

**COMMENT LETTER 101 - GUNTHER, SIVAS & WALTHALL, ATTORNEYS AT LAW,
ELISABETH R. GUNTHER (OCTOBER 7, 1996), RECEIVED OCTOBER 7,
1996**

Response to Comment 101-1

Comment Summary: The comment states that Comment Letter 101 was submitted on behalf of Dr. Lee W. Schaller who owns agricultural property that would be destroyed by the Tolay Extended alternative. The comment states that Dr. Schaller strongly opposes selection of the Tolay Extended alternative and will not sell his property to accommodate the Project.

Specific concerns were expressed in subsequent comments and these comments are addressed specifically in the Responses to Comments below.

Response to Comment 101-2

Comment Summary: The comment lists a number of significant impacts associated with implementation of the Tolay Extended Alternative (South County Agricultural Irrigation with the Tolay Extended Reservoir Site).

The comment is correct that this option has significant impacts.

Response to Comment 101-3

Comment Summary: The comment urges dropping the Tolay Extended option from further consideration because of the environmental impacts.

It is not within the scope of the Draft EIR/EIS to eliminate alternatives, but rather to disclose impacts of alternatives. Refer to Response to Comment 5-9.

Response to Comment 101-4

Comment Summary: The comment is in agreement with many of the conclusions reached in the Draft EIR/EIS but states that the document does not contain an adequate analysis of several reasonable and cost-effective alternatives that allow for reuse of wastewater without requiring large storage reservoirs that result in unacceptable and unavoidable environmental impacts.

The EIR/EIS authors believe that the Draft EIR/EIS has evaluated all reasonable alternatives. Master Responses 14 through 17, located in Section 6.2 of this document discuss several alternatives that were recommended in other comments on the Draft EIR/EIS. Because no specific alternatives are suggested, a more specific response is not possible.

Response to Comment 101-5

Comment Summary: The comment states that the Draft EIR/EIS fails to identify several significant impacts of the Tolay Extended alternative and therefore understates the impacts in comparison to other, less harmful, alternatives.

The comment does not identify the additional significant impacts to which it alludes. Therefore, it is not possible to provide a response that would address any specific inadequacies in the Draft EIR/EIS.

Response to Comment 101-6

Comment Summary: The comment states that the lead agencies should reexamine the issues of inadequate analysis and failure to identify significant impacts, revise the Draft EIR/EIS, and recirculate a draft document for public review.

Alleged inadequacies in the Draft EIR/EIS are addressed in the response to comments section of the Final EIR. None of the comments has identified any significant new impacts that were not addressed in the Draft EIR/EIS. Revision and recirculation of a Draft EIR/EIS is therefore not required. In addition, the comment does not provide additional data or analysis and does not identify the inadequacies to suggest why the analysis is inaccurate or insufficient.

Response to Comment 101-7

Comment Summary: The comment suggests that the alternatives analysis is inadequate because a reasonable range of alternatives is not analyzed, and the purpose and need for the project should determine the alternatives to be considered.

The EIR/EIS authors believe that the Draft EIR/EIS does evaluate a reasonable range of alternatives, and all of the alternatives were developed to achieve the Project purpose and need. Discussion of how each alternative achieves the Project purpose and need is provided on page 3.1-5 of the Draft EIR/EIS.

Response to Comment 101-8

Comment Summary: The comment suggests the project purpose is primarily wastewater disposal, but the project alternatives emphasize reuse. The comment also states that if reuse was a part of the project purpose, then conservation should have been emphasized, phasing of small projects should be considered, and commercial and industrial options should have been included.

The Project purpose is broader than simply disposing of wastewater. As stated on page 1-4 of the Draft EIR/EIS, "the City's purpose for the Project is not only to dispose of reclaimed water, but to do so in a manner that maximizes reclamation, recycling, and reuse and optimizes water conservation." All of the Project alternatives include a substantial amount of conservation. Refer to page 3.2-2 in the Draft EIR/EIS, where

conservation is described. Further evaluation of conservation options is presented in Appendix D-3 (Water Conservation Element) of the Draft EIR/EIS. Refer to Master Response 14, located in Section 6.2 of this document, for discussion of Project phasing and small storage options. The City of Santa Rosa has an existing urban irrigation program, and expansion of the urban irrigation pipeline system is considered as a component of the Project. Although specific industrial and commercial users have not been identified, the City is pursuing new industrial users on an ongoing basis, and can add such users either to the existing system or to pipelines included in Project alternatives. Other than pipeline construction, which is discussed in the Draft EIR/EIS, industrial and commercial use does not have environmental impacts because reclaimed water will be used entirely within existing facilities.

Response to Comment 101-9

Comment Summary: The comment asks for consideration of phased reuse projects combined with river discharge.

Refer to Master Response 14, located in Section 6.2 of this document.

Response to Comment 101-10

Comment Summary: The comment states that the Draft EIR/EIS fails to identify significant unavoidable impacts that would result from the Tolay Extended alternative and fails to take into consideration information relevant to the significance of an impact. In addition, the Draft EIR/EIS concludes that certain impacts are not significant based on mitigation that will not reduce the impacts to a less than significant level.

The comment does not identify what significant impacts were not analyzed in the Draft EIR/EIS, but refers to subsequent comments. These comments are addressed specifically in the Responses to Comments below.

Response to Comment 101-11

Comment Summary: With respect to land use impacts, the comment asserts that the Draft EIR/EIS overlooks significant actual conflict with existing uses on the Tolay Extended reservoir site, and that the site supports residential and agricultural uses that will be eliminated, constituting a land use conflict. The comment further states that the Tolay Extended alternative will result in significant impacts on adjacent uses such as serious visual impacts and noise from the pump station and construction.

Section 4.1 (page 4.1-29) of the Draft EIR/EIS concluded that because the function of the reservoirs is an integral part of agricultural production, they constitute an agricultural use, and a change from one agricultural use to another is not considered significant from a land use standpoint. Section 4.1 of the Draft EIR/EIS (page 4.1-1) also states that this section does not cover associated topics such as noise, loss of dwelling units, or visual impacts. These items, although related to land use, are evaluated in other sections of the

document. This is done to avoid unnecessary repetition in the document. Section 4.2 of the Draft EIR/EIS (page 4.2-12) identifies significant loss of farmland at the Tolay Extended reservoir site. Section 4.18 of the Draft EIR/EIS (page 4.18-35) recognizes that the construction of the Tolay Extended reservoir will have a significant impact due to loss of homes. Section 4.14 of the Draft EIR/EIS (pages 4.14-45 and 4.14-46) concludes that the Tolay Extended reservoir will have significant, unmitigable visual impacts on nearby residences. Section 4.13 of the Draft EIR/EIS (page 4.13-40) concludes that the Tolay Extended reservoir will have significant, unmitigable noise impacts on nearby residences. The comment has not identified any other impacts that the Draft EIR/EIS has not considered.

Response to Comment 101-12

Comment Summary: The comment indicates that slope instability and earthquake hazards at the Tolay reservoir site are unavoidable significant impacts.

As discussed in Section 4.3 of the Draft EIR/EIS, the Tolay reservoir site is located near the active Rodgers Creek fault, and the Tolay fault (not active in the Holocene) is located within the dam and reservoir footprint. The Draft EIR/EIS indicates that special design engineering and construction at this site will be required. Slope instability at the site could be triggered by seismic activity. However, landslides into the reservoir will not pose a risk for catastrophic failure of the dam and reservoir. Refer also to Response to Comment 93-6 regarding historic performance of earth filled dams in California during large earthquakes. Potential impacts of dam failure are addressed in Section 4.19 of the Draft EIR/EIS.

Response to Comment 101-13

Comment Summary: The comment suggests that ground rupture in an earthquake cannot be fully mitigated, since measures only respond to ruptures after they have happened.

As described starting on page 4.6-63 of the Draft EIR/EIS, the only pipelines that cross active faults are the urban irrigation and Geysers pipelines. Pipelines in the vicinity of the Tolay reservoir site are not expected to break due to ground rupture. The comment is correct that the proposed mitigation measure does not avoid all impacts, but the intent of the mitigation is to minimize the effects of a pipeline rupture so that they are less than significant. The Draft EIR/EIS concludes that with prompt repair, the effects of a pipeline rupture can be reduced to a less than significant level due to their short-term nature. Because pipeline breaks cannot be completely avoided, the short-term effects of such an event are evaluated throughout the Draft EIR/EIS.

Response to Comment 101-14

Comment Summary: The comment suggests that disruption of service in an earthquake would have socioeconomic impacts.

With prompt repair of pipelines, service disruption is not expected to last long enough to have a socioeconomic impact. As noted in Response to Comment 101-13, none of the agricultural irrigation areas is expected to be affected by ground rupture, because pipelines to reservoirs and agricultural areas do not cross active faults. Smaller projects are not necessarily less vulnerable to pipeline rupture; the important factor is whether the pipeline crosses an active fault.

Response to Comment 101-15

Comment Summary: The comment requests greater exploration of impacts associated with Tolay reservoir construction.

Reservoir construction impacts are evaluated and compared for each issue area, including construction impacts on air, noise, traffic. For example Table 4.12-8 on page 4.12-23 in the Draft EIR/EIS shows construction emissions associated with reservoir construction for each alternative. The Tolay Extended configuration does generate more air emissions than other reservoir sites. Because the comment does not identify specific deficiencies a more specific response is not possible.

Response to Comment 101-16

Comment Summary: The comment states that a significant socio-economic impact should be identified associated with disruption in service in the event of pipeline breaks following an earthquake. The comment requests that mitigation be recommended to charge users of irrigation water to offset the significant impact of increased sewer charges. Also, the comment requests that the EIR/EIS discuss the subsidy of irrigation users by the ratepayers.

Regarding the service disruption, refer to Responses to Comments 101-12 and 101-14. Regarding changes for reclaimed water, refer to Master Response 13, located in Section 6.2 of this document.

Response to Comment 101-17

Comment Summary: The comment asks whether the Tolay Extended reservoir will affect the Williamson Act contract for Dr. Schaller's property.

Table 4.2-7 on page 4.2-14 in the Draft EIR/EIS shows parcel size, affected area, and area remaining in Williamson Act for each parcel in the Tolay Extended Reservoir site. Dr. Schaller's affected parcel is Number 68-060-55. As shown in the table, 46 acres of the 118-acre parcel are within the reservoir footprint. Because the remaining parcel will be 72 acres it will still qualify for a Williamson Act contract.

Response to Comment 101-18

Comment Summary: The comment states that groundwater in the vicinity of the reservoir sites will be degraded and that the proposed mitigation measure of providing replacement water supply would not mitigate the degradation of groundwater.

Based on the groundwater Evaluation Criteria and Points of Significance (page 4.5-22 and 4.5-23 of the Draft EIR/EIS) the proposed mitigation measure will eliminate any potential drinking water supply impacts if they occur. Refer to Response to Comment 8-3 for a discussion of the non-degradation policy.

The proposed mitigation measure will provide for alternative water supply for allowable (under the General Plan and Zoning regulations) future uses in the 20 percent or greater contribution zone (i.e. the zone where reclaimed water concentration is greater than 20%). The Project will provide reclaimed water to be used for agricultural irrigation in place of potable water, and the maximum population that could be affected by reduced groundwater quality for drinking water supplies will be small. The overall effect of the Project will not be a reduction in water supply.

Sonoma County Permit and Resource Management Department regulates well installation. A permit is required prior to installing wells. The Project will not affect the frequency of unauthorized well installations.

Response to Comment 101-19

Comment Summary: The comment states that selection of the Tolay Extended storage reservoir site would result in significant and unavoidable losses of sensitive terrestrial wildlife habitat and wetlands, making this a substantially inferior site for a storage reservoir.

The comment agrees with the conclusions of the Draft EIR/EIS regarding cumulative terrestrial habitat impacts. However, while the Tolay reservoir has significant wetland impacts, they can be mitigated to a less than significant level. Refer to Master Response 11, located in Section 6.2 of this document, regarding feasibility of wetlands mitigation. The intent of the Draft EIR/EIS is to provide a thorough and unbiased analysis of Project alternatives. Selection of the final Project alternative will be made by the appropriate decision-makers, based on the analysis provided in the EIR/EIS.

Response to Comment 101-20

Comment Summary: The comment contends that the loss of wetlands associated with the Tolay Extended alternative should be identified as a significant and unavoidable impact, despite proposed mitigation.

Page 4.10-37 of the Draft EIR/EIS identifies that the potential loss of 248 acres of wetlands at the Tolay Extended site will result in a significant impact. The EIR/EIS

authors do not agree that this impact should remain significant and unavoidable after implementation of the Sensitive Resource Conservation Program mitigation measures (Page 2-76 through 2-84 of the Draft EIR/EIS). Refer to Master Response 11, located in Section 6.2 of this document, which substantiates feasibility of wetlands mitigation.

Response to Comment 101-21

Comment Summary: The comment contends that impacts to red-legged frog and northwestern pond turtle at the Tolay Extended site should be considered significant.

Pages 4.9-56 and 4.9-60 of the Draft EIR/EIS, identify that construction of the proposed Tolay Extended storage reservoir site will result in significant impacts to red-legged frog and northwestern pond turtle respectively. Relocation of red-legged frogs and northwestern pond turtles is only one element of the mitigation proposed to compensate for significant impacts to these two aquatic species. Creation, restoration, and/or preservation of aquatic habitat is the other element of the proposed mitigation designed to protect the long-term welfare of both species. The comment contends that relocation programs for red-legged frog have been proven to be unsuccessful; however, no evidence or data which support this claim have been provided. Refer to Response to Comment 304-42 concerning the success of such relocation programs.

Response to Comment 101-22

Comment Summary: The comment argues that proposed mitigation measures contain success criteria which allow for some failure associated with preservation, creation, and restoration that would not ensure adequate compensation for lost habitat.

The performance criteria provided in the Sensitive Resource Conservation Program (Page 2-76 through 2-84 of the Draft EIR/EIS) were developed in consultation with various resource agencies, including the U.S. Army Corps of Engineers and California Department of Fish and Game. Mitigation ratios are developed in acknowledgment of the fact that 100 percent success cannot be guaranteed. The comment does not provide evidence as to why more than five years is necessary to confirm the long-term viability of the mitigation sites. Also refer to Response to Comment 101-21 regarding identification of significant impacts.

Response to Comment 101-23

Comment Summary: The comment contends that any potential disturbance to active raptor nests should be considered a significant impact.

Page 4.8-91 of the Draft EIR/EIS identifies that Alternatives 2 and 3 will result in significant impacts to active raptor nests that will be reduced to less than significant through implementation of Mitigation Measure 2.4.5: The Active Raptor Nest Location and Monitoring Program (Pages 2-103 through 2-104 of the Draft EIR/EIS). This Mitigation Measure was developed in consultation with the California Department of

Fish and Game. The measure specifically requires delay of construction activities within a proposed storage reservoir boundary until the end of the nesting season (April-July) should an active raptor nest be observed, or requires the establishment of a 0.25 mile exclusionary buffer around any unavoidable nest sites. Nests within the exclusionary buffer shall be monitored to determine if construction activities are disturbing nesting raptors. Additional protection measures may be employed if it is determined that construction activities negatively affecting nesting raptors.

To clarify this point, the following change is made to the Draft EIR/EIS:

Page 2-103. The following sentence is added to the end of the third paragraph:

The monitoring biologist shall propose and the City shall implement additional measures (as necessary) to minimize impacts to nesting raptors due to construction activities.

Response to Comment 101-24

Comment Summary: The comment states an opinion that the Tolay Extended alternative should not be selected in favor of more environmentally and economically sound alternatives that will accomplish the objectives of the Subregional system project.

Refer to Master Response 2, located in Section 6.2 of this document, regarding Project selection.