

Appendix L - Draft MIRWMP Comments and Responses

#	Commenter/Organization	Section	Page #	Comment	Response
1	Colette Alvernaz	n/a	n/a	The document was written such that a layperson could follow the information. A good job was done putting it together.	Comment noted
2	Colette Alvernaz	n/a	n/a	There is good information from Merced Irrigation District, just okay information from City of Merced, and lacking information from other participants to the point of making the document deficient.	The document was prepared using the information available. Additional information, if provided, could be incorporated into the next plan update.
3	Colette Alvernaz	Chapter 2 - Region Description	n/a	There is Merced River flooding in the Livingston area that may not be cited as flood areas in the MRIWMP Public Draft. (see Section A of Mrs. Alvernaz's comment letter)	The draft will be updated to clarify that there is generalized flooding throughout the region, including in the Livingston area.
4	Colette Alvernaz	Appendix E - Climate Change Study	15	The MIRWMP does not list the flood event of Jan. 1997. (see Section B of Mrs. Alvernaz's comment letter)	Page 5 of the Flood memo (Appendix B) references the 1997 event, among others. The climate change study only references two recent, major events as flooding is not the primary focus of this document.
5	Colette Alvernaz	Appendix E - Climate Change Study	24	For the IRWM Integrated Flood Study: The flooding along the Merced River in the Livingston area should be included. (see Section B of Mrs. Alvernaz's comment letter)	The draft will be updated to clarify that there is generalized flooding throughout the region, including in the Livingston area.
6	Colette Alvernaz	n/a	n/a	How will flood management on the Merced River affect the City of Livingston Wastewater Treatment Plant and the old abandoned wastewater ponds which are below on the Merced River? (see Section C of Mrs. Alvernaz's comment letter)	The wastewater ponds at the City of Livingston Wastewater Treatment Plant are no longer in use. They were abandoned in compliance with all applicable standards. There is no relationship between flood management on the Merced River and the ponds.
7	Colette Alvernaz	Chapter 2 - Region Description	2-5	Livingston's Wastewater Treatment Plants are a potential source of pollutant/stressor (see Section D of Mrs. Alvernaz's comment letter)	The wastewater ponds at the City of Livingston Wastewater Treatment Plant are no longer in use. They were abandoned in compliance with all applicable standards and are not a source of pollutants.
8	Colette Alvernaz	Appendix C - Groundwater Recharge Feasibility Study, Section 3.11 Surface Water Quality	38	The old abandoned City of Livingston Wastewater Treatment Plant Ponds adjacent to the Merced River is a surface water quality concern. (see Section D of Mrs. Alvernaz's comment letter)	The wastewater ponds at the City of Livingston Wastewater Treatment Plant are no longer in use. They were abandoned in compliance with all applicable standards and are not a surface water quality concern.
9	Colette Alvernaz	Appendix E - Groundwater Recharge Feasibility Study, Section 3.11 Surface Water Quality	14	The old abandoned City of Livingston Wastewater Treatment Plant Ponds adjacent to the Merced River is a surface water quality concern. (see Sections D and F of Mrs. Alvernaz's comment letter)	The wastewater ponds at the City of Livingston Wastewater Treatment Plant are no longer in use. They were abandoned in compliance with all applicable standards and are not a surface water quality concern.
10	Colette Alvernaz	Appendix D - Salinity and Nutrient Study, Section 1.1.4 UC Merced CENS	4	How does the City of Livingston Domestic Wastewater Treatment Plan and Livingston's DWWTP abandoned ponds affect the groundwater-surface water discharge on the Lower Merced River? (see Section D of Mrs. Alvernaz's comment letter)	The wastewater ponds at the City of Livingston Wastewater Treatment Plant are no longer in use. They were abandoned in compliance with all applicable standards.
11	Colette Alvernaz	Appendix D - Salinity and Nutrient Study, Section 5 Data Gaps, Local Data Mgmt, and Vulnerabilities	16	Suggestion: Place Surface Water Monitoring Points above and below the City of Livingston Domestic Wastewater Treatment Plan. (see Section D of Mrs. Alvernaz's comment letter)	Monitoring points already exist upstream and downstream of the wastewater treatment plant.
12	Colette Alvernaz	Appendix E - Climate Change Study, Section 1.6.1 Adaptation Strategies (Pollution Prevention)	23	Suggestion: Educate urban users about household pesticides, cleaners, and other chemicals. Some homeowners use strong concentrations. (see Section E of Mrs. Alvernaz's comment letter)	Climate change TM has been revised to include public education as a component of the pollution prevention resource management strategy.

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13	Colette Alvernaz	n/a	n/a	The MIRWMP is utilizing and referencing outdated UWMP's. By doing this the MIRWMP is making it seem like the out-dated UWMP's are a reliable, up-to-date source of information and Atwater and Livingston's UWMP's are in compliance with all the new regulations. How can this regional water plan address requirements like SB X7-7 when the second and third largest urban providers don't have a 2010 UWMP that address that issue? Other reports and regulations may have more up-to-date information. How can this MIRWMP satisfy the CA Water Plan Update 2009 using the City of Atwater and City of Livingston 2005 UWMP that the DWR have not determined "completed"? (see Sections G, J, M and X of Mrs. Alvernaz's comment letter)	As a regional planning document, the IRWMP compiles and integrates local planning documents, including UWMPs, but does not supersede local planning efforts. The UWMPs used in preparing the IRWMP are the most recently completed UWMPs for jurisdictions in the region. The IRWMP cannot be used to meet the requirements of SBx7-7. This will need to be addressed by individual water suppliers. As individual UWMPs are updated, this information can be used to update information in the IRWMP.
14	Colette Alvernaz	Chapter 11 - Technical Analysis	11-1	What does administrative draft mean? Is the Atwater 2005 UWMP completed? (see Section H of Mrs. Alvernaz's comment letter)	The copy of the 2005 Atwater UWMP used as a basis for the draft IRWMP was labeled Administrative Draft. Data pulled from the Administrative Draft has been replaced with data from the final document.
15	Colette Alvernaz	n/a	n/a	There are concerns about the hydrological/factual basis of Livingston's 2005 UWMP. Brian Kelley, MID, has disputed the claims that the groundwater quantity and quality is adequate through 2030. These concerns should not be ignored. (see Sections I and Y of Mrs. Alvernaz's comment letter)	As a regional planning document, the IRWMP compiles and integrates local planning documents, including UWMPs, but does not supersede local planning efforts. The City of Livingston is working on updates to its UWMP; these updates can be incorporated into the next IRWMP revision. This comment has been passed along to the City of Livingston and MID for consideration in its local planning efforts.
16	Colette Alvernaz	n/a	n/a	The out-dated and not "DWR completed" Atwater and Livingston 2005 UWMP are not in compliance with several of the new mandatory State requirements. Since the MIRWMP is having to use information from documents that have not meet the state requirements, how can this MIRWP meet the requirements? (see Section K of Mrs. Alvernaz's comment letter)	The SBx7-7 requirements pertain solely to UWMPs and were not required in 2005, and the 2005 UWMPs do not violate any portion of the water code. The IRWMP uses these documents to describe water systems, and projected supplies and demands. The IRWMP is required to present regional water supply and demand planning information, and is not required to address SBx7-7 or any new State regulations, and is not required by the water code. The 2005 UWMPs documents contain the most up-to-date water supply and demand projections for Livingston and Atwater available at the time of IRWMP preparation.
17	Colette Alvernaz	n/a	n/a	Suggestion: Placing, utilizing, and citing the City of Atwater and City of Livingston's 2005 Urban Water Management Plan in this plan will legitimize those questionable plans. (see Section K of Mrs. Alvernaz's comment letter)	As a regional planning document, the IRWMP compiles and integrates local planning documents, including UWMPs, but does not supersede local planning efforts. The IRWMP is not required by the water code, and cannot be used to meet UWMP requirements or the requirements of SBx7-7.
18	Colette Alvernaz	Chapter 2 - Region Description Chapter 3 - Governance Chapter 7 - Impacts and Benefits	2-49 3-9 7-1	This MIRWMP does not meet the requirements of a cities Urban Water Management Plan, and it should not preclude the cities of Atwater and Livingston from completing a more recent UWMP. (see Section L of Mrs. Alvernaz's comment letter)	The IRWMP does not preclude the cities of Atwater and Livingston from completing updated UWMPs.
19	Colette Alvernaz	Chapter 2 - Region Description	2-19	Supply availability - the statement "all cities are projected to be able to fully meet their urban water demands in 2030." is questionable. On what data is this statement relying on? (see Section N of Mrs. Alvernaz's comment letter)	This statement is based on the latest demand and supply projections available - those contained in the 2005 UWMPs for Atwater and Livingston and the 2010 City of Merced UWMP. As updated demand and supply projections are developed, the IRWMP can be updated to reflect revised projections.

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20	Colette Alvernaz	Chapter 4 - Objectives Chapter 2 - Region Description Appendix A - Conservation Study	4-2 2-35 1	The MIRWMP and the City of Livingston 2005 Urban Water Management Plan contradict each other when it comes to charge/recharge. The MIRWMP discusses declining Merced Groundwater Basin (citing reports); the city of Livingston 2005 UWMP lacks supporting evidence for claims that recharge and discharge are in balance in the Livingston area. Using the Livingston 2005 UWMP undermines the validity of the MIRWMP. The MIRWMP will be used to direct significant future decisions for the City of Livingston and the Region. It is imperative the information in the MIRWMP is correct and accurate. (see Sections O and P of Mrs. Alvernaz's comment letter)	The IRWMP will not supersede local planning and will not compel the City of Livingston to implement projects included in the IRWMP. The City of Livingston's UWMP was used for demand and supply information specific to the City of Livingston. General trends, such as regional groundwater conditions, were taken from other, more regional sources. The statement that groundwater conditions in Livingston are in balance could be true despite regional overdraft given the localized nature of groundwater pumping and overdraft conditions; however, this comment has been passed along to the City of Livingston for verification.
21	Colette Alvernaz	n/a	n/a	Where are the updated water plans to support the conclusions of the City of Livingston's future water situations in the MIRWP? (see Section P of Mrs. Alvernaz's comment letter)	The 2005 UWMP includes the latest water supply and demand planning information available for the City of Livingston, and therefore was used as the basis for the IRWMP where it pertains to Livingston supply and demand information. The City of Livingston is working on updates to its UWMP; these updates can be incorporated into the next IRWMP revision.
22	Colette Alvernaz	n/a	n/a	Livingston's plan recommends the installation of 21 new groundwater wells. What will happen to the Merced Subbasin then? Adding significantly more population to an already over drafted system is not sustainable. (see Section P of Mrs. Alvernaz's comment letter)	This question is beyond the scope of the IRWMP, as it can only be answered through a detailed assessment of localized groundwater recharge and withdrawal conditions. This question has been passed along to the City of Livingston for consideration.
23	Colette Alvernaz	Chapter 2 - Region Description	Table 2-4 Table 2-5 Table 2-7	Why is the city of Livingston water use in 2010 shown to be so high? Why does its demand increase so much between 2010 and 2015? The relationship of anticipated water supply and population between the City of Atwater and City of Livingston does not appear to be realistic. (see Section Q of Mrs. Alvernaz's comment letter)	As a regional planning document, the IRWMP compiles and integrates local planning documents, including UWMPs, but does not supersede local planning efforts. The UWMPs used in preparing the IRWMP are the most recently completed UWMPs for jurisdictions in the region. This question has been passed along to the City of Livingston for consideration.
24	Colette Alvernaz	Appendix A - Conservation Study, Section 1.1 Urban Water Demands	Figure 1 Figure 2	Concerns about the population projections used. The projected population from the 1997 GP needs to be used instead of the not DWR "correct" City of Atwater and City of Livingston 2005 Urban Water Management Plans. (see Section R of Mrs. Alvernaz's comment letter)	As a regional planning document, the IRWMP compiles and integrates local planning documents, including UWMPs, but does not supersede local planning efforts. The UWMPs used in preparing the IRWMP are the most recently completed UWMPs for jurisdictions in the region. The City of Livingston is working on updates to its UWMP. When updated population, demand, and supply projections are available, the IRWMP can be revised to reflect these updated projections.
25	Colette Alvernaz	Appendix A - Conservation Study, Section 1.1 Urban Water Demands	4	When comparing the city of Livingston's projected gpcd (<200) to Atwater's (400), the numbers seem to be off. Why is Atwater so high? The MIRWMP must be in compliance with SBx7-7. The City of Atwater needs to reduce its gpcd water consumption. (see Section S of Mrs. Alvernaz's comment letter)	As a regional planning document, the IRWMP compiles and integrates local planning documents, including UWMPs, but does not supersede local planning efforts. The IRWMP is not subject to the requirements of SBx7-7. The UWMPs used in preparing the IRWMP are the most recently completed UWMPs for jurisdictions in the region. This question has been passed along to the Cities of Atwater and Livingston for consideration.
26	Colette Alvernaz	Appendix A - Conservation Study, Section 1.1 Urban Water Demands, Section 1.1.2 City of Livingston	4 6	What causes Livingston's 2010 per capita water demand to be the "highest of the three agencies"? If future water use is closer to 370 gpcd and not 185 gpcd, and 21 new groundwater wells are needed for a water use consumption at 185 gpcd, then how many actual groundwater wells would be needed for future	As a regional planning document, the IRWMP compiles and integrates local planning documents, including UWMPs, but does not supersede local planning efforts. The UWMPs used in preparing the IRWMP are the most recently completed UWMPs for jurisdictions in the region. This question has been passed along to the Cities of Atwater, Livingston, and Merced for consideration.

