

**WATER SUPPLY IMPROVEMENT PROJECT  
FINAL ENVIRONMENTAL IMPACT REPORT**

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# Letter 21

**PLANNING AND COMMUNITY  
DEVELOPMENT DEPARTMENT**

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**DEVELOPMENT SERVICES AGENCY**

Planning and Community Development  
Engineering, Surveying and Permit Services  
Roads Department

December 9, 2011

**FILE:** IWVWD 2011 Water Supply  
Improvement Project EIR

Indian Wells Valley Water District  
Attn: Tom Mulvihill, General Manager  
P.O. Box 1329  
Ridgecrest, CA 93555

**RE: Comment Letter - Water Supply Improvement Project Environmental Impact Report  
(SCH. No. 2011071010)**

Dear Mr. Mulvihill,

Kern County appreciates the opportunity to provide comments on the Environmental Impact Report (EIR) prepared for the proposed Water Supply Improvement Project (State Clearinghouse Number 2011071010). The Indian Wells Valley Water District is a retail supplier of water for domestic use, landscape irrigation and fire protection for the City of Ridgecrest and specific areas in San Bernardino County. The proposed project is to increase system capacity to meet existing demand with a 20 percent redundancy in capacity through equipment improvements to two (2) existing wells (Wells 18 and 34) and possible construction and operation of One (1) new well (Well 35). The Kern County Planning Department has been designated by the Board of Supervisors as the official resource and expert on implementation of CEQA for County Departments. Under this designation and the Home Rule resolution, the Planning Department reviews other agencies' environmental documents for projects that may impact County residents, businesses and affect economic growth in unincorporated communities. Staff works closely with County Counsel's office in ensuring compliance with CEQA. Staff has reviewed the proposed Environmental Impact Report and provides the following comments for the record.

#### **Hydrology and Water Quality – Project Specific and Cumulative Impacts**

Pages 3.8-1 through pages 3.8-32 and pages 5-5 through 5-7 of the EIR include a description of the project specific and cumulative impacts to hydrology and water quality associated with the proposed project. In reviewing the project analysis, it is the Kern County Planning and Community Development Department's conclusion that there is insufficient analysis to support the identified conclusions.

CEQA caselaw is clear (*Communities for a Better Environment vs California Resources Agency* (3d Dist 2002) 103 Cal. App 4<sup>th</sup> 98) that the agency must examine the impacts of the project under review (increased pumping and a new well) against the backdrop of cumulative conditions, and may not rely on the fact that the particular project's impacts are small in comparison to a large environmental problem, in this case, the over draft condition of the basin. Accordingly, the court has determined that in considering whether a project's impacts are "cumulatively considerable" the agency may not use a "de minimis" rationale because to do so would ignore the potential impacts of the project in combination with past, present or future projects.

**21-1**

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The documents use of the word “nominal “ and “minor “ are mere substitutes for the word “de minimis “ which is a term in latin which is defined as “lacking significance or importance, so minor as to merit disregard” (Merriam-Webster dictionary). Therefore the determination and cursory analysis that determined that the project is less than significant violates CEQA and no substantial evidence has been provided in the document.

**21-1  
Continued**

One single measure has been included in the proposed project to address draw down concerns. This measure is inadequate because (1) it is dependent on the participation of surrounding property owners not associated with the IWVWD, (2) the measure does not include performance standards which would trigger specific actions to be taken by the district,(3) potential environmental impacts associated with future potential corrective actions identified in the mitigation measure such as deepening existing and surrounding wells have not been analyzed in this EIR.

