



Inland Empire Waterkeeper

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April 8, 2013

City of Moreno Valley
Community and Economic Development Department
ATTN: John C. Terell, Planning Official
14177 Frederick Street
PO Box 88005
Moreno Valley, CA 92552

Sent via email: johnt@moval.org

Re: World Logistics Center Project, Draft Environmental Impact Report, State Clearinghouse No. 2012021045.

Dear Mr. John C. Terell,

Inland Empire Waterkeeper (Waterkeeper) is a non-profit environmental organization dedicated to advocacy, education, restoration and enforcement in the Santa Ana River Watershed. Waterkeepers' members use and enjoy the unique waterways of the Inland Empire and rely on our region's surface and groundwater on an everyday basis. We write on behalf of our collective membership to express our concerns with the World Logistics Center Project Draft Environmental Impact Report, released on February 4, 2013 (DEIR). Waterkeeper participated in the scoping process, and submitted written comments on March 7, 2012 regarding the Notice of Preparation of the Draft Environmental Impact Report for the World Logistics Center Specific Plan. Waterkeeper supports responsible development and seeks to ensure that the World Logistics Center (WLC) goes forward in a manner that is both economically viable and environmentally responsible.

Waterkeeper has reviewed the DEIR in its entirety, but we have largely confined our comments to the Hydrology and Water Quality Section of the DEIR, Section 4.9, and Appendix J, the Project Specific Water Quality Management Plan required by Riverside County. However, we comment on other sections of the DEIR when relevant to the analysis of water quality impacts.

The purpose of an environmental impact report is to provide public agencies and the public in general with detailed information about the effect which a proposed project is likely to have on the environment; to list ways in which the significant effects of a project might be minimized; and to indicate alternatives to such a project.¹ With this in mind, the primary focus of this letter is to assess whether direct and indirect impacts to water resources are adequately addressed and analyzed, the project is consistent with the applicable Water Quality Management Plan, R8-2010-0033, October

¹ CA Pub. Res. Code § 2106.

22, 2012; and Riverside County Flood Control and Water Conservation District's Design Handbook for Low Impact Development, Best Management Practices, and that the proposed mitigation is adequate to compensate for project impacts.

Waterkeeper finds that the DEIR is deficient because it is overly speculative regarding the project's effect on groundwater recharge; does not describe treatment and control methods for surface water runoff in sufficient detail; and fails to adequately address cumulative impacts to the San Jacinto Wildlife Area.

I. The Project Area.

The proposed WLC project covers 3,918 acres in the eastern portion of the City of Moreno Valley, in northwestern Riverside County. The project site is immediately south of State Road 60, between Redlands Boulevard and Gillman Springs Road. The site slopes at approximately 2% from north to south. (DEIR, § 3.2, p. 3-1.)

Immediately south of the project site is the San Jacinto Wildlife Area, which includes the Upland Game Hunting Area, Mystic Lake, and the Lake Perris State Recreation Area.” (DEIR p. 3-7.) Most of these lands are owned by various state agencies. The San Jacinto Wildlife Area is owned and operated by the California Department of Fish and Wildlife and contains approximately 20,000 acres of restored wetlands and ponds. The project's Specific Plan extends to the northern border of the San Jacinto Wildlife Area. (DEIR, § 3.2.3, pp. 3-7 - 3-11.) The San Jacinto Wildlife Area contains several habitat areas, including rare inland wetland, which provides habitat for many wetland plant and wildlife species. The San Jacinto Wildlife Area has a very high diversity and abundance of bird species, and is recognized nationally and internationally for its bird population. (DEIR, § 4.4.18, p. 4.4-15.)

Mystic Lake, which pools in a shallow depression of the San Jacinto River, is one of the last ephemeral water bodies that once covered 5 million acres of inland California, today, about 90% of all such wetlands are gone.² Mystic Lake is an important stop on the Pacific Flyway, with more than 150 species of birds visiting annually.³ At its fullest, Mystic Lake can cover more than 3,000 acres as it spills over surrounding roads and floods the ponds and reconstructed wetlands of the San Jacinto Wildlife Area.