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27	Colette Alvernaz	Appendix A - Conservation Study, Section 1.2.2 Supply Availability, Section 1.2.3 Regulatory Frameworks	7 9 Figure 3	If the baseline and target future water use is unknown that how can the MIRWMP make the statement that the cities will be able to meet their 2030 projected water demands? (see Section T of Mrs. Alvernaz's comment letter)	Based on the demand and supply analyses completed in the latest UWMPs for these cities, the cities will be able to meet their projected 2030 demands. Baseline and target relate to SBx7-7, which is a specific requirement of 2010 UWMPs, to which the IRWMP is not subject. For the IRWMP demand and supply analysis, the latest available demand and supply projections were used (for the cities of Livingston and Atwater, those correspond to the projections included in the 2005 UWMPs).
28	Colette Alvernaz	Chapter 4 - Objectives Chapter 12 - Relation to Local Water Planning Chapter 13 - Relation to Local Land Use Planning Appendix C - Groundwater Recharge Feasibility Appendix G - Example Goals and Objectives	4-2 12-1 13-1 4 1	The Court set aside the Livingston 2025 General Plan. By including these documents in the foundation of the MIRWMP it is circumventing the court's ruling and validating plans that are not valid. The current general plan for Livingston is the 1997 General Plan. The MIRWMP should not be using plans that the court said to fix. (see Section U of Mrs. Alvernaz's comment letter)	References to the City of Livingston's 2025 General Plan have been removed. The IRWMP presents what are believed to be the most current population, supply, and demand projections available, and are based on the 2005 UWMPs for the Cities of Livingston and Atwater and the 2010 UWMP for the City of Merced. Projections taken from the City of Livingston's 2005 UWMP have been footnoted to reference the General Plan challenge and a need to revise these projections once newer projections have been developed. The City of Livingston is working on updates to its UWMP.
29	Colette Alvernaz	Chapter 3 - Governance	3-2	Two (the Cities of Atwater and Livingston) of the five governing bodies of the Regional Water Management Group (RWMG) are out of compliance on their local level. How can they adequately make decisions as water managers for a larger regional area? The Cities of Atwater and Livingston should not be making decisions on the RWMG until their 2010 Urban Water Management Plans are deemed "completed" by the DWR. The majority of the acres of the region are agriculture so the cities	The IRWMP governance structure reflects the recommendation of the Regional Advisory Committee, a diverse group of stakeholders. The RWMG would include the largest entities with water and resource management responsibility in the region. The Cities of Livingston and Atwater would not be alone in making policy decisions related to water management under the proposed governance structure, but would be advised by a 30-member committee of key regional stakeholders and would work with MID and the City and County of Merced on policy decisions.
30	Colette Alvernaz	n/a	n/a	Issues regarding the City of Livingston - water fund is financially underfunded, numerous water quality issues including high contaminant levels in groundwater and difficulty meeting water needs. (see Section W of Mrs. Alvernaz's comment letter)	As a regional planning document, the status of the City of Livingston's water fund is not a directly relevant issue, except to the extent that the Finance section of the Plan identifies potential funding mechanisms for water resource project implementation. The water quality issues identified, namely the concentrations of arsenic, manganese and 1,2,3-TCP around the Livingston area, are documented in the Salt and Nutrient Study. Because the discussion of water quality issues presented in the Region Description focuses on areas with the highest concentrations, elevated arsenic concentrations in the Livingston are not specifically discussed in the Region Description.
31	Colette Alvernaz	Chapter 2 - Region Description	2-17	Under City of Livingston - it is my understanding that Foster Farms cleaned up the old industrial Wastewater Treatment Plant, wells are monitoring water quality, and Foster Farms has an onsite facility. (see Section X of Mrs. Alvernaz's comment letter)	The text will be revised to explain that the City of Livingston is in the process of decommissioning the industrial wastewater treatment plan and that Foster Farms now treats wastewater at its own facility.
32	Colette Alvernaz	Chapter 2 - Region Description	2-17 2-18	What about City of Livingston and recycled water? (see Section X of Mrs. Alvernaz's comment letter)	The City of Livingston currently does not have recycled water facilities. The City has evaluated the use of recycled water, but it has not been found to be cost effective.
33	Colette Alvernaz	Chapter 2 - Region Description	2-10 Figure 2-6	Figure 2-6 lists 9 active wells for the city of Livingston when the document previously states there are 8 active wells. (see Section X of Mrs. Alvernaz's comment letter)	There are 8 wells in the City of Livingston. The figure will be revised accordingly.
34	Colette Alvernaz	Chapter 2 - Region Description	2-21 2-22 Table 2-3	"Metering with Commodity Rates" is listed as implemented for Merced, Livingston, Atwater, but p.2-21 states "all three cities have a large number of unmetered accounts." (see Section X of Mrs. Alvernaz's comment letter)	Caption has been revised to state "Fully or Partially Implemented."

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35	Colette Alvernaz	Chapter 13 - Relation to Local Land Use Planning	13-3	Will the City of Livingston recommendation of installing 21 new groundwater wells "create a cone of depression" affecting quality and quantity of groundwater? (see Section X of Mrs. Alvernaz's comment letter)	This question is beyond the scope of the IRWMP, as it can only be answered through a detailed assessment of localized groundwater recharge and withdrawal conditions. This question has been passed along to the City of Livingston for consideration.
36	Colette Alvernaz	Appendix A - Conservation Study, Section 1.3.2 Local Approach	10	The meter water rates are low (under \$10 a month), for more water than most homes use in Livingston. Such low rates for a large quantity of water negates the water conservation measure. Water meters are ineffectual as a water conservation tool. (see Section X of Mrs. Alvernaz's comment letter)	The IRWMP does not direct rate setting at the individual utility level. This comment has been passed along to the City of Livingston for consideration.
37	Colette Alvernaz	Appendix A - Conservation Study	29	I like the idea of recharge. How does recharge on ag land work? Concern: If urban areas are using MID canals for storm runoff, wouldn't urban pollutants in the storm runoff water mix with the recharge water in the canal and possibly contaminate the ag soil? (see Section X of Mrs. Alvernaz's comment letter)	Any water applied on agricultural lands that is not lost to evaporation or taken up by vegetation may eventually reach the groundwater basin, providing recharge. As such, conservation on agricultural lands should be managed to prevent unplanned reductions in groundwater recharge. Urban runoff does typically include contamination associated with urban land uses, and if that water is discharged to MID's canals, depending upon the water quality of the discharge and the degree to which concentrations are reduced through natural attenuation processes, there may or may not be water quality impacts.
38	Colette Alvernaz	Appendix C - Groundwater Recharge Feasibility Study, Section 7 Alternatives	53	Suggestion: Sometimes ag land is fallow for short periods of time. What about having temporary recharge basins? Sometimes there are smaller units of land for rent. What about having small acre recharge basins? What about renting the land for a season and trying it out to see how it works? (see Section X of Mrs. Alvernaz's comment letter)	Due to the cost of designing and constructing recharge basins, facilities are typically only implemented on land owned by the utility and used for year-round operation. Agricultural lands could be periodically allowed to flood during high flow events, acting as intermittent recharge basins. This is a potential water management strategy that would fall under Agricultural Lands Stewardship / and or Flood Management - strategies discussed in Chapter 5 of the IRWMP as applicable to the region. Text has been added to mention this alternative.
39	Colette Alvernaz	Appendix C - Groundwater Recharge Feasibility Study, Section 7.5 Opportunity Area E	59	I believe start of paragraph should read Opportunity Area E not Opportunity Area D (see Section X of Mrs. Alvernaz's comment letter)	This change has been made.
40	Colette Alvernaz	Appendix E - Climate Change Study, Section 1.6.1 Adaptation Strategies (Land Use Strategies)	25	What are "critical public facilities"? (see Section X of Mrs. Alvernaz's comment letter)	Critical facilities are those that are required to maintain public health and safety. This has been clarified in the text.
41	Colette Alvernaz	n/a	n/a	If Merced Irrigation District rations water to ag land the same ration must be applied to the urban users. (see Section X of Mrs. Alvernaz's comment letter)	It is beyond the scope of the IRWMP to dictate rationing requirements for the MID system. This comment has been passed along to MID.
42	Colette Alvernaz	n/a	n/a	When will the City of Atwater and City of Livingston have a DWR "completed" current Urban Water Management Plan? (see Section X of Mrs. Alvernaz's comment letter)	It is beyond the scope of the IRWMP to dictate when the Cities of Livingston and Atwater will update their respective UWMPs. This comment has been passed along to the Cities of Livingston and Atwater.
43	Colette Alvernaz	Chapter 2 - Region Description	2-21	In many places in the MIRWMP, the City of Livingston's plans are in conflict. (see Section X of Mrs. Alvernaz's comment letter)	It is beyond the scope of the IRWMP to revise local plans developed by the City of Livingston. This comment has been passed along to the City of Livingston.
44	Colette Alvernaz	n/a	n/a	Members of the agriculture community know the water table is dropping. Several people in the Livingston area are concerned about water and have spoken to the Livingston City Council multiple times. (see Section Y of Mrs. Alvernaz's comment letter)	This comment has been passed along to the City of Livingston.
45	Colette Alvernaz	n/a	n/a	The 2005 City of Livingston Urban Water Management Plan is of concern. It is being used to support future planning though it does not reflect current demands and needs. (see Section Y of Mrs. Alvernaz's comment letter)	This comment has been passed along to the City of Livingston.

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46	Merced County Farm Bureau	n/a	n/a	We believe it is necessary for the region to fully assess and plan for our critical water resources and we commend the leadership and participants for their involvement in this process.	Comment noted and passed along to RAC members.
47	Merced County Farm Bureau	n/a	n/a	The City of Livingston's 2025 General Plan Update is flawed. In 2009, a court decision ruled that the 2008 EIR inadequately analyzes potential mitigation for prime ag land. There is a lack of updated master plans which are required to coincide with the GPU. These unapproved documents are not current, accurate or complete and therefore should not be reference points for the IRWMP. Since the 2025 GPU is has been ruled incomplete then it is the duty of the IRWMP to review and include the 1997 General Plan.	References to the City of Livingston's 2025 General Plan have been removed. The IRWMP did not include or present GPU projections from the 2025 General Plan; as such, this information does not require revision. However, the City of Livingston's 2005 UWMP may have included assumptions based on the 2025 General Plan. If so, the demand and supply projections included in the plan should be revised when updated projections are available. This has been footnoted in the plan where these projections are cited.
48	Merced County Farm Bureau	Chapter 1 - Introduction Chapter 2 - Region Description, Section 2.3.7 Water Conservation (Supply Availability) , Section 2.6.1 Water Supply (Water Supply Projections), Section 2.6.2 Water Demand	1-1 2-19 Table 2-4 Table 2-5	There is concern about the statement that "all cities (Merced, Atwater & Livingston) are projected to be able to fully meet their urban demands in 2030" considering the anticipated supply and demand projections for Merced, Atwater and Livingston. The numbers reflect concern with using the incomplete 2025 GPU; for example, the City of Atwater currently has a population double the size of the City of Livingston; however in the provided tables, the five year increments show Livingston's demand (AFY) growing substantially more than Atwater's.	This statement is based on the latest demand and supply projections available - those contained in the 2005 UWMPs for the Cities of Livingston and Atwater and the City of Merced 2010 UWMP. As updated demand and supply projections are developed, the IRWMP can be updated to reflect revised projections.
49	James Marshall	n/a	n/a	The report accurately reflects the committee's work.	Comment noted.
50	Jean Okuye	n/a	n/a	Recommends revisiting policy makers with the idea of possibly adding EMerced RCD concerns. Cities and county often in favor of development. Need another viewpoint.	The governance section of the draft Plan has been revised to include this recommendation.
51	Dena Traina	Chapter 2 - Region Description	2-3	The document states that the Region is "slightly larger" than the 491,000-acre Merced Groundwater Subbasin. 607,000 seems like a lot more than 491,000.	The text has been revised to explain that the Region is primarily defined by the Merced Groudwater Subbasin.
52	Dena Traina	Chapter 2 - Region Description	2-9	The 1990 Merced Country General Plan numbers for average daily water use in Le Grand are referenced. Update number.	The avergae daily water use presented for Le Grand Community Services District is the most up to date number that was available at the time of the plan preparation. The primary reference for this value was the Le Grand Community Services District is the Merced County General Plan Background Report completed in 2007; the document in turn references the 1990 Merced County General Plan.
53	Dena Traina	Chapter 2 - Region Description	2-9	Regarding the Municipal Water Suppliers section, it would be nice if the units were the same throughout this section	The text has been revised to express water production, when available, on an annula basis in acre-feet as well as on an average daily basis in million gallons per day.
54	Dena Traina	Chapter 2 - Region Description	2-9	Why does the Planada Community Services District have half the population of Winton but uses 2/3 the amount of water?	As a regional planning document, the IRWMP compiles and integrates information from local planning entities and local planning documents. This question has been passed along to Winton Water Sanitary District and Planada Community Services District for consideration.
55	Dena Traina	Chapter 2 - Region Description	2-10	How much groundwater does Meadowbrook Water Company provide to its customers?	The descriptions in the Municipal Water Suppliers section includes all the information that the project team was able to obtain for the various entities. If additional information is obtained in the future, it can be incorporated in a subsequent update of the MIRWMP.