In addition, the one lone mitigation measure that is proposed disregards available mitigation, including other alternatives to increased pumping and a new well. An example is the previously proposed mitigation that this department provided to address surrounding land owner concerns:

**Proposed Mitigation Measures**

1. Create a monitoring committee to monitor the impact of operations on groundwater levels and quality and to ensure that adjacent landowners are protected. The monitoring committee would be responsible for development of a detailed monitoring and operational constraints plan and would ensure that it is implemented. Composition of the monitoring committee shall include, at a minimum, the following representatives: District , Inyokern Community Services District, China Lake, neighboring landowners and/or other selected representatives, and Kern County. The monitoring committee would meet regularly and provide reports to the property owners as well as the Lahontan Regional Water Quality Control Board. All cost for the committee operation are to be borne by the District.
2. To ensure that Project operations do not adversely impact the quality of nearby resident’s drinking water, the monitoring committee shall offer to sample and analyze water from domestic drinking water wells located within two or three miles of the operations. In order to assess the results of these analyses, samples will need to be collected before and after operations begin. The sampling and analysis protocols shall be defined in the monitoring and operational constraints plan. If analytical results reveal that the project operations may adversely affect a resident’s drinking water well, then operations will be adjusted to prevent such effect or the owner of the well shall be provided compensation of an alternate source of water in the event that adverse effects do occur.

**21-2**

The document requires the inclusion of a full analysis of all the cumulative impacts, including the distinction between the projected water use from the adoption of the Ridgecrest General Plan as distinct from the users in the unincorporated area of the District and projected water use of users outside the District. If the District is relying on the adopted Urban Water Management Plan it would need to be included in the document as an attachment and discussed not just referenced.

**21-3**

In conclusion, the project impacts are significant and unavoidable and as such, all feasible and reasonable mitigation has to be imposed. The position of the District that only a “reasonable range of alternatives” has to be considered was predicated on the determination that the project was less than significant. Comments have been submitted by other interested parties for reasonable alternatives and mitigation and those must be reviewed, discussed and if not imposed, a full comprehensive rationale presented for rejecting them. The analysis in the document is sparse, conclusionary and not consistent with CEQA. It consists of 1 ½ pages of analysis (5.5 to 5.7) for the entire body of cumulative discussion on hydrology and water quality.

**21-4**

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Section 15088.5 of the revised CEQA Guidelines provides that a document needs to be recirculated when the Draft EIR was “fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded.” Based on the deficiencies in the document, the Draft EIR needs a comprehensive revision to address the issues raised and recirculated for public comment.

**21-5**

Thank you for the opportunity to participate in this process. At this time, the Planning and Community Development Department requests a copy of the response to comments and all notices as they relate to this project. Should you have any questions, please feel free to contact me directly at (661) 862-8739 or by email at [murphy@co.kern.ca.us](mailto:murphy@co.kern.ca.us).

Sincerely,



Craig M. Murphy  
Advanced Planning Division Chief

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**Response to Comment 21-1:** This comment states that the EIR uses the words “nominal” and “minor” as substitutes for “*de minimis*”. A *de minimis* rationale to determine cumulative impacts is not allowed under CEQA case law. The EIR does not use a *de minimis* rationale to determine cumulative impacts. The terms “nominal” and “minor” were used to describe the incremental contribution of Phase 2 of the Proposed Project to the creation of groundwater depressions in the Indian Wells Valley basin that have caused the co-mingling of good quality and lesser quality water. This explanation is necessary, because it affects the feasibility of mitigation for cumulative impacts to water quality.

The flow of low-quality water toward the groundwater depressions, and areas of higher-quality groundwater, is dependent on the hydraulic gradient, or slope of the groundwater surface. The groundwater flow model prepared by Layne Hydro in August 2011, and simple volumetric analysis, demonstrate that the incremental additional pumping from Phase 2 would not change the hydraulic gradient in or adjacent to the areas of low-quality water. Therefore, while the additional pumping would contribute to the groundwater depression locally (within two miles of the new well), it would not change the groundwater flow rate in the areas of low-quality water. Thus, the Proposed Project’s contribution to the cumulative impact to basin-wide water quality cannot be measured. Given this situation, it is also not technologically feasible to measure the timing or amount of the impact to individual wells in the basin. Therefore, feasible mitigation that provides performance standards and timing for this cumulative impact is not possible, and the cumulative impact to water quality in the basin remains significant, unmitigatable, and unavoidable.