Runoff entering the Project area originates upstream in the foothill area known as “The Badlands,” as well as a small swath of moderately developed area and open space. The flows from upstream collect in natural drainage courses and flow south under State Road 60 and Gilman Springs Road, through existing drainage culverts and onto the project site.⁴

Runoff leaving the project area flows south to the San Jacinto River. There is a topographic divide in the project area, located just west of Theodore Street, which separates storm water flows to the San Jacinto River in two directions. For planning purposes, the lead agency has divided the project's

² California Wetlands Conservation Policy, Executive Order W-59-93.

³ Friends of the Northern San Jacinto Valley, *The Road Runner*, February 2011, available at: <http://www.northfriends.org/images/RoadrunnerFebruary2011.pdf>

⁴ Draft Master Plan of Drainage Report § 2.1.2, p. 2.

study area into six distinct watershed (drainage) subareas. Two drainage subareas, west of the divide, drain to the Perris Valley Storm Drain and eventually to the Perris Valley Hydrologic Subarea. The remaining four drainage subareas, east of the divide, drain directly to the San Jacinto Wildlife Area and Mystic Lake, and then south to the Gilman Hot Springs Hydraulic Subarea. Both Hydrologic Subareas eventually flow to the San Jacinto River, about 10 miles south of the project site.⁵ The San Jacinto River, a major tributary to the Santa Ana River, is ephemeral, flowing only during large storm events. The San Jacinto River flows through Canyon Lake and typically terminates in Lake Elsinore.⁶ Lake Elsinore and Canyon Lake are currently on the Environmental Protection Agency's 303(d) list of Impaired Waters.

The proposed project will impact water resources and alter the hydrologic characteristics of the watershed through: increased percentage of impervious area, increased peak flow, reduced time to reach peak flow, increased hydraulic efficiency of the drainage systems from natural drainage courses to improved underground drainage systems and detention basins.⁷

II. The Project Will Substantially Interfere With Groundwater Recharge and No Mitigation Measures are Proposed.

The California Department of Water Resources identifies groundwater wells located within the project area.⁸ Groundwater measurements from 1939 to 1985 indicate a depth range from approximately 100 to 150 feet below ground surface. Groundwater was measured at 106 feet below ground surface within an onsite well.⁹ The DEIR does not contemplate the groundwater wells in the project area and the Draft Master Drainage Report does not explain how the wells will be incorporated into the project area. The Water Supply Assessment prepared for the proposed project indicates that development of the project will not include groundwater for water supply, however Waterkeeper urges the City of Moreno Valley to identify in the DEIR who is responsible for the maintenance of groundwater wells in the project area.

The DEIR finds that the project will not substantially interfere with groundwater recharge, "as any decreased groundwater recharge due to increased impervious surface area will be offset by infiltration due to irrigation." (DEIR, § 4.9.5.3, p. 4.9-19.) In order to offset groundwater recharge through irrigation, the project area must have the capacity to hold all precipitation on site. Furthermore, there must be sufficient demand for the stored water in order to draw down the supply and allow for additional capture volume. The DEIR does not describe a method to capture and store all precipitation that falls upon the project area and the proposed use for landscape irrigation is inadequate because the Specific Plan calls for the instillation of drought tolerant landscape which requires minimal irrigation, especially after storm events when most precipitation will be captured on the project area.

Therefore, this finding is speculative and requires further investigation by the City of Moreno Valley. The Project Description is contrary to a finding of no substantial interference with groundwater

⁵ Draft Master Plan of Drainage Report § 2.1.2, p. 2.

⁶ California Regional Water Quality Control Boards, Region 8 Fact Sheet.

⁷ Draft Master Plan of Drainage Report § 3.1.2, p. 6

⁸ Draft Master Plan of Drainage Report, § 2.1.2, p. 2.

