague Ranch on north side of river) are important wetlands and waterfowl habitats and groundwater recharge areas. These would conceivably be diminished or lost and wildlife lost due to the proposed project and must be fully addressed in the DEIR, along with alternatives to avoid these impacts, minimization and mitigation measures.
- f. Native meadows and alfalfa that are irrigated for cattle are excellent habitat for Tricolored Blackbird and Kern Red-winged blackbirds, wintering raptors, and other wildlife. These could be diminished under the proposed project and must be fully addressed in the DEIR, along with alternatives to avoid these impacts, minimization and mitigation measures.
- g. The Draft EIR must consider ways to avoid or mitigate the impacts to native species habitat and associated wildlife in the San Joaquin Valley (SJV) resulting from expanding the water bank in the SJV with additional water from the South Fork Kern River as a result of providing this additional water to Bakersfield, which is likely to result in more urban growth by improving water security. Further analysis of this environmental issue should also be provided in the Draft EIR.
- h. How much destruction of native species habitats in SJV will occur by expanding RRBWSD water bank in SJV?

- i. The RRBWSD Study also says, “This would result in a net increase in flows within the South Fork of the Kern River, and the Isabella Reservoir where the water would be released through the Isabella Dam and flow downstream in the lower Kern River until the water is diverted at the RRBWSD diversion point. From there, the RRBWSD would deliver the water to recharge basins and channels within and near its service area west of the City of Bakersfield (City) in unincorporated Kern County within the San Joaquin Valley.”
- ii. The James Project of RRBWSD says, “The Bakersfield housing market has experienced a severe downturn in recent years; however, there remains an interest from the homebuilding community in developing a portion of the property for residential use. Rosedale supports a mixed use approach for the property and intends on building upon the successful integration of groundwater recharge facilities with urban development, as seen in the Rosedale Allen Road Ponds and the City of Bakersfield’s 2800 acre project.”
- iii. The RRBWSD Study says, “the RRBWSD would deliver the water to recharge basins and channels within and near its service area west of the City of Bakersfield (City) in unincorporated Kern County within the San Joaquin Valley.”
- iv. Since RRBWSD is developing the James project, which has a mixed use approach that includes homebuilding that could be stimulated by the water transferred from the Onyx Ranch, how much habitat will be converted to homebuilding or water storage? All of these issues must be fully addressed in the DEIR, in terms of direct, indirect and cumulative impacts. Further, alternatives to avoid these impacts, minimization and mitigation measures must be provided.

**V. Cultural Resources – checked**

- a. The buildings and structures on Doyle Ranch Road are all over 50 years old and some may be eligible for protection as historical structures. Although this project states that the historic Onyx Store will not be affected, how can we be assured that the lessee, who is now running the store that she has restored, will be allowed to continue as the use is subject to a Grandfather clause in code enforcement?
- b. Cemeteries of Native Americans do not follow the European construct, the DEIR cannot assume lack of burial grounds, because they are outside of designated cemeteries.
- c. Further discussion and analysis of these issues should be provided in the Draft EIR.

**VI. Geology/Soils – checked**

- a. The close proximity and orientations of the Scodie seismic lineament to this project and the alteration of the aquifer by less recharge should be analyzed for its potential to increase the stress and strain on this seismic zone.

- b. Fugitive dust and loss of top soil are a major concern where winds frequently are sustained at greater than 30 mph.
- c. Increase in volume and flow of the South Fork Kern River has potential to cause significant down cutting and transport of great amounts of sediment downstream and into the reservoir, the DEIR must discuss this impact, alternatives and ways that RRBWSD could minimize and mitigate this impact as well.
- d. Further discussion and analysis of these issues should be provided in the Draft EIR.

**VII. Greenhouse Gas Emissions – no impact**

- a. The RRBWSD Study says not one word about climate change even though it briefly, but inadequately considers greenhouse gas emissions. CEQA guidelines require that, “Lead agencies must analyze the greenhouse gas emissions of proposed projects, and must reach a conclusion regarding the significance of those emissions. (See CEQA Guidelines § 15064.4.)”
- b. The RRBWSD Project Draft EIR must consider Greenhouse Gas Emissions and climate change because the scoping report erroneously claimed no impact. CEQA requires that both GHGs and climate impacts be fully addressed.
- c. The RRBWSD Project Draft EIR must consider the impacts of Climate Change on the Project and the impacts of the project on Climate Change, which are requirements for all projects that involve California lands and all Federal property, including Waters of the United States, which includes the South Fork Kern River water that RRBWSD proposes to transfer.
  - i. The Federal National Environmental Quality Act (NEPA) “Considerations related to climate change include: 1. The effects of a project on climate change through greenhouse gas emissions. 2. The effects of climate change on a proposed project. In other words, how climate change may influence the purpose and need for projects in the short-term (within the next 10 to 15 years) and long-term (over the next several decades); and 3. The implications of climate change for the environmental effects of a proposed action. These considerations may receive different levels of emphasis at different stages of the NEPA process and depending on the nature of a project and its potential effects.”
  - ii. The Federal Environmental Protection Agency: “Climate change is changing our assumptions about water resources. As climate change warms the atmosphere, altering the hydrologic cycle, changes to the amount, timing, form, and intensity of precipitation will continue. Other expected changes include the flow of water in watersheds, as well as the quality of aquatic and marine environments. These impacts are likely to affect the programs designed to protect water quality, public health, and safety.” <https://www.epa.gov/climate-change-water-sector>

- d. The RRBWSD Study says, “As a result, the proposed project would change the visual characteristics of the agricultural fields with the conversion of the types of crops grown and agricultural fields would be allowed to become fallow, return to native vegetation, or used for livestock grazing.” The proposed project would facilitate changes in the use of native surface water from rural agrarian uses to other uses that could increase GHGs and accelerate impacts from climate change, such as oil and gas production and urban expansion.
- e. The DEIR must consider whether this RRBWSD water transfer project could cause increased wildlife habitat loss in Bakersfield due to the transfer of South Fork Kern River agriculture use water being put to the unreasonable uses of this agriculture water for downstream oil production, urban sprawl, dairy livestock, or livestock feed crops production. Contrary to the finding of the scoping study, which found NO IMPACT on GREENHOUSE GAS EMISSIONS and LAND USE AND PLANNING, the project site analysis must fully consider, further analysis of these environmental issues in the Draft EIR.
- f. Therefore, further analysis of GHGs and climate change environmental issue should be provided in the Draft EIR.

**VIII. Hazards & Hazardous Materials – checked**

- a. All farming activities produce significant hazardous materials with storage of fuels, fertilizers (manure), pesticides, and herbicides. The fallowing of fields in agriculture is bound to cause hazardous materials to become airborne. All disposal sites, fields, and water conveyance facilities must be analyzed for hazardous wastes.
- b. The desiccation of the vegetation will increase the potential for catastrophic wildfires and exposure of area residents and businesses to airborne contaminants carried in smoke. The DEIR must consider ways for RRBWSD to mitigate these impacts.

**IX. Hydrology/Water Quality – checked**

- a. The Draft EIR must fully disclose and analyze the type of “water rights” held by RRBWSD (pre-1914, post-1914, or other) for the lower Kern River groundwater recharge basins and at its service area west of the City of Bakersfield to where this pre-1914 South Fork Kern River water will be delivered.
- b. The RRBWSD Study says, “Currently, the RRBWSD receives Kern River water from the City of Bakersfield through contractual arrangements and the RRBWSD’s water rights associated with its holdings in the Kern Valley.”
- c. The “Study” fails to disclose the type of “water rights” held by RRBWSD (pre-1914, post-1914, or other) for the lower Kern River groundwater recharge basins available to RRBWSD within and near its service area west of the City of Bakersfield to where this pre-1914 South Fork Kern River water will be delivered.
- d. The "water rights" RRBWSD receives from the State Water Project through the City of Bakersfield mentioned in the “Study” are not clearly defined in the

“study” and those from the State Water project may be only "paper water" allocations under the State Water Project (SWP). If these are so-called Table A waters, they are earmarked for agriculture and not urban growth or for oil extraction.

- e. The claimed “water rights” from Onyx Ranch must be further explained and proven and any appropriative rights clearly distinguished from riparian rights.
- f. There was a large lawsuit over "Monterey Agreement" transfers (farm to city). The Monterey Amendments was a secret deal concluded in the 1990s between the Department of Water Resources and San Joaquin Valley irrigators. The Monterey Amendments compromised the public interest in state water policy in several ways. It eliminated safeguards against the expansion of “paper water,” i.e., the difference between the water that actually exists in state reservoirs and the water authorized for SWP delivery. (In California, water rights claims outstrip the amount of developed water in the state by 5.5 times.) It nullified the “urban preference,” the clause in state water contracts that gave cities priority over farms during drought. And it transferred control of the rechargeable Kern Water Bank to private interests.
- g. The Draft EIR analysis must fully consider that, if the groundwater table level drops in the area of the riparian forest, due to the fallowing of adjacent prime farmlands, the riparian forest would be severely impacted or die. Alternatives that would avoid this impact as well as minimization and mitigation measures must be addressed.
- h. The RRBWSD Study says, “With the implementation of the proposed project, the RRBWSD would collect data from the wells on the project site as well as seek additional data from other South Fork Valley pumpers and post the records on a monthly basis.”
- i. The RRBWSD study shows there is a Potentially Significant Impact under IX HYDROLOGY AND WATER QUALITY b) Substantially deplete groundwater supplies or interfere substantially with groundwater recharge such that there would be a net deficit in aquifer volume or a lowering of the local groundwater table level.
- j. The RRBWSD study shows there is a Potentially Significant Impact under IX HYDROLOGY AND WATER QUALITY c) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, in a manner which would result in substantial erosion or siltation on- or off-site? Potentially Significant Impact X
- k. The Draft EIR must provide a much more rigorous system of inflow and diverted water measurements, including tracking flows through various man-made canals and ditches along the South Fork, both hardened and not, so the data is transparent using more modern equipment with a database made easily accessible by the public and maintained by a third party or an independent third party government agency. The data identified in the study is insufficient for the

analysis needed in the DEIR to ensure that the public and decision makers are fully informed of the potential impacts of the proposed project.

- l. Even if RRBWSD can prove some of their claimed pre-1914 appropriative water rights the proposed transfer may lead to both waste and unreasonable use of water and those issues must be fully considered in the DEIR. If some (or all) of the claimed water rights are found to be post-1914 appropriations then RRBWSD must seek approval of the SWRCB to change the place of use. And if some (or all) of the claimed water rights are found to be riparian rights then they cannot be transferred from the parcels where they are found.
- m. Because the proposed water transfer may cause adverse impacts to Public Trust resources, those impacts must be fully addressed in the EIR.

**“Types of Water Rights**

From a water right standpoint there are two types of water: surface water and groundwater. Laws governing them are very different in California. Groundwater is basically treated as a local water supply and has little statewide regulation of its use. However, State law, as developed by the courts, defines the nature and extent of groundwater rights. Surface water, on the other hand, has a rather well-developed, if not complicated, set of statewide laws regulating its development and use. These laws related to surface water rights are administered by the SWRCB. In order to transfer water one must possess a right to the water in the first place. A water transfer is a special kind of change in these existing water rights. All water use in California is governed by the State’s constitutional provisions [Section 2 of Article X of the California Constitution] that prohibit waste and unreasonable use of water. The SWRCB can take action to halt or prevent waste and unreasonable use of water regardless of the source of the water.”

[https://www.waterboards.ca.gov/publications\\_forms/publications/general/docs/watertransferguide.pdf](https://www.waterboards.ca.gov/publications_forms/publications/general/docs/watertransferguide.pdf)

- n. The RRBWSD Study says, “With the implementation of the proposed project, the RRBWSD would collect data from the wells on the project site as well as seek additional data from other South Fork Valley pumpers and post the records on a monthly basis.”
- o. The RRBWSD study shows there is a Potentially Significant Impact under IX HYDROLOGY AND WATER QUALITY b) Substantially deplete groundwater supplies or interfere substantially with groundwater recharge such that there would be a net deficit in aquifer volume or a lowering of the local groundwater table level.
- p. The DEIR must disclose if groundwater use on these parcels increase to offset the non-use of surface flows and result in ground water depletion. There is no separation between the ground and surface water in the South Fork Valley. This system is a ground-water dependent ecosystem in many years especially in late



summer and fall. Groundwater depletion would be catastrophic for the natural systems.

- q. In order to know if groundwater levels are being affected in real-time and to be fully transparent, RRBWSD must install acoustic groundwater depth measuring devices that transmit real-time to a publicly-accessible web site the depth of local wells.
- r. The July 1999 publication from the State Water Resources Control Board (SWRCB) titled, A Guide to Water Transfers states, “The study should evaluate effects on reservoir levels, recreational impacts, flows downstream, temperature downstream, other water quality changes, and the likely biological effects of these changes.”
- s. If groundwater level for nearby residential wells were to similarly drop, mitigation would be required.
- t. Therefore, further analysis of this environmental issue should be provided in the Draft EIR.
- u. Therefore, further discussion, analysis, and clarification of ALL of these environmental issue(s), including but should be provided in the Draft EIR.

**X. Land Use/Planning – no impact**

- a. The CEQA checklist asks would the proposed project conflict with any applicable habitat conservation plan or natural community conservation plan? However, the lack of HCP or NCCP does not equate to lack of impacts to conservation planning. This project will have extreme impacts to the NRCS, Nature Conservancy, Audubon, California Department of Fish & Wildlife, and Army Corps of Engineers conservation objectives and therefore it will impact land use and planning values in the area.
- b. The DEIR must analyze this environmental issue .

**XI. Mineral Resources – no impact**

- a. We have no real dispute with this not being considered although sand and gravel operations do happen along the South Fork Kern River where they are not historically part of Onyx Ranch operations. RRBWSD could consider specifically prohibiting development of any surface or subsurface minerals that are of economic value on the parcels, if water rights are transferred as a mitigation measure.

**XII. Noise – no impact**

- a. The loss of noise buffering vegetation in the South Fork Kern River Valley will increase ambient noise to nearby residents and wildlife.
- b. Therefore, further discussion and analysis of this environmental issue should be provided in the Draft EIR.

**XIII. Population/Housing – no impact**

- a. The RRBWSD Project Draft EIR should consider impacts to Population and Housing, since the study narrowly interprets the questions in this section and

avoids other interpretations. Impacts could include loss of jobs in disadvantaged communities caused by the transfer of water out of the Kern River Valley, that would disclose potential environmental impacts and should be considered in the Draft EIR.

- b. The RRBWSD Study says, “a. Would the proposed project induce substantial growth in an area, either directly (for example, by proposing new homes and business) or indirectly (for example, through extension of roads or infrastructure)?
- c. The Study claims “No impact. The project site is located in an area that has been historically used for cultivating crops and cattle grazing. The proposed project would consist of the diversion of a portion of the surface water allocated for the project site to a downstream location and minor construction activities for improvements to and maintenance of existing drainage ditches, other irrigation facilities, wells, and associated equipment. The proposed project would not generate new temporary or permanent jobs or result in the construction of new residential units. In addition, the proposed project would not provide for the extension of roads or infrastructure. Therefore, the implementation of the proposed project would not induce substantial growth, either directly or indirectly, in the surrounding areas. No impact would occur and no mitigation measures would be required. No further analysis of this environmental issue will be provided in the Draft EIR.”
- d. The study fails to consider the questions of urban development increases for the Bakersfield district where the water is proposed to be transferred and where the transferred water could enable urban growth, since according to the RRGWSD web site <http://www.rrbwsd.com/about-us> “Rosedale encompasses approximately 44,000 acres of lands, of which approximately 27,500 are in irrigated agriculture, with an additional 7,500 acres developed in residential, commercial and industrial.”
- e. And the RRBWSD Study says, “Currently, the RRBWSD’s service area, located in the westernmost portion of the City of Bakersfield and unincorporated Kern County, contains approximately 43,000 acres of agricultural and urbanized agricultural land. The present developed area is estimated to be 35,500 acres, with approximately 28,000 acres utilized for irrigated agriculture and approximately 7,500 acres developed with urban uses. The urban development is primarily located in the eastern end of the RRBWSD’s service area and is anticipated to increase as the City develops to the west.”
- f. And the RRBWSD says on its web site <http://www.rrbwsd.com/james-project>, “The James Groundwater Storage and Recovery Project is a proposed 2,070-acre project in southwest Bakersfield designed to recharge, store and recover water to provide a cost-effective and reliable water supply for landowners within the Rosedale-Rio Bravo Water Storage District (“Rosedale”).“ “The Bakersfield housing market has experienced a severe downturn in recent years; however, there remains an interest from the homebuilding community in developing a

portion of the property for residential use. Rosedale supports a mixed use approach for the property and intends on building upon the successful integration of groundwater recharge facilities with urban development, as seen in the Rosedale Allen Road Ponds and the City of Bakersfield's 2800-acre project."

- g. Therefore, the study itself shows that the Draft EIR must address the potentially growth-inducing impacts of the proposed water transfer and mitigate the urban growth-inducing impacts of providing this additional water to Bakersfield, which is likely to result in more urban growth by improving water security.
- h. Therefore, further discussion and analysis of these environmental issues should be provided in the Draft EIR.

**XIV. Public Services – no impact**

- a. Would the proposed project result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities, need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times, or other performance objectives related to fire protection?
  - i. This project is stated to have no impact on public services, but to the contrary, if the proposed project goes forward the additional water in the river will likely contribute to Sierra Way flooding for greater periods of time. As a result, the project will absolutely have a great impact on response times for fire and police.
- b. Therefore, further discussion and analysis of this environmental issue should be provided in the Draft EIR.

**XV. Recreation – no impact**

- a. Contrary to the finding of this study, NO IMPACT on RECREATION, the Draft EIR analysis must fully consider that, if the habitat is further degraded in South Fork Kern River Valley, due to the fallowing of adjacent prime farmlands, the riparian forest would be severely impacted or die, which would impact recreation in the Kern River Valley and beyond, because the Audubon Kern River Preserve (KRP) is home to 108 nesting species or birds, almost 100 species of wintering birds, as well as the stop-over point for many species of migrating birds on their way from the southern hemisphere to Alaska. Nature lovers who annually travel to the South Fork Kern River Valley to observe, document, photograph, and just see birds would be directly impacted by this project. The Draft EIR must provide further discussion and analysis of the Potentially Significant Impact to recreation and alternatives to avoid those impacts, and minimize and mitigate any impacts that cannot be avoided.
- b. As the forest degrades the recreational opportunities for hikers and residents who enjoy the trails of the Kern River Preserve will lose that opportunity.

- c. Agri-tourism will decline as pastures dry and cattle are removed.
- d. Therefore, further discussion and analysis of these environmental issues should be provided in the Draft EIR.

**XVI. Transportation/Traffic – no impact**

- a. Sierra Way and Fay Ranch Road flood when water exceeds 965cfs at the Onyx gauging station and most of the water is held in the river channel. If the proposed project goes forward, transportation will be impacted for longer periods and infrastructure will degrade to impassible without significant improvements and elevation of the road structure.
- b. Traffic will be impeded as flows increase and roads are closed.
- c. Because a transfer of water, which would deplete the recharge in the South Fork Kern River area, the proposed project will cause the Miller Ditch to be used earlier in the year by other water users who may be forced to take their appropriative rights out of the stream earlier in the year to preserve those flows. This could cause additional, flooding at the Kelso Valley Road/Highway 178 intersection in high water events.
- d. The DEIR must consider an alternative where the water remains in South Fork Kern River aquifer and is re-infiltrated there to support historic groundwater levels even if some crops are fallowed in order to benefit the ecosystem and communities of the Kern River Valley, , rather than be transferred to Bakersfield to encourage more sprawl in the San Joaquin Valley.
- e. Therefore, further discussion and analysis of these environmental issues should be provided in the Draft EIR.

**XVII. Tribal Cultural Resources – checked**

- a. Tübatulabal (Pahkanapil) people have occupied the South Fork Valley for around 3,000 years and the project is within the village site of Omomip. As vegetative cover is removed many artifacts will be revealed and subject to plunder by anyone encountering them.
- b. Site monitors must be present and any artifacts or remains encountered must be immediately documented and preserved for proper archiving, or reburial.
- c. This topic must be researched and solved with the greatest sensitivity. The people from whom this land was taken live on BIA land immediately adjacent to the project on the White Blanket and Miranda Allotments. The Chico Allotment is surrounded by Onyx Ranch land.
- d. Therefore, further discussion and consultation with the Tübatulabal tribe as well as full accredited archeologists must be part of the Draft EIR.

**XVIII. Utilities/Service Systems – no impact**

- a. Residents reliant on abundant ground water for their wells and also residents served by the various water districts will see a drop in well depth and water availability.
- b. Therefore, there will be impacts to services and this section of the DEIR must address the potentially significant impact and Alternatives to avoid the impacts, minimization and mitigation measures.

**XIX. Mandatory Findings of Significance – checked**

RRBWSD finds adverse impacts for the first two categories but less than significant adverse impact to human beings, either directly or indirectly, and states it will not analyze these impacts further. However, loss of economic opportunity, historical values, transportation, degradation of air and water resources, loss of recreational opportunities, loss of spiritual renewal surrounded by the beauty of the natural resources of the South Fork Valley among many other issues are significant and must be addressed.

Therefore, further discussion and analysis and findings of significance to almost every section of the CEQA checklist should be provided in the Draft EIR.

**Economic Impacts must be part of this DEIR.**

The question of jobs and whether the proposed project would cause the loss of temporary or permanent jobs in the disadvantaged communities of Kern River Valley as a result of the transfer of water out of the Kern River Valley are questions that the Draft EIR should address.

The proposed exportation of water from the South Fork Kern River by Rosedale-Rio Bravo Water Storage District would negatively impact businesses, residents, and biological diversity. The DEIR should consider an alternative that would include the sale of this portion of the Onyx Ranch to the ACOE (along with any claimed water rights) as a priority mitigation action for the proposed Dam Safety Modification Project in order to avoid many of the impacts of the proposed project and/or to mitigate those impacts.

Given this information, we urge RRBWSD to analyze the impacts of the project on all of the impacted resources in the Draft EIR to protect the character of the South Fork Kern River Valley. Please include us on all future notices regarding this proposed project at the addresses listed below.

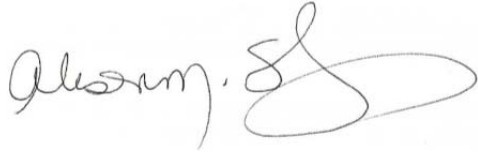
Respectfully submitted,



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<sup>i</sup> Presentation to Kern River Valley Revitalization by Kern River Watermaster, Dana Munn, 4 March 2015

<sup>ii</sup> Hydrogeological Setting of the Onyx Ranch Project, Thomas Harder & Company, February 11, 2015. (RRBWSD study page 1-7)

<sup>iii</sup> <http://www.kwb.org/index.cfm/fuseaction/Pages.Page/id/349>