

Chapter 3

Revisions to Draft Subsequent Environmental Impact Report

Introduction

Revisions to the DSEIR are shown below. Text that has been deleted is shown in ~~strikeout~~, and text that has been inserted is shown in underline.

Revisions

The Phase Two Project Facilities description on page 2-4 in Chapter 2, *Project Description*, has been revised as follows:

The MRWTP would continue to be owned and operated by MID, and the City would own and operate the downstream facilities ~~ownership and operation of the downstream facilities is still under discussion, but are assumed to belong to the City.~~ For simplicity, the environmental analysis refers to the above components as “MID” and “City” facilities, respectively.

Environmental Commitment GC-6 on page 2-24 in Chapter 2, *Project Description*, has been revised as follows:

GC-6 Dust suppression and cleanup provisions (e.g., street sweeping, sidewalk cleaning, and debris removal) will be implemented, as needed by the City of Modesto and MID. (City of Modesto and MID facilities)

Environmental Commitment GC-9 on page 2-24 in Chapter 2, *Project Description*, has been revised as follows:

GC-9 Fact sheets and public updates to inform the community about progress of the project will be provided. (City of Modesto and MID facilities)

Environmental Commitment WQ-3 on page 2-27 in Chapter 2, *Project Description*, has been revised as follows:

WQ-3 The federal reportable spill quantity for petroleum products, as defined in the U.S. Environmental Protection Agency's (EPA's) Code of Federal Regulations (CFR) (40 CFR 110) is any oil spill that (1) violates applicable water quality standards, (2) causes a film or sheen upon or discoloration of the water surface or adjoining shoreline, or (3) causes a sludge or emulsion to be deposited beneath the surface of the water or adjoining shorelines.

If a spill is reportable, the contractor's superintendent would immediately notify the City of Modesto and/or MID, Stanislaus County Department of Environmental Resources, and the California Department of Toxic Substances Control (DTSC), which have spill response and clean-up ordinances to govern emergency spill response. A written description of reportable releases must be submitted to the Regional Water Quality Control Board (RWQCB). This submittal must include a description of the release, including the type of material and an estimate of the amount spilled, the date of the release, an explanation of why the spill occurred, and a description of the steps taken to prevent and control future releases. The releases would be documented on a spill report form.

If a reportable spill has occurred and results determine that project activities have adversely affected groundwater quality in excess of water quality standards, a detailed analysis will be performed by a Registered Environmental Assessor to identify the likely cause of contamination. This analysis will conform to American Society for Testing and Materials (ASTM) standards, and will include recommendations for reducing or eliminating the source or mechanisms of contamination. Based on this analysis, the City, MID, and/or their contractors will select and implement measures to control contamination, with a performance standard that groundwater quality must be returned to baseline conditions. These measures will be subject to approval by the City and MID.

Environmental Commitment NR-3 on page 2-28 in Chapter 2, *Project Description*, has been revised as follows:

NR-3 Prior to construction, the City ~~and/or MID~~ will notify residences along the construction areas of the construction schedule in writing. ~~MID/~~The City will designate a noise disturbance coordinator, who will be responsible for responding to complaints regarding construction noise. The coordinator will determine the cause of the complaint and will ensure that reasonable measures are implemented to correct the problem. A contact telephone number for the noise disturbance coordinator will be conspicuously posted on construction site fences and will be included in the written notification of the construction schedule sent to nearby residents in the identified range. These duties may be delegated to the City's contractor in the project specifications.

Table 3.4-4 on page 3.4-19 in Chapter 3.4, *Water Resources*, under Impact WR-4: Changes in Reservoir Operations and Tuolumne River Releases, has been revised as follows:

Table 3.4-4. Average Changes in Tuolumne River Releases from LaGrange Dam, Proposed Project minus Baseline Conditions (in average cubic feet per second and percent of flow)

Month	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep
Average Releases, Baseline Conditions	333	305	660	1145	1660	2098	1681	1130	875	845	214	236
Average change	0	<u>2</u> <u>-2</u>	0	<u>2</u> <u>-2</u>	<u>23</u> <u>-23</u>	<u>18</u> <u>-18</u>	<u>5</u> <u>-5</u>	<u>-4</u> <u>4</u>	<u>-15</u> <u>15</u>	<u>-16</u> <u>16</u>	<u>-4</u> <u>4</u>	<u>-6</u> <u>6</u>
Percentage Change	<u>0.06%</u> <u>-0.06%</u>	<u>0.75%</u> <u>-0.75%</u>	<u>-0.07%</u> <u>0.07%</u>	<u>0.15%</u> <u>-0.15%</u>	<u>1.41%</u> <u>-1.41%</u>	<u>0.83%</u> <u>-0.83%</u>	<u>0.31%</u> <u>-0.31%</u>	<u>-0.32%</u> <u>0.32%</u>	<u>-1.72%</u> <u>1.72%</u>	<u>-1.84%</u> <u>1.84%</u>	<u>-1.94%</u> <u>1.94%</u>	<u>-2.34%</u> <u>2.34%</u>

Mitigation Measure BIO-2a: Conduct Preconstruction Surveys for Valley Elderberry Longhorn Beetle and Avoid or Compensate for Loss of Habitat on page 3.9-20 in Chapter 3.9, *Biological Resources*, has been revised as follows:

Mitigation Measure Bio-2a: Conduct Preconstruction Surveys for Valley Elderberry Longhorn Beetle and Avoid or Compensate for Loss of Habitat

For any construction activity within 100 feet of the six elderberry shrubs at Tank Sites S-2 and S-3 and near Dry Creek along the Southern main pipeline alignment~~an elderberry shrub, before construction begins~~, the City shall hire a qualified biologist to conduct a preconstruction survey of the alignment corridor and document the extent of habitat for the VELB. The information gathered in this survey would include the number of elderberry stems greater than 1 inch in diameter and the number of emergence holes in these stems for each elderberry shrub encountered. If no VELB habitat is found within 100 feet of a project alignment, then no further mitigation is required.

The City then would implement the USFWS guidelines for avoiding impacts on the VELB by avoiding construction activities within 100 ft of any elderberry shrub where feasible (Mitigation Measure Bio-2b). Where avoidance is not feasible, the City would obtain authorization from the USFWS pursuant to the ESA, and prepare and implement a mitigation plan consistent with USFWS guidelines to compensate for impacts on the VELB and loss of habitat.

USFWS guidelines call for avoidance of VELB habitat wherever possible. When avoidance is not possible, the guidelines direct that all elderberry plants be transplanted to an appropriate site when feasible, and that all stems 1 inch or greater in diameter be replaced by planting replacement plants at appropriate locations in the project vicinity determined in consultation with

the resource agencies (Mitigation Measure BIO-2c). The replacement ratio depends on the percentage of affected elderberry shrubs that have beetle emergence holes. The guidelines require the project proponent to monitor the transplanted shrubs and replacement plants for 10 years from the date of transplanting to monitor the success of the mitigation efforts, and replacement would be necessary for plants that do not succeed.

Mitigation Measure BIO-2b: Avoid and Protect VELB Habitat on page 3.9-20 in Chapter 3.9, *Biological Resources*, has been revised as follows:

Mitigation Measures BIO-2b: Avoid and Protect VELB Habitat

Complete avoidance is assumed when a 100-foot buffer is established and maintained around elderberry plants containing stems measuring 1 inch or greater in diameter at ground level. Firebreaks may not be included in the buffer zone. In buffer areas, construction-related disturbance should be minimized and any damaged area should be promptly restored following construction. The City shall consult the USFWS before any disturbances within the buffer area are considered. The following measures include establishment and maintenance of a buffer zone:

- The City shall hire a qualified biologist to identify and mark all elderberry shrubs with stems 1 inch or more in diameter within 100 feet of the impact area. A 100-foot buffer will be established around all elderberry shrubs, and no construction activities will be permitted within the buffer zone without consultation with USFWS. In areas where encroachment on the 100-foot buffer has been approved by USFWS, no ground-disturbing activities will be permitted within 20 feet of the dripline of each elderberry shrub unless the activity is necessary to complete the project. If no VELB habitat is found within 100 feet of a project alignment, then no further mitigation is required.
- Orange fencing will be placed around all shrubs to avoid inadvertent effects.
- Signs will be erected every 50 feet along the edge of the avoidance area with the following information: “This area is habitat of the valley elderberry longhorn beetle, a threatened species, and must not be disturbed. This species is protected by the Endangered Species Act of 1973, as amended. Violators are subject to prosecution, fines, and imprisonment.” The signs will be clearly readable from a distance of 20 feet, and must be maintained for the duration of construction.
- The City’s contractor will present an environmental education program ~~will be presented~~ to all construction personnel to brief them on the need to avoid damaging the elderberry shrubs and the possible penalty for not complying with these requirements.
- Any damage done to the buffer area (area within 100 feet of elderberry plants) during construction must be repaired and the area restored. Erosion control must be provided and the area must be revegetated with appropriate native plants.

- Buffer areas must be protected after construction from adverse effects of the project through measures including fencing, signs, weeding, and removing trash.
- The use of insecticides, herbicides, fertilizers, or other chemicals that might harm the beetle or its host plant will be prohibited.
- Grasses or ground cover will be mowed from July through April to reduce fire hazard. No mowing should occur within 5 feet of elderberry plant stems.
- The City of Modesto must provide a written description of how the buffer areas are to be restored, protected, and maintained after construction is completed.

To prevent inadvertent trimming of elderberry shrubs (habitat for VELB) during future maintenance activities, the City will also prepare a Maintenance Plan that provides the location of all elderberry shrubs growing near the water storage tank sites and along the pipeline corridors. The Maintenance Plan will also include a photo and description of an elderberry shrub and information about VELB and its legal status and requirements under ESA.

Mitigation Measure BIO-3: Implement the DFG Guidelines for Swainson's Hawk Foraging Habitat Mitigation on page 3.9-23 in Chapter 3.9, *Biological Resources*, has been revised as follows:

Mitigation Measure BIO-3: Implement the DFG Guidelines for Swainson's Hawk Foraging Habitat Mitigation

The City will retain a qualified wildlife biologist to conduct preconstruction surveys for Swainson's Hawk foraging habitat on undeveloped tank sites and/or pipelines outside of existing roadways. The preconstruction surveys will be conducted to determine whether active Swainson's Hawk nests are present within 10 miles of the project construction sites and will include, at a minimum, a study of the eight previously recorded nest sites. If the project construction site is not suitable Swainson's Hawk foraging habitat, then no further mitigation is required. If agricultural habitat is removed within 10 miles of a known, active Swainson's Hawk nest, the City will compensate to the extent specified by DFG to replace lost foraging habitat. Habitat compensation ratios will depend on the distance of the affected habitat from known, active nests, as specified in DFG mitigation guidelines for Swainson's hawks. The publication Staff Report Regarding Mitigation for Impacts to Swainson's Hawk (*Buteo swainsoni*) in the Central Valley of California, published by DFG (1994), recommends mitigation for the removal of suitable Swainson's hawk foraging habitat at a ratio determined by the distance to the nearest active nest. The City will implement the measures identified or their functional equivalents, based on the recommendations of the qualified wildlife biologist.

Mitigation Measure BIO-4: Retain a Qualified Biologist to Conduct a Preconstruction Survey for Nesting Swainson's Hawk on page 3.9-24 in Chapter 3.9, *Biological Resources*, has been revised as follows:

Mitigation Measure BIO-4: Retain a Qualified Biologist to Conduct a Preconstruction Survey for Nesting Swainson's Hawk

If construction is scheduled to occur during the Swainson's Hawk breeding season (generally March 1–August 15), the City will retain a qualified wildlife biologist to conduct preconstruction surveys for nesting Swainson's Hawks on undeveloped tank sites and/or pipelines outside of existing roadways. The preconstruction surveys will be conducted to determine whether there is a suitable nesting habitat within a 0.5-mile radius of the construction site. If no Swainson's Hawks are found nesting within the areas surveyed, then no further mitigation is required. If Swainson's Hawks are found nesting within a 0.5-mile radius of the construction site, DFG will be consulted to determine whether a no-disturbance buffer would be required until after the young have fledged (as determined by a qualified wildlife biologist). Impact avoidance measures will be conducted pursuant to DFG mitigation guidelines. The City will implement the measures identified or their functional equivalents, based on the recommendations of the qualified wildlife biologist.

Mitigation Measure BIO-5: Conduct Preconstruction Surveys for Active Burrowing Owl Burrows and Implement the California Department of Fish and Game Guidelines for Burrowing Owl Mitigation, if Necessary on page 3.9-25 in Chapter 3.9, *Biological Resources*, has been revised as follows:

Mitigation Measure BIO-5: Conduct Preconstruction Surveys for Active Burrowing Owl Burrows and Implement the California Department of Fish and Game Guidelines for Burrowing Owl Mitigation, if Necessary

DFG (1994) recommends that preconstruction surveys be conducted to locate active Burrowing Owl burrows in the project area and in a 250-foot-wide buffer zone around the project area. The City will retain a qualified biologist to conduct preconstruction surveys for active burrows on undeveloped tank sites and/or pipelines outside of existing roadways according to DFG guidelines. The preconstruction surveys will include a nesting season survey and a wintering season survey during the year immediately preceding construction. If no Burrowing Owls are detected, then no further mitigation is required. If active Burrowing Owls are detected in the survey area, ~~the following measures will be implemented~~ the City will implement the following measures or their functional equivalents, based on the recommendations of the qualified wildlife biologist.

- Occupied burrows will not be disturbed during the nesting season (February 1–August 31).
- When destruction of occupied burrows is unavoidable during the non-nesting season (September 1–January 31), unsuitable burrows will be enhanced (enlarged or cleared of debris) or new burrows created

(installing artificial burrows) at a ratio of 2:1 on protected lands approved by DFG. Newly created burrows will follow guidelines established by DFG.

- If owls must be moved away from the project area, passive relocation techniques (e.g., installing one-way doors at burrow entrances) will be used instead of trapping. At least 1 week will be necessary to accomplish passive relocation and to allow owls to acclimate to alternate burrows.

If active Burrowing Owl burrows are found and the owls must be relocated, the City will offset the loss of foraging and burrow habitat in the project area by acquiring and permanently protecting a minimum of 6.5 acres of foraging habitat per occupied burrow identified in the project area. The protected lands should be located adjacent to the occupied Burrowing Owl habitat in the project area or at another occupied site near the project area. The location of the protected lands will be determined in coordination with DFG. The City will also prepare a monitoring plan and provide long-term management and monitoring of the protected lands. The monitoring plan will specify success criteria, identify remedial measures, and require an annual report to be submitted DFG.

If avoidance is the preferred method of dealing with potential impacts, no disturbance should occur within 160 feet of occupied burrows during the nonbreeding season (September 1–January 31) or within 250 feet during the breeding season. Avoidance also requires that at least 6.5 acres of foraging habitat (calculated based on an approximately 300-foot foraging radius of an occupied burrow), contiguous with occupied burrow sites, be permanently preserved for each pair of breeding Burrowing Owls or single unpaired resident bird. The configuration of the protected site will be submitted to DFG for approval.

Mitigation Measure TR-4: Maintain Traffic Lanes and Limit Hours of Construction on page 3.10-18 in Chapter 3.10, *Transportation*, has been revised as follows:

Mitigation Measure TR-4: Maintain Traffic Lanes and Limit Hours of Construction

The City of Modesto’s selected contractor will not conduct construction on arterial streets during the peak traffic period, and where feasible, will maintain the existing number of traffic lanes through pipeline construction. For pipeline segments with construction V/C ratios over 1.5 and construction duration that would exceed two weeks, if the contractor is unable to maintain the existing number of traffic lanes through pipeline construction zones, construction activities will be limited to evening hours.¹ This practice applies to the following routes:

¹ Construction V/C ratios were calculated for the peak traffic period. For segments with construction V/C ratios between 1.0 and 1.5, the off-peak (midday) construction V/C was not calculated but is anticipated to be close to or below 1.0. For this reason, midday construction for these segments is not anticipated to result in LOS failure and would be allowed.

- Carpenter Avenue, south of Maze Boulevard
- Yosemite Boulevard, near Codoni Avenue
- Briggsmore Avenue

Mitigation Measure CUME1: Implement Enhanced Measures to Control PM10 Generation, as Recommended by SJVUAPCD (2002) on page 4.3-6 in Chapter 4.3, *Cumulative Impacts*, has been revised as follows:

Mitigation Measure CUME1: Implement Enhanced Measures to Control PM10 Generation, as Recommended by SJVUAPCD, Regulation VIII (amended 20024)

The City and MID will require construction contractors to implement the SJVUAPCD's optional and enhanced PM10 control measures, listed below, or their functional equivalents.

- Limit traffic speeds on unpaved roads to 15 mph;
- On sites with a slope greater than 1%, install sandbags or other erosion control measures to prevent silt runoff to public roadways;
- Install wheel washers for all exiting trucks, or wash off all trucks and equipment leaving the site;
- Install wind and/or water breaks at windward side(s) of construction areas;
- Suspend excavation and grading activity when Regulation VIII's 20% opacity limitation is exceeded;
- Ensure that the accumulation of mud or dirt is expeditiously removed from adjacent public streets throughout the duration of construction activities, where such accumulation is visible (the use of dry rotary brushes is expressly prohibited except where preceded or accompanied by sufficient wetting to limit the visible dust emissions);
- Limit the area subject to excavation, grading, or other construction activity at any one time.

These measures will be incorporated into project construction documents (plans and specifications) to ensure that they are contractually enforceable. For each phase of the project, the entity responsible for retaining construction contractors will be responsible for ensuring that these measures are correctly and effectively implemented; MID will be responsible during construction of MID facilities, and the City will be responsible during the construction of City facilities.

Mitigation Measure CUME2: Require Use of Measures to Reduce Emissions on page 4.3-6 in Chapter 4.3, *Cumulative Impacts*, has been revised as follows:

Mitigation Measure CUME2: Require Use of Measures to Reduce Emissions

The City and MID will require construction contractors to implement the following measures to reduce emissions of combustion byproducts, or their functional equivalents.

- Minimize idling time to 10-minute maximum.
- Limit the hours of operation of heavy-duty equipment and/or the amount of equipment in use to the minimum practical.
- Take steps to curtail construction activity during periods of high ambient pollution concentrations, such as reducing construction activity during the peak hours of vehicular traffic on adjacent roadways ~~and ceasing construction activity during days declared as Spare the Air days by the SJVAPCD.~~

These measures will be incorporated into project construction documents (plans and specifications) to ensure that they are contractually enforceable. For each phase of the project, the entity responsible for retaining construction contractors will be responsible for ensuring that these measures are correctly and effectively implemented; MID will be responsible during construction of MID facilities, and the City will be responsible during the construction of City facilities.

The following text has been added to page 5-9, Chapter 5, *Alternatives*, under Delayed Alternative:

Water Resources, Hydrology and Water Quality

Without the expanded MRWTP and the new storage and distribution facilities, the need for surface water from Don Pedro reservoir would be decreased, and would result in reduced effects on water levels in Don Pedro Reservoir and flows in the Tuolumne River until such a time as the facilities were to be constructed. Note that these impacts of the proposed project were not identified as significant in this SEIR.

In addition, this alternative could result in significant adverse effects on groundwater levels if groundwater were used as an alternative source of supply and it was pumped in excess of sustainable yield of the aquifer. The water quality of the groundwater to be pumped to make up the supply need in many areas of the City would need expensive treatment systems to meet regulatory drinking standards. These treatment systems would consume energy and require disposal of waste products.

The following text on page 6-1, Chapter 6, *Water Transfer Petition Information*, has been revised as follows:

Effects on the amounts of water the Petitioner is entitled to use. This transfer would result in no change to the amounts of water that Modesto Irrigation District (MID) is entitled to use. The water right license terms and conditions control the amount of water that the petitioner is entitled to use. The water to be transferred to the City is available due to the conversion of agricultural land to urban uses. As this conversion occurs, water once used for agriculture will instead be used by residents of Modesto within the MID service area. The discussion of ~~Sources of Additional Water~~ Water Supply and Demand Setting in Chapter 3.4, *Water Resources*, of this SEIR provides additional detail on the agricultural to urban conversion ratio.