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56	Dena Traina	Chapter 2 - Region Description	2-10	The document states that the City of Merced anticipates using a small amount of surface water from MID to supplement its water supply by 2015. Quantity should be added.	The text has been revised to include the initial anticipated quantity.
57	Dena Traina	Chapter 2 - Region Description	2-13	Add quantity of groundwater served to the Turner Island Water District.	The descriptions in the Municipal Water Suppliers section includes all the information that the project team was able to obtain for the various entities. If additional information is obtained in the future, it can be incorporated in a subsequent update of the MIRWMP.
58	Dena Traina	Chapter 2 - Region Description	2-13	Add quantity of water served to the Chowchilla Water District users.	The descriptions in the Municipal Water Suppliers section includes all the information that the project team was able to obtain for the various entities. If additional information is obtained in the future, it can be incorporated in a subsequent update of the MIRWMP.
59	Dena Traina	Chapter 2 - Region Description	2-13	Add quantity of surface water the Turlock Irrigation District receives from the Tuolumne River.	The descriptions in the Municipal Water Suppliers section includes all the information that the project team was able to obtain for the various entities. If additional information is obtained in the future, it can be incorporated in a subsequent update of the MIRWMP.
60	Dena Traina	Chapter 2 - Region Description	2-13	Add quantity of groundwater served to the East Side Water District.	The descriptions in the Municipal Water Suppliers section includes all the information that the project team was able to obtain for the various entities. If additional information is obtained in the future, it can be incorporated in a subsequent update of the MIRWMP.
61	Dena Traina	Chapter 2 - Region Description	2-14	Add quantity of water provided by the Lone Tree Mutual Water Company.	The descriptions in the Municipal Water Suppliers section includes all the information that the project team was able to obtain for the various entities. If additional information is obtained in the future, it can be incorporated in a subsequent update of the MIRWMP.
62	Dena Traina	Chapter 2 - Region Description	2-17	Add quantities for the City of Livingston's domestic and industrial wastewater treatment plants.	The text has been revised to include the capacity of the domestic wastewater treatment plant and to explain that the industrial wastewater treatment plan is being decommissioned.
63	Dena Traina	Chapter 2 - Region Description, Section 2.3.6 Agricultural Water	2-18	Numbers regarding service area of Merced Irrigation District do not match previously stated numbers.	The text has been revised to clarify that MID's service area is 164,000 acres of which 140,000 acres is agricultural land.
64	Dena Traina	Chapter 2 - Region Description	2-37 Figure 2-16	Regarding groundwater recharge opportunity areas in Figure 2-16, areas C and D would have little benefit for the region. B would have the most benefit and A would have the second most.	Comment noted.
65	Dena Traina	Chapter 2 - Region Description	2-39 Table 2-4	No change in the AFY numbers for anticipated water supply through 2035 seems like a red flag. This indicates either no growth or no data, and either one is bad. Numbers should be confirmed.	Current and projected water demand data is a data gap that was identified through the MIRWMP planning process, and this data gap is noted Section 9.1 Overview of Data Needs. The water supply and water demand projections is based on the best information available to the project team was able to obtain for the various entities. As better information is developed and obtained, it can be incorporated in a subsequent update of the MIRWMP.
66	Dena Traina	Appendix A - Conservation Study	n/a	Provide final copy not draft Page 3. All average 300 gpcd doesn't seem to match graph. Also says Livingston is the highest but Atwater looks almost exactly the same. Seems hard to believe that Atwater has done all of those conservation programs and still has the highest usage. Water conservation measures listed seem to be on the light side. Very little reference to removing landscapes, changing crop types, automated landscape irrigation systems, etc	The final IRWMP Plan will include final copies of all the technical studies; they were issued as drafts to allow the public to provide comments during the public review process. Regarding the per capita water usage, the text has been revised to clarify that the three cities together average 300 gpcd and to address the comment about the Livingston's per capita usage compared to Atwater. As a regional planning document, the IRWMP compiles and integrates local planning documents; the implementation status of the conservation measures for the City of Atwater are consistent with the City of Atwater 2005 UWMP. The water conservation measures noted are captured under the water audit programs; the text has been revised to clarify that landscape removal and installation of automated irrigation systems are two of the most common outcomes of outdoor water evaluations.

Friday, July 19, 2013

Hicham EITal
Merced Irrigation District
744 W 20th Street
Merced, CA 95340
Comments@mercedirwmp.org
Fax (209) 722-6421

First off thank you for putting together a document in a manner that a lay person could follow the information. It was an interesting read. Yes, I read it all. Thank you for the opportunity to comment on the MIRWMP Public Draft June 17, 2013. I made notes of my thoughts as I read along. I wish to share my comments and thoughts.

My overall impression of the Merced Integrated Regional Water Management Plan is someone did a good job putting this together. Good information from Merced Irrigation District, just okay information from City of Merced, and lacking information from other participants to the point of making the document deficient. Even in one section the MIRWMP cites insufficient information from Atwater and Livingston (second and third largest urban users in the plan) to be able to do a projection.

My concerns are:

Regarding Flooding:

There is Merced River flooding in the Livingston area that may not be cited as flood areas in the MIRWMP Public Draft.

The following basically says when Merced River runs high there is flooding.

The Merced River, which borders the north boundary of the western half of the SDMP study area, retains a floodplain area that was delineated by the Federal Emergency Management Agency (FEMA) per Flood Insurance Rate Map (FIRM) Panels 175 and 200 for Merced County, California and Incorporated Areas (Effective Date: 1995). The floodplain area is represented as Zone A on these maps, indicating that the designation is “approximate” (See Appendix), and is shown as being confined to the river channel and adjacent low lying terrace areas. City representatives have indicated that some areas within the northwest quadrant of the SDMP study area may have previously experienced flooding induced by high stages in the Merced River. Prior to development occurring in lower lying portions of the northwest quadrant of the SDMP study area, it is recommended that a detailed hydraulic study be performed to more accurately determine the 100-year floodplain limits for the Merced River. This SDMP addresses local storm drainage needs and issues, and analyses pertinent to the Merced River are outside of the scope of the SDMP. (CITY OF LIVINGSTON STORM DRAINAGE MASTER PLAN (REVISED FINAL VERSION – JULY, 2007 pg 2-3)

B

The Merced River has flooded in the Livingston area. In Jan. 1997, water from Merced River was easily seen sitting in the fields on the north side of Vinewood Ave. Vinewood Circle, a U shaped road off of Vinewood, came about because before the current dam Vinewood Ave. would flood and people would travel on Vinewood Circle to avoid the water. In Jan. 1997 the Merced River was running quite high. Hundreds of acres of Ag land were flooded. High water was in the playground at Hagaman Park. No driving was allowed in the lower portion. Hagaman Park was shut.

Appendix E Climate p.15. The MIRWMP does not list the flood event of Jan. 1997.
Appendix E p. 24 For the IRWM Integrated Flood Study: The flooding along the Merced River in the Livingston area should be included.

C

My neighbor says the there has been flooding down by Wastewater Treatment Plant.

Appendix B p. 15 & 16 How will flood management on the Merced River effect the City of Livingston Wastewater Treatment Plant and the old abandoned wastewater ponds which are below on the Merced River?

Regarding Pollutants/Surface Water Quality

Pg. 2-45 under Table 2-6 Potential Sources Livingston’s Wastewater Treatment Plants are a potential source of Pollutant/Stressor. The City of Livingston’s Domestic Wastewater Treatment Plant is near the Merced River. When Livingston developed it’s new system it abandoned the old ponds it had used for many decades. These old ponds next to the river have not been cleaned up. My neighbor who used to work for the U.S. Forest Dept. and worked with NEPA documents told me there are probably heavy metals and other containments in the abandoned ponds. These old ponds have been flooded when the Merced River runs high. There is a possible lateral flow below the top soil surface.

The former Industrial Wastewater Treatment Plant was near the Merced River. There were issues with it and the State of CA got involved. Foster Farms cleaned it up and wells are monitoring water quality.

But nothing has been done with the Domestic Wastewater Treatment Plant abandoned ponds.

There also have been two breaks at the Domestic Wastewater Treatment Plant. One involved the old ponds. Solids from the wastewater plant were in the Merced River. The State of CA placed a building moratorium on Livingston. The other involved a break in the new facilities. (See attached pictures)

D

Given the history, the Livingston Domestic Wastewater Treatment Plant is a potential pollutant/stressor.

Pg. 5-13 CA Water Plan Update 2009, “Developing proper land management practices that prevent sediment and pollutants from entering source water.” Could this help Livingston clean up its old abandoned Domestic Wastewater Treatment Plant Wells next to Merced River?

Appendix C p. 38 **3.11** Surface Water Quality and Appendix E p.14

The old abandoned City of Livingston Wastewater Treatment Ponds adjacent to the Merced River is a surface water quality concern.

Appendix D p.4 How does the City of Livingston Domestic Wastewater Treatment Plant and Livingston's DWWTP abandoned ponds affect the groundwater-surface water discharge on the Lower Merced River?

Appendix D p.16 Suggestion: Place Surface Water Monitoring Points above and below the City of Livingston Domestic Wastewater Treatment Plant.

E

Appendix E Climate p.23 Pollution Prevention Suggestion: Educate urban users about household pesticides, cleaners, and other chemicals. Some homeowners use strong concentrations.

F

Appendix E p.14 The City of Livingston's abandoned Domestic Wastewater Treatment Ponds adjacent Merced River is a possible pollutant.

Outdated Urban Water Management Plans

There are some issues that need to be brought to the forefront of the discussion of using the City of Livingston's 2005 Urban Water Management Plan to justify the statements and conclusions made in the MIRWMP.

G

The City of Atwater and the City of Livingston have not complied with the Urban Water Management Plan Act. According to the CA Dept. of Water Resource the 2010 UWMP must be adopted by July 1, 2011 and submitted to DWR by August 1, 2011. Atwater and Livingston do not have a completed 2010 UWMP. Here are some regulations/ requirements since the City of Atwater and City of Livingston's 2005 UWMP.

Assembly Bill 1420 (AB 1420), CA Water Code Section 525-529.5, Water Conservation Bill of 2009 (SB x7-7), CA Water Plan Update 2009, EO S-3-05 Greenhouse, AB 1420, SB 5, SB 1278, AB 1965, AB 32, SB 97, EO S-13-08, SB 375, Climate Ready Utilities 2010, GHG Reporting Rule 2009, National Water Program 2012 Report, 2008 GWMP Update, MAGPI updates, AB 359, Recycled Water Policy (SWB Resolution #2009-0011), plus numerous reports with more up-to-date information and data.

The MIRWMP is utilizing and referencing the outdated UWMP's. By doing this the MIRWMP is making it seem like the out-dated UWMP's are a reliable, up-to-date source of information and Atwater and Livingston's UWMP's are in compliance with all the new regulations. It makes me wonder how serious Merced Integrated Water Region is about water management practices.

H

Pg. 11-1 Technical AnalysisThe MIRWMP Table 11-1 lists in the foundational documents used to create the MIRWMP the City of Livingston 2005 Urban Water Management Plan and City of Atwater 2005 Urban Water Management Plan (Administrative Draft). What does administrative draft mean? I think of a draft as in a working stage and not finished

yet. Is the Atwater 2005 UWMP completed? Using out-of-date and not DWR “completed” Water management Plans as foundational document weakens the foundation of the MIRWMP.

Livingston’s 2005 UWMP is not based in Hydrological facts, On March 20, 2007 from 8:33 to 8:41 p.m., Mr. Brian Kelly from the Merced Irrigation District spoke to the Livingston City Council about the concerns with the City of Livingston Urban Water Management Plan.

“Brian Kelly, Merced Irrigation District, **disputed claims in the report that groundwater quality and quantity is adequate through 2030. He added that the reference of water plans noted within the master plan are actually only studies at this point.** Mr. Kelley requested that the City become more involved in the Regional water interest, specifically MAGPI, encouraging cities to use the surface water for landscaping and parks.” (Livingston City Council Meeting Minutes March 20, 2007 page 5.)

I went on <http://www.water.ca.gov/urbanwatermanagement/UWMP.cfm> and clicked 2005 UWMPs and then clicked on the link for “folder names of the various agencies that have submitted Urban Water Management Plans (UWMP) that were determined by DWR to be “completed”. I could not find the City of Atwater or City of Livingston.

Making the MIRWMP rely on foundational water management documents that are out-of-date and out-of-compliance corrupts the integrity of its regional water plan. How can this regional water plan address requirements like SB X7-7 when the second and third largest urban providers don’t have a 2010 UWMP that address that issue?

The MIRWMP is deficient when it comes to providing the information needed for an up-to-date 2010 Urban Water Management Plan for Atwater and/or Livingston. It seems those two cities have not done their due diligence as water providers and complied with CA Water Resource Board and a “DWR completed” 2010 UWMP and maybe not a “DWR completed” 2005 UWMP.

Pg. 4-1 Some of the data and technical analyses in the MIRWMP that were used in the development of the IRWM Plan are from the outdated Atwater and Livingston 2005 UWMP to fill in the spots in its water management plan.

The out-dated and not “DWR completed” Atwater and Livingston 2005 UWMP are not in compliance with several of the new mandatory State requirements. Since the MIRWMP is having to use information from documents that have not meet the state requirements, how can this MIRWP meet the requirements?

Placing, utilizing, and citing the City of Atwater and City of Livingston’s 2005 Urban Water Management Plan in this plan will legitimize those questionable plans.

I’m afraid the City of Atwater and/or the City of Livingston might say that it does not have to complete a 2010 UWMP because it is listed in the MIRWMP and the MIRWMP

L

will satisfy the requirement. But this MIRWMP does not meet the requirements of a cities Urban Water Management Plan.

The MIRWMP “is intended to be a useful future guide to the Region”(pg. 2-49) an “umbrella document not to supersede local jurisdiction” that will “provide guidance for the developing and refining projects for the next 20 years.” (Pg. 3-9) It is a “planning study and basic data compilation possible ...these activities are CEQA exempt.” (Pg. 7-1). The MIRWMP is not designed be a substitute for local UWMP.

M

Pg. 5-1 How is this MIRWMP going to meet SB x7-7 requirement of reducing urban water consumption 20% by 2020 when the second (Atwater) and third (Livingston) largest urban water managers fail to supply the information?

Overdraft/Merced Groundwater Basin

N

Pg. 2-19 Supply Availability. The statement “all cities are projected to be able to fully meet their urban water demands in 2030.” is questionable. On what data is this statement relying on? Mr. Brian Kelley, MID disputed this claim in March 2007, when he spoke about Livingston’s 2005 Urban Water Management Plan.

Pg.4-2 states, “The Merced Subbasin, which serves the majority of demands in the Merced IRWM Region, is in overdraft; however, significant population growth is projected.” Pg. 2-35 speaks to the “mild long-term groundwater level decline of the Merced Subbasin.

Appendix A - Conservation Study P.1 has two important regional objectives. One is “correct groundwater overdraft conditions” The City of Livingston’s Urban Water Management Plan claims the recharge and discharge are “nearly in balance”. “Long-term water level records indicate that recharge and discharge are nearly in balance in the Livingston area.” (City of Livingston 2005 Urban Water Management Plan P. 3-7)

O

The MIRWMP and the City of Livingston 2005 Urban Water Management Plan contradict each other when it comes to charge/recharge.

Pg. 2-50, 4-1, 4-2, 5-6, The MIRWMP states that groundwater resources are already overdrafted in many places. And Appendix C p.53, “ As discussed in section 2 the Merced Groundwater Basin is currently thought to be in a state of declining groundwater levels.” The MIRWMP discussed in detail the declining Merced Groundwater Basin. It sited reports.

The City of Livingston 2005 Urban Water Management Plan lacked supporting evidence to back up its 2005 Urban Water Management Plan.

On March 3, 2006, Merced County Farm Bureau Director Diana Westmoreland Pedrozo called the City of Livingston Planning Director Donna Kenney and asked about Livingston’s water plan. The Farm Bureau Director told Ms. Kenney that the water plan referenced by the City of Livingston were not plans.

This questions the validity and reliability of the Livingston 2005 UWMP. When the MIRWMP extrapolate information from the Livingston 2005 UWMP it questions the validity of the MIRWMP.

The MIRWMP Public Draft June 2013 relying on Livingston's UWMP states that there is adequate groundwater supply through 2030.

There have been wells going dry or needing to be drilled deeper.

Where are the updated water plans to support the conclusions of the City of Livingston's future water situations in the MIRWP?

The MIRWMP will be used to direct significant future decisions for the City of Livingston and the Region. It is imparitive the information in the MIRWMP is correct and accurate.

Livingston's plan recommends the installation of 21 new groundwater wells. What will happen to the Merced Subbasin then? Adding significantly more population to an already overdrafted system is not sustainable.

Questions on Table 2-4, 2-5, & 2-7

In the MIRWMP Public Draft 2013 one obvious question is: Why does Table 2-4 and Table 2-5 have the City of Livingston at a much higher rate of water in 2010 than the larger City of Atwater? Why is the City of Livingston at a level close to the much larger City of Merced for 2010?

Why in comparison of the Table 2-4 chart does the larger City of Atwater increase its water supply between 2010-2015 by 2,000 AFY but the smaller City of Livingston increase its water supply demand by 13,000 AFY?

The relationship of anticipated water supply and population between the City of Atwater and City of Livingston does not appear to be realistic and it would appear the City of Livingston's anticipated water supply per capita water basis is far greater than the City of Atwater and the other municipalities.

Why is the City of Livingston's Anticipated Water Supply Table 2-4 so much higher than Table 2-5 Anticipated Water Demand ?

According to Table 2-7: 2010 Population and Housing Data for the Region Livingston has less than half the population of Atwater and Livingston has only a third of the housing units. Where is the justification for the City of Livingston to have a water demand higher than the City of Atwater by 2015 and a water supply 20,000 (AFY) greater than Atwater in 2015?

Appendix A Conservation Study

Appendix A P.3 Figure 1 & 2 are relying on the outdated, not DWR "correct" City of Atwater and City of Livingston 2005 Urban Water Management Plans. This MIRWMP lists the Atwater 2005 UWMP as an administrative copy. The City of Livingston's populations projection in its 2025 General Plan were so skewed the court told Livingston it had to correct it. 2005 was at the height of the building bubble. The bubble burst. The MIRWMP states that it will need to use up-to-date information. Figure 1 & 2 do not take

into the current situation. The 1997 General Plan for Livingston is the current General Plan the City of Livingston is using.

Appendix A P.4 The summary is “Based on the data provided in the UWMP’s” The summary is questionable at best and possibly incorrect because the data was weak, lacking or faulty.

For example: projected population growth to increase by 112 % by 2030. The court told the City of Livingston its huge projected population growth needs to be corrected and to set aside Livingston’s 2025 General Plan. The general plan governing Livingston at this time is the 1997 General Plan. The projected population from the 1997 GP needs to be used.

The City of Atwater gpcd is increasing from 370 gpcd to 400 gpcd by 2025. The SBx7-7 requirement is to decrease water use, 10 percent by Dec. 31, 2015 and 20 percent by 2020. Atwater is the second largest urban provider in the MIRWMP. The MIRWMP cites the second largest urban user increasing its water use by what 8.1%.? This questions the MIRWMP compliance with SBx7-7.

S

The statewide average is 192 gpcd. Atwater is increasing by 2025 to a average of 400? This number seems overabundant. By 2025, Atwater gpcd will increase to 208% of the statewide average?

The City of Livingston’s gpcd is estimated to be below 200 and Atwater estimation is 400. These two cities are next to each other. These numbers when compared to each other seem to be off. The data behind these numbers needs to be questioned.

The MIRWMP must be in compliance with SBx7-7. The City of Atwater needs to reduce its gpcd water consumption.

Appendix A P. 6 states Livingston’s high per capita water demand over 370 gpcd in 2010 possibly because of single family residence lot size average of 10,000 sq. feet. But on page 4 it states, “The city’s current per capita water uses is the highest of the three agencies, at almost 370 gpcd. ...this higher water use is partially due to the presence of a large industry with high water demands.” These two statement are a contradiction. If the high gpcd is because of large industry, as the population grows and the industry stays the same size the gpcd will decline. If the high gpcd is because of large lot size, maybe irrigation conservation needs be discussed i.e. smaller lot size, drought resistant plants, rock gardens... But first it needs to be determined why the gpcd is the “highest of the three agencies”.

T

Also if the gpcd is below 200, the water demand as the population grows will be significantly different than if the water demand is 370 gpcd. This is at least a 185% difference.

This raises the question: The City of Livingston’s Plan recommends 21 new groundwater wells to meet its future population needs. Livingston 2005 UWMP cites 185 gpcd for future water use. But if the water use is closer to 370 gpcd and not 185 gpcd, and 21 new groundwater wells are needed for a water use consumption at 185 gpcd, then how many actual groundwater wells would be needed for future projected growth? 42 new groundwater wells (370 gpcd divided by 185 gpcd = 200%. 21 groundwater wells x 200% = 42 groundwater wells.)

A question is if MIRWMP is relying on Livingston 2005 UWMP to state that the cities will be able to meet its projected future water needs, if Livingston's future water needs requires 42 groundwater wells, not the recommended 21, will Livingston be able to meet its future water needs?

This questions the MIRWMP when it states in Appendix A p.7 "Figure 3, all cities are projected to be able to fully meet their urban water demands in 2030."

Appendix A p.9 states, "The City of Livingston's and the City of Atwater's 2010 UWMPs were not yet available....information regarding their baseline water use, 2015 interim targets, and 2020 targets is not provided in this document." If the baseline and target future water use is unknown that how can the MIRWMP make the statement on pg. 7 and do Figure 3 that as cities are projected to be able to fully meet their urban water demands in 2030."? According to p.9, Atwater, second largest, and Livingston, third largest urban water users in the MIRWMP do not know what their baseline, 2015 target, and 2020 target use is. This questions the validity of the statements and conclusions the MIRWMP make regarding the water uses of Atwater and Livingston.

Regarding Court-Set-Aside Documents

Pg. 4-2 states "Water management issues in the Merced IRWM Region were identified by reviewing existing water management plans in the region...."

The 2008 Livingston 2025 General Plan has been court set aside the Master Plans are part of the GP. They are not appropriate to be used as foundational documents. They need to be fixed first. The 200 year flood plain was missing. Projected Population was askew. Agriculture land designation missing and more.

Pg. 12-1 When the MIRWMP uses the Court-Set-aside Livingston 2025 General Plan outdated and 2005 Urban Water Management Plans it undermines its objective to respond to changing conditions and update periodically.

Pg. 13-1 The current general plan for the City of Livingston is the 1997 General Plan. The 2008 Livingston 2025 General Plan was taken to court and the court ruled that there were issues the City of Livingston needs to fix like unrealistic growth projections. The MIRWMP reference sites the court-set-aside general plan for the City of Livingston. which is not the actual general plan that the City of Livingston is under.

Appendix C p.4 The RAC developed 12 IRWM objectives. Eleven of those objects have direct relevance to groundwater recharge. The City of Livingston court-set-aside General Plan that the MIRWMP utilizes to come up with MIRWMP objectives will possibly jeopardize the MIRWMP objectives.

Appendix G **Example Goals and Objectives** p.1 "The following table summarizes Goals and/or Objectives contained in a variety of local documents covering various aspects of water management in the Merced Region. These goals and objectives are provided as reference to be used when developing objectives for the Merced Integrated Regional Water Management Plan."

Document Name

Goals and / or Objectives

#19 City of Livingston - 2025 GP

Then it lists the accompanying 2025 Master Plans with their goals and/or objectives.

#20 City of Livingston- Storm Drain MP

#21 City of Livingston - Water Distribution System MP

#22 City of Livingston - WWCS MP

#23 City of Livingston - Parks MP

#26 City of Livingston- Traffic Circulation MP

The Court set aside the Livingston 2025 General Plan. By including these documents in the foundation of the MIRWMP it is circumventing the court's ruling and validating plans that are not valid. The current general plan for Livingston is the 1997 General Plan. By referencing the goals and objectives of the City of Livingston debunked plans the MIRWMP is resurrecting plans that are not rational, justifiable, logical, sound, or viable. It corrupts the MIRWMP. The court said to fix them. The MIRWMP should not be using plans that the court said to fix.

There are issues in Livingston's Plans that contradict the MIRWMP. At this point in time they are not valid plans.

Using the 2008 City of Livingston 2025 General Plan as a reference document has inherent risks because the court reviewed and set aside the City of Livingston's 2025 General Plan which is being used as supportive information for the City.

Regarding Regional Water Management Group

Pg. 3-2 the Regional Water Management Group responsible for "overall direction, funding and approval" is made up the Merced Irrigation District, Merced County, City of Merced, City of Livingston and City of Atwater. Livingston and Atwater have not completed their 2010 Urban Water Management Plan. Their 2005 Water Management Plans are not in the "completed" list by the DWR. Livingston and Atwater have not completed their responsibilities as water managers to their local urban areas. Two of the five governing bodies of the Regional Water Management Group are out of compliance on their local level. How can they adequately make decisions as water managers for a much large regional area? The City of Atwater and the City of Livingston should not be making decisions on the Regional Water Management Group until their 2010 Urban Water Management Plan are deemed "completed" by the DWR. Otherwise it seems to me Livingston and Atwater don't know what they are doing.

The Merced Irrigation District which is agriculturally based has done a good job on managing water. Farmers are good water managers. This year farmers are on a water budget of 2.4 acre feet per acre of water. Cities have not done such a good job. The cities have not budgeted their water. Livingston is operating its system on a deficit. (households under \$10.00 a month for more water than most households use.)

Livingston keeps building which adds more to an overtaxed system. Livingston's plan is to state the charge/recharge underground basin is in balance (2005 UWMP), add 21 new wells and concludes there is enough water for a projected growth rate that the even the courts say is out of balance.

The problem is three of the five members of the Regional Water Management Group responsible for making overall decisions are the cities of Merced, Atwater, and Livingston. The majority of the decisions for the entire region which most of the acres are agriculture will be under the authority of the cities.

As a farmer I know water is a precious commodity. We conserve and budget our water. I do not want an entity like Livingston which is a poor water manager making decisions regarding my water as a farmer. Livingston has messed up its water situation. Do not take a chance with the cities messing up the agriculture water. The cities should not be a majority on the Regional Water Management Group.

The MIRWMP needs a policy stating, "to serve on the Regional Water Management Group the entity's required documents must be in compliance with the CA State Water Resource Board." In other words, No DWR "completed" Urban Water Management Plan, No vote. An entity, like the City of Livingston can come and listen and learn but it would not be able to make decisions on a regional level until it is able to do its job on a local level.

Impression with the MIRWMP is farmers are good water managers. Cities not so good. Weakest link major decision makers for region Not so good.

RAC puts majority in hands of worse water managers.

Regarding Water quality in Livingston

The City of Livingston is struggling to meet its water needs.

The City of Livingston's water fund is financially underfunded. The residential water rates are \$9.95 a month for more water than most households use.

There is correspondence with the State Water Control Board addressing the City of Livingston's water quality, low rates/feasibility, and water issues.

Local blogger Kathrine Schell at thegardeningsnail.wordpress.com has written much and spoken often at City of Livingston meetings about water issues in Livingston. Water is a problem. At the May 14, 2013 Livingston Planning Commission Meeting she made the following comments about the water situation:

The State wants monthly reports about how much water Foster Farms uses. Livingston has two wells shut down for arsenic related issues. The well by Starbucks has manganese and arsenic issues. The City has a well on quarterly monitoring for DBCP. The State Department of Health inspection report states Livingston may not have enough certified staff to adequately run the water system. There are multiple wells on quarterly monitoring for arsenic.

There are multiple wells with TCP123 over 100 times the notification limit set by the State. The federal limit is expected to be in somewhere around 2015 with a maximum contaminant level very close to the current notification level. The City's only water storage tank also has issues that need to be addressed. This could run somewhere between \$60,000 and 1/4 Million dollars, according to the Public Works Director.

She added that the Department of Health wants the City to: Start watering conservation measures immediately and until further notice. Give the State a list of repairs and upgrades that are planned over the next five years. Tell the State how the City plans to handle the manganese problem in the well by Starbucks. Report to the State what the City plans to do about the water storage tank. Not to mention the large amount of lab testing that needs to be done by the end of

W

this year. She said it is pretty clear that the City's water system has several significant issues that must be addressed before it can do any serious planning in the future. (City of Livingston Planning Commission Meeting Minutes May 14, 2013 p. 2-3)

In addition to Katherine's comments regarding water, Foster Farms had to shut down production one day because of water quality issues.

Miscellaneous

Pg. 2-17 Under City of Livingston It is my understanding that Foster Farms cleaned up the old industrial Wastewater Treatment Plant, wells are monitoring water quality, and Foster Farms has an on site facility.

Pg. 2-17 & 18 **2.3.5 Recycled Water** What about City of Livingston and recycled water?