In addition, it appears that the County is being arbitrary and applying a double standard to the District’s Draft EIR that it does not apply to the County’s own EIRs. Specifically, in 2009, Kern County prepared an EIR for the Ridgecrest Recycling and Sanitary Landfill Project, located approximately 2.75 miles east of the proposed Well 35 site (SCH #2009021053). For the project-specific and cumulative impacts related to hydrology and water quality (Section 4.9), and to Utilities and Service Systems (Section 4.12) the County offered the following analysis:

“The anticipated increase in groundwater production from the water supply well...is minimal compared to current and projected basin-wide groundwater production...”

and:

“Based on the water supply assessment, it appears that the proposed project will have minimal impact on basin groundwater supply...”

The County used this analysis to conclude that the potential project-specific and cumulative impacts are less than significant. The County cannot apply one set of criteria to its own projects while holding other lead agencies to another standard.

This comment may also be referring to the term “nominal capacity”, which has been used throughout the EIR to refer to the pumping capacity of existing/proposed well pumping plants. This is an engineering term referring to the maximum continuous capacity for which the plant has been designed by the manufacturer and was used in the EIR to provide an estimate of the worst-case scenario. However, the actual pumping capacity may be less than this due to

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hydrologic and geologic conditions in the aquifer encountered during drilling which differ from those previously estimated based on performance of other wells, hydraulic conditions in the water system to which the well is connected, and, over time, declining water levels, wear and tear on pumping equipment, and build-up of minerals and bio-films inside the well and gravel pack.

**Response to Comment 21-2:** This comments states that the mitigation measure proposed to address water level impacts in local wells is inadequate because it is dependent on the participation of surrounding property owners not associated with the IWWVD. While it is true that the property owners would need to grant access to their wells for monitoring, Mitigation Measure H-1 would be implemented by the District itself and not potentially-affected property owners. This includes obtaining water level data semiannually, analyzing water data semiannually, and reporting the results of the monitoring program. This also includes installation and/or funding of the installation of mitigation options to ensure that water continues to be provided to support land uses that exist at the time of the EIR. It should also be noted that many well owners in the area already allow monitoring of the water levels in their wells by KCWA and the monitoring conducted for Mitigation Measure H-1 would be identical to, and coordinated with, the KCWA monitoring. There is also a strong incentive for the property owners to allow monitoring of their wells because, without the monitoring data, it would be very difficult, if not impossible, to evaluate changes in water levels and compare them with performance standards.

This comment states that the mitigation measure proposed to address water level impacts on local wells is inadequate because the measure does not include performance standards which would trigger specific actions to be taken by the District. The overall performance standard described in Mitigation Measure H-1 is the identification of a rate of water-level decline in an individual well that is greater than the baseline rate that occurs in perimeter monitoring wells, once Phase 2 of the Proposed Project is implemented. As described in Mitigation Measure H-1, if such an increase in the rate of water-level decline is identified, then a well-specific mitigation program would be developed. It is difficult to provide the details of the mitigation program, such as specific groundwater depths that would trigger one specific action, such as deepening a well, because each well has been constructed differently and the groundwater conditions vary with geography. Therefore specific wells would be affected differently by the Proposed Project and the specific actions required to provide water to that property would also be specific to the well, property, and existing land use.

Mitigation Measure H-1 specifies the timing of the mitigation. Well monitoring and data analysis would be conducted semiannually and compared to the data from the perimeter control wells. The data will be evaluated to determine whether the rate of water level decline in a particular well begins to increase at a rate greater than the baseline level. Mitigation Measure H-1 also specifies the performance standard that would require that action be taken. When the data shows that the rate of decline has increased from the baseline (again, this timing is specific to each well), *such that the well will not support land uses that existed at the time the EIR was certified*, then one of several mitigation options shall be implemented. Finally, Mitigation Measure H-1 includes a list of specific actions that could be taken: deepening the existing well, installing a different pump in an existing well, drilling a new deeper well, or providing a hookup to IWWVD or another cooperative water system. This approach meets the requirements of CEQA Guidelines 15126.4.

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This comment states that the mitigation measure proposed to address water level impacts on local wells is inadequate because potential environmental impacts associated with future potential corrective actions identified in the mitigation measure such as deepening existing and surrounding wells have not been analyzed in the EIR. There would be no impacts to groundwater from implementation of the mitigation measure, because the measure would simply replace existing wells and support existing land uses. Minor impacts related to ground disturbance during construction of replacement wells or providing hookups to existing District infrastructure would be similar to those described for Well 35 and its associated pipeline. No ground-disturbing impacts are anticipated from re-equipping wells. Any impacts from the potential corrective actions in Mitigation Measure H-1 do not constitute new significant environmental impacts or a substantial increase in the severity of an environmental impact that would trigger recirculation of the EIR.

