

FINAL ENVIRONMENTAL IMPACT REPORT

for the

MODESTO  
SURFACE WATER TREATMENT PLANT

**APPENDIX A**

**GENERAL RESPONSE TO COMMENTS  
TO DRAFT EIR REGARDING WATER RIGHTS**

**RESPONSE TO COMMENTS TO DRAFT EIR  
REGARDING WATER RIGHTS**

Modesto Irrigation District (the "District") was formed and organized in 1887, and it thereafter proceeded diligently, in conjunction with the Turlock Irrigation District, to acquire the water rights in the natural flow of the Tuolumne River that the District would need to fully support its projected water service operations. As a result of that process and the merger of the Waterford Irrigation District into the Modesto Irrigation District in 1978, the District has extensive Tuolumne River water rights that were initiated and perfected under state water rights laws as they existed prior to December 19, 1914, the date on which the Water Commission Act became law in this State. This Act created a new system for the initiation and perfection of appropriative water rights that involves the issuance by the State of water rights permits and licenses.

Under the laws in effect before the Water Commission Act became law, an appropriative water right was ordinarily initiated by giving notice of appropriation by posting and recording and perfected by actually diverting water and applying it to beneficial use pursuant to the notice, although it was permissible and common for the right to be perfected simply by taking the water from its source and applying it to beneficial use. Water rights perfected under one or the other of the old procedures are referred to as pre-1914 water rights.

All of the District's pre-1914 water rights were initiated by notices of appropriation given at various times in the

required manner from as early as 1855 up to 1913. The District is an original owner of some of these rights. The others were acquired by purchase and by transfer and assignment in connection with the above-mentioned merger.

The Congress of the United States enacted the Raker Act (38 Stat.242) in 1913. This enactment granted to the City and County of San Francisco the right to use certain lands within Yosemite National Park and Stanislaus National Forest for the construction and operation of San Francisco's Hetch Hetchy project, and it also specifically and expressly obligated San Francisco to "recognize the prior (water) rights of the Modesto Irrigation District and the Turlock Irrigation District."

All of the District's pre-1914 water rights were perfected by diversion and application to beneficial use with due diligence, and the historical pattern of diversion and application to beneficial use has been continued up to the present time. The District's pre-1914 rights have provided the basis for a substantial portion of the District's total water usage over the years, and they have been supplemented as needed by water rights filings made with the State after the effective date of the Water Commission Act.

The District's proposed surface water treatment plant project envisions deliveries of water for domestic and municipal and industrial uses to the City of Modesto (as to that portion situated within the District) and the Del Este Water Company. In that connection, the District will not be supplying water for use

outside its boundaries. Therefore, the place of use of the water that will be supplied if the project is carried out will remain the same as it has always been, namely - inside the Modesto Irrigation District.

In recent years urbanization inside the District has caused irrigated agricultural land to be converted into non-irrigated urban land, and this process is continuing at an accelerated rate. The proposed project will utilize water no longer needed for irrigation by reason of such conversion as well as water that is developed by increased system operating efficiency and conservation.

The domestic and municipal and industrial water supplied by the City of Modesto and Del Este Water Company is presently pumped from underground. This ground water resource has been overdrafted and is systematically diminishing in quantity and quality. Surface water supplied by the District would replace water that would otherwise be pumped from underground. In the course of time, it is expected that ground water in the area would be restored to normal levels and a reserve for appropriate use in dry years would be created.

The pre-1914 appropriative water rights of the District are available and adequate to fully support the operations of the proposed project. Diversions from the Tuolumne River under these rights will continue to be made as they were made in the past; however, the purpose of use will be changed from irrigation to domestic and municipal and industrial as permitted by applicable law.