Pg. 2-20 Figure 2-6 Lists 9 active wells but earlier in the document lists 8 active wells (pg. 2-10) for the City of Livingston.

Pg. 13-3 Will the City of Livingston recommendation of installing 21 new groundwater wells "create a cone of depression affecting quality and quantity of groundwater"?

Pg. 2-22 **Table 3-2** Metering with Commodity Rates is listed as implemented for all three cities, Merced, Livingston, Atwater but on p.2-21 it states "all three cities have a large number of unmetered accounts.

Appendix A p.10 The meter water rates are low (under \$10 a month), for more water than most homes use in Livingston. Such low rates for a large quantity of water negates the water conservation measure.

Water meters are ineffectual as a water conservation tool.

Appendix A p.29, I like the idea of recharge. How does recharge on ag land work?

Concern: If urban areas are using MID canals for storm runoff, wouldn't urban pollutants in the storm runoff water mix with the recharge water in the canal and possibly contaminate the ag soil?

Appendix C p.53 Idea: Sometimes Ag land is fallow for short periods of time. What about having temporary recharge basins?

Sometimes there are smaller units of land for rent. What about having small acre recharge basins?

What about renting the land for a season and trying it out to see how it works?

Appendix C p. 59 7.5 Opportunity Area E, I believe start of paragraph should read Opportunity Area E not Opportunity Area D.

Appendix E p.25 What are "critical public facilities" ?

If Merced Irrigation District rations water to ag land the same ration must be applied to the urban users.

How can this MIRWMP satisfy the CA Water Plan Update 2009 using the City of Atwater and City of Livingston 2005 UWMP that the DWR have not determined “completed”?

When will the City of Atwater and City of Livingston have a DWR “completed” current Urban Water Management Plan?

In many places in the MIRWMP, the City of Livingston’s plans are in conflict.

Pg. 2-21 Under **(SB x7-7)** states “The interim and 2020 targets for the City of Livingston and City of Atwater were not yet available at the time this document was prepared.”
If it helps City of Livingston 2005 Urban Water Management Plan has a projected use of 185 gpcd and the 2007 Water Master Plan Projected use 150 gpcd.

“...a residential per-capita water use of 185 gpcd was applied to calculate the future residential and commercial water use.” (City of Livingston 2005 Urban Water Management Plan P. 5-5)

“For planning purposes a residential per-capita water use of 150 gpcd was applied to calculate the future residential and commercial water use for the planning horizon of 2024 and the buildout of the Urban Reserve. (City of Livingston 2007 Water System Master Plan P. 3-7)

As a member of the agriculture community we **know** the water table is dropping. Former California Governor Schwarzenegger declared a water crisis for the entire state. The water conditions of this year (2013) demonstrates water is a commodity in short supply. This year the Merced Irrigation District, MID, rationed the amount of water available to its constituents. The MID is subsidizing surface water with well water to meet its demand. Heavy pumping is being used to make up the difference in the shortfall of gravity water.

Several of us in the Livingston area are concerned about our water and have spoken to the Livingston City Council multiple times, both verbally and in writing. Thank you for showing an interest in our water situation.

I appreciate the opportunity to comment. Doing a cursory review of your document these are some of the obvious concerns I have. A more exhaustive review will most likely generate more concerns but at this time those mentioned above will serve the purpose for initial input into your draft. My focus has been on City of Livingston where I have been an active participant in review of planning documents dating back to at least 2005. One document that concerns me is the 2005 Urban Water Management Plan which is being used to support future planning which does not reflect current demands and needs. I think Mr. Brian Kelly, MID, made some strong points and it should not be ignored.

Thank you,

Mrs. Colette Alvernaz
PO Box 255
Livingston, CA 95334

May 2008 City of Livingston Domestic Wastewater Treatment Plant had a break in the embankment of its holding ponds. Over a Million gallons of treated effluent flowed into the Merced River.



Caterpillar tractor in the broken Levee of wastewater holding basin.

May 2008 washed out levee where over one million gallons flowed to Merced River



May 2008 Wash out of the banks of Merced River when over one million gallons flowed from a break at the Domestic Wastewater Treatment Plant



July 19, 2013

Hicham ElTal
Merced Irrigation District
744 W. 20th Street
Merced, CA 95340

RE: MCFB's response comments to the Merced Integrated Regional Water Management Program Draft Report

Mr. ElTal,

Merced County Farm Bureau (MCFB) would respectfully like to submit our comments regarding the Merced Integrated Regional Water Management Program (IRWMP) Draft Report. We believe it is necessary for the region to fully assess and plan for our critical water resources and we commend the leadership and participants for their involvement in this process.

Supplemental Document

As the organization created to protect and preserve the rights of all agriculturalists in Merced County, we have continued to be involved with all municipal and county general plans and supporting documentation (i.e. master plans). When reviewing the IRWMP Draft we were surprised to see the City of Livingston's 2025 General Plan Update (GPU) used as a reference point for the entire report. In 2009, MCFB successfully litigated the City of Livingston's 2025 General Plan Update. In the attached ruling the Court found the 2008 EIR to be flawed for inadequately analyze potential mitigation for prime ag land. The heart of the Court's concern rested in the population projects which ultimately impacts every aspect of the planning and growth document. Specifically the Court stated, "Rather than consider a reasonable estimate of population growth as provided by the MCAG and expanding that to fit that, the City decided how large it wanted the expansion to be and then backfilled the area with a worst case scenario population growth to justify an expansion that would result in the disappearance of prime agricultural lands without adequate mitigation measures" (Attached decision 11/30/09, pp. 5-7).

MCFB's concern with the background provided for IRWMP Draft Report also includes the lack of updated master plans which are required to coincide with the GPU. The report assumes these unapproved documents are current, accurate and complete and this is simply not true.

Since this ruling in late 2009, the City has released a Revised Draft Environmental Impact Report (August 2012) on the 2025 General Plan Update and MCFB again submitted comments (Attached letter dated 10/22/12), but no further staff or council decisions have been rendered since late 2012. Since the 2025 GPU is has been ruled incomplete then it is the duty of the IRWMP to review and include the 1997 General Plan.

Groundwater

Groundwater continues to be our main source of domestic water and as expressed in the document (pp.1-4) MAGPI “has been meeting to develop technical data and management strategies to improve the health of the groundwater basin, which is generally in overdraft.” Yet, in the Supply Availability section (pp. 2-19) “All cities (Merced, Atwater & Livingston) are projected to be able to fully meet their urban demands in 2030.” Further reviewing Table 2-4 and Table 2-5 show the anticipated supply and demand projections for Merced, Atwater and Livingston show numbers that reflect our obvious concern with using the incomplete 2025 GPU. Which also make us question the ability to “fully meet their urban demands in 2030.” For example, the City of Atwater currently has a population double the size of the City of Livingston; however in the provided tables, the five year increments show Livingston’s demand for acre feet per year growing substantially more than Atwater’s.

MCFB understands agriculture is a large participant in the usage and depletion of groundwater and this discussion about joint uses and recharge is a necessary conversation. Similarly there are a large number of farmers surrounding the cities who have implemented conservation efforts to preserve and protect their water resources, but competing interests have created a difficult situation. The 20 percent reduction of urban water uses by 2020 mandated in SBx7-7 is a good plan, but we are concerned that the supporting documents to not prove to be an anticipated goal or addressed by some of the municipalities.

We again commend the committee and staff for taking part in this document. We only ask that the document use adequate and legitimate documentation for the evaluation. See the attached documents referenced above.

Water is the lifeblood of our county, communities and industries. The vast scope of work and planning for a healthy and sustainable future is a difficult, but necessary undertaking. We are gracious for the opportunity to discuss this issue and we look forward to future dialogue on this plan.

Sincerely,

Amanda Carvajal
Executive Director

MERCED COUNTY
2020 NOV 30 11:03:33
CLERK OF THE SUPERIOR COURT
MELANIE MIGLIAZZO

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF MERCED

MERCED COUNTY FARM BUREAU,) Case No. CU151754
Petitioner,)
vs.) ORDER GRANTING PETITION FOR WRIT
CITY OF LIVINGSTON et al.,) OF MANDATE
Respondents)
_____)

At issue in this writ is the City of Livingston's (City) approval of a 2025 General Plan Update (GPU) increasing the City's sphere of influence and certification of the EIR relating to that GPU.

The 2025 GPU includes a proposal to expand the City's sphere of influence by approximately 2,905 acres. The purpose of the 2025 GPU is to provide policy direction regarding elements contained in the general plan, including policy direction on the City's projected growth and to designate land use of the areas for the City's projected growth. As no specific projects were included as part of the GPU, the intent of the City was that the EIR would be a programmatic or tiered EIR, allowing for future environmental analysis regarding specific projects. Petitioner asserts several flaws in the GPU and EIR that they argue show a prejudicial abuse of discretion by Respondent City in that it failed to comply with CEQA in approving the

1 GPU and certifying the EIR. Petitioner also asserts the City's approval of the Project violated
2 state Planning and Zoning Law.

3 Respondent replied that the City met and exceeded the requirements of CEQA and
4 Petitioner is expressing their dissatisfaction with the policy decision of the City to expand its
5 boundaries in bringing this lawsuit. Further it is not up to Petitioner or the Court to second guess
6 the legislative land use decisions of the City. Respondent claims there was no abuse of
7 discretion and the City reached an informed decision in certifying the EIR and their adoption of
8 the GPU was not arbitrary, capricious or entirely lacking in evidentiary support.

9 I. REQUEST FOR JUDICIAL NOTICE

10 Petitioner requested the court take judicial notice of extra-record evidence of the Senate Bill
11 Analysis for SB 97 and the California State Governor's Office of Planning and Research
12 Technical Advisory: CEQA and Climate Change: Addressing Climate Change through
13 California Environmental Quality Act (CEQA) Review." June 19, 2008. Extra-record evidence
14 is generally not admissible in a traditional mandamus action in determining whether a respondent
15 agency failed to proceed in the manner required by law or whether substantial evidence supports
16 their decision. Western States Petroleum (1995) 9 Cal. 4th 559. However, in this particular
17 instance, the request for judicial notice is not based upon evidence that should or could have
18 been consider by the City, but rather is offered in support of Petitioner's argument that
19 greenhouse gas emissions and global warming impacts are impacts requiring analysis under
20 CEQA. The court will take judicial notice as requested for the limited purpose of aiding the
21 court in interpreting the law regarding greenhouse gas emission and their analysis under CEQA.
22 and not as extra-record evidence regarding the City's actual decision making process

23 II STANDARD OF REVIEW

24 In reviewing the City's decision to certify the EIR, this court is to review de novo any issues
25 regarding procedural compliance with CEQA, using its independent judgment, while factual

1 determinations are governed by the substantial evidence test with deference to be given the
2 agency's determinations of the evidence. Of course, in this case, the argument raised by
3 Petitioner is that the decision to defer analysis of reasonably foreseeable significant
4 environmental impacts to later specific projects was a failure to procedurally comply with the
5 requirements of CEQA as opposed to a lack of evidence to support the City's decision, and thus
6 it is a question of law requiring independent determination by this court. Vineyard Area Citizens
7 for Responsible Growth, Inc. v. City of Rancho Cordova (2007) 40 Cal. 4th 412. The Court
8 agrees that the City's decision to defer analysis of loss of prime agricultural land to future
9 project specific EIRs is a procedural decision subject to the less deferential standard of de novo
10 review.

11 III. EXHAUSTION OF ADMINISTRATIVE REMEDIES.

12 Petitioner did exhaust their administrative remedies as to the following issues:

13 A) Insufficiency of Statement of Overriding Considerations: Many citizen comments raised
14 concerns regarding the projected population growth (See the comments section 2 AR starting at
15 948).

16 B) Project objectives and descriptions: Concerns were raised by County of Merced in the
17 letter from Richard Lewis, the County's Development Services Director (Letter AM, 2 AR
18 1134).

19 C) Air Quality and Greenhouse Gas Emissions (GGH): Raised by Petitioner's letter (3 AR
20 6859, Mr. Harriman's letter (2 AR 1102), and a citizen letter (2 AR 1033).

21 D) Adequacy of Response to Comments: Concerns were raised at the public hearing (9 AR
22 4778-4779 and 4783) and by Petitioner's letter (3 AR 6859).

23 E) Inadequacy of GPU that it is internally inconsistent or otherwise inadequate: Concerns
24 were raised regarding the agriculture policies, lack of inclusion of the master plans by a citizen
25

1 letter (2AR 1168). Merced County Farm Bureau Letter (2AR 1122) and Mr. Harriman's letter:
2 (2AR 1102).

3 IV. STATEMENT OF OVERRIDING CONSIDERATIONS

4 The statement of overriding considerations reflects a policy decision by the City as to
5 why the project should be approved even with significant environmental impacts that cannot be
6 mitigated. This policy decision is at the "core of the lead agency's discretionary responsibility
7 under CEQA and is, for that reason, not lightly to be overturned." City of Marina v. Board of
8 Trustees of the Cal. State Univ. (2006) 39 Cal. 4th 341. However, in determining whether the
9 environmental impacts can be mitigated, the agency is required to analyze all mitigation
10 measures unless a measure is infeasible on its face.

11 "A statement of overriding considerations is required, and offers a proper basis for
12 approving a project despite the existence of unmitigated environmental effects, only when the
13 measures necessary to mitigate or avoid those effects have properly been found to be infeasible.
14 (Pub. Resources Code, § 21081, subd. (b).) As addressed more fully below, the City failed to
15 analyze all potential reasonable mitigation measures regarding prime farmland or make a finding
16 of infeasibility, thus the statement of overriding considerations is flawed.

17 Further, in the present case, the City's reliance on an unsupported population growth
18 figure to support a statement of overriding considerations as to the numerous unmitigated
19 impacts is unreasonable and appears to be a random leap from "evidence to conclusions."
20 Topanga Association for a Scenic Community v. County of Los Angeles (1974) 11 Cal. 3d 506
21 For these reasons the Court finds the statement deficient and not supported by substantial
22 evidence. The assertions of economic and social objectives/benefits in the statement of
23 overriding considerations used to support the policy choice by the City to expand its boundaries
24 are not supported by the record. Sierra Club v. Contra Costa County(1992) 10 Cal App 4th
25 1212, at 1223

1 V. PROJECT DESCRIPTION, MASTER PLANS and ADEQUACY OF ALTERNATIVES
2 ANALYSIS

3 Petitioner asserts the project description is deficient in misstating the need for and
4 objectives of the Project and that there is no substantial evidence in the record to support the
5 growth rates resulting in the expanded Planning Boundaries. This court agrees.

6 "An accurate description of the proposed project is 'the heart of the EIR process.' "A
7 curtailed or distorted project description may stultify the objective of the reporting process. Only
8 through an accurate view of the project may affected outsider and public decision-makers
9 balance the proposal's benefit against its environmental costs, consider mitigation measures,
10 assess the advantage of terminating the proposal...and weigh other alternatives in the balance.
11 An accurate, stable and finite project description is the *sine qua non* of an informative and
12 legally sufficient EIR.'" Rio Vista Farm Bureau Center v. County of Solano (1992) 5 Cal.
13 App. 4th 351 citing Sacramento Old City Assn. V. City Council (1991) 229 Cal. App. 3d 1011
14 In the present case the GPU's rational to accommodate growth is self-inducing. There is no
15 evidence the growth rate will be as described in the GPU, rather the population projections are,
16 as Petitioner argues, fictional factors.

17 Further, this projected growth rate is not supported by substantial evidence and is
18 internally inconsistent. For example, the GPU (section 1.3 Issues of Importance, section 5.1
19 Agriculture, Objectives), the Project Objectives in the EIR (1 AR 00032) and the Statement of
20 Overriding Considerations name preservation of agricultural land as a major objective of the
21 GPU. Yet this objective is seemingly disregarded in favor of a self-induced population pressure
22 created by the City's own desire to expand the SOI to fit particular boundaries, in essence
23 generating the population pressure by its own boundary description. Rather than considering a
24 reasonable estimate of population growth as provided by MCAG and expanding to fit that
25 estimate, the City decided how large it wanted the expansion to be and then backfilled that area

1 with a worst case scenario population growth to justify an expansion that would result in the
2 disappearance of prime agricultural lands without adequate mitigation measures.

3 In conjunction with this faulty project description is the fact there was no real meaningful
4 analysis or consideration of the alternatives, as the proposed Project was found to be the only
5 feasible alternative. The City decided that it was the only one that met the objectives for future
6 growth, based upon a faulty estimate. There was no real analysis of the alternatives that were
7 based on a smaller SOI, less population growth and less conversion of prime farmland, and thus
8 the City Council made their decision without really considering feasible alternatives in violation
9 of CEQA.

10 An additional deficit in the project description is the reference to "master plans" that were
11 not incorporated by reference into the EIR, and were not circulated with the EIR causing a
12 failure to comply with the informational requirements of CEQA. A further problem is that some
13 of the master plans referenced were never prepared or approved, i.e. a Waste Water Management
14 Plan or an Urban Water Management Plan.

15 VI. ANALYSES OF AIR QUALITY AND GREENHOUSE GAS EMISSIONS

16 While the court agrees with Petitioner that Greenhouse Gas Emissions are environmental
17 impacts requiring analysis under CEQA, the court notes Respondent did include an analysis of
18 greenhouse gas emissions in the EIR. Petitioner argues this analysis was inadequate and
19 improperly defers mitigation to the future, but the Court finds the analysis to be sufficient and
20 also finds the mitigation measures set forth in the EIR regarding air quality to be adequate.
21 Specific policies and measures are contained within the analysis that are enforceable and not
22 merely hortatory. (IAR 319-332.)

23 VII. IMPACTS TO AGRICULTURE

24 The EIR recognizes the GPU will result in conversion of agricultural resources that is a
25 significant and unavoidable impact but then impermissibly defers mitigation measures to future

1 projects. This is an improper deferral as there is no clear performance standard for any future
2 mitigation measures. A review of mitigation measures contained in section 4.2 of the EIR (1AR
3 182-211) show broad policy requirements that would "encourage" certain mitigation measures,
4 but nothing assuring mitigation measures would actually be implemented or what the standard
5 for conservation would be. An example is the policy to "encourage the use of buffers", but as
6 the County pointed out in their letter (2AR 1134) there are many details lacking regarding
7 implementation of those buffers--details that could reasonably be addressed even in this
8 programmatic EIR. Similarly, the use of Agricultural Conservations Easements are referred to in
9 the comments but their analysis as a mitigation measure is improperly deferred to future projects.
10 There is no analysis as to why such easements would be infeasible or could not be analyzed in
11 this EIR. Rather, the Response just states the mitigation measures are not general plan-level
12 mitigations and in any even the conversion of agricultural land cannot be mitigated to less than
13 significant. Such deferral of a feasible mitigation measure violates CEQA. [Guidelines
14 15002(a)(3)]

15 VIII. RESPONSES TO COMMENTS

16 The Court finds that in responding to comments on the DEIR, the City did provide a good
17 faith, reasoned response, although obviously disagreeing with the analysis contained in some of
18 those responses.

19 IX. OPEN SPACE LANDS ACT.

20 Petitioner argues the City failed to comply with the Open Space Lands Act by failing to
21 include agricultural lands or provide for their protection in Chapter 5 of the GPU governing open
22 space plan. A review of Chapter 5 shows the City did state preservation of prime farmland
23 within the proposed SOI was an objective and does set forth polices regarding preservation
24 This is followed by the recognition that agricultural uses are anticipated to be phased out within
25 the city limits. Unfortunately, the Land Use Map itself does not have a designation for

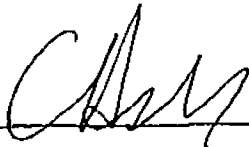
1 agricultural land even outside the city limits but within the SOI, thus the Court finds the City did
2 not comply with the Open Space Lands Act as there is no attempt to designate or protect
3 agricultural land as required by CA Govt sections 65560, 65561, 65563, and 65564.

4
5 **CONCLUSION**

6 In summary, the Court finds the City's approval of the GPU and certification of the EIR
7 violated CEQA and the Open Space Plans Act for the reasons stated herein, and orders a
8 peremptory writ of mandate issue directing the City to set aside its approval and certification of
9 those documents. Petitioner to prepare the peremptory writ.

10
11 **IT IS SO ORDERED.**

12 Dated: 11/30/09

13 
14 _____
15 Carol K. Ash, Superior Court Judge
16
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24
25

PROOF OF SERVICE BY MAIL
(1013a, 2015.5 C.C.P)

STATE OF CALIFORNIA)
)
COUNTY OF MERCED) Case No. CU151754

I am a citizen of the United States and a resident of the county aforesaid. I am over the age of eighteen years and not a party to the within entitled action, my business address is Merced County Superior Court, 627 West 21st Street. Merced. California 95340.

On **November 30, 2009**, I served the within **ORDER GRANTING PETITION FOR WRIT OF MANDATE**, on the person(s) named below and then placing a true copy thereof in an envelope and then placing in the Merced County Superior Court/Clerk's outgoing mail addressed as follows:

Donald B. Mooney, Esq.
Marsh A. Burch, Esq
Law Offices of Donald B. Mooney
129 C Street, Suite 2
Davis, CA 95616


Jonathan P. Hobbs, Esq
KRONICK, MOSKOVITZ, TIEDEMANN &
GIRARD
400 Capitol Mall, 27th Floor
Sacramento, CA 95814

and then placing a true copy thereof in an envelope and then placing in the Merced County Superior Court/Clerk's office for the following department(s) or person(s):

N/a

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

Executed on **November 30, 2009** at Merced, California.



Melanie Migliazzo, Declarant

MARSHA A. BURCH

ATTORNEY AT LAW

131 South Auburn Street
GRASS VALLEY, CA 95945

Telephone:
(530) 272-8411
Facsimile:
(530) 272-9411

maburchlaw@gmail.com

October 22, 2012

Via Electronic Mail
citymanager@livingstoncity.com

Jose Antonio Ramirez, City Manager
City of Livingston
1416 C Street
Livingston, CA 95334

***Re: Revised Environmental Impact Report
City of Livingston 2025 General Plan Update
State Clearinghouse Number 2006051070***

Dear Mr. Ramirez:

This office, in conjunction with the Law Office of Donald B. Mooney, represents the Merced County Farm Bureau with respect to the above-referenced 2025 General Plan Update ("GPU" or "Project"), and we provide the following comments on the Revised Draft EIR ("RDEIR"). These comments are intended to supplement all comments submitted on behalf of the Merced County Farm Bureau and others during the administrative process and review of the original 2025 GPU and the 2008 EIR for the Project.¹

For a variety of reasons, the RDEIR falls short of compliance with the California Environmental Quality Act ("CEQA")², the Open Space Lands Act of 1972³ and also fails to comply with the Decision and Judgment issued in Merced County Superior Court Case No. CU151754, entered in January of 2010.

¹ The Record of Proceedings (Pub. Res. Code § 21167.6) for this Project includes the entire Record of Proceedings for the original 2025 GPU and the 2008 EIR, and we incorporate by reference all of the comments submitted on the 2008 EIR.

² Public Resources Code § 21000 *et seq.*

³ Government Code § 65560 *et seq.*

I. The Court's Decision and Judgment

The Court found that the 2008 EIR and its process for the 2025 GPU were flawed for several reasons. With respect to the Statement of Overriding Considerations, the Court found that the evidence in the record did not support the City's finding that mitigation for impacts to agriculture were infeasible, and concluded that the "City failed to analyze all potential reasonable mitigation measures regarding prime farmland." (Decision, p. 4.)

The Court, in a portion of its ruling that has apparently been completely disregarded by the City, found error in the City's actions as follows: "Rather than considering a reasonable estimate of population growth as provide by the MCAG and expanding to fit that, the City decided how large it wanted the expansion to be and then backfilled the area with a worst case scenario population growth to justify an expansion that would result in the disappearance of prime agricultural lands without adequate mitigation measures." (Decision, pp. 5-7.)

Violation of the Court's Decision and Judgment: The RDEIR includes additional measures for mitigating impacts to agricultural lands, but fails entirely to get to the heart of this issue. The reason the Project has such tremendous impacts on agriculture in the first place is because of the extent of the expanded boundaries. There is no need for such excessive expansion, and so it must be reduced to the size actually necessary to accommodate reasonably predicted growth. The City may wish to find a way to bring the Sultana/Highway 99 interchange into its boundaries because of the potential benefits to the City, but this "benefit" is something the City pretends not to be a motivating factor, and it does not provide a legal basis for unnecessarily expanding the City boundaries and creating devastating impacts to agriculture (not to mention air quality, traffic and other impacts). The legal error the Court found in the original EIR has not been remedied in the RDEIR. The failure to adequately address impacts to agriculture is discussed in further detail below.

The Court found further flaw with the Statement of Overriding Considerations when it held that "the City's reliance on an unsupported population growth figure to support a statement of overriding considerations as to the numerous unmitigated impacts is unreasonable and appears to be a random leap from 'evidence to conclusions'." (*Id.*)

Importantly, the Court held as follows: "The assertions of economic and social objectives/benefits in the statement of overriding considerations used to support the policy choice by the City to expand its boundaries are not supported by the record [citations]." (Decision, p. 4.)

The Court found the Project Description in the original EIR to be flawed because the population growth rates projected in the document were “fictional factors.” (Decision, p. 5.)

Violation of the Court’s Decision and Judgment: The population figures used in the RDEIR are, just as they were in the original EIR, flawed and overstated. As set forth in detail below, the City again ignores the recent and reasonable MCAG estimates, and instead relies on outdated figures in order to justify essentially the *same level of expansion* considered in the original EIR.

The Court also found that the 2008 EIR failed to consider any feasible alternatives. (Decision, p. 6.)

Violation of the Court’s Decision and Judgment: The RDEIR includes only a single alternative, and so does not include the range of alternatives required by CEQA. As set forth in my letter dated October 19, 2012, there are many questions raised by this odd (and illegal) approach of “revising” the original EIR by created a separate EIR that the City is treating as a stand-alone document. The original EIR is no longer certified, and so the City will have to recertify it before Project approval. The RDEIR does not incorporate the original EIR by reference, and has indicated to the public that it will not accept comments on anything in the original EIR. In approving the Project the City will violate the law if it does not consider a reasonable range of alternatives, and in order to comply with this requirement, the RDEIR must incorporate the original EIR and allow the public to review and comment with respect to the sufficiency of the alternatives analysis.

With respect to the complicating factor of multiple City master plans, the Court found as follows: “An additional deficit in the project description is the reference to ‘master plans’ that were not incorporated by reference into the EIR, and were not circulated with the EIR causing a failure to comply with the informational requirements of CEQA. A further problem is that some of the master plans referenced were never prepared or approved...” (Decision, p. 6.)

Violation of the Court’s Decision and Judgment: As set forth in greater detail below, the City has simply ignored this part of the Judgment and stated that the master plans will be updated later.

With respect to greenhouse gas (“GHG”) emissions, the Court agreed with Petitioner that GHG emissions are environmental impacts under CEQA, but found that the analysis in the 2008 EIR complied with the applicable requirements.

Violation of the Court’s Decision and Judgment: While the Court found the original EIR’s analysis of these issues to be adequate, the Court also requires that the City comply with CEQA in any reconsideration of the Project. As set

forth in detail below, shortly after the Judgment was entered, the CEQA Guidelines were revised to include specific analyses of a Project's climate change impacts. The original EIR and RDEIR, even if read together, do not comply with the new provisions of law.

The Court went on to find a violation of the Open Space Lands Act, because of the City's failure to include agricultural lands or provide for their protection in Chapter 5 of the GPU governing open space land. (Decision, p. 7.) Importantly, the Court stated as follows: "A review of Chapter 5 shows the City did state preservation of prime farmland within the proposed SOI was an objective and does set forth policies regarding preservation. This is followed by recognition that agricultural uses are anticipated to be phased out within the City limits." (Decision, p. 7.) The fact that the Land Use Map did not have a designation for agricultural lands even outside the City limits but within the SOI was also found to be in error. (Decision, pp. 7-8.)

Violation of the Court's Decision and Judgment: The Court found that the fictional population pressure was not sufficient to support the expanding boundary, and the RDEIR continues to use inflated numbers in an effort to support unnecessary expansion. As set forth in detail below, the designation of 155 acres (out of thousands identified for conversion to urban uses) does not even come close to compliance with the Open Space Lands Act.

In its judgment, the Court ordered the City of Livingston and the City of Livingston City Council to vacate the approval of the City of Livingston General Plan Update, and to vacate the certification of the EIR for the GPU, pending compliance with the Court's order and correction of the deficiencies identified in the Court's Order and demonstrated compliance with CEQA and the Open Space Lands Act. (Judgment, p. 2.)

In a crucial provision of the Judgment, the Court ordered as follows: "If Respondents determine to reconsider the Project, Respondents shall make and file a return to the Court upon taking final action to revise the environmental documents and analysis for the Project and to reconsider the Project setting forth what Respondents have done to comply with this Writ of Mandate." (Judgment, p. 2.)

Violations of the Decision and Judgment: This letter describes many of the reasons the City will not be able to file an adequate return to the Court. The violations of law have not been corrected, and the City is in the process of committing additional violations by precluding public participation and failing to "revise" the original EIR by creating a stand-alone document that is insufficient under CEQA when read on its own.

II. Violations of CEQA's procedural requirements

As set forth in my letter to the City dated October 19, 2012, the Notice of Preparation and Notice of Availability are misleading, and do not comply with CEQA. Both of the notices omit any mention of the 2008 GPU EIR, and both of the notices indicate that the Revised GPU (despite having a different project description from that contained in the 2008 EIR) will raise only issues related to agriculture, population/housing balance and cumulative impacts. The RDEIR itself does nothing to correct this misinformation.

In fact the RDEIR indicates that comments regarding anything other than what is included in the RDEIR would be inappropriate and illegal. (RDEIR, p. 1.0-3.) After this warning that the City will not consider comments on the original EIR, in Chapter 4 on population and housing impacts, the document states: "The physical environmental impacts of this potential growth are addressed in Sections 4.1 through 4.13 of the 2008 Draft EIR (except as revised by this RDEIR)" and goes on to give the address of City Hall where the 2008 EIR is "available." It is entirely unclear why the City makes this citation after making clear that "only those portions of the original EIR that have been modified need to be circulated for public comment..." and that "reviewers should limit their comments to the information and analysis contained in the Revised DEIR." (RDEIR, p. 1.0-3.)

The City has improperly restricted the analyses and also public participation. In addition to finding error in the project description and alternatives analysis, as well as analysis of impacts to agriculture, the Court found that "[a]n additional deficit in the project description is the reference to 'master plans' that were not incorporated by reference into the EIR, and were not circulated with the EIR causing a failure to comply with the informational requirements of CEQA. A further problem is that some of the master plans referenced were never prepared or approved..." (Decision, p. 6.) The City completely ignores this finding in the RDEIR. The RDEIR attempts to dismiss this portion of the Court's judgment, stating that master plans are tools and will be "updated for consistency with the General Plan." (RDEIR, p. 3.0-29.) The RDEIR does not incorporate the existing draft master plans into the RDEIR, and says they were informational documents and are "not components of the General Plan update or part of this Project Description." (RDEIR, p. 3.0-36.) The Court found that the master plans were indeed part of the Project and its description. Simply deleting references to the master plans from the Revised GPU does not negate the fact that the plans *are* an integral part of the GPU. This attempt to avoid the Court's judgment results in the RDEIR failing (again) to comply with the informational requirements of CEQA, and from a procedural standpoint, the City has improperly restricted the public from receiving the information the Court ordered into the analysis, and having an opportunity to review and comment.

III. General Comments

A. The Project description is still inadequate

Under CEQA, the inclusion in an EIR of a clear and comprehensive description of the proposed project is critical to accurate analysis of impacts and meaningful public review. (*County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 193 (“*Inyo II*”). The court in *Inyo II* explained why a thorough project description is necessary:

A curtailed or distorted project description may stultify the objections of the reporting process. Only through an accurate view of the project may affected outsiders and public decision-makers balance the proposal’s benefit against its environmental cost, consider mitigation measures, assess the advantage of terminating the proposal (i.e., the “no project” alternative) and weigh other alternatives in the balance. (71 Cal.App.3d at 192-193.)

“A curtailed, enigmatic or unstable project description draws a red herring across the path of public input.” (*Id.* at 197-198; see also *San Joaquin Raptor Rescue Center, supra*, 149 Cal.App.4th at 655-657 [invalidating an EIR for misleading project description].)

In the case of this 2025 GPU RDEIR, the glaring flaws in the new Project Description are the failure to include the master plans as the Judgment required, and failure to do as the Court directed and consider “a reasonable estimate of population growth as provide by the MCAG and expand[ing] to fit that...” (Decision, pp. 5-7.)

Additionally, the Project Description for the Revised GPU includes misleading (or at the very least, confusing) information regarding the number of acres in the expanded City boundary and conversion of agricultural lands. The original 2025 GPU City boundary and expanded SOI included 5,709.6 acres. “The 2025 General Plan introduced several changes to the 1999 General Plan, including expansion of the Sphere of Influence by approximately 2,932.3 acres, for a total of about 5,709.6 acres in the Sphere of Influence (including the existing city limits).” (Original GPU, p. 1.0-5.)

The Revised GPU City boundary and expanded SOI includes 6,150 acres. “The General Plan Update revision includes a proposal to expand the Planning Area to encompass a total of approximately 6,150 acres (2,333 acres within the city limits and 3,817 acres outside the city limits).” (Revised GPU, p. 3.0-11.)

The proposed Revised GPU appears to increase the City Limits and SOI by 440.4 acres over the unnecessarily large boundary expansion set aside by the Court. The RDEIR should include a clear comparison of the 1999 General Plan,

the 2008 GPU, the proposed Revised GPU and Alternative 5. Table 3-2 on page 3.0-11 of the RDEIR is confusing and does not include all of this information.

Additionally, there is no clear statement of the number of acres of prime and important agricultural lands will be converted to urban uses. In order to fulfill its function as an informational document the RDEIR must provide the numbers so that the public and the decision makers may compare the existing General Plan with the original GPU, the revised proposal and its alternative.

1. Failure to include master plans

As set forth above, the Court found that the master plans were improperly left out of the original EIR. The draft master plans were inconsistent with the GPU as it was originally proposed, and this continues to be the case with the Revised GPU. During the CEQA litigation over the original EIR, Petitioner argued that the City's handling of the master plans was improper. The Court agreed. The City's attitude throughout the process was that the GPU is a programmatic document, and so impacts analyses could be deferred to the future, along with development of mitigation measures. Completion of the master plans so integral to the GPU was deferred, and the master plans did not undergo environmental review in the GPU EIR. In fact, the public expressed confusion and frustration because they were unable to decipher parts of the GPU without the master plans. City's response was that the drafts of these documents were in the City's files and the public and other agencies could access them as public records. This was a major point in the litigation over the original EIR and GPU.

The Court, in its Judgment, directed the City to remedy these flaws. City has chosen not to do so, claiming that the master plans will be updated later. Again, improperly deferring the preparation and environmental review of these essential parts of the GPU.

On August 16, 2012, the Merced County Farm Bureau submitted a letter in response to the Notice of Preparation and stated as follows:

The NOP indicates that the revised project description will include "discussion or reference to the pervious Master Plans." The Court, however, held that an "additional deficit of the project description is the reference to "master plans" that were not *incorporated by reference into the EIR, and were not circulated with the EIR* causing a failure to comply with the informational requirements of CEQA." Thus, "discussion and reference" will not serve to comply with the Court's order. The master plans must be completed, incorporated by reference and circulated with the Revised EIR.

This City ignored the comment in the letter. This violation of the Court's Judgment is particularly troublesome because it has the effect of precluding public review and comment regarding many of the Project's impacts not once, but twice. During review of the 2008 EIR, the public raised the issue to the City, stating that much of the GPU and EIR was incomprehensible without completed master plans. The Court agreed. And now, the City claims that the public may not comment on any part of the 2008 EIR, and is restricted to the review in the RDEIR, despite the fact that the City has once again refused to include the master plans. The failure to include the master plans obscures many significant environmental impacts.

For example, the draft Circulation Master Plan (that the City says is not part of the RDEIR and may not be commented upon) shows a bridge over the Merced River. There is no analysis of this, and no funding source identified. In another example, the Master Plan for wastewater is referred to in the RDEIR, but not analyzed, and the location of the plant expansion is not included on the 2025 GPU maps. The RDEIR also fails to discuss the fact that the proposed plant expansion will impact lands under Williamson Act contracts.

In summary, the original EIR was incomplete because the master plans were not included in the analysis. The Court found this to be a violation of CEQA, and the Farm Bureau pointed this out to the City in its comment on the Notice of Preparation. The City ignored the Court and the comment letter and determined to move forward with the 2025 GPU and the truncated RDEIR (with a prohibition on comments regarding anything outside of the RDEIR). The RDEIR does not take into account any of the things in the existing (outdated, draft) master plans, and the City believes that it will be able to go forward with this vague "project" and later adopt master plans without any environmental review. None of this makes any sense.

2. Failure to propose a reasonable boundary

The City did not respond to the Court's finding that the *expanded boundary was unnecessary* in light of reasonable population projections. Rather than do as directed and determine what the reasonable population projections are and propose a new boundary consistent with what will be necessary to accommodate that level of growth, the City simply kept the illegal (and enormous) boundary in place and reduced its population projections by approximately 25,000. This provides even less support for the huge boundary expansion, and the population projections *still overstate* reasonable estimates.

The City took the same approach to the Revised GPU as it did to the GPU and EIR prepared in 2008, and the Court rejected that approach. The City's attitude is revealed in the RDEIR, stating that the 2025 GPU establishes the area where the City prefers growth and expansion to occur, going on to say that

population growth is market driven, and Livingston is “not limited to following the growth trends of its neighbors, or the region, in developing long term plans.” (RDEIR, p. 2.0-28.) The planning and CEQA processes must be factual, logical and accurate. There is not room in the planning process for whimsy or preference that results in plans that are not supported by evidence and reasonable assumptions and conclusions.

MCAG, with the most recent information (2011), estimates a population in Livingston of 22,900 in the year 2025. (RDEIR, p. 4.3-6.) When the original GPU was proposed in 2008, the MCAG population projection for 2025 was “ 18,600. The 1999 General Plan projected that by 2018, the City would grow to approximately 22,400.

There is no evidence in the record to support the unreasonable conclusion that the City will grow to more than 74,000 people by 2025, and the City admits as such in the RDEIR, stating that “[m]aximum population figures are unlikely to be realized.” (RDEIR, p. 3.0-28.) In the face of this admission, and in an effort to avoid the *facts*, the City claims that “[t]hese forecasted growth rates [MCAG] are somewhat inconsistent with historical growth rates...” and goes on to claim that MCAG failed to use numbers that “represent potential increase or rapid acceleration of growth that have occurred periodically in the past or could occur with the implementation of several large projects implemented in a short timeframe.” (RDEIR, p. 4.3-7.) This “rapid acceleration of growth” is a figment. City makes an effort to re-create the events of the housing boom, describing development projects initiated in 2006 and 2007. (RDEIR, p. 3.0-7.) The RDEIR refers to the Dunmore Homes and Blueberry Crossing developments, and shockingly cites to City information from **2007**, indicating that 180 building permits had recently been issued. There is no current information in this portion of the RDEIR, likely because these developments have not developed as anticipated.

The Dunsmore Homes development has not been built out, and many of the homes are in foreclosure or close to it. Members of the public will be submitting evidence revealing that this historical “rapid acceleration” of growth did not result in much of an increase in population at all, but in reality has resulted in empty lots and a few homes. The subdivision between Walnut and Olive Avenue has only a few homes constructed, and there are many open lots with utilities in the ground. No further development has occurred but the streetlights and manicured landscaping are still there. The City knows the status of these non-developments better than anyone. The City must disclose and rely upon current, accurate information, and it is misleading to include extremely old data from the days of the housing boom to justify its desire to ignore the real information and MCAG estimate of growth to just over 22,000 people by 2025.

Full buildout of the net acreages of land uses identified in the Revised GPU Land Use Map “could generate a population of approximately 55,000 to

74,000, up to 18,441 housing units, and 23,135 jobs within the proposed SOI/Planning Area.” (RDEIR, Table 4.3-11a.) This reflects an annual growth rate between 10.4% and 12.3% (RDEIR, p. 4.3-13.) This is so far beyond the MCAG estimates, with no basis in fact, there is no evidence to support a conclusion that the City needs to expand its boundaries and provide for 2 to 3 times the actual projected growth. The Revised GPU has the same fundamental problems as the 2008 GPU.

The continued use of the same type of proposed boundaries, with no evidence to support the need for such a grossly expanded development area, is inappropriate and violates the Court’s judgment.

B. The RDEIR fails to adequately analyze impacts and develop mitigation measures

1. Air Quality and Greenhouse Gas Emissions analysis is required

The Court found that the air quality analysis was adequate in the original EIR. There are two reasons why the revised environmental document must include air quality and greenhouse gas emissions analyses. First, the Revised GPU includes the same irrationally large footprint for the City, and yet allows for lower density development in an attempt to explain that the enormous boundary expansion will not result in a wildly increased population level. This will allow for more sprawling growth and the air quality impacts of this change must be evaluated. Second, the law has changed with respect to the contents of an EIR.

On March 8, 2010 (two months after the Judgment was entered mandating the City to rescind certification of the 2008 EIR) the CEQA Guidelines clarified how greenhouse gas emissions should be analyzed and mitigated under CEQA. These Guideline requirements are *not optional*. The adopted changes to the CEQA Guidelines include the following:

- A lead agency should make a good-faith effort to calculate or estimate the amount of GHG emissions resulting from a project. Although a lead agency retains discretion to determine the model or methodology used for such analysis, the lead agency is required to support its decision to employ a particular model or methodology with substantial evidence (14 CCR § 15064.4(a));
- The following factors should be considered when assessing the potential significant impacts from GHG emissions on the environment: (i) the extent to which the project may increase or reduce GHG emissions as compared to the existing environmental setting; (ii) whether the project emissions exceed a threshold of significance that the lead agency determines applies to the project; and (iii) the extent to which the project complies with regulations or requirements adopted to implement a statewide, regional,

- or local plan for the reduction or mitigation of greenhouse gas emissions (14 CCR § 15064.4(b));
- When adopting thresholds of significance, a lead agency may adopt thresholds previously adopted or recommended by other public agencies or recommended by experts, provided the decision to adopt such thresholds is supported by substantial evidence (14 CCR § 15064.7(c));
- Lead agencies must consider feasible means, supported by substantial evidence and subject to monitoring and reporting, of mitigating the significant effects of GHG emissions related to a project (14 CCR § 15126.4(c));
- If an Environmental Impact Report is required, then the EIR should evaluate any potentially significant impacts of locating development in areas susceptible to hazardous conditions such as floodplains, coastlines and wildfire risk areas, in addition to considering any significant environmental effects the project might cause by bringing development and people into the area affected (14 CCR § 15126.2(a)); and Appendix G (the sample form with questions a lead agency should consider in its Initial Study) has been modified to include analysis related to whether the project will generate GHG emissions and whether the project would conflict with any applicable plan, policy or regulation adopted for the purpose of reducing GHG emissions.

The City has not evaluated any of the areas required under CEQA. This is particularly obvious in the short discussion of GHG emissions with respect to Alternative 5; the RDEIR does not even mention the new CEQA Guidelines in this cursory analysis. (RDEIR, p. 6.0-9.) At this time, the City has the opportunity and the obligation to evaluate the GHG emission impacts of the Project and develop and adopt feasible mitigation measures for the entire Project area.

2. The RDEIR's proposed mitigation for impacts to agriculture are insufficient under CEQA

The RDEIR claims that the Revised GPU is “self mitigating,” and that policies included in the GPU will mitigate potential impacts of the development allowed under the plan. (RDEIR, pp. 4.2-22.)

The policies designed to “mitigate” for impacts to agriculture are not enforceable, and so violate CEQA.

Mitigation measures proposed in an EIR must be “fully enforceable” through permit conditions, agreements or other legally binding instruments. (Pub. Res. Code § 21081.6(b); and CEQA Guidelines § 15126.4(a)(2).) Many of the GPU policies and programs relied on to mitigate impacts to agriculture are vague, optional, directory, or otherwise unenforceable. A few examples – out of numerous instances – include the following:

- “The City shall *continue to participate* with local land trusts and Merced to County to establish the preservation of lands designated Agriculture in perpetuity....” (RGPU, p. 3.0-22.)
- “*Promote* the urbanization of the City by allowing a balanced...” mixture of land uses, including industrial, residential and agriculture. (RGPU, p. 5.0-1.)
- “*Avoid* premature and haphazard conversion of agricultural lands within the expanded Sphere, and *promote* continued agriculture as a permanent use *outside of the expanded Sphere.*” (*Id.*)
- City will “encourage” existing agricultural uses to continue despite recognizing that they will be “phased out.” (RGPU, p. 5.0-2.)

A general plan’s goals and policies are necessarily somewhat vague and aspirational. However, the City may rely on such policies to mitigate environmental impacts under CEQA only if they are proposed to be implemented through specific implementation programs that represent a firm, enforceable commitment to mitigate. (See *Napa Citizens for Honest Gov’t v. Napa County Board of Supervisors* (2001) 91 Cal.App.4th 342, 358, citing *Rio Vista Farm Bureau Center v. County of Solano* (1992) 5 Cal.App.4th 351, 377.) CEQA requires that mitigation measures actually be implemented – not merely adopted and then disregarded. (*Anderson First Coalition v. City of Anderson* (2005) 130 Cal.App.4th 1173, 1186-87; *Federation of Hillside & Canyon Ass’ns v. City of Los Angeles* (2000) 83 Cal.App.4th 1252, 1261.) By contrast, the GPU’s vague and noncommittal policies and programs (and policies for which no implementation programs are identified) allow the County to decide to take no action and thus fail to mitigate the impacts. As a result, the RDEIR cannot ensure that the policies relied on will in fact be implemented

There is no land use designation for agriculture, other than on the 155-acre area intended to be a buffer between cities. The City does not give adequate consideration to the impacts of developing lands that are currently under Williamson Act contracts, and also fails to identify lands that under permanent agricultural conservation easements. The draft master plans even show development on these Williamson Act and conservation easement areas.

The RDEIR is inconsistent in showing the proposed boundaries. For example, the maps show buffer areas through private property (Figure 4.2-3), which is inconsistent with Figures 4.2-1 and 3.0-2, showing no buffer on the west or east side to separate agriculture from development.

Policy 5.1.AB.8 must be revised to remove “and/or” in the parenthetical identifying the types of important farmland that would be subject to the policy. There are 194 acres within the proposed SOI that have been identified as potentially falling within the LAFCo definition of prime agricultural lands. The vast majority of the prime and important farmland that will be converted is not subject to the LAFCo definition (as applied by the City). The way this policy is

written, it could possibly be applied to either the prime and important farmland identify by the Farmland Mapping and Monitoring Program *or* as LAFCo-defined prime agricultural lands. This section of the RDEIR and Policy 5.1AB.8 must be revised. If the City is correct that the LAFCo definition of prime agricultural land requires a Storie Index rating between 80 and 100, then the Policy must be revised to change the term “and/or” to “and” in order for the Policy to be effective. Without such a change, under the City’s analysis, it could mitigate for conversion of important agricultural lands identified on the Farmland Map, or for the 194 acres of “LAFCo-defined” prime agricultural lands. This would allow a way to avoid mitigating for most of the agricultural impacts.

This point is moot, in any event, as the RDEIR relies upon an inaccurate and overly restrictive interpretation of the Cortese Knox Hertzberg Act of 2000, and the RDEIR discussion of “prime” agricultural land is inaccurate as a result. The Storie Index subdivision of the LAFCo definition is not the least restrictive. For active or potentially active agricultural lands, the least restrictive qualification criteria are: if the land supports livestock with annual carrying capacity of at least one animal unit per acre; or can support agricultural plant production worth not less than \$400 per acre. There are very few agricultural parcels that would fail to qualify under these criteria. The LAFCo definition includes a *much broader range* of agricultural lands than the Farmland Map and the RDEIR analysis must be corrected.

C. The GPU remains internally inconsistent

Under California law, a general plan must be integrated and internally consistent, both among the elements and within each element. (Govt. Code § 65300.5.) If there is internal inconsistency, the general plan is legally inadequate. (See *Concerned Citizens of Calaveras v. Board of Supervisors* (1985) 166 Cal.App.3d 90, 103.) The original 2025 GPU failed to meet this requirement.

The Court found the original 2025 GPU to contain inconsistencies regarding agriculture, with the GPU stating that preservation of agriculture as a major objective, “[y]et this objective is seemingly disregarded in favor of a self-induced population pressure created by the City’s own desire to expand the SOI to fit particular boundaries....” (Decision, p. 5.) The only difference between the GPU as revised and the original is that 155 acres of land intended as a buffer between cities is designated as “agriculture” and intended to remain as such. (RDEIR, p. 4.2-24.) The 2025 GPU will still result in the conversion of over 4,000 acres of prime and important agricultural lands to other uses. (See RDEIR, p. 4.2-10.) Further, as set forth in detail above, the so-called “mitigating” policies are insufficient to offset this internal inconsistency in the plan.

Agriculture must be the priority. The jobs/housing balance acknowledges but fails to address the fact that the MCAG figures on commuting reveal that

there are not enough jobs for the existing population. The City does not need more room for housing, it needs to address job creation. The City must disclose and also analyze the most recent housing progress report prepared under Policy 11.3.7 b(iii) of the current General Plan, which states that the City will "[p]rovide for an annual housing progress report to summarize changes in the City's housing balance and report progress in goal achievement."⁴

Agriculture is where the jobs are, and City's attempt to gloss over this fact falls flat in the face of Table 4.3-7 in the RDEIR. The number of agricultural jobs dwarfs those in any other area (and the RDEIR fails to take into account jobs associated with sweet potato processing). Processing plants, the major employers, are expanding in agriculturally zoned areas in the county around Livingston (sweet potato processing and Gallo Winery are good examples). The paltry 155 acres of agricultural zoning that the City proposes does not allow for processing of agricultural products. These jobs must be protected, and the City's inconsistent treatment of agriculture as a "major objective" and a sad casualty of the City's progress to highway commercial is illegal and ignores the needs of the citizens.

D. The Revised GPU also violates the Open Space Lands Act

Much of the following discussion appeared in the petitioner's Opening Brief in the lawsuit challenging the original 2025 GPU. The Court agreed with this argument, and ruled against the City. In the face of the Court's judgment, the City continues to violate the requirements of the Government Code described here.

The legislative intent in adopting the Open Space Lands Act (Government Code §§ 65560-65570) is frustrated if cities can simply subordinate the open space element to other elements of the general plan. The Legislature expressed the importance of the open space elements in the following terms. "It is the intent of the Legislature in enacting this article: [para.] (a) To assure that cities and counties recognize that open-space land is a limited and valuable resource which must be conserved wherever possible. [para.] (b) To assure that every city and county will prepare and carry out open-space plans which, along with state and regional open-space plans, will accomplish the objectives of a comprehensive open-space program." (Govt. Code § 65562; and *Sierra Club v. Board of Supervisors* (1981) 126 Cal. App. 3d 698, 704.)

The original GPU (and now the RGPU) fails to provide for protection of permanent undeveloped open space, including protection for biological resources, agricultural lands and scenic viewshed resources in violation of State planning law and the Open Space Lands Act. (See Govt. Code §§ 65561, 65562, 65563, 65566 and 65567.)

⁴ We request on behalf of the Merced County Farm Bureau a copy of the housing progress reports for the years 2000 through 2012 (or the most recent report).

Government Code section 65563 requires that every city and county have an open-space plan in place by December 31, 1973. In preparing the RGPU, the City continues to ignore the requirement that the City have an open space action plan in place. Section 65564 requires that each local open-space plan shall contain an action program. Section 65566 requires that any action by the city or county must be consistent with the local open-space plan. There is no evidence in the Record that the City had a compliant open-space plan or an action program. Further, the GPU (and now the RGPU) is inconsistent with the any open space provisions in the 1999 General Plan, as the 1999 General Plan focused on preservation of agriculture and did not provide for the market-driven expansion of urban uses into agricultural open spaces. The City must have an open space preservation plan, and any action taken by the City to update its general plan must be consistent with the required plan.

The City has done nothing to remedy the fact that it did not have an open space action plan in place prior to preparation of the original EIR, and has completely ignored that requirement by moving forward with the Revised GPU without adopting such a plan.

The Revised GPU contains an Open Space chapter that simply comes out and states that open space is not included in the SOI, other than the 155-acre agricultural buffer. The only policies in the chapter that could arguably make any progress toward “preserving” open space are the policies that provide for city-centered development progressing from the edges of the City outward. This would temporarily preserve some open space, but does not come anywhere near compliance with the Open Space Lands Act. (See above; Govt. Code § 65562; and *Sierra Club v. Board of Supervisors* (1981) 126 Cal. App. 3d 698, 704.)

E. Analysis of Alternative 5 is insufficient

Alternative 5 is also based upon faulty assumptions regarding population growth and housing needs. Buildout of this Alternative would provide for more than double the number of residents compared to recent, reasonable estimates by MCAG. (RDEIR, p. 6.0-2.) As set forth in detail above, the City must use reasonable, recent figures, and may not overstate population growth projections in an attempt to justify irrational City boundaries.

Several commenters will be submitting letters regarding the flawed assumptions and other areas in Chapter 6.0 of the RDEIR. Some of these flaws are fatal to the use of this alternative for consideration. For Example, the analysis for Alternative 5 does not address impacts to biological resources. This is particularly concerning because of the development it will allow adjacent to the Merced River. Further, Alternative 5 includes areas of development that were not analyzed in the 2008 EIR, making the failure to consider an entire area of impact a flaw that prevents full analysis of Alternative 5.

F. The Revised GPU Housing Element fails to included required density information

In order to attempt to justify the overblown population projections and the unnecessarily expanded City boundary, the Revised GPU includes modified densities for various land uses, and this is also relied upon in analysis of Alternative 5. The Land Use Element fails to comply with California Planning laws with respect to stating densities for all land uses.

Section 65302, subdivision (a), provided in 1980 that a general plan mandated by section 65300: "shall include ... [&] A land use element which designates the proposed general distribution and general location and extent of the uses of the land for housing, business, industry, open space, including agriculture, natural resources, recreation, and enjoyment of scenic beauty, education, public buildings and grounds, solid and liquid waste disposal facilities, and other categories of public and private uses of land. The land use element shall include a statement of the standards of population density and building intensity recommended for the various districts and other territory covered by the plan. ..." (See *Twain Harte Homeowners Ass'n v. County of Tuolumne* (1982) 138 Cal. App. 3d 664, 696.)

In the present case, density is not identified for three of the four types of commercial designation. (RGPU, pp. 3.0-15 through 3.0-17.) Thus, the land use element is not in substantial compliance with the requirements of section 65302, subdivision (a). (*Id.*)

IV. Conclusion

Because of the issues raised above, we believe that the RDEIR and the Revised GPU fail to meet the requirements of the California Environmental Quality Act and the State Planning Laws. For these reasons, we believe the proposal should be denied, pending appropriate environmental review prior to further consideration.

Sincerely,

// Marsha A. Burch //

Marsha A. Burch
Attorney

cc: Merced County Farm Bureau
Donald B. Mooney, Esq.