This comment also states that the mitigation measure disregards other available mitigation, including other alternatives to increased pumping and a new well. This comment mixes the concepts of mitigation for the Proposed Project and analyzing alternatives to the Proposed Project that could avoid the significant impacts from the Proposed Project. The EIR provides feasible mitigation for the impacts caused by the Proposed Project, including incorporating many of the mitigation measure suggestions provided by the County for a previous project that was not adopted, which are discussed later in this response. The EIR also provides the analysis of five project alternatives. As described in more detail in Master Responses 9 and 10, not every conceivable alternative must be included in the EIR, only a reasonable range of feasible alternatives need to be evaluated. CEQA defines feasible as “capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors”. The five alternatives that were evaluated, described in Section 4.3 of the Draft EIR, included two alternative scenarios for improvements to existing wells, one alternative to obtain water from another source within Indian Wells Valley (purchase of water from NAWS China Lake’s existing wells), and one alternative for a smaller project (Phase 1 only). Additionally, the No Project Alternative was evaluated. These represent a reasonable range of feasible alternatives to the Proposed Project.

In addition to the five alternatives that were analyzed, several alternatives to the Proposed Project were considered and rejected. Many alternatives were rejected because they were determined not to be feasible due to the amount of time for implementation – they would not be able to be implemented in the project time frame. Cost and reliability were also factors in the rejection of alternatives. It should be emphasized that these alternatives were only rejected as alternatives to the Proposed Project. These alternatives could still be considered for future projects, although separate environmental analysis would need to be conducted. It should also be noted that one of the reasons Phase 3 of the project (the construction of new Well 36 at Victor and Las Flores) was eliminated after the scoping period was that some of these alternatives may become feasible in the future and could be considered.

The alternatives that were rejected included the construction of new wells on NAWS China Lake, Additional Water Conservation; and Developing Supplemental Water Supply. For the last category, the IWWVD examined three sub-alternatives for development of supplemental water supply within the Indian Wells Valley, including construction of additional storage tanks, groundwater treatment and blending, and the use of reclaimed or recycled water. Four sub-alternatives for additional water supply outside of the Indian Wells Valley were examined,

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including import of water from existing and potential future District-owned properties, purchase of supplemental water from other public or private entities, purchase of State Water Project water, and the purchase of water from the City of Los Angeles.

This comment also states that mitigation measure suggestions from a different Water Supply Improvement Project provided by the County were not included in the EIR. Many of the mitigation measure suggestions made by the County for the 2007 Water Supply Improvement Project have been incorporated into Mitigation Measure H-1. These include development of a detailed monitoring plan and provision of an alternate source of water. The District disagrees, however, that a monitoring committee is required to “ensure that it [the monitoring plan]” is implemented, as suggested in the County’s mitigation measure 1. Like the County, the District is its own CEQA Lead Agency and, as such, is authorized to implement its own mitigation monitoring and reporting program under CEQA Guidelines Section 15097. Furthermore, it is specified in the Draft EIR that the mitigation monitoring program and evaluation of the semiannual monitoring data is to be conducted by a qualified, state-licensed professional, such that the District would receive independent analysis from a third-party licensed professional.

The County’s mitigation measure 2, which addresses water quality impacts, would not be able to be implemented because it is impossible to measure the Proposed Project’s contribution to water quality changes. Therefore, it would be impossible to know when the Proposed Project would “adversely affect a resident’s drinking water well” anywhere in the basin. Therefore, as discussed in the response to comment 21-1, mitigation is not feasible.

It should be noted that both mitigation measures suggested by the County also are dependent on the participation of surrounding property owners not associated with the IWWWD and do not provide timing or performance standards as required by CEQA. Additionally, the mitigation measures provided by the County do not provide specific actions that would be implemented in the event that groundwater levels are affected.

