



THE CITY OF SAN DIEGO

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Subject: Draft Environmental Impact Report for Padre Dam Municipal Water District  
Comprehensive Facilities Master Plan

Dear Mr. Niemiec:

The City of San Diego (City) submits these comments on the Draft Program Environmental Impact Report (Draft PEIR) for Padre Dam Municipal Water District's (District's) 2015 Comprehensive Facilities Master Plan (Plan). As this document is a Programmatic Environmental Impact Report, future actions will be subject to project level analysis. The City would like the opportunity to review draft project level California Environmental Quality Act (CEQA) documents that are subsequently prepared. Plan projects would occur within the City of San Diego and require certain discretionary approvals from the City, making the City a Responsible Agency under CEQA.

As a municipal water supplier, the City appreciates the need to develop reliable drought-resistant sources of supply; water recycling can provide an important component of such supplies. As a senior water rights holder, and current provider of wastewater treatment services for a significant portion of the area to be served by the Plan, the City has concerns about the potential for Plan projects to impact the City's water rights and its existing treatment facilities. Operation of Plan projects, including the Advanced Water Purification (AWP) project and associated Groundwater Replenishment and Reuse Project (GRRP), could have potentially significant impacts to the quantity and quality of water to which the City holds long-established pueblo water rights.

The City owns and operates a regional wastewater system that includes both the Municipal (Muni) System and Metropolitan (Metro) System. The Muni System is primarily a wastewater collection system that serves the City's service area. The Metro System, which services both the City and its Participating Agencies, includes facilities that provide advanced

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primary treatment, secondary treatment, tertiary reclamation, sludge processing and effluent disposal.

The effect of Plan projects impact on the City's Metro System in regards to treatment and disposal, billing methodology, capacity, allocation of expenses, capital improvements and possible diversion of Metro System flow will need to be negotiated and mutually agreed upon by the City and all the signatories to the *Regional Wastewater Disposal Agreement* (Participating Agencies). The City's East Mission Gorge Pump Station is a Muni System facility; therefore, the terms of Plan projects proposed upgrades and use of this facility must be negotiated and finalized with the City prior to implementing any station upgrades independent of the Metro System.

### **I. Scope of City's Pueblo Water Rights**

Based on the California Department of Water Resources (DWR) Bulletin 118 (2003 Version), the San Diego River Valley Groundwater Basin (DWR Basin No. 9-15, Basin), and the El Cajon Groundwater Basin (DWR Basin No. 9-16, El Cajon Basin) appear to be the two primary groundwater basins included in the Draft PEIR. The City also refers to the San Diego River Valley Groundwater Basin as the Santee-El Monte Groundwater Basin or Santee-El Monte Basin. (City's 2015 Urban Water Management Plan, p. 6-6.)

The City has concerns with any project that has the potential to adversely affect the City's ability to exercise its water rights. The City possesses pueblo rights in the San Diego River. (*San Diego v. Cuyamuca Water Co.* (1930) 209 Cal. 105, 151 (*San Diego*)). A pueblo right is the "paramount" right of an American city as successor of a Spanish or Mexican pueblo to the use of water naturally occurring within the old pueblo limits for the use of the inhabitants of the city. (*Los Angeles v. Pomeroy* (1899) 124 Cal. 597; *Los Angeles v. San Fernando* (1975) 14 Cal.3d 199, 251 (*San Fernando*); *Cal. Farm Bureau Federation v. State Water Resources Control Bd.* (2011) 51 Cal.4th 421.) The City's right attaches to the use of all surface and ground waters of the San Diego River that flowed through the original pueblo, including its tributaries, from its source to its mouth. (*San Diego, supra*, 209 Cal. at p. 151.) The right also extends to any percolating groundwater in the Basin or any other groundwater basin that supports the San Diego River's surface and subsurface flows. (See *San Fernando, supra*, 14 Cal.3d at pp. 247-251.) For any source of water to which the pueblo right attaches, the City is entitled to take "to the extent of the needs of its inhabitants." (*Feliz v. Los Angeles* (1881) 58 Cal. 73, 80; *San Diego, supra*, 209 Cal. 105 at pp. 164-165.) The City may also "manage and control" native waters to meet such needs. (*Ibid.*) Furthermore, the pueblo right is superior to virtually every other right and cannot be lost. (*Ibid.*; *Los Angeles v. Glendale* (1943) 23 Cal.2d 68, 74-79.) Under the law of water rights, the District may not take actions that would adversely affect the quantity or quality of ground or surface waters to which the City's pueblo right attaches if the effect of such actions deprives the City of its reasonable and beneficial use of its water supply.

Plan projects would divert most of the 15 million gallons per day (mgd) of wastewater flows that historically have been treated at the City's Point Loma Wastewater Treatment Plant, and ultimately will reduce flows to the City's facilities by up to 21 mgd. (Draft PEIR, p. 2-30.) The upstream diversion of those flows for use within the East County, as envisioned under the AWP and GRRP, would deprive the City of flows which it otherwise could have used for its own recycled water projects. In addition to these concerns, it appears that the District

intends to use recycled water pumped from proposed extraction facilities throughout the County. It is likely that not all of the extracted water would be recharge water, and some portion would be native groundwater. In this circumstance, the District would produce groundwater from the extraction facilities for use elsewhere in the County as an appropriator. Such use is permitted only if the water proposed for non-overlying use is surplus water, meaning it is not needed for the reasonable beneficial use of those having overlying or prior rights. (*City of San Bernardino v. City of Riverside* (1921) 186 Cal. 7.) If there is no surplus water in the Santee-El Monte or El Cajon basins, the use of any native extraction water on non-overlying parcels would be unlawful. (*California Water Service Co. v. Edward Sidebotham & Son* (1964) 224 Cal.App.2d 715, 725.)

Environmental documents prepared for all future Plan projects must clearly catalogue overlying and appropriative groundwater uses, as well as the City's pueblo rights, and identify what portion of pumped water is recharge water versus native groundwater, so as to be able to identify whether the water to be pumped is surplus water. As discussed further below, the District's environmental documents also must address impacts to ground and surface water quantity and quality.

## II. Specific Concerns with Draft PEIR

### A. The Draft PEIR Fails to Acknowledge the Plan's Potential to Deplete Surface Water in the San Diego River and Tributary Streams.

The Draft PEIR appropriately recognizes that the Sustainable Groundwater Management Act (SGMA) applies to the Plan projects and the future operation of Plan facilities, including groundwater extraction wells. The SGMA requires development of groundwater sustainability plans that consider, among other things, potential effects to hydrologically connected surface waters. Master Plan projects will occur within the San Diego River hydrologic unit, which is the source of the City's pueblo right. The Santee-El Monte Basin, where the Plan proposes to locate five new extraction wells, is categorized as medium priority under the SGMA, indicating it is an area of medium concern to the state for potential groundwater depletion and associated impacts. The Draft PEIR identifies that Plan projects could have significant cumulative impacts to the Santee-El Monte and El Cajon Groundwater Basins. (S-50.) Before deciding whether to proceed with investment in any particular extraction wells, the District must evaluate and disclose their potential to deplete stream flows in the San Diego River or any of its tributaries.

The Santee-El Monte Basin underlies the San Diego River, and the Basin undoubtedly contributes or supports both surface and subsurface flows of the river in which San Diego has primary and overriding rights. Additionally, the El Cajon Basin lies within the San Diego River watershed, and groundwater in the basin moves northwestward towards the San Diego River. (California Department of Water Resources, Bulletin 118, Groundwater Basin No.: 9-16.) Pumping from the proposed GRRP extraction facilities could adversely affect the surface and underflow of the San Diego River. Specifically, the AWP project, through the GRRP, proposes 14 injection wells and five new extraction wells to be located in the Santee portion of the Santee-El Monte Basin along the San Diego River. (Draft PEIR, p. 4.9-32 - 4.9-33.) The Draft PEIR appropriately recognizes the potential for the proposed water recycling projects to

have a significant adverse effect on groundwater resources, but it fails to address the potential streamflow impacts from Project groundwater pumping at wells along the San Diego River.

The City appreciates the Draft PEIR's inclusion of mitigation measure Hyd-3, which includes a performance standard requiring the District to ensure that Plan projects result in no net depletion of groundwater resources. However, as presented in the Draft PEIR, Hyd-3 does not go far enough to ensure that Plan projects would not have a significant impact on the City's pueblo rights. Specifically, Hyd-3 does not ensure that groundwater quality would not be substantially degraded (see section II.C below), storage space in the groundwater basin for percolation of native flows would not be reduced (see section II.B below), nor does it address potential streamflow depletion impacts to the San Diego River.

To adequately address the streamflow depletion issue, the Draft PEIR and future Plan project environmental documents must include evidence and analysis regarding existing and projected flows in the San Diego River and any affected tributary streams, demands on flows from existing and planned development, and the effect of all Master Plan project pumping on flows. If Plan projects will result in any depletion of surface flows, the District and any other CEQA lead and responsible agencies also must consider the effect of such depletion (both at project-level and cumulatively) on beneficial uses of these water bodies, including the City's water supply and impacts to biological resources (both in stream and riparian vegetation) that could be adversely affected by diminished flows. Without an evaluation of the potential hydrologic connection between the wells and San Diego River or tributary streams, and the potential for Plan project pumping to deplete surface waters of the San Diego River or tributary streams, the City will be unable to understand the potential effect on the City's pueblo rights, or other potential adverse effects, including effects to beneficial uses of these watercourses and biological resources that depend on surface flows.

To ensure that the City's pueblo rights are not harmed, the City requests that Hyd-3 be modified to include a commitment that Plan projects result in no net depletion of streamflow in the San Diego River or any of its tributary streams. To implement this commitment, the revised mitigation measure should specify that, future planning studies and environmental documents for Plan projects will incorporate adequate hydrogeologic studies that consider the location of proposed extraction facilities, including their zone of influence and the potential for project pumping to deplete surface water in the San Diego River or tributary creeks.

**B. The Draft PEIR Fails to Acknowledge that the GRRP May Reduce the Storage Space Available in the Santee-El Monte Basin to Accommodate Percolation of Native Flows.**

The GRRP, through use of 14 injection wells, could reduce the storage space available in the Santee-El Monte Basin to accommodate percolation of native flows in the San Diego River watershed. By using available storage space in the Santee-El Monte Basin to inject treated water, there could be lost opportunities for native flows to naturally recharge the basin through percolation. Because the City's pueblo right confers a

right to manage and control native waters, any diminution in the City's ability to store native waters infringes on the City's paramount right.

Despite Hyd-3's performance standard requiring the District to ensure that Plan projects result in no net depletion of groundwater resources, Hyd-3 does not go far enough to ensure that Plan projects would not have a significant impact on the City's ability to store native flows in the basin under its pueblo right. To ensure that the City's pueblo right is not harmed, the City requests that Hyd-3 be modified to include a commitment that Plan projects result in no net depletion in deep percolation of native flows because of injection of water into the Santee-El Monte Basin through the GRRP. In addition to the revision to Hyd-3 proposed in Section A, the City also requests that hydrogeologic studies for Plan projects consider the lost opportunity for native flows to percolate into the Santee-El Monte Basin because of the use of basin storage space through injection of Plan project water supplies.

**C. The Draft PEIR Fails to Demonstrate that the GRRP Will Not Result in Potentially Significant Groundwater Quality Impacts from Recharge.**

The Draft PEIR recognizes that both surface and groundwater quality are impaired within the San Diego River watershed. Total dissolved solids (TDS) is a constituent of concern for drinking water suppliers as high concentrations of TDS have drinking water taste impacts on water users and can adversely affect plant growth when used in irrigation. The Draft PEIR states that groundwater recharge under the Project would potentially improve water quality in the Basin. (Draft PEIR, p. 4.9-23.) However, no evidence or analysis is provided to support this statement, and the City notes that source water (especially State Water Project and Colorado River water) can contain high TDS concentrations, and that potable use causes TDS concentrations to increase by 110-205 mg/L in wastewater influent.

The Draft PEIR appears to rely on groundwater monitoring under the existing Salinity Nutrient Management Plan (SNMP) and "compliance with regulations related to groundwater quality" for its assumption that groundwater recharge under the GRRP will not substantially degrade water quality. (Draft PEIR, pp. 4.9-6, 4.9-33.) The City recognizes that the Draft PEIR is intended to function as a program-level document and that future environmental review under CEQA will be required for projects implementing the Plan. However, the fact that the document is a program-level EIR does not excuse the District from the obligation to address potentially significant impacts. Here, the Draft PEIR has improperly deferred any meaningful analysis of the impacts the Plan projects will have on groundwater quality in the Santee-El Monte Basin to a future permitting process. But CEQA requires that the lead agency identify and analyze all impacts prior to making its decision to approve a project, regardless of whether a different process would permit or otherwise address a particular impact. (*Californians for Alternatives to Toxics v. Cal. Dept. of Food & Agriculture* (2005) 136 Cal.App.4th 1, 17.) CEQA requires that agencies meaningfully consider the impacts of a project, and deferring to a later regulatory process does not achieve this goal. (*Id.* at p. 16.) Further, a project can have a significant impact on the environment even if it does not result in the violation of a water quality standard. (*Protect the Historical Amador Waterways v. Amador Water Agency* (2004) 116 Cal.App.4th 1099, 1111.) This is acknowledged in CEQA Guidelines Appendix G, which separately asks whether a

project will violate a water quality standard and whether a project will otherwise substantially degrade water quality. (CEQA Guidelines, § 15387, App. G, IX (a)-(f).) The City notes that even if sufficient information had been provided in the Draft PEIR about the Project's potential to degrade water quality, the Draft PEIR does not describe how monitoring under the SNMP, or compliance with "groundwater regulations" would translate into specific actions to address any water quality degradation that monitoring reveals.

Please provide the data and analysis to support the Draft PEIR's statement that groundwater recharge under the GRRP would improve groundwater quality, with reference to existing TDS levels in the proposed recharge areas and expected TDS levels in recharge water. Please also describe the specific actions the District would take to avoid degradation of groundwater quality should Draft PEIR assumptions about the expected effect of recharge prove incorrect. The commitment to ensure that recharge under the GRRP does not lower groundwater quality levels, and the specific actions the District will take to avoid or mitigate any degradation, should be incorporated into the Draft PEIR as mitigation measures.

Please provide clarification on what happens to the existing infrastructure when converting from one phase of the project to a future phase. For example, one option might be moving from GRRP Phase I to SWA Phase 2. The Plan project suggests no future groundwater could be used and all is moved to SWA. If this scenario does occur, please clarify what happens to the existing groundwater infrastructure. A similar clarification is requested when going from Phase 2 to Phase 3.

**D. The Draft PEIR Fails to Evaluate the Effect on Air Quality and Green House Gas (GHG) Emissions.**

The California Supreme Court took on the CEQA issue of determining the significance of GHG emissions in its decision, *Center for Biological Diversity v. California Department of Fish and Wildlife and Newhall Land and Farming* (2015) 224 Cal.App.4th 1105 (CBD vs. CDFW; also known as the "Newhall Ranch" case).

The City does not use 900 metric ton (MT) as a screening or significance criteria. The City has adopted Climate Action Plan (CAP 2015), and any discussions that include the City need to be edited appropriately to capture the CAP. It is recommended that the Air Quality, GHG and Cumulative sections be revised in light of the Newhall Ranch case. It is likely that 900 MT threshold would not be considered adequate analysis.

**E. The Draft PEIR Fails to Adequately Evaluate the Plan's Consistency with City of San Diego Standards.**

Any portion of the projects located within the City, or owned by the City of San Diego, must be analyzed for consistency with the City's Standards. The document should reference applicable City of San Diego Land Development Code sections.

The Draft PEIR Table 1-1, "Anticipated Discretionary Actions and Approvals," should include the discretionary permits from the City and the agreement in place between the City and the District for Metro System water contributions.

**F. The Draft PEIR Inadequately Addresses the Effects on the City's Metro System.**

The Plan states in multiple places that the future project(s) will “reduce wastewater flows to the Point Loma Wastewater Treatment Plant (PLWTP) and reduce total suspended solids (TSS) load discharged at the Point Loma ocean outfall to the same or lower levels” as would be achieved by implementing secondary treatment at the full plant. (Draft PEIR, p. S-3, 2-2, 2-26, 5-5, 8-1, 8-2, 8-3, 8-8, 8-9...)

City suggests clarifying this language to “reduce the wastewater flows into the City’s Metro System”, not necessarily a direct reduction to flows to the PLWTP. With the implementation of the Plan project(s), wastewater flow contributions to the Metro System would be reduced/diverted; however, the District is not really in a position to accurately predict the effect of Plan project(s) on the City-owned Metro System including reducing the flows sent to PLWTP. We agree that due to the implementation of the Plan project(s), the wastewater flow sent to the Metro System would be reduced; however, Metro System operations is within the City's purview and Plan project(s) sewage flow may not necessarily be planned to go to PLWTP.

Also, in the Phase I description (Draft PEIR 2.4.4.1), the Draft PEIR describes two scenarios: brine would either be sent to the Metro System, or be utilized as dust control. The document should clarify what the brine strategy is as it affects the City, and how the City treats its wastewater. The discharge of brine into the Metro System would have an effect on the treatment of wastewater within the Metro System. This potentially significant impact must be analyzed.

The analysis for Phases 2 and 3 must also include the plan for brine. Please address the issue concerning if the District intends to discharge brine back into the Metro System even if diverting wastewater for recycling purposes.

**III. Conclusion**


The City is concerned with the District’s Plan projects’ individual as well as collective impact on the City’s Metro System and the unspecified effects on treatment and disposal, billing methodology, capacity, allocation of expenses, capital improvement needs, system flow, and other unknowns. We expect these details will need to be negotiated and mutually agreed upon by the City and all the signatories to the *Regional Wastewater Disposal Agreement* (i.e., Participating Agencies).

To ensure that potential impacts to the City’s water rights are accurately and adequately addressed, the City requests that the District conduct such additional analysis necessary to evaluate all Plan projects for consistency with the City’s Standards, with particular focus on the potential to affect the quantity and quality of San Diego River flows and groundwater levels within the Santee-El Monte and El Cajon Basins. The Draft PEIR should be modified accordingly. The District should coordinate with the City in development of the analysis as well as future Plan projects, especially the AWP and GRRP. The City looks forward to working cooperatively with the District to ensure that all potential impacts to the City’s water rights are fully disclosed and mitigated.

Under SGMA, the City has declared to be a Groundwater Sustainable Agency (GSA) in the San Diego River Valley Groundwater Basin. We are currently working cooperatively with the District and three other declared GSAs in the Basin to complete the required Memorandum of Understanding (MOU) to resolve the GSA overlap and work together to jointly fund the development of a Groundwater Sustainability Plan to sustainably manage the groundwater in the Basin. These collaborative meetings for SGMA with the District and the other agencies are a great example of the City's desire to work cooperatively for the greater good of the Basin. The City looks forward to the continued collaborative work effort with the District during the future SGMA process and in developing the District's Plan projects.

Should you have any questions, please contact George Adrian, Program Manager at (619) 533-4680.

Sincerely,



Lan C. Wiborg  
Deputy Director, Public Utilities Department

HR/kw

cc: Lan C. Wiborg, Deputy Director, Long-Range Planning & Water Resources Division  
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