

LAW OFFICE OF
J. WILLIAM YEATES

3400 COTTAGE WAY, SUITE K
SACRAMENTO, CALIFORNIA 95825
TELEPHONE: (916) 609-5000
FACSIMILE: (916) 609-5001
www.enviroqualitylaw.com

J. WILLIAM YEATES

MARY U. AKENS
KEITH G. WAGNER

October 18, 2004

VIA HAND-DELIVERY

Jim Abercrombie, General Manager
Amador Water Agency
12800 Ridge Road
Sutter Creek, CA 95685

Re: Revised Section 4.1 of the Environmental Impact Report (EIR) for the
Amador Transmission Project
State Clearinghouse #2000022106

Dear Mr. Abercrombie:

On behalf of Protect the Historic Amador Waterways ("PHAW"), we have the following comments on the Revised Section 4.1 Water Resources of the DEIR prepared for the Amador Transmission Project.

I. COMMENTS ON RECIRCULATED AND REVISED SECTION 4.1

A. LACK OF BASELINE ENVIRONMENTAL INFORMATION TO DETERMINE THE IMPACT OF ELIMINATING CANAL LEAKS THAT PROVIDE SURFACE AND SUBSURFACE STREAM FLOWS TO LOCAL STREAMS.

At page 4.1-28, the following language was added under the subheading, Potential Influence of the Amador Canal on the Hydrology of Other Waters:

The substantial local water sources have been examined and do not appear to be dependent for their persistence and use on canal leakage. Leakage from the canal has been well documented in the KASL report. The ephemeral nature of most canal leaks that produce seeps and spring-like areas makes it impossible to list all possible locations. Most of these sites last for a limited duration as repairs are made to the canal in the course of normal maintenance.

COMMENT: When and how were "the substantial local water sources" examined? Has that information been made available to the public?

The Water Agency's claim that "the ephemeral nature of most canal leaks that produce seeps and spring-like areas makes it impossible to list all the possible locations," is simply an excuse used by the Agency to avoid its responsibilities under CEQA to investigate and evaluate the potentially significant environmental effects of its proposed action.

In response to the EIR's claim that it is impossible to determine the location of seeps and spring-like areas resulting from canal leaks, the Law Office of J. William Yeates commissioned a report by Dr. Eric Larsen and Alexander Fremier ("Larsen-Fremier report") on behalf of PHAW that has identified 183 acres of riparian and wetland vegetation that is dependent on the water from the Amador Canal. (A copy of this report is attached as Exhibit 1 to this comment letter. The report's discussion and findings is incorporated into this letter.) Based on an interpretation of 13 aerial photographs taken on July 12, 2004, and subsequent surveys on the ground on September 13, 2004, Dr. Larsen and Mr. Fremier have conservatively identified nine acres of canal-dependent vegetation contiguous to the canal, 170 acres of canal dependent vegetation non-contiguous to the canal, and four acres of vegetation contiguous to canal-fed ponds.

COMMENT: Why is it infeasible for the Water Agency to commission similar aerial photographs of the project area along the Amador Canal to determine baseline environmental conditions, which include those areas where water-dependent vegetation is dependent upon canal leaks?

For Canal-Dependent Riparian Vegetation Contiguous to the Canal, the Larsen-Fremier report suggests confirmation strategies to further validate the influence of water from the Canal on vegetation contiguous to the canal: (1) direct on-the-ground measurements of water-dependent and wetland areas; and (2) installation of groundwater piezometers. (See Larsen-Fremier report at page 10, attached as Exhibit 1 to this letter.)

COMMENT: Why is it infeasible for the Water Agency to undertake direct on-the-ground measurements, and install groundwater piezometers to ascertain baseline environmental conditions?

The Larsen-Fremier report points out that there are 24 operational waste gates along the existing canal that leak. This report also suggests that there are at least three methods that could be used to quantify direct leakage through these waste gates: (1) use of a portable weir or other system to directly measure the flow; (2) survey the waterways that follow the seeps and make an inventory of photosynthetically active vegetation; and, (3) perform a GIS analysis from aerial photos. (See Exhibit 1 at pages 14 & 15.)

COMMENT: Why is it infeasible for the Water Agency to assess the baseline conditions associated with water leaking from the waste gates?

The Larsen-Fremier report also recommends a water balance calculation (see Exhibit 1, page 15) to quantify how much water is contributed from the existing canal to other sources, like the riparian vegetation.

COMMENT: Did the Water Agency undertake any similar water balance calculation in its preparation of the DEIR, or recirculated section 4.1? If not, explain why the Agency did not provide this baseline information.

Where canal leakages are clearly flowing above ground in discrete channels, the Larsen-Fremier report notes that it is feasible to accurately measure this flow and quantify the vegetation dependent on this water.

COMMENT: Why has the Water Agency failed to provide this baseline information regarding the canal's influence on the existing environment?

The Larsen-Fremier report determined from the aerial photographs and followed with ground surveys that there are springs, seeps, and ponds that are directly supplied by subsurface seepage from the canal. (See Exhibit 1, page 16.) Larsen-Fremier also recommends a way to "fingerprint" the water in the canal and in the springs, seeps, and ponds to confirm that the canal is the source of water. (*Ibid.*)

COMMENT: Why has the Agency failed to evaluate the source of the water for the springs, seeps, and ponds that appear to depend upon canal water?

Beginning at page 4.1-38 of the recirculated section 4.1 of the DEIR, the Agency purports to evaluate how its proposed project may affect the hydrologic processes of the streams. Impact 4.1-1 focuses exclusively on a stream's "ability to support the natural erosion process, material transport and sediment deposition functions."

COMMENT: How does this impact relate to the dewatering of the Amador Canal, and the loss of water from the canal on local stream hydrology?

At page 4.1-39, new text added to Impact 4.1 claims that "the only hydrological impact that the Pipeline Alternative would have on certain stream reaches in the Jackson Creek and Sutter Creek watersheds would be some flow reduction due to the elimination of leakage associated with the Amador Canal."

COMMENT: Since this impact will not cause erosion or any other effect associated with the listed significance thresholds on page 4.1-39, what are the physical changes to the existing baseline environmental conditions of reducing the surface flow within the affected watersheds?

The Larsen-Fremier report recommends a simple experiment to quantify the canal's contribution to local stream channels. (See Exhibit 1, page 17.) Larsen-Fremier points out that the Agency could reduce the flow in the canal for a period of time and then measure the reduction in the flow of the South Fork Jackson Creek in order to determine the canal's contribution to this creek. This would provide the interested public and other interested public agencies and local jurisdictions with information about the Canal's influence on the South Fork Jackson Creek's surface flow.

Included in the Larsen-Fremier report is a hydrology study based on three years of flow data in the canal collected by East Bay Municipal Utilities District (EBMUD) and three years of flow in Jackson Creek measured by the City of Jackson just below the City at the City's sewage

treatment plant. (See Exhibit 1, pages 17 through 23.) This hydrology study demonstrates that the flows in the Amador Canal are influencing flows in Jackson Creek.

COMMENT: What are the potentially significant environmental effects (*i.e.*, potentially substantial adverse physical changes in land, water, minerals, flora and fauna) of reducing the Amador Canal's contribution to the streams within the Jackson Creek watershed?

The recirculated section 4.1 claims the leaks at the Canal are too ephemeral to locate. (Sec. 4.1, p. 4.1-28.) The Larsen-Fremier report clearly identifies locations where substantial riparian and wetland vegetation exist due to the measurable leaks along the Canal.

COMMENT: Why is it infeasible for the Agency to verify existing leaks along the Amador Canal, which are identifiable by the proximity of vegetation that is dependent upon water in order to survive?

Larsen-Fremier also suggests a way to confirm the riparian vegetation that depends on the Amador Canal from vegetation supplied by water from other water sources. (See Exhibit 1, page 17.)

COMMENT: Did the Agency do any field evaluation of riparian vegetation adjacent to the canal or any of the streams, seeps, or leaks supported by Canal water?

COMMENT: Did the Agency do any core sampling of riparian vegetation adjacent to the canal or any of the streams, seeps, or leaks supported by Canal water?

COMMENT: If the Agency did not do either of these methods to determine the dependence of riparian vegetation on Canal water, how did the Agency determine the effect of dewatering the Canal on riparian vegetation that is dependent on canal leaks?

At page 4.1-41 of the recirculated section 4.1, new language has been added acknowledging that dewatering the Amador Canal "will cause approximately a 19 percent reduction in the length of perennial streams in the South Fork watershed in drier water years." It is unclear from this statement, how a 19 percent reduction in the length of perennial streams will affect the physical environment. For example, using a transportation corridor, like Interstate 80 ("I-80"), the removal of the Bay Bridge crossing San Francisco Bay would only be a very small percentage reduction in the total length of I-80 within California. Yet, the removal of this small segment of I-80 would have substantial adverse effects on traffic congestion and circulation in and around the Bay Area.

COMMENT: So, rather than state the effect of dewatering a stream, as a percentage reduction in the overall length of the stream, what effect will the reduction of stream flow have on land, water quality, minerals, flora, fauna, and aesthetics that depend upon this segment of a perennial source of water?

The Larsen-Fremier Report, after examining 13 aerial photographs of the project site which includes the Amador Canal and after additional ground surveys to validate what was seen on the aerial photographs to what is actually on the ground, determined that 183 acres of riparian and wetland vegetation depend upon water from the Amador Canal. The Amador Water Agency has a duty under CEQA to determine the environmental consequences that dewatering the Amador Canal will have on this baseline environmental condition. None of the thresholds of significance used by the Agency's DEIR address this physical change. On August 12, 2002, the California Department of Fish and Game ("CDFG"), a responsible agency for the Amador Transmission Project, sent a letter to the Amador Water Agency pointed out deficiencies in the Agency's EIR. PHAW incorporates the comments made by CDFG on August 12, 2002, as the responsible agency's concerns are still valid today. (CDFG's August 12, 2002 letter is attached as Exhibit 2 to this comment letter.)

B. ADDITIONAL COMMENTS ON THE ADEQUACY OF THE AGENCY'S EVALUATION OF ITS PROPOSED PROJECT'S IMPACTS ON THE EXISTING ENVIRONMENT.

i. "OTHER PARAMETERS" RELIED UPON BY THE AGENCY ARE NOT IDENTIFIED IN REVISED SECTION 4.1.

Under the "Method of Analysis" section at page 4.1-37, new language has been included in Revised Section 4.1 stating: "These impacts were evaluated against both the standards of significance and *other parameters*." (Emphasis added.) The Revised Section also states that the other relevant parameters are discussed, no discussion of those other parameters can be found. Furthermore, nowhere does the Revised Section identify what those other parameters are.

COMMENT: What are those other parameters referenced at page 4.1-37?

COMMENT: How were these other unstated parameters used in determining the significance of the project's effect on the existing environment?

ii. ANALYSIS OF IMPACT 4.1-2 IS NOT CONSISTENT WITH DISCUSSION WITHIN LOCAL SETTING OF DEIR

The analysis of Impact 4.1-2 states "One reach of the South Fork Jackson Creek and some reaches of certain tributaries to the South Fork influenced by canal leakage [] may become intermittent in the absence of accretion flows from the Amador Canal during August and September and possibly October. . . ." (Page 4.1-40, emphasis added.) However, within the descriptive text under the subheading "Unimpaired Hydrology" at page 4.1-11, the DEIR states: "The data in the four tables indicates that under natural conditions all of the local streams in the project area that could capture leakage from the Amador Canal, except Sutter Creek, would be intermittent in some reaches by late summer or early fall in all but above normal or wet water years." (Page 4.1-11 emphasis added.) The terminology "would be" has been added to Revised Section 4.1.)

COMMENT: Did the Agency investigate the Canal's contribution to the impacted streams within the Jackson Creek watershed?

COMMENT: Under the narrative for South Fork Jackson Creek (p. 4.1-40), the South Fork of the South Fork is purported to have a minimum flow of 0.2 cfs year-round. However, Table 4.1-5 states that the flow is 0.01 during August and September. Please explain this discrepancy.

At page 4.1-40, the DEIR states that Spinetta Creek will become intermittent between the June and October months, depending upon the climate. New language added to this analysis states, that natural springs in the Spinetta Creek watershed would continue to provide water to Spinetta Creek so that it would remain perennial downstream of this location. Within the descriptive local setting section of the DEIR under the subheading "Unimpaired Hydrology" on page 4.1-11, the DEIR states, "the precise contribution of other water sources to surface streams is difficult to determine and is variable over time."

COMMENT: How did the Agency determine the contribution of the natural springs to Spinetta Creek?

COMMENT: Where are the natural springs in the Spinetta Creek watershed located?

COMMENT: How did the Agency determine that these natural springs are not influenced by water from the Amador Canal?

COMMENT: How does the Agency reconcile its conclusion regarding additional flows when the Agency's analysis "does not assume any supplemental water is contributed to surface streams by local springs or seeps?" (Page 4.1-11.)

On page 4.1-40 the Agency states that the stockpond on the Fregulia Ranch is "believed to be spring-fed and not created by leakage from the Amador Canal." It is the Agency's duty to investigate whether the Fregulia Ranch is spring-fed or whether it is supported by the leaks and seeps of the Amador Canal. The Larsen-Fremier report (Exhibit 1, p. 16) states,

The areas of seeps and ponds like those on the Fregulia property (Figure 19), which depend on the canal water, could be confirmed by developing a method to "fingerprint" the water in the canal near the pond and seeps and then comparing the water signature in the canal with the signature of the water in the ponds or seeps. This could be accomplished by quantification of water quality measures like temperature, PH, isotopic signatures of the water, or other indicators.

COMMENT: How is the Agency able to conclude that the Fregulia stock pond is "spring-fed" without first attempting to "fingerprint" the source of water?

New text has been added to Section 4.1 regarding impacts to the North Fork of the South Fork with the South Fork of the South Fork to the Fregulia Ranch. This new language states that “field measurements of flows in the South Fork Jackson Creek” (Page 4.1-41)

COMMENT: When were these field measures taken?

COMMENT: Where is this information? Is this information available for public review?

COMMENT: Was there any attempt to fingerprint the source of the waters?

COMMENT: How does the Agency reconcile its conclusion regarding additional flows when the Agency’s analysis “does not assume any supplemental water is contributed to surface streams by local springs or seeps?” (Page 4.1-11.)

The DEIR states with regard to Middle Fork Jackson Creek that “it is not known if local springs or other water sources would provide accretion to this stream reach.” (Page 4.1-42.) New language has been added to this section stating, “[b]elow this reach, field measurements indicate that the creek is a gaining stream, and it is expected that it would remain perennial with implementation of the Pipeline Alternative.” (Page 4.1-42.)

COMMENT: When were these field measurements taken?

COMMENT: Where is this information? Is this information available for public review?

COMMENT: Was there any attempt to fingerprint the source of the waters?

How does the Agency reconcile this new language that claims streamflow increases in the South Fork and Middle Fork, based upon alleged “field measurements” that are not included in section 4.1, when the DEIR states in the Local Setting section under the subheading “Unimpaired Hydrology” that the unimpaired hydrology analysis “does not assume any supplemental water is contributed to surface streams by local springs or seeps?” (Page 4.1-11.)

In addition, new language added to section 4.1 at page 4.1-43 states:

A precise tally has not been made of which springs or seeps are related to canal leakage and which are not. The substantial local water sources have been examined and do not appear to be dependent for their persistence and use on canal leakage. Leakage from the canal has been well documented in the KASL report. The ephemeral nature of most canal leaks that produce seeps and spring-like areas makes it impossible to list all possible locations. Most of the sites last for a limited duration as repairs are made to the canal in the course of normal maintenance.

COMMENT: The Agency must provide all the data and field information that it relied in determining whether stream flow in existing streams is being influenced by water from the Canal, or from other sources. The public and interested public agencies and local jurisdictions should be given the opportunity to review this information to determine whether the information supports the determinations reached in the DEIR regarding the influence of the Amador Canal on existing streams.

COMMENT: Please identify the waterbodies that are totally dependent on canal leakage as referenced on page 4.1-43.

Again, regarding the existing canal leaks the Larsen-Fremier report provides information the Agency could use to identify the existing canal leaks. PHAW is willing to provide the Agency with a copy of the aerial photographs and make Dr. Larsen and Mr. Fremier available to explain their finding and review the aerial photographs with the ground surveys that they took.

iii. DISCREPANCIES WITH THE DATA USED TO COMPILE SOME OF THE TABLES IN SECTION 4.1.

Table 4.1-11 shows that the total of all the leakage to the six streams over the 12-month period in 1998 is about 1340 acre feet ("AF"). However, Table 4.1-9 states that for the same period in 1998, the total estimated canal loss is 5513 AF.

COMMENT: How does the Agency explain this discrepancy in the baseline data?

Table 4.1-9 shows the 1998 annual loss as a percentage of diversions to be 53% (Annual Diversion of 10,350 AF and an estimated loss of 5,513 AF.) Table 4.1-11, which is based on 1991 diversion shows August to have the maximum total leakage, but that amount is only 20% of the total diversion through the Canal.

COMMENT: How can the canal average 53% leakage annually, when the largest monthly average is only 20%?

In developing Table 4.1-11, the DEIR relied upon the KASL Amador Canal Life Extension Final Study (April 1991) and EIP Associates Amador Water Agency Hydrologic Analysis (July 2000).

COMMENT: The source data in the unpublished EIP report does not agree with the data in Table 4.1-11. Please explain.

COMMENT: The total annual leakage flows in the EIP report only add up to 1774 AF. Yet Table 4.1-9 lists the total annual leakage for that same period at 5513 AF. Please explain the discrepancy in baseline information.

COMMENT: The EIP report uses data from water years 1992 and 1993 in its report. Please explain how EIP's use of data from 1992 and 1993 can be used to determine contributions by Amador Canal in 1998?

iv. THE AGENCY'S STATEMENT OF REASONS FAILS TO COMPLY WITH CEQA.

The Statement of Reasons for why the project will not have a significant effect on stream hydrology is based on irrelevant standards of significance and with limited to no direct field knowledge of the effect of Canal water on the baseline environmental conditions. For instance, the revised section 4.1 admits that certain segments of local streams will be changed from a perennial to an intermittent stream, however the standards of significance used by the agency to measure the significance of this physical change do not address this physical change to the existing environment. By using irrelevant standards or thresholds of significance, the Agency ignores the Transmission Project's impacts, no matter how significant, because the thresholds are not relevant to the actual impacts to the baseline (or existing) environment.

Additionally, the Statement of Reasons uses the length of streams as a yardstick to determine the significance of the physical change to the existing streams. Again this is merely drawing a line on a piece of paper, erasing a small portion, and then claiming no representative change on the ground.

COMMENT: The DEIR determined that 1.6 miles of stream in the Middle Fork Jackson Creek will become intermittent/ephemeral. Earlier, at p. 4.1-42, it is claimed that .08 miles of stream would be impacted. Please explain.

COMMENT: Please explain the relevance that the streams impacted by the Agency's project are not considered wild, scenic or recreational under the California Wild and Scenic Rivers Act.

COMMENT: Please explain how changing a perennial stream to an intermittent stream would not impact biological resources as claimed in the Statement of Reasons, at page 4.1-44. How does the Agency reconcile the Statement of Reason with the comments in the California Department of Fish and Game's August 12, 2002 letter?

COMMENT: The Statement of Reasons fails to explain how dewatering one section of a stream may affect other downstream sections or segments

COMMENT: How can DEIR even determine the hydrological impacts of the proposed project when it claims that the all Canal leaks and seeps are impossible to list?

C. REVISED SECTION 4.1 FAILS TO ADEQUATELY EVALUATE THE AMADOR TRANSMISSION PROJECT'S ADVERSE WATER QUALITY IMPACTS

The EIR states: "Where water remains and the riparian vegetation is in tact, the South Fork is not expected to warm to the detriment of either trout or other warmwater fishes that currently reside in the stream." Additionally, the EIR states: "Water temperatures should remain acceptable in all reaches supporting a mature riparian plant community adjacent to the stream." (4.1-55) The Larsen-Fremier report has determined that 183 acres of riparian vegetation that is dependent on Canal water supplied by leaks from the canal will be affected by dewatering the Amador Canal.

COMMENT: How can the DEIR even determine the hydrological impacts of the proposed project on water quality when it claims that the all Canal leaks and seeps are impossible to list?

COMMENT: How did the EIR consultants determine that streamflows dependent on Canal water would not warm up considerably when this flow is permanently curtailed?

COMMENT: Where streams are changed from perennial to intermittent streams, what effect can this have on certain organisms and fish species that have grown accustomed to a perennial flow of water even in dry summer and fall periods?

COMMENT: On what basis, now that it has determined that certain segments of streams will become intermittent during dry summer and fall months, does the DEIR conclude that the existing riparian plant community adjacent to the stream would continue to thrive?

COMMENT: Has the agency done any plant surveys or core samples in order to characterize the plant communities adjacent to the leaks, seeps, and streams that will be affected by dewatering the Amador Canal?

COMMENT: Impact 4.1-5 concludes that water quality impacts are less than significant because current land management practices would have a larger impact on water quality than on the elimination of leakage from the Amador Canal, despite the admitted changes to the existing environment. Are the existing land use practices a part of the baseline environmental conditions?

COMMENT: Impact 4.1-5 concludes that mature riparian plant communities adjacent to the stream will continue to be supported. Are the existing aesthetics a part of the baseline environmental conditions?

COMMENT: Where is the statement of reasons supporting the Agency's finding of less than significant impact for Impact No. 4.1-5?

Jim Abercrombie, General Manager

AMADOR WATER AGENCY

October 18, 2004

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On behalf of PHAW we appreciate the opportunity to comment on the Agency's Revised Section 4.1, but recommend that the Agency revise section 4.1 Water Resources by providing necessary baseline information, relevant standards of significance, and clarifying inconsistencies in the data used. The entire DEIR should be recirculated for public review and comment, as revised section 4.1 refers to other sections of the DEIR, and it is unclear whether the revisions may alter other sections of the DEIR. We believe the findings in the Larsen-Fremier report provide baseline information about riparian and wetland vegetation, and the location of Canal leaks that feed springs and seeps that support this water-dependent vegetation that does not exist in the section 4.1 or section 4.2 of the DEIR.

Sincerely,

J. William Yeates

Attachments

- Exhibit 1: Larsen and Fremier, Identification of Riparian and Wetland Vegetation Dependent on Water Supplied by the Amador Canal , and, An Analysis of Dependence of Jackson Creek Flows on Flow in the Amador Canal (October 12, 2004)
- Exhibit 2: August 12, 2002 letter to Jim Abercrombie, General Manager, Amador Water Agency from Larry Eng, Deputy Regional Manager, California Department of Fish and Game.