**Response to Comment 21-3:** This comment states that the cumulative impact analysis for water resources should be split between the users in the incorporated City of Ridgecrest and users in the unincorporated areas of the County. The use of political boundaries to define the area of effect for cumulative impacts for water resources is not appropriate. The District used the entire basin as the area of effect for water resources, although growth and development projections from both the City and County general plans were used to provide a basis for evaluation. The comment also states that the 2010 Urban Water Management Plan should be included as an attachment and discussed, not just referenced. The 2010 Urban Water Management Plan, particularly the estimate of future population in the IWWWD service area, was used as a reference for the EIR and is not required to be appended to the EIR (CEQA Guidelines 15148); however, the 2010 Urban Water Management Plan was publically available at the District offices and on the District website during the preparation of this EIR.

**Response to Comment 21-4:** This comment states that the range of alternatives considered in the EIR is incomplete because alternatives and mitigation suggested by other interested parties has not been reviewed, discussed and either imposed or a rationale provided why the alternative was rejected. The District received several comment letters suggesting alternatives to the Proposed Project that had already been considered in the Draft EIR. Several commentors suggested that alternatives listed in the 1993 Bureau of Reclamation report. The

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1993 Bureau of Reclamation report states that “There are three major avenues for extending the life of the groundwater resources in the Indian Wells Valley:

- Blend good quality water with poorer quality water
- Expand pumping to “new” areas, such as the southwest
- Treat poorer quality water.”

An alternative to treat poorer quality water, including blending that water with good quality water was considered in the EIR and rejected. The District conducted pilot testing for brackish water desalination from the northwest well field from June 2008 to June 2009. The study concluded that the benefits from this additional drinking water recovered would not be more than the cost of brine treatment. It should be noted that the Proposed Project and Alternatives 1 and 2 do include a pumping expansion into the southwest, rather than the intermediate area, as recommended by the report. Additionally, several commentors suggested that an alternative using the existing intertie with the Navy be evaluated. This alternative has been evaluated as Alternative 3. Additional information on the alternatives considered during the EIR process are provided in Master Responses 9 and 10. The District is unaware of any different mitigation or alternatives proposed by other interested parties.

Response to Comment 21-2 discusses the rationale for rejecting portions of the mitigations suggested by the County. As described in more detail in Master Responses 9 and 10, not every conceivable alternative must be included in the EIR, only a reasonable range of feasible alternatives need to be evaluated. CEQA defines feasible as “capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors”. The District is unaware of any alternative that was not included in the range of alternatives discussed in the EIR that was suggested by any other interested parties, including the County. The five alternatives that were evaluated, described in Section 4.3 of the Draft EIR, included two alternative scenarios for improvements to existing wells, one alternative to obtain water from another source within Indian Wells Valley (purchase of water from NAWS China Lake’s existing wells), and one alternative for a smaller project (Phase 1 only). Additionally, the No Project Alternative was evaluated. These represent a reasonable range of feasible alternatives to the Proposed Project.

In addition to the five alternatives that were analyzed, several alternatives to the Proposed Project were considered and rejected. Many alternatives were rejected because they were determined not to be feasible due to the amount of time for implementation – they would not be able to be implemented in the project time frame. Cost and reliability were also factors in the rejection of alternatives. It should be emphasized that these alternatives were only rejected as alternatives to the Proposed Project. These alternatives could still be considered for future projects, although separate environmental analysis would need to be conducted. It should also be noted that one of the reasons Phase 3 of the project (the construction of new Well 36 at Victor and Las Flores) was eliminated after the scoping period was that some of these alternatives may become feasible in the future and could be considered.

The alternatives that were rejected included the construction of new wells on NAWS China Lake, Additional Water Conservation, and Developing Supplemental Water Supply. For the last category, the IWWWD examined three sub-alternatives for development of supplemental water supply within the Indian Wells Valley, including construction of additional storage tanks,

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groundwater treatment and blending, and the use of reclaimed or recycled water. Four sub-alternatives for additional water supply outside of the Indian Wells Valley were examined, including import of water from existing and potential future District-owned properties, purchase of supplemental water from other public or private entities, purchase of State Water Project water, and the purchase of water from the City of Los Angeles.