⁹ *Id.*

recharge. The Specific Plan requires the developer to install xeriscape, or drought-tolerant landscaping, which involves minimal irrigation. (DEIR, § 3.4.7.2, p. 3-59) Without more information, it is unreasonably speculative to conclude that irrigation of the planned xeriscaping will fully replace the natural rate of groundwater recharge in the project area. Speculation or unsubstantiated opinion is not substantial evidence. Substantial evidence includes “facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts.”¹⁰ Given the size of the project area, it is foreseeable that the proposed project will substantially interfere with groundwater recharge; the DEIR does not provide substantial evidence that irrigation of landscaping will offset the effects of the project on groundwater recharge. A project has a significant effect on the environment when it will potentially degrade the quality of the environment.¹¹ The recharge of groundwater is an important factor in the San Jacinto River Watershed and for floodplain management; on site recharge is promoted in the San Jacinto River Watershed Management Plan.¹² The project’s interference with groundwater recharge could potentially degrade the quality of the environment.

The California Environmental Quality Act requires that mitigation plans be established for all impacts. No mitigation measure has been proposed for the potential impact to groundwater recharge in the project area. The Environmental Impact Report must identify mitigation measures that could minimize significant adverse impacts.¹³ The Project Specific Water Quality Management Plan (in Appendix J of the DEIR) acknowledges that infiltration testing has not been performed at the project site but that a preliminary review of the feasibility of infiltration has been conducted, finding that the majority of the study area consists of a Hydrologic Soil Group which is considered appropriate for infiltration. (DEIR Appendix J-2 and WQMP, p. 16, Section D.1.) Currently, the majority of the precipitation, particularly in smaller storms, infiltrates into the subsurface of the project area. (DEIR, § 4.9.6, p. 4.9-29.) The project area covers 3,198 acres (the Specific Plan covers 2,710), the majority of which is currently unpaved. As of the writing of this letter, the area of the impervious project footprint has not been determined. The Project Specific Water Quality Management Plan states that it will be determined in the final Water Quality Management plan. The project description calls for the construction of impervious surfaces, such as roadways, parking lots, and buildings, over the majority of the specific plan area yet the DEIR speculates that irrigation will offset “any decreased groundwater recharge.” (DEIR § 4.9.5.3.) Given that the project area will undergo a massive increase in impervious surface area, it is overly speculative to assume that the loss of groundwater recharge will be offset by irrigation of the project’s drought tolerant landscaped areas.

III. The Project Will Significantly Increase Surface Water Runoff, and Treatment Methods are Inadequately Described.

The project may significantly increase off-site runoff. (DEIR § 4.9.6, p. 4.9-22.) Currently, the project site has a low runoff coefficient, meaning that runoff during storms represents a relatively

¹⁰ CA Pub. Res. Code § 21082.2(c).

¹¹ CA Pub. Res. Code § 21083 (b)(1).

¹² San Jacinto River Watershed management Plan, available at http://www.cityofcanyonlake.com/uploads/files/sanjacintoirwmp_entiredocument.pdf

¹³ CA Pub. Res. Code, §§ 21002, 21002.1, subd. (a)(b), 21100, subd. (b)(3)(4).

small portion of the total rainfall. (DEIR, § 4.9.6, p. 4.9-29.) The Specific Plan calls for development of the project area with impervious surfaces, such as roadways, parking lots, and buildings. This development would result in a condition in which nearly all rainfall becomes runoff. (DEIR § 4.9.6, p. 4.9-29.) The majority of the runoff from the project site flows south to Mystic Lake and during times of high storm flow, and reaches the San Jacinto River south of the San Jacinto Wildlife Area. Conditions resulting from the project will include increased runoff volumes and velocity; reduced infiltration; increased flow frequency, duration, and peak; shorter time to reach peak flow; and degradation in water quality. However, the City of Moreno Valley finds that this increase in runoff will be reduced to a less than significant impact because volume is to be stored in basins and released at a controlled rate after the storms. (DEIR § 4.9.6, p. 4.9-29.) Releasing contaminated storm water at a controlled rate after a storm event will change the hydrology of downstream areas such as Mystic Lake by providing a more regular flow of water into the ephemeral lake. The DEIR is insufficiently detailed in its description of the type of treatment captured water will undergo before it is released into Mystic Lake.

Mitigation measures must be feasible, measurable and specific.¹⁴ Mitigation Measure 4.9.6.1A, purports to “reduce potential impacts associated with runoff from the project site to less than significant levels” through the construction of “drainage structures” at the downstream end of the drainage subareas flowing to the San Jacinto Wildlife Area “to control the runoff and spread the flow in such a way that the flows exiting the project boundary will return to the sheet flow pattern similar to the existing condition.” This mitigation measure is unreasonably vague because it does not specify the type of “drainage structures” suitable for the project or how effective “drainage structures” are at releasing runoff to mimic natural sheet flow. Furthermore, this mitigation measure ignores the changes in the quality of the runoff that will flow to Mystic Lake and the San Jacinto Wildlife Area.

All runoff from the site must be treated before it leaves the project area and enters the San Jacinto Wildlife Area. The Specific Plan for the project area does not address the changes in the quality of water that will run off the project area during a storm event. The Specific Plan describes a “system of underground drainage lines and detention basins” that will convey the storm water runoff and “manage the increased flow due to the proposed development.” (World Logistics Center Specific Plan, § 3.5.4, p. 41.) This statement is general and does not adequately describe how the “increased flow” will be managed in order to protect the quality of the water in Mystic Lake or the San Jacinto Wildlife Area. The DEIR fails to describe what types of “detention basins” are contemplated and whether they will have the capacity to treat polluted runoff before release. The DEIR must specify the type of treatment captured storm water will undergo prior to release into Mystic Lake and the San Jacinto Wildlife area.

According to the Specific Plan, peak flows at downstream discharge points, at the southerly project boundary with the San Jacinto Wildlife Area, will not exceed the peak flows for the existing condition. Concentrated flows released from detention basins will be spread to mimic existing sheet flow patterns. (World Logistics Center Specific Plan, § 3.5.4, pp. 42-43.) This is overly speculative because the Plan does not describe how or if the storm water runoff will be filtered or treated according to Low Impact Development Best Management Practices (BMPs.) The DEIR simply lists

¹⁴ Cal. Code Reg. Tit. 14, § 15126.4

treatment control BMPs (in section 4.9.6.3) but fails to describe where, specifically, these BMPs will be implemented or how effective these treatments will be at mimicking existing sheet flow patterns or treating water before release.

The degree of specificity in an EIR must correspond to the degree of specificity involved in the underlying activity which is described in the EIR.¹⁵ Since this is a construction project, the effects of construction can be predicted with a fair amount of accuracy and therefore must be described in sufficient detail.¹⁶ The DEIR is too general because it describes detention basins and spreading areas designed “to account for the amount of sediment transported through the project boundary so that the existing sediment carrying capacity is maintained,” but the DEIR does not describe what the existing carrying capacity for sediment is or whether it is feasible to maintain this capacity with mitigation. (DEIR § 4.9, p. 4.9-30.)

IV. Construction Related Water Quality Impacts Will Be Significant.

The project may cause surface water pollution during construction. (DEIR §4.9.6.2, p. 4.9-31.) The Environmental Protection Agency has cited sediment-laden runoff from construction projects as one of the most potentially damaging forms of water pollution. Sediment leaving construction sites may deliver toxic chemicals and nutrients into waterways. The threat of increased sedimentation to Mystic Lake must be analyzed in the DEIR. Treatment Control BMPs listed in the DEIR do not include treatment for sediment. Instead, the DEIR relies on the future acquisition of an NPDES permit to address the control of sediment discharges from the project site.

The DEIR finds that short term water pollutant discharges from the project area will be mitigated through compliance with the required NPDES permits, however, National Pollution Discharge Elimination permits are an issue that should be addressed early in the planning process so that methods for compliance with the Total Maximum Daily Loads (TMDLs) can be determined. In order to comply with the TMDLs, the project may need to keep all water on site or face penalties under the NPDES program.

Waterkeeper is further concerned about the status of necessary permits for the project site. In Appendix J of the DEIR, the status of the United States Army Corps of Engineers Clean Water Act section 404 permit for the discharge of dredged and fill material into waters of the United States is “To Be Determined.” (DEIR, Appendix J, p. 8.) It is more than likely that grading of the construction site will release dredged or fill material into navigable waters, this activity is prohibited without a permit from the Army Corps of Engineers. Waterkeeper urges the City of Moreno Valley to comply with the Clean Water Act and prepare to apply for all applicable permits.¹⁷

¹⁵ Cal. Code Reg. Tit. 14, § 15146.

¹⁶ Cal. Code Reg. Tit. 14, § 15146.

¹⁷ 33 U.S.C.A. § 1344(a)

V. Operational Water Quality Impacts: The Project Must Comply With Total Maximum Daily Loads and The DEIR Must Specifically Address Methods of Compliance With LID BMPs.

The project may result in surface water pollution during operation. (DEIR §4.9.6.3, p. 4.9-33.) During the operational phase of any urban use, the major source of pollution is storm water runoff, which carries contaminants that have accumulated on the land surface over which runoff passes. Storm water runoff from the roadways, parking lots, and commercial and industrial buildings can carry a variety of pollutants such as sediment, petroleum products, commonly utilized construction materials, landscaping chemicals, and trace metals such as zinc, copper, lead, cadmium, and iron, which may lead to the degradation of downstream water bodies and channels. Runoff from landscaped areas may contain elevated levels of phosphorus, nitrogen, and suspended solids. (DEIR §4.9.6.3, p. 4.9-33.)

a) Receiving Waters from the Project Site are on the 303(d) List of Impaired Waters; the Project Must Comply with TMDLs.

Runoff from the project area drains to the San Jacinto River, approximately 10 miles south of the proposed project. The San Jacinto River flows through Canyon Lake and typically terminates in Lake Elsinore.¹⁸ Storm water runoff from the roadways, parking lots, and commercial and industrial buildings can carry a variety of pollutants, including nutrients. (DEIR § 4.9.6.3, p. 4.9-33). Lake Elsinore and Canyon Lake are currently on the Environmental Protection Agency's 303(d) list of Impaired Waters. The California Regional Water Quality Control Board - Santa Ana Region established a Resolution Amending the Water Quality Control Plan for the Santa Ana River Basin to Incorporate Nutrient Total Maximum Daily Loads (TMDLs) for Lake Elsinore and Canyon Lake, Resolution No. R8-2004-0037. A TMDL is the amount of a pollutant a water body can receive in a day and still meet water quality standards.¹⁹ The TMDL program is a complicated process, typically spanning 19 years, and requires all agencies and developers in the watershed to commit to the program under threat of penalty. The proposed WLC project would increase the volume of water and pollutants entering Canyon Lake and Lake Elsinore.

Table 4.9.1 of the DEIR lists the adopted TMDL pollutants in Canyon Lake (phosphorus and nitrogen) and in Lake Elsinore (phosphorus, nitrogen, and dissolved oxygen.) (DEIR §4.9.6.3, p. 4.9-34.) The table also identifies pollutants associated with operation of the proposed project: sediments, nutrients (such as nitrogen and phosphorous), toxic organic compounds, trash and debris, bacterial indicators, oil and grease, pesticides, and metals. (DEIR § 4.9.6.3, p. 4.9-34.) The DEIR addresses this impact to water quality with assurance that as "specific developments within the project are developed," updates to the Master Water Quality Management Plan for the World Logistics Center Specific Plan "will be required to ensure that water quality treatment is being maintained per city requirements." (DEIR, § 4.9.6.3, p. 4.9-35.) In order for the environmental review process to be meaningful, the method of water quality treatment should be discussed in the DEIR. Methods for complying with city and county Water Quality Management Plans should be specifically analyzed early in the planning process so that cost projections are accurate and potential environmental

¹⁸ California Regional Water Quality Control Board, Region 8 Fact Sheet.

¹⁹ United States Environmental Protection Agency, Laws and Regulations, Total Maximum Daily Loads (303d); available at: <http://water.epa.gov/lawsregs/lawsguidance/cwa/tmdl/overviewoftmdl.cfm>

impacts can be addressed. NPDES permits are also an issue that should be addressed at this stage, so that methods for compliance with the TMDLs can be determined. In order to comply with the TMDLs, the project may need to keep all water on site, or face penalties applicable in the NPDