



January 30, 2006

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Paul A. Marshall
Department of Water Resources
South Delta Branch Draft EIR Comments
1416 9th Street
Sacramento, CA 95814

Sharon McHale
U.S. Bureau of Reclamation
Mid-Pacific Region
Draft EIS Comments
2800 Cottage Way
Sacramento, CA 95825

Re: City of Antioch's Comments on South Delta Program, EIS/EIR

Dear Mr. Marshall and Ms. McHale:

The City of Antioch appreciates the opportunity to comment on the South Delta Improvements Program EIS/EIR. While we join with our colleague Contra Costa Water District in many of its comments, Antioch also has unique historic and legal perspectives and special concerns relating to its citizens.

Established in 1872, Antioch is Contra Costa County's oldest incorporated city. Its lineage traces back to its ancient¹ namesake city along the banks of the mighty Euphrates River in what is now modern day Syria. Antioch was diverting water from the San Joaquin River prior to December 19, 1914, the date that the Water Commission Act became effective, requiring subsequent appropriators to obtain permits and licenses from what is now the State Water Resources Control Board.

¹ Since the earliest days of Christianity.

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Antioch's non-statutory right is just as valid today as a pre-1914 statutory right and is probably better than a statutory right because it is not limited to a recorded maximum quantity or specified diversion works. The city's use of water from the river has been continuous since initiated by the original purveyors of water to the City more than 130 years ago. The only limitation on Antioch's water right is the Constitutional mandate that the water must be reasonably required for beneficial municipal purposes.² Of course, Antioch is also protected by Water Code §106.5, declaring it to be "the established policy of this State that the right of a municipality to acquire and hold rights to the use of water should be protected to the fullest extent necessary for existing and future uses."

The reader probably knows that the State Water Project of 1957 provided no facilities which benefited Antioch and, to the contrary, established massive exports from the Delta, further reducing the availability of usable water for the city. To mitigate this damage, the city and the Department of Water Resources negotiated an agreement dated April 11, 1968³. This compact recognizes the historically usable water (150 parts per million or less of chloride) occurred on an average of 208 days per year. If in any year the number of days of availability of usable water is less than 208, the Department must pay to the City one-third of the City's incremental costs of purchasing canal water from CCWD to replace the river supply. The one-third fraction was based on the assumption that the depletion of the natural supply is due one-third to the operation of the Central Valley project, one-third to the State Water Project, and one-third to all the other upstream diverters, riparians and appropriators.

Antioch also has the "delta priority". The Sacramento-San Joaquin Delta, as defined by Water Code §12220, includes all the land east of Mallard Slough (in Pittsburg) that was in the territory of CCWD as it existed in 1959, the year that §12220 was enacted.

The Delta Protection Act, at §12202 states that among the functions to be provided by the State Water Project "shall be the provision of salinity control and an adequate water supply for the users of water in the Sacramento-San Joaquin Delta". The provision further declares that if a substitute water supply is necessary for Delta users, no added financial burden shall be placed upon said Delta water users. Finally, §12203 declares it to be the policy of the State that no one, including the Bureau of Reclamation and the Department of Water Resources, divert from the Delta water "to which the users within said Delta are entitled."

² California Constitution, Article X §2.

³ Set to expire in 2008.

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Finally, under the Watershed Protection Act (Water Code §§11460 – 11465), the Department of Water Resources is directed to respect “the prior right to all of the water reasonably required to adequately supply the beneficial needs of the watershed area, or any of the inhabitants or property owners therein”, §11460.

It is with these historic and legal perspectives that Antioch reacts to and comments upon this proposal to increase *by a factor of 27 percent* the diversions from our water source that is already in delicate balance⁴. Unquestionably, diversions of this magnitude can only exacerbate salt intrusion at Antioch’s intake and increase our reliance on purchased water from the canal source.

Please inform us whether the draft EIS/EIR models impacts on water quality as far downstream as Antioch’s intake at Fulton Shipyard. As we have pointed out, there currently is a delicate balance affecting water quality at this location, and further diversions would appear, almost with a certainty, to further degrade quality levels.

The Contra Costa Water District informs Antioch that water quality at its intake is such that “normal” years of rainfall now have the same poor quality of chlorides as “dry” years prior to 1993. Although the EIS/EIR uses 16-year averages in its calculation of water quality impacts, people do not drink “16-year average quality”. Obviously, they drink what is available in the river at any given time.

We are further informed by CCWD that the proposed diversions will degrade the performance of Los Vaqueros Reservoir by at least ten percent, resulting not only in a very substantial cost to all ratepayers but also degrading the reservoir’s ability to provide good quality water during dry years, its primary purpose.

If Antioch is required to purchase more canal water because of degraded quality at the municipal intake, it will incur very significant costs which either must be borne by the City for its municipal uses and/or by its ratepayers for private uses. The EIR/EIS should identify those potential costs and study possible physical blighting effects on the community if, for example, Antioch reduces irrigation of parks and landscaped medians and public areas to the point of causing plant distress or loss, and similar impacts on privately-owned property if ratepayers reduce water usage as well.

⁴ The proposed increase of permitted diversion limits into the SWP Clifton Court Forebay from 6,680 cubic feet per second to 8,500 cfs.

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The EIS/EIR should propose appropriate mitigation measures to ensure, at a minimum, current levels of water quality at the City's Fulton Shipyard intake, as well as a requirement for the Department of Resources to extend its agreement with Antioch for the guarantee of at least 208 days of usable water per year and ensuring that Antioch suffers no financial hardship because of the need to purchase more canal water.

Finally, the EIS/EIR should contain an environmental justice component to discuss the various impacts of state actions that have degraded Antioch's environment over the last few decades. Such impacts include State policies that mandate that Antioch accommodate at least 600 units of housing per year, yet makes no provision for state funding of Highway 4 improvements and other transportation issues exacerbated by residents of the new housing; approval of the siting and operation of a number of electrical power generating plants along the San Joaquin River in Eastern Contra Costa County, adversely impacting both air and water quality; and now, with this project, the further degradation of water quality and the adverse impacts on the health—both physical and fiscal—of our 100,000+ residents.

Very truly yours,



WILLIAM R. GALSTAN
Special Counsel

WRG/sh

cc: Mayor and City Council Members
Lynn Tracy Nerland, City Attorney
James M. Jakel, City Manager
Phil Harrington, Director of Public Works
Joseph G. Brandt, Director of Community Development/City Engineer
Greg Cartrell, CCWD