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April 16, 2002

Division of Water Rights  
State Water Resources Control Board  
P.O. Box 2000  
Sacramento, CA 95812-2000  
Attn: Andy Fecko

Re: Amended Joint Petition of the Imperial Irrigation District and the San Diego Water Authority for Approval of a Long-Term Transfer of Conserved Water Pursuant to an Agreement between IID and SDCWA. (Application 7482) (Phase 2)

Dear Members of the State Water Resources Control Board,

On behalf of the National Wildlife Federation, we submit these comments regarding the impacts of the proposed long-term transfer, specifically the significant growth-inducing impacts within San Diego County. Pursuant to Water Code section 1736, the proposed transfer will unreasonably affect fish, wildlife and other instream beneficial uses of water by inducing and accommodating growth within the San Diego region, which will, in turn, result in urban sprawl and adverse impacts related to, for example, biology, water quality, air quality and traffic. Moreover, the environmental documentation prepared for this project fails to acknowledge these growth-inducing impacts and therefore provides absolutely no analysis of the myriad secondary impacts arising from such growth, in violation of the California Environmental Quality Act ("CEQA") and the National Environmental Policy Act ("NEPA").

Accordingly, we respectfully request that the Board not approve the Long-Term Transfer Petition unless and until the draft EIR/EIS addresses the growth inducing impacts and indicates that the responsible land use agencies within San Diego County provide assurances that they can and will take the necessary steps to ensure that the growth accommodated by this project will not adversely impact the environment.

**A. GROWTH INDUCEMENT IS A CRITICAL ENVIRONMENTAL IMPACT THAT MUST BE CONSIDERED**

An action's potential for inducing growth is a specific environmental consideration that must be addressed and analyzed in an environmental impact report ("EIR") pursuant to CEQA

and an environmental impact study (“EIS”) pursuant to NEPA. California Administrative Code, title 14 (“CEQA Guideline”), §§ 15126(d), 15126.2(d); 40 C.F.R. § 1508.8(b). Thus, Guideline section 15126.2(d) provides the following mandate for the content of an EIR:

Growth-Inducing Impact of the Proposed Project. Discuss the ways in which the proposed project could foster economic or population growth, or the construction of additional housing, either directly or indirectly, in the surrounding environment. Included in this are projects which would remove obstacles to population growth (a major expansion of a waste water treatment plant might, for example, allow for more construction in service areas.)

In determining whether a project may have a significant impact on the environment, the agency must consider reasonably foreseeable indirect impacts. Guideline § 15064(d)(3).

If a direct physical change in the environment in turn causes another change in the environment, then the other change is an indirect physical change in the environment. For example, the construction of a new sewage treatment plant may facilitate population growth in the service area due to the increase in sewage treatment capacity and may lead to an increase in air pollution.

Guideline § 15064(d)(2) (emphasis added.)

Similarly, NEPA requires an EIS to include a discussion of both direct and indirect effects of the project, 40 C.F.R. § 1502.16(a)-(b), and defines indirect effects to include growth-inducing impacts:

Indirect effects may include growth inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems, including ecosystems.

40 C.F.R. § 1508.8(b)

The court in City of Antioch v. City Council (1986) 187 Cal.App.3d 1325 considered these effects with respect to a project consisting of construction of roadways and sewer facilities, which was approved by a municipality without preparation of an EIR. The court concluded that such anticipated effects required preparation of the EIR, despite their uncertainty: “[O]ur decision in this case arises out of the realization that the sole reason to construct the road and sewer project is to provide a catalyst for further development in the immediate area.” 187

Cal.App.3d at 1337; see also Stanislaus Audubon Society, Inc. v. County of Stanislaus (1995) 33 Cal.App.4th 144, 147 (EIR required to evaluate growth inducing impacts from golf course project because it would induce residential growth, despite fact that surrounding area was zoned agricultural, since zoning can change); Friends of "B" Street v. City of Haywood (1980) 106 Cal.App.3d 988, 1003 (EIR/EIS required for road construction project because project may accelerate conversion of single-family homes to commercial or multi-family uses); City of Davis v. Coleman (9th Cir. 1975) 521 F.2d 661, 674-675 (EIR required for project constructing highway interchange in an agricultural area where no connecting road currently exists because it will have growth-inducing effect).

Likewise, Appendix G to the CEQA Guidelines (the Environmental Checklist Form) provides that growth inducement is a potential environmental impact that must be considered in an EIR:

XII. POPULATION AND HOUSING. Would the project:

- a) Induce substantial population growth in an area, either directly (for example, by proposing new homes and businesses) or indirectly (for example, through extension of roads or other infrastructure)?

Guidelines, App. G, § XII(a).

**B. THE PROPOSED TRANSFER IS GROWTH-INDUCING IN SAN DIEGO COUNTY**

In the instant case, the project will have growth-inducing impacts because the transfer will make additional water available to San Diego County, as well as making the available water more secure and reliable. However, the draft EIR/EIS concludes that there will be no growth-inducing impacts because the project purportedly will not increase the amount of water delivered to the region. This "analysis" is incorrect for at least two reasons. First, the underlying assumption is simply not correct: the transfer provides rights to an additional 200,000 acre feet annually ("afa") (and potentially 300,000 afa) that San Diego County would not otherwise have access to.

Second, the analysis ignores the crucial fact -- indeed, the stated purpose for the transfer - that the project provides a secure, reliable source of water to sustain San Diego County's projected growth, reliability which is currently non-existent. This securing of a reliable source of water to insure against drought situations is itself growth-inducing, even if the amount of water supplied to the region in normal years remains constant.

**1. The Project Has the Potential for Increasing the Amount of Water Supplied to San Diego County**

The draft EIR/EIS bases its conclusion on the presumption that the project will not increase the amount of water supplied to the SDCWA service area. There is no evidence to support this assumption, however. Currently, under normal conditions, SDCWA has the right to essentially import all its needed water from MWD pursuant to the Metropolitan Water District Act (Water Code App. § 109 et seq.) and MWD's Administrative Code (§ 4202.) When MWD's supplies are inadequate, SDCWA maintains a "preferential right" to a certain percentage, less than 15%, of MWD's water supplies pursuant to section 135 of the Act.

The proposed project, however, adds to these supplies an extra 200,000 afa from the IID transfer, with the option of up to 100,000 afa more under certain circumstances. (EIR, p. 2-35.) These additional supplies are independent of SDCWA's right to MWD water. As noted in SDCWA's 2000 Urban Water Management Plan, "under the exchange agreement with Metropolitan, the Authority's water acquired from IID will be treated as independently owned local water in the same manner as independently owned local water supplies of other Metropolitan member agencies." (SDCWA 2000 Urban Water Management Plan p. 6-4 [Exh. 5].) Neither the proposed project, the MWD exchange agreement, nor any other project or agreement we are aware of, alters or limits the amount of water SDCWA can obtain from MWD. Accordingly, the 200,000-300,000 afa supplied by the IID transfer adds to the water supplies already available to SDCWA, rather than supplanting a portion of its current supplies.

Thus, the project will substantially increase the amount of water available to San Diego County to support its future growth. These additional water supplies will assist SDCWA in meeting the increasing water demands of the region as it continues its rapid growth. San Diego County is expected to grow from 2.94 million people in 2000 to over 3.85 million in 2020. (EIR/EIS p. 5-37.) During this period, SDCWA anticipates the County's water demands to increase from 619,000 afa in 1999 to 813,000 afa in 2020, nearly a 25% increase. (Exh. 5 p. 2-1.) Over the next 20 years, the county's population is expected to increase by another 33% to 5.12 million in 2040. (EIR/EIS p. 5-37.)

Increased growth requires increased supplies of water. This long-term transfer of 200,000-300,000 afa makes available a significant additional source of water to serve that growth. According to evidence submitted by Mr. Craig Jones (which is incorporated herein), a professional planner specializing in local and regional planning and associated environmental review and analysis, any increase in the amount of available water to an urbanizing region is necessarily growth-inducing. (Exh. 3.)

The relationship between the proposed SDCWA/IID transfer and the region's future growth was recognized in a 1998 report by the San Diego Association of Governments

("SANDAG") entitled San Diego Regional Economic Prosperity Strategy. (Exh. 6.) The report is intended to determine and recommend particular strategies for the San Diego region "to strengthen our existing industries, our emerging growth companies, and our universities and research and development institutions that create new enterprises." (Exh. 6, p. 4.) One of the crucial issues identified in the report was the availability of imported water, and SANDAG specified the IID transfer as a critical element, concluding that it could "substantially increase our supply of water." (Id. at p. 55.) The report further noted that imported water was "an essential resource" to San Diego, and that "[i]t will continue to influence the long-term business expansion and location decisions of our existing and emerging growth industries." (Id. at p. 65.) SANDAG further explained the importance of the agreement to such business decisions: "The ever-present perception of a looming water shortage in the region would quickly evaporate with the consummation of this agreement." (Id. at p. 55.)

Accordingly, the project will make available an additional 200,000-300,000 afa of water to the San Diego region. The availability of this additional water in the rapidly urbanizing San Diego region is necessarily growth-inducing. (Exh. 3.)

**2. The Project is Growth-Inducing Because it Secures a Reliable Source of Water**

In addition to creating an additional source of water, the project will have further growth-inducing impacts as a result of SDCWA's securing of a reliable source of water. Mr. Jones, a professional planner specializing in local and regional planning, indicates that, regardless of the amount of water available to an urbanizing region like San Diego, the reliability of that water source is crucial. According to Mr. Jones, the securing of a more reliable source of water inherently encourages and induces growth. (Exh. 3.)

Crucial to understanding the impact on potential growth is an understanding of SDCWA's current guaranteed supplies of water and that supply's inability to meet the current and future demands for water within its service area.

The demand for water within SDCWA's service area in 2000 was 695,000 afa and for the years 1995-2000 averaged approximately 622,000 afa. (Exh. 5, p. 2-3.) However, given the inadequate local water supplies, SDCWA has historically imported 75-95% of its needed water supplies from outside sources. (Id. p. 3-1.) MWD is the sole source of imported water for SDCWA. (Id.)

MWD has an obligation to supply water to SDCWA pursuant to the Metropolitan Water Act. However, the amount of water to which SDCWA is entitled, or guaranteed, from MWD is fixed pursuant to SDCWA's preferential rights under section 135 of the Act. SDCWA's

preferential right to MWD's supply is less than 15%.<sup>1</sup> The impact of this is noted by SDCWA in its 2000 Urban Water Management Plan:

At any time under preferential rights rules, Metropolitan could allocate water without regard to historic water use or dependence on Metropolitan. This could leave [SDCWA] short by more than half of its water supply in a hypothetical 20 percent shortage.

(Exh. 5 at p. 3-14 [emphasis added].)

This situation is exacerbated by the relatively small amount of water which MWD can guarantee its member agencies will be available in any given year, i.e., its "firm supply." MWD's current "firm supply" is 2.1 million afa, which amount would need to be apportioned among all of MWD's 27 member agencies, including SDCWA, the City of Los Angeles and the Metropolitan Water District of Orange County. (*Id.* at pp. 3-5 to 3-6.) Pursuant to SDCWA's preferential rights, it is entitled to less than 15% of this firm supply, or slightly more than 300,000 afa, whereas its water needs in 2000 were 695,000 afa (75-95% would need to be imported from MWD) and its projected 2020 demand of 813,000 afa. (*Id.* at pp. 3-4, 2-3, 2-5.)

Although MWD has been able to supply more water than its "firm supply" (due to, for example, declarations of surplus water in the Colorado River by the Department of Interior), SDCWA is nevertheless faced with the prospect of a guaranteed supply of imported water dramatically short of its current and future needs:

Until the preferential rights issue is resolved, [SDCWA] must assume for planning purposes that its firm water supply from Metropolitan is limited to 303,630 AF, representing its existing preferential right to water under the Metropolitan Act.

(*Id.* at p. 3-15.)

Moreover, there is no guarantee that MWD's current firm supply will continue at that level. In fact, it may decrease significantly in the near future. The Quantification Settlement

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<sup>1</sup> SDCWA disputes MWD's contention that its preferential right is 15%, and contends it should be somewhat more, about 22%. However, SDCWA's lawsuit against MWD on this issue, which was filed in January 2001, was recently dismissed, but may still be appealed by SDCWA.

Agreement (“QSA”) between IID, MWD and the Coachella Valley Water District (“CVWD”) regarding reallocation of these agencies’ rights to Colorado River water, has not been approved. If the QSA is not approved, the result will be that MWD may lose 650,00 afa of its supply from the Colorado River. (Draft EIR for the QSA, “No Project Alternative” description.) This will result in a reduction of MWD’s “firm supply” of water from 2.1 million afa to 1.6 million afa. SDCWA’s preferential right to MWD’s water, then, would reduce from approximately 300,000 to approximately 230,000 afa.

Accordingly, SDCWA’s reliable, guaranteed supply of water is significantly short of the current and future demand within its service area. This potential shortfall has substantial ramifications for the growth potential within San Diego County. SDCWA has itself acknowledged that if it is unable to increase its guaranteed supply of water, there will be potentially drastic impacts upon development within the county. In January 2001, SDCWA filed a lawsuit against MWD challenging MWD’s calculation of SDCWA’s preferential rights. SDCWA claimed they should be higher than its approximate 15%. In its complaint, verified under penalty of perjury by its General Manager, SDCWA stated that MWD’s failure to increase its preferential rights (i.e., increase the amount of reliable water supplies) “is chilling needed water supply management and planning efforts in Southern California, generally, and in the service territory of SDCWA specifically.” (SDCWA v. MWD, et al. Complaint [Exh. 7] p. 20 [emphasis added].)

SDCWA further stated that its failure to obtain increased amounts of reliable water by way of an increased calculation of preferential rights:

would place almost fifty percent (50%) of SDCWA’s water supply at risk, and would cause SDCWA irreparable harm in that it would destroy business confidence, undermine investment, translate directly into lost production, reduce income, cause lost jobs and result in a weakening economy in San Diego County.

(Id. at p. 28 [emphasis added].)

As acknowledged by SDCWA, a reliable source of water supply is essential to accommodate the growth planned for the San Diego County. Absent a reliable source of water, growth in the region would be slowed or stalled as local businesses make decisions whether to expand or stay within the region and other businesses decide whether to move into the County. (Exh. 3.) For example, the biotechnology industry is one of San Diego’s most important and fastest growing industries, and it needs a reliable supply of water to survive and grow. In a September 1999 public hearing before CALFED regarding its Bay-Delta program, Alan Smith of Biocom/San Diego, the trade association for the life science industry in San Diego County, made the following remarks regarding that industry’s need for reliability in its water sources:

If life science companies are going to prosper, grow, and survive in California, we need assurance that there will be a consistent quantity of water, Monday through Friday, winter, spring, summer and fall. IDAK [sic] Pharmaceutical, for example, has been contemplating for some time a manufacturing plant that would jump them from 65,000 gallons of water a day as an R and D to 750,000 gallons a day as a manufacturing facility.

(CALFED 9/1/99 Transcript [Exh. 8], p. 80; see also Exh. 3.)

Mr. Smith's comments were echoed by those of Don Parent, the chairman of the board of the East (San Diego) County Development Council. Mr. Smith emphasized the importance of reliability of water supplies to "high-tech and biotech firms in our area. They contribute billions to our regional economy and will suffer financially unless CALFED makes significant improvements in its program." (Exh. 9, p. 70; see also Exh. 3.)

Likewise, a reliable source of water is necessary to support the projected increased population in the region. As noted by the project's draft EIR/EIS, all of SANDAG's and SCAG's population forecasts "are based on the assumption that the necessary water supplies would continue to be available to the region into the future." (EIR/EIS p. 5-37.) This assumption, however, simply cannot be made given the current uncertainty of SDCWA's water supplies.

It is precisely for this reason that SDCWA is seeking this long-term transfer of water: to obtain an increased amount of secure, reliable water supply to support the growth planned for the region. The Notice of Intent to Prepare an EIR/EIS for this project explicitly stated that, by this project, "SDCWA seeks to acquire an independent, reliable alternate long-term water supply to provide drought protection and to accomodate current and projected demand for municipal, domestic, and agricultural water uses." (64 Fed. Reg. 186, p. 52103 [emphasis added].) Moreover, in its 2000 Urban Water Management Plan, SDCWA notes that water transfers (like the IID-SDCWA transfer) have become one of its "greatest potential resources for meeting future needs." (Exh. 5, p. 3-16.) SDCWA further explains that its objective is "to secure firm supplies to meet dry year demands. At this time we rely on a supply from Metropolitan which, for quantities above our preferential right, is not considered reliable." (Id. p. 5-3.) "The Authority-IID Water Conservation and Transfer Agreement will increase the reliability of the Authority's future imported water supplies." (Id. p. 3-16.)

SDCWA explains the benefits of the project and the increased reliability as follows:

During dry years, when water availability is low, the conserved water will be transferred under IID's Colorado River

rights, which are among the most senior in the Lower Colorado River Basin. Without the protection of these rights, the Authority could suffer delivery cutbacks.

(Id. p. 3-17.)

In addition, the supplies from IID, though delivered by MWD, will be treated identically to local supplies independently owned by SDCWA. (Id. p. 6-4.) For all these reasons, then Secretary of the Interior Bruce Babbitt publicly stated of the project: "For San Diego, it means your growth future is assured if you use water wisely." (S.D. Union-Tribune, 1/17/01 [Exh. 9, p. 2].)

Moreover, the need for assured, reliable sources of water to support development and growth is not merely theoretical or abstract; it is now the law. In 2001, the California Legislature passed Senate Bill 221, the relevant portions of which are codified at Government Code § 66473.7. Senate Bill 221 prohibits approval of developments of 500 units or more unless certain assurances can be made about the availability of sufficient water supplies to support such development. For each such project, the applicable public water system must make a written verification that sufficient water supplies exist to support the project, and that verification must be supported by substantial evidence. Gov't Code § 66473.7(b)-(c). "Sufficient water supply" is defined by the statute to be:

the total water supplies available during normal, single-dry, and multiple-dry years within a 20-year projection that will meet the projected demand associated with the proposed subdivision, in addition to existing and planned future uses, including, but not limited to, agricultural and industrial uses.

Gov't Code § 66473.7(a)(2).

The determination of the availability of sufficient water supply must take into account factors such as the historic availability of water supplies over the last 20 years and the amount of water that the water agency "can reasonably rely on receiving from other water supply project." Id.

The basis for Senate Bill 221 was the realization that water supplies are insufficient to support the projected growth in California, and that new development should not proceed unless and until a sufficient water supply was assured. The bill's legislative history notes this basis:

California's increasing population and limited water supply virtually guarantee a future of insufficient water supply to support

California's forecasted growth. While this bill provides a much needed link between the planning decisions made by cities and counties and the amount of water available for development, it does not address the state's fundamental need for additional water supplies.

(Sen. Ag. & Water Resources Comm., 4/24/01 [Exh. 10], p. 4 [emphasis added].)

The legislative history is also replete with evidence linking the need for additional, reliable water supplies and the ability to accommodate planned growth, for example:

Under present conditions, the [State Water Project] and the [Central Valley Project] currently have greater demands than they are able to meet. According to the Department of Finance, California's population will double by 2040. Supporters [of the bill] contend that approving new development faster than new water supplies are developed puts existing customers at risk during future droughts. Supporters also maintain that the bill will encourage the development of new supplies at the local level in conjunction with the reality of growth needs in the region.

(Assem. Comm. On Water, Parks & Wildlife, 7/10/01 [Exh. 11], p. 6 [emphasis added].)

According to the sponsor, East Bay Municipal Utility District, forecasters expect between now and 2020, California is expected to add over 15 million more residents, and the state will face a major challenge to ensure adequate quantities of safe and clean water to sustain the population, the environment, and the variety of industries and businesses of the state. They contend that the state's continued economic prosperity depends largely on its ability to retain a diverse industrial economy, including a strong manufacturing component; and that many industries, particularly manufacturing firms, rely heavily upon reliable, quality water supplies to remain competitive. They feel that this bill is essential in the early planning in improving linkages between land use and water supply and land use planning as new development projects move through the subdivision process.

(Sen. Rules Comm., Senate Floor Analyses, 9/12/01 [Exh. 12], pp. 6-7 [emphasis added].)

Absent a reliable source of water in excess of what SDCWA currently has from MWD,

SDCWA cannot comply with this statute for large developments within San Diego County. SDCWA essentially acknowledged this in its verified complaint against MWD. It stated it needed a Court judgment declaring that its preferential right to MWD water was greater than its current 15%:

so that SDCWA can responsibly plan for its future water supply, make required representations to local and state governmental agencies as the reliability of its existing supply of water, and/or seek alternative supplemental sources of water supply if necessary to augment its existing supply of water. SDCWA is currently unable to fulfill its duties to the citizens and businesses of San Diego County because it is unable to determine with any certainty how Metropolitan will determine or be required to determine its preferential rights under Section 135.

(SDCWA v. MWD Complaint p. 25.)

Accordingly, this transfer project is a crucial step in SDCWA's ability to secure reliable water sources to support the growth planned for San Diego County. The transfer, therefore, by securing 200,000-300,000 afa of secure, reliable water, will necessarily accommodate and induce growth within the region, contrary to the conclusions in the draft EIR/EIS.

**3. The EIR/EIS Incorrectly Finds no Growth-Inducement on the Ground that the Water Supplied Will be Used to Support Growth Already Planned**

The draft EIR/EIS's analysis of the growth inducement appears to be based upon the additional argument that the water provided to SDCWA by the project will only be used to accommodate growth in the region that has already projected. This circular reasoning is both factually and legally flawed.

First, this analysis makes the mistake of judging the impacts of the project against the conditions envisioned by future projections rather than the conditions currently existing on the ground. CEQA, however, requires that a project's impacts be measured against the actually existing conditions, not hypothetical conditions envisioned in a General Plan or other projections. Christward Ministry v. Superior Court (1986) 184 Cal.App.3d 180, 190.

Furthermore, the argument incorrectly assumes that the projected growth has been planned for. It has not. Rather, the projections relied upon in the draft EIR/EIS are merely SANDAG's population projections for 2020. The draft EIR/EIS does not rely upon the growth planned by San Diego County's General Plan. Indeed, the County's General Plan 2020 Update is not even near completion or approval. Contrary to the implication in the draft EIR/EIS, the

growth projections which will be served by these additional water supplies have not been comprehensively planned for.

Finally, the analysis is based upon transparent circular reasoning. The draft EIR/EIS explicitly acknowledges that the growth projections relied upon in the draft EIR/EIS “are based on the assumption that the necessary water supplies would continue to be available to the region into the future.” (EIR/EIS p. 5-37.) Thus, these projections will not be met if the necessary water supplies are not available. The entire purpose of this project is to ensure that this condition is met, buy obtaining additional and more reliable water supplies for the future.

Likewise, the draft EIR/EIS acknowledges that its growth projections “do not assume significant seasonal or year-to-year variability in the water supply. Rather, they are predicated on an assumed consistency in water quantity and quality.” (EIR/EIS p. 5-39 to 5-40.) Again, the project is specifically designed to insure against the potential for “seasonal or year-to-year variability in the water supply” and to insure a consistent water quantity. In other words, this project enables the growth projections cited in the draft EIR/EIS. Accordingly, the draft EIR/EIS’ circular reasoning cannot support its conclusion that this project will not be growth-inducing.

**C. GROWTH INDUCEMENT WILL ADVERSELY IMPACT FISH, WILDLIFE AND OTHER INSTREAM BENEFICIAL USES OF WATER**

As discussed above, the project will induce growth within the San Diego region by providing additional and more reliable supplies of water. Such growth will necessarily adversely impact fish, wildlife and other instream beneficial uses of water.

The traditional pattern of development within San Diego County has been one of urban sprawl. Furthermore, the planning documents of the local land use agencies within the region provide no protection against such sprawl. Accordingly, any growth within the region will likely take the form of urban sprawl development.

The result of such growth and urban sprawl will include a multitude of adverse environmental impacts. As demonstrated by the testimony of Suzanne Michel and David Hogan (Exhs. 1 and 13), which is incorporated herein, such impacts will include substantial impairment of water quality and destruction of valuable habitat and wildlife. Accordingly, this project will unreasonably affect fish, wildlife and other instream beneficial uses of water by inducing and accommodating growth and urban sprawl within the San Diego region, which will, in turn, result in adverse impacts related to, for example, biology and water quality.

**D. CONCLUSION**

For the foregoing reasons, we respectfully request that the Board not approve the Long-Term Transfer Petition unless and until the draft EIR/EIS addresses the growth inducing impacts and indicates that the responsible land use agencies within San Diego County provide assurances that they can and will take the necessary steps to ensure that the growth accommodated by this project will not adversely impact the environment.

Sincerely,

**JOHNSON & CROSS LLP**

Jared Phil Hanson