Additionally, this comment states that the cumulative discussion on hydrology and water quality is conclusionary (sic) and not consistent with CEQA because it is not long enough. It should be noted that CEQA does not specify a length of document that is sufficient for analysis. CEQA encourages that the information contained in the EIR include summaries of technical data and relevant information, and encourages the placement of detailed technical information in appendices to the EIR (CEQA Guidelines Section 15147). The analysis of cumulative impacts to hydrology and water quality uses as its basis the analysis provided in the 32-page Section 3.8 (including eleven figures), the Kern County Water Agency Water Level Data provided in Appendix F, and the regional groundwater flow model prepared by Layne Hydro provided in Appendix G. It was not necessary to repeat the information contained in these sections such as the establishment of existing conditions and the purpose and results of the model. Instead, this information was referenced as necessary in Section 5.1.1.7.

**Response to Comment 21-5:** This comment states that the EIR should be revised and recirculated for public comment to address the issues raised during the comment period. None of the comments received during the public comment period would require recirculation of the EIR under Section 15088.5 of the CEQA Guidelines. Specific responses to comments received during the public comment period are contained in this Final EIR.

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## Letter 22

-----Original Message-----

From: H. Marie Brashear [<mailto:waterforwildlife@gmail.com>]

Sent: Friday, December 09, 2011 7:36 PM

To: [patty.m@iwvwd.com](mailto:patty.m@iwvwd.com)

Subject: Re: Agendas

Ms.Montenegro,

The Districts contact link is broken on the Website and I wanted to send my comments on the EIR, Society for the Protection and Care of Wildlife P. O. Box 97, Johannesburg, CA 93528

780-590-0471

Friday, December 09, 2011

RE: Indian Wells Valley Water District EIR Previously submitted comments are included by reference. Our focus for this comment period will be on two items. The first is the significant over draft in the basin and the actual and potential impacts to wildlife because of this over draft. Springs and more often seeps are impacted by over drafts and there should be no additional over draft and the existing over draft should be mitigated by shared ramp down by all users of the basin.

22-1

The second issue is that the Indian Wells Valley Water District throughout the document maintains they must do this project because they need a cushion, a surplus which could be called upon in times of emergency or growth. Projected growth has not happened and may never happen.

There is no justification for this project at this time and to pre-approve a project with an environmental document which may be years old at the time of drilling lacks real concern for new issues which may surface.

Finally, your own records demonstrate there is really no need to drill a new well.

22-2

the Base has reduced its water consumption by 30 plus percent and you have announced a 17 percent reduction in water use and the District plans to continue its conservation focus. So there will be even more water conserved.

Recent newspaper articles discussing fees for water provided speaks to millions of gallons saved. These millions of gallons will add up over the years and if left in the ground will begin to reduce the draw down of the basin.

Additionally, it would be available to be pumped for any emergency.

Repair the existing well and forget about the rest.

Sincerely,

H. Marie Brashear, President

Please include these comments. Thank you so very much,

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**Response to Comment 22-1:** This comment states that previously-submitted comments are included by reference. The IWWVD has not received a previous comment letter on the Draft EIR from Ms. Brashear. Additionally, a letter was not received during the scoping period from Ms. Brashear.

This comment further states that there may be impacts to springs and seeps in the Indian Wells Valley basin from the Proposed Project, and that impacts to biological resources that use these springs and seeps could occur. As discussed in Section 3.8.3.3 of the Draft EIR, the Proposed Project would cause water levels at wells within 2 miles of Well 35 to decline at an increasing rate. The difference between the current baseline rate of decline and the rate of decline that could occur with the Proposed Project is a potentially significant impact. In this area, depth to groundwater generally ranges from 200 to 400 feet bgs, thus there are no springs and seeps in this area of the valley. Although the additional pumping by the District would contribute to the overall pumping in the basin, this addition is not considered to be cumulatively considerable. Master Response 5 further addresses this issue.

**Response to Comment 22-2:** This comment states that the growth projected in the Draft EIR may never happen and that conservation will reduce future demand. Therefore the Proposed Project is not needed. Master Responses 7 and 8 address this issue.