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10 Specially Appearing for Protestant Environmental Council of
 11 Sacramento for Purposes of Presenting Part 2 Testimony

12 **BEFORE THE**
 13 **CALIFORNIA STATE WATER RESOURCES CONTROL BOARD**

14 HEARING IN THE MATTER OF
 15 CALIFORNIA DEPARTMENT OF WATER
 16 RESOURCES AND UNITED STATES
 17 BUREAU OF RECLAMATION
 18 REQUEST FOR A CHANGE IN POINT OF
 19 DIVERSION FOR CALIFORNIA WATER FIX

20 **TESTIMONY OF JUDITH LAMARE, Ph.D.**
 21
 22 **ENVIRONMENTAL COUNCIL OF**
 23 **SACRAMENTO**

I. PROFESSIONAL BACKGROUND AND APPROACH TO ANALYSIS

Fifty years ago, I entered the Ph.D. program at the UCLA Department of Political Science, with a focus on public policy, public administration, state and local government with emphasis on quantitative methods, public policy evaluation, and government performance metrics. This was a Department committed to addressing the public interest in solving urban problems (racial equality, poverty, pollution). My dissertation (Ph.D., 1973) focused on transportation policy for Southern California, the key source of uncontrolled air pollution in that basin. At that time, air pollution was blamed on an imbalanced transportation system. After teaching at the university level for several years, I worked as a policy consultant for the California Senate, assigned to state transportation policy issues, principally for transit proponents in the Senate. From 1983 to 2005, I served the American Lung Association/Breathe Sacramento and in this capacity, I managed the Cleaner Air Partnership, a regional air pollution reduction coalition, comprised of business, government and environmental groups. Our mission was to get new and improved nitrogen oxide (“NOx”) reduction programs. We advocated for heavy duty diesel emission reduction advances beyond federal regulations. For example, the Carl Moyer Program originated within the Cleaner Air Partnership. Additional information regarding my professional background is available in in my statement of qualifications. (ECOS-12.)

In order to prepare this testimony regarding my air quality-related concerns about the Delta Tunnels project (a.k.a. “California WaterFix”), I reviewed the air quality analysis in the Final Environmental Impact Report/Statement (“FEIR/S”), comments on the FEIR/S (and prior drafts) by members of the public and air quality experts, several air districts, and responses to comments for the preferred Alternative 4A. I also spoke with U.S. Environmental Protection Agency and California Air Resources Board experts familiar with the project and confirmed that neither agency performed a thorough analysis of the air quality impacts and mitigation for the Delta Tunnels project, and neither had a role in approving the plan. I also examined online the record of performance and audits of the relevant air districts in the programs relied upon for the

1 proposed emission reductions for the Delta Tunnels project in the FEIR/S.¹ (See, e.g., ECOS-
2 18, SJVAPCD 2016 [Appendix E: Incentives] and ECOS-17, SJVAPCD 2017, pp. 6-7 [Table 1,
3 total criteria pollutant emissions reduced].)

4 **II. AIR QUALITY IMPACTS FROM PETITIONED PROJECT WOULD BE CONTRARY TO** 5 **THE PUBLIC INTEREST**

6 The project would be built in air districts that do not meet air quality standards and are
7 struggling to implement plans to do so. The project makes a commitment to use the best
8 available technology in construction to reduce emissions as feasible. (See SWRCB-111,
9 MMRP, pp. 3-33 to 3-35 [Environmental Commitment (“EC”) 3.15, BMPs to reduce criteria
10 pollutants and GHG emissions].) But there is an additional significant burden of excess
11 pollutants emitted during construction that must be fully offset. There are two elements of the
12 air quality strategy: use the cleanest available construction equipment and practices (SWRCB-
13 111, MMRP, pp. 3-33 to 3-35) and mitigate remaining “excess” pollution through offsets.
14 (SWRCB-111, MMRP, p. 2-102.) The mitigation program is structured so that construction in
15 each air district has a separate mitigation program. (See SWRCB-111, MMRP, p. 2-102
16 [Mitigation Measures (“MM”) AQ-1, AQ-2 and AQ-3, mitigating and offsetting criteria pollutant
17 emissions to net zero].)

18 “Because the project is receiving federal funds and approvals from the U.S. Department
19 of the Interior Bureau of Reclamation (“Reclamation”), U.S. Fish and Wildlife Service
20 (“USFWS”), and National Marine Fisheries Service (“NMFS”) (Federal lead agencies), all direct
21 and indirect emissions generated by the project are subject to the general conformity rule.”
22 (SWRCB-102, FEIR/S, p. 22E-1.) The Federal Clean Air Act provides safeguards to ensure
23 that federal permits and funds are not permitted for projects whose emissions would fail to
24 conform to adopted air quality attainment plans. The construction emissions of the Delta
25 Tunnels are significantly above the conformity standard even after all available control
26 measures are employed on the project. The FEIR/S acknowledges that these emissions must
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28 ¹ California Air Resources Board, “Incentive Program Oversight,” Incentive Program
Reviews (available at <https://www.arb.c.gov/msprog/moyer/audits/audits.htm>).

1 be reduced to zero by offsetting reductions in the same year, and that emission reductions
2 must meet the standards of a “conformity determination” under federal law. (SWRCB-102,
3 FEIR/S, p. 22E-13 [emission reduction measures] and pp. 22E-36 to 22E-39 [compliance with
4 conformity requirements].)

5 The analysis of Delta Tunnels emissions subject to the general conformity rule is
6 performed by dividing the project into segments and assigning emissions to each of the air
7 basins based on the construction emissions of segments constructed in each air basin.
8 Splitting the project into three pieces and separately analyzing these is consistent with air
9 quality planning practice in California, but in this case produces perverse results.

10 **A. Construction Emissions and Reduction Impacts Not Fully Disclosed**

11 **1. Construction Emissions Split into Three Districts for Analysis** 12 **without Regard for Pollution Transport Patterns**

13 Construction emissions over 11 years would include 1,741 tons of pollutants, primarily
14 NO_x, *that exceed the annual thresholds for conformity with air quality plans that demonstrate*
15 *attainment in a future year in a given district.*

16 In the San Joaquin Valley Air Basin (“SJVAB”), the project would exceed thresholds for
17 reactive organic gas (“ROG”) in 2020-2025, NO_x in 2018-2028, and particulate matter
18 (“PM10”) in 2019-2025. In total, the emissions include 677 tons of NO_x and 78 tons of ROG.

- 19 • In the Sacramento Federal Nonattainment Area, the project would exceed the
20 threshold for NO_x in 2019-2027, for a total of 709 tons of NO_x.
- 21 • Last, in the San Francisco Bay Area Air Basin, the project would exceed the
22 threshold for NO_x by 2024-2025, for a total of 277 tons of NO_x. (See SWRCB-102,
23 FEIR/S, p. 22-316 to 22-317 [Table 22-110, criteria pollutant emissions from
24 construction].) The project would be built within a narrow 36-mile-long area
25 including the boundaries of three air basins that do not meet state and federal air
26 quality standards. (See ECOS-16, FEIR/S, Figures 22E-1 to 22E-4 [air districts map
27 of project area].) The project segments in each air district are described at FEIR/S,
28 p. 22E-32. Difficulty occurs when the emissions from the project are assigned to

1 different air districts with different criteria for evaluating their significance while the
2 emissions impact will largely be dispersed to the SJVAB, due to the location of the
3 project in and directly upwind of the SJVAB. (ECOS-14, Cal. EPA 2001.)

4 “Because the attainment status of the four area air basins differ with respect to ozone,
5 CO, PM10, fine particle (“PM2.5”) and Sulfur dioxide (“SO₂”) different *de minimis* thresholds
6 must be applied to emissions generated within each air basin.” (SWRCB-102, FEIR/S, p. 22-
7 48 [Table 22-8, air district thresholds of significance].) However, the emissions in the
8 hinterlands of two air districts (Sacramento and the Bay Area) are likely to be transported into
9 the northern San Joaquin Valley Air Basin under typical meteorological conditions. Yet the
10 emission reduction mitigation measures are allowed to occur anywhere within the air basin
11 where generated, that is, as far removed from the project area as Kern, Marin and Placer
12 Counties. This is helpful for increasing odds that emission reduction programs will be feasible
13 and achievable. But this is unfair to San Joaquin Valley residents and is inconsistent with the
14 intent and spirit of the Clean Air Act and its Conformity Determination requirement.

15 For example, the largest single construction emission source is at the Clifton Court
16 Forebay in eastern Contra Costa County, 17 miles southwest of Stockton and directly west of
17 Lathrop and Manteca, and just northwest of Tracy. (See DWR-616 [map of project activity at
18 Clifton Court Forebay]; SWRCB-102, FEIR/S, p. 22-293 [Impact AQ-3, generation of excess
19 criteria pollutants in BAAQMD].) As a practical matter these emissions are going to transport
20 eastward and southward, adding to ozone formation in the summer, fall, and winter particulate
21 violations. (See SWRCB-102, FEIR/S, pp. 22-4 to 22-5; ECOS-14, Cal. EPA 2001 [weather
22 pattern effects on pollutant transport].) The emissions would have no meaningful impact within
23 the Bay Area Air Quality Management nonattainment area because of this south-east
24 transport. Yet the mitigation would occur somewhere in the Bay Area because the pollutants
25 originated in that basin. This approach to the project’s emissions reductions is not in the public
26 interest.

1 The reason given by project proponents for ignoring transport issues is:

2 With respect to pollutant transport among air districts; all mass emissions
3 thresholds adopted by the Plan Area air districts account for expected criteria air
4 pollutant contributions from downwind air basins. Accordingly, use of the Plan
5 Area air district thresholds to evaluate construction and operational impacts
6 associated with the project is appropriate and supported by substantial evidence
7 (see California Air Resources Board 2011b in the Administrative Record for the
8 Draft EIR/EIS and also the local air district threshold justification reports for
9 additional information). Project-level ozone transport or dispersion modeling is
10 not required.

11 (SWRCB-102, FEIR/S, Comments and Responses to Comments, Letter 2622, p. 97.) The
12 project, however, is far beyond the scale of construction found in the districts and located in an
13 area particularly subject to transport. The statement also confuses upwind and downwind.

14 **2. Construction Emissions Split into Three Districts for Analysis** 15 **Results in Underestimating Emission Impacts and Mitigation Needed** 16 **for Indirect Emissions**

17 A second, related issue occurs because the significance levels of emissions are
18 evaluated by air basin. Table 22-9 "Federal *de minimis* Thresholds by Air Basin (tons per
19 year)" shows that the standard for determining whether excess emissions must be mitigated to
20 conform to federal law varies significantly by Air District for NO_x and VOC/ROG. (SWRCB-
21 102, FEIR/S, p. 22-49.) In the SJVAB, the threshold is 10 tons per year for each pollutant. In
22 Sacramento Federal Nonattainment Area, it is 25 tons/year and in the San Francisco Bay Area
23 Air Basin, it is 100 tons per year (ten times the SJVAB threshold). If the SJVAB standard were
24 applied to all the project NO_x and VOC/ROG emissions, an additional 558 tons per year of
25 NO_x and an additional 144 tons of ROG would have to be offset by the project. That is an
26 increase of 40 percent over the excess emissions acknowledged as required to be mitigated
27 by the project proponents. Similarly, the threshold for PM₁₀ is not met in any year in any air
28 basin, but if the project PM₁₀ emissions are aggregated, and Bay Area PM₁₀ emissions were
not eliminated from the accounting (due to that district not having a PM₁₀ threshold), then
there would be years when the threshold for PM₁₀ is exceeded, and PM₁₀ emissions would
have to be mitigated.

1 It should be noted that the secondary particulate matter impacts from NOx generated in
2 the construction of project elements in the far eastern part of the Bay Area Air Quality
3 Management District (Reach 7, Clifton Court Forebay) and southern Sacramento County will
4 likely be experienced in the San Joaquin Valley Air Basin due to prevailing meteorological
5 conditions. Yet, SJVAB is the only basin in a federally-designated PM2.5 nonattainment area
6 and PM10 maintenance area subject to the requirement that secondary PM2.5 and PM10
7 effects be considered in the general conformity determination for those years in which NOx
8 emissions exceed 100 tons. (SWRCB-102, FEIR/S, p. 22E-36 [Compliance with Conformity
9 Requirements] and pp. 22-316 to 22-317 [Table 22-110, Criteria Pollutant Emissions, and
10 footnote a].)

11 It is arguable that these unmitigated emissions are *indirect emissions* from the project in
12 the San Joaquin Valley Air Basin. “The General Conformity evaluation must consider both
13 direct and indirect sources of emissions for all nonattainment and/or maintenance pollutants,
14 which include regulated precursor emissions.” (SWRCB-102, FEIR/S, p. 22-49.) However, the
15 Conformity Analysis specifically did not consider the impacts of unmitigated emissions in one
16 air district as indirect emissions in the adjacent air basin. Hence, there will not be mitigation for
17 those impacts.

18 **B. Risks of Proposed Emissions Offset Programs**

19 There are substantial risks that the intended protection of the public interest in the
20 emissions reductions program for the Delta Tunnels Project, will not occur.

21 **1. Feasibility of Environmental Commitments**

22 As commented on by air quality experts, some of the engines relied upon for lower
23 emissions may not be available as planned. (SWRCB-102, FEIR/S, Comments and
24 Responses to Comments, p. 107, Letter 2622.) Specifically, the availability of the Tier 4
25 tunneling locomotive engine, used to transport muck, is speculative. The EPA certified Tier 4
26 tunneling locomotive engine, which would lower emissions from tunneling activities, is asserted
27 to be available by proponents because of “consultation with tunneling locomotive engine
28 manufacturers.” (SWRCB-102, FEIR/S, Comments and Responses to Comments, p. 107,

1 Letter 2622.) There is no estimate of the additional pollution offsets required should this
2 engine prove to be unavailable to power construction activities for some or all of the
3 construction period.

4 **2. Deferred Mitigation Programs**

5 Air quality experts and the San Joaquin Valley Unified Air Pollution Control District
6 ("SJVAPCD") commented that the proposed mitigation program agreements should have been
7 finalized before project approval. (SWRCB-102, FEIR/S, Comments and Responses to
8 Comments, pp. 63-64, Letter 2506, and p. 107, Letter 2622.) While the FEIR/S defines the
9 emission reduction performance required to be credible (SWRCB-110, Adopted Findings of
10 Fact and Overriding Considerations, pp. 210-227 [stating all reductions must be quantifiable,
11 verifiable, enforceable and satisfy the basic criterion of additionality]), it is air districts that must
12 judge whether these conditions have been met. The deferral of fully defining the mitigation
13 program means it is speculative. For example, the mitigation program relies upon voluntary
14 participation of owners of engines to replace or retrofit diesel engines in buses, trucks and
15 locomotives.

16 For comparison, consider the case of the California High-Speed Train Project's Merced
17 to Fresno section. There, the agreement between the implementing agency, the California
18 High Speed Rail Authority, and the air district was required as a condition of approval. The
19 reason given was:

20 In implementing a VERA, the SJVAPCD verifies the actual emission reductions
21 that have been achieved as a result of completed grant contracts, monitors the
22 emission reduction projects, and ensures the enforceability of achieved
23 reductions. The initial agreement is generally based on the projected maximum
24 emissions that exceed thresholds as calculated by a District-approved Air Quality
25 Impact Assessment and/or the project's EIR/EIS; the agreement then requires
26 the proponent to deposit funds sufficient to offset those maximum emissions
27 exceedances. However, because the goal is to mitigate actual emissions, the
28 District has designed adequate flexibility into these agreements such that the
final mitigation is based on actual emissions related to the project, based on
actual equipment used, hours of operation, etc. that the proponent tracks and
reports to SJVAPCD during construction. After the project is mitigated, the
District certifies to the lead agency that the mitigation is completed. Thus, a
VERA provides the lead agency with an enforceable mitigation measure that will
result in emissions exceedances being fully offset. If FRA selects one of the
action alternatives in the ROD, it would include the VERA mitigation measure

1 AQ-MM#4 as an enforceable commitment undertaken by the Authority and
2 required for project implementation. According to the SJVAPCD, since 2005 the
3 SJVAPCD has entered into seventeen VERAs with project proponents and
4 achieved 1,393 tons of NOx and PM10 reductions per year. It is the SJVAPCD's
experience that implementation of a VERA is a feasible mitigation measure which
effectively achieves actual emission reductions, mitigating the project to a net-
zero air quality impact.

5 (ECOS-15, California High-speed Rail Authority ("CHRA") 2012, App. 3.3-B.) Conversely,
6 without such an agreement prior to project approval, the mitigation measure is speculative.

7 **3. Speculative Emission Offset Programs**

8 The emissions offset program relies on speculative emission reduction programs to
9 claim that emissions can be reduced to net zero. (SWRCB-110, Adopted Findings of Fact and
10 Overriding Considerations, pp. 210-227.) Little analysis or data is presented on the current
11 performance of these programs. Further, there is nothing in the record to demonstrate the
12 incentive programs potential to feasibly meet these emission reductions, despite the
13 constraints on the location of emission reductions.

14 For two decades, Air Districts have been implementing incentive programs to reduce
15 heavy duty diesel NOx and PM emissions. (SWRCB-102, FEIR/S, 22-29 to 22-34 [description
16 of Criteria Pollutant management by air districts in project area].) The programs work because
17 federal engine standards and state fleet rules set a regulatory framework in which it is
18 advantageous for heavy duty engine owners to participate in incentive programs before
19 regulations force engine turnover. Millions of dollars have been expended to *accelerate*
20 turnover of older engines. For example, SJVAPCD reports that in 2017 its incentive programs
21 reduced NOx by 6,479 tons, particulate by 255 tons and ROG by 787 tons. (ECOS-17,
22 SJVAPCD 2017.)

23 But there is a limit on what can be achieved with these programs because of normal
24 vehicle turnover rates and California's Air Resources Board regulatory deadlines. (See ECOS-
25 21, 13 CCR § 2025 [Regulation to Reduce Emissions of Diesel Particulate Matter, Oxides of
26 Nitrogen and Other Criteria Pollutants, from In-Use Heavy-Duty Diesel-Fueled Vehicles].)

27 For example, by January 2, 2023 nearly all trucks and buses in fleet operation and
28 trucks entering ports or railyards will need to have 2010 model year engines or the equivalent.

1 Thus, there may be inadequate motivation for vehicle owners to provide further mitigation
2 through participation in incentive programs to replace or retrofit engines to a higher standard
3 even if such engines became available.

4 **4. Risk That the Contingency Program for Emission Reductions cannot**
5 **Be Achieved, Harming the Public Interest in Air Quality and**
6 **Conformity with Air Quality Plans**

7 The emission reduction program relies on a speculative contingency mitigation measure
8 to be developed, implemented, and monitored by the DWR, an agency with no air quality
9 mitigation expertise, to manage risk that the primary speculative mitigation program will not
10 succeed. (SWRCB-110, Adopted Findings of Fact and Overriding Considerations, pp. 210-
11 227.) Particularly disturbing is the assumption that if the air districts are unable to meet the
12 reduction goals, DWR would be able to do so. The contingency plan contains the same
13 measures included in the primary reduction plan.

14 The integrity of the Delta Tunnels air pollution mitigation program rests on the expert
15 credentials and participation by the individual air districts. The FEIR/S and General Conformity
16 Determination cite the air districts' participation as the source of credibility for the mitigation
17 approach. Yet the FEIR/S does not require an enforceable criteria pollutant emission
18 reduction program agreement be in place with each air district before construction begins, and
19 allows DWR to substitute its own emission reduction program (after "consultation" with air
20 districts) independent of air district implementation and oversight, if it deems necessary.

21 Both U.S. Environmental Protection Agency ("EPA") and the Sacramento Metropolitan
22 Air Quality Management District ("SMAQMD") submitted comments cautioning that offsets may
23 become scarce or prohibitively expensive in certain years. On August 26, 2014, U.S. EPA
24 Region IX Administrator noted in a letter to Will Stelle, Regional Administrator, West Coast
25 Region National Marine Fisheries Service:

26 The availability of sufficient offsets to demonstrate conformity for the BDCP may
27 be limited. EPA is aware that other construction projects scheduled to take place
28 in the BDCP project area during the BDCP's proposed construction time frame
also include the purchase of offsets to demonstrate conformity. For example,
two segments of the California High Speed Rail project scheduled to be
constructed in the San Joaquin Valley Air District are currently pursuing a
significant amount of offsets for several criteria pollutants.

1 (ECOS-20, U.S. EPA 2014, p. 21.)

2 Likewise, in a January 28, 2016 letter to Cassandra Enos-Nobriga of the Department of
3 Water Resources, the Air Pollution Control Officer for the SMAQMD noted: “DWR should be
4 aware that toward the middle of the construction time period it will become more difficult to
5 identify off-site emission reduction options for mitigation measure AQ-1a. Consequently, it is
6 likely that mitigation measures will become increasingly expensive. DWR should ensure that
7 adequate funds will be available.” (SWRCB-102, FEIR/S, Attachment 22E.)

8 Concern about the scarcity of offset opportunities was the basis for recommending that
9 the FEIR/S contain a contingency program to ensure that mitigation goals are met. (SWRCB-
10 102, FEIR/S, Comments and Responses to Comments, p.40, Letter 1434 [SMAQMD
11 recommending “that plans be outlined for development of contingency mitigation should any
12 currently proposed mitigation prove infeasible”].) The point of contingency is to come up with
13 *additional* measures to backstop the measures relied upon. Ironically, the only measures
14 suggested for the contingency program are the very measures which the air districts already
15 implement and have the expertise to carry out. (See, e.g., SWRCB-102, FEIR/S, pp. 22-69 to
16 22-70.) It is not in the public interest for DWR to rely on the expertise of the air districts to
17 qualify their mitigation program and then to appropriate the role of carrying out that program
18 away from those districts and back to DWR.

19 **5. Unreasonable Assumption That DWR Can Backstop Air Districts**

20 Contingency planning should be creative and done far in advance. There is a maze of
21 regulatory and incentive programs underway at state, federal and local levels that present an
22 obstacle course for DWR to achieve complete offset of its construction emissions. The
23 FEIR/S, simply assumes that if an expected reduction in partnership with an air district goes
24 missing, DWR can produce it on a timely basis. (SWRCB-110, Adopted Findings of Fact and
25 Overriding Considerations, pp. 210-227.) This is not a reasonable assumption. DWR is
26 obligated to find and document feasible emission reductions that it can achieve to supplement
27 any shortfalls by the air districts and have air district agreement that its plan is in fact surplus to
28 their planned emission reductions. These emission reductions measures are the equivalent of

1 a State Implementation Plan (“SIP”) measure under the Federal Clean Air Act and must meet
2 the performance criteria of a SIP measure. (ECOS-19, SJVAPCD 1994 [adopting Code of
3 Federal Regulations (“CFR”), title 40, chapter 1, subchapter C, parts 6 and 51]; see also
4 ECOS-20, U.S. EPA 2014, p. 21 [“Demonstrate that all direct and indirect emissions of the
5 federal action, including all required conservation measures, would conform to the applicable
6 SIPs and not cause or contribute to violations of the National Ambient Air Quality Standards].)

7 There is also the fact that other construction projects will be seeking the same emission
8 reduction sources for offsets. The FEIR/S does not consider the cumulative demands on
9 voluntary emission reduction programs in the air districts. The same measures are required
10 for attainment of air quality standards, normal local demand for offsets for new projects, and for
11 other expected large state/federal projects anticipated. For instance, the High-Speed Rail
12 Merced to Fresno project, which generates 589 tons of pollutants requiring offsets during the
13 same time period. (ECOS-15, CHRA 2012.)

14 **6. Risk of Losing Conformity Determination**

15 General Conformity Determinations are valid for five years. (SWRCB-102, FEIR/S, p.
16 22E-38 [general conformity determination findings and conclusions].) The project runs the risk
17 of not being able to avoid redetermination if it is unable to meet its mitigation obligations. The
18 risk of losing the Conformity Determination and the consequences have not been disclosed by
19 Petitioners. Loss of conformity would lead to a loss of federal permits and any federal funding
20 for the project. It is not in the public interest for a project to be initiated that may default on its
21 federal permits and not be sustainable through completion.

22 **7. Cumulative Emission Reduction Burden for DWR**

23 In addition, state law governs reduction of greenhouse gas emissions. Project
24 construction would generate three million metric tons of greenhouse gas emissions. (SWRCB-
25 110, Adopted Findings of Fact and Overriding Considerations, p. 229.) These emissions also
26 must be offset completely, but the emission reduction programs suffer the same risks as
27 described for the criteria pollution reductions programs. The mitigation program is “to be
28 determined.” (SWRCB-110, Adopted Findings of Fact and Overriding Considerations, pp. 102-

3 and 229-236.) In the FEIR/S, Comments and Responses to Comments (p.110-114, Letter 2622) there is discussion of comments submitted by air quality experts regarding the flawed nature of the mitigation program. For example, the pollution reduction burden is high, the timing is critical, but the mitigation program reporting will occur only for the past year. (SWRCB-102, FEIR/S, Comments and Responses to Comments, Letter 2622, p.111, [“the project proponents will conduct annual reporting to verify and document that selected strategies achieve sufficient emissions reductions to offset construction-related emissions to net zero. The annual report will identify construction emissions for the reporting year, projects selected to offset those emissions, actual emission reductions achieved, and funds provided”].) Should mitigation fail to keep pace, it will not be reported until after the fact. This is a serious lapse in accountability. Another example is that consultation will take place with California Air Resources Board (“CARB”) and air districts, but their approval will not be required for the mitigation plan. (See SWRCB-102, FEIR/S, Comments and Responses to Comments, Letter 2622, p. 110.)

III. Suggested Water Board Permit Conditions to Help Protect the Public Interest in Clean Air

The Water Board should step in and require permit conditions to fill the public interest gap left by the FEIR/S, Findings of Fact and Mitigation Monitoring Program. The Board should engage CARB in a joint review of the project, direct and indirect emissions impacts, environmental commitments and mitigation to determine how to strengthen and guarantee air quality mitigation to achieve the stated goal.

I suggest the following conditions be imposed on the project by the SWRCB to help diminish the unreasonable impacts on air quality that would be contrary to the public interest:

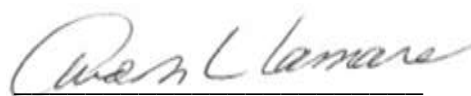
- Require all construction criteria pollutant emissions generated in the Bay Area Air Quality Management District to be evaluated and mitigated according to San Joaquin Valley Air Basin standards and in the San Joaquin Valley Air Basin.
- Require all emission reduction measures be approved and implemented by air districts or CARB.

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- Require emission reduction agreements with air districts and CARB to be completed prior to issuance of Water Board permit.
- Require all DWR/air district/CARB agreements to include schedules and contractual provisions to ensure that emission reduction offsets are implemented in the year that the emissions are generated. Failure to have contracts for sufficient emission reduction projects approved for the coming two years should trigger a delay in the schedule of construction until this “stay ahead” provision is confirmed with signed contracts to deliver proven emission reductions.
- Require that the Water Board permit be suspended in the event that environmental commitments or emission reduction offset contracts do not meet the schedule, with the California Air Resources Board as the arbiter of whether emissions reductions are achieved.
- Require DWR to report annually to Cal EPA and the Water Board on all emission reduction offsets required and achieved for the report year and under contract for the coming two years to demonstrate that future year emissions will be on schedule.
- Require public disclosure of agreements with air districts, Air Resources Board and annual reports to the Water Board for air quality and greenhouse gas reduction programs.

In my opinion, this project as planned, is detrimental to the public interest, both in the project area and elsewhere. This project would result in an unfair air pollution burden in the San Joaquin Valley, already impacted by severe air quality problems. These requirements listed above will not prevent the damage to the public interest, but merely limit the severity.

Executed on the 30th day of November, 2017, at Sacramento, California.



Judith Lamare

1 **REFERENCES**

2 13 CCR § 2025. [ECOS-21]

3 California Environmental Protection Agency, Air Resources Board, Assessment of the Impacts
4 of Transported Pollutants on Ozone Concentrations in California (March 2001).

5 [ECOS-14]

6 CHRA, Final Environmental Impact Report/Statement: Merced to Fresno, Appendix 3.3-B Draft
7 Federal Conformity Determination (2012). [ECOS-15]

8 FEIR/S, Figures 22E-1 to 22E-4. [ECOS-16]

9 SJVAPCD, Annual Demonstration Report, SIP-Creditability of Emission Reductions Generated
10 through Incentive Programs (2017), pp. 6-7. [ECOS-17]

11 SJVAPCD, Plan for the 2000 8-Hour Ozone Standard (2016), Appendix E: Incentives
12 [ECOS-18]

13 SJVAPCD, Rule 9110 Federal General Conformity Regulation (1994). [ECOS-19]

14 U.S. EPA, Letter to Will Stelle (2014). [ECOS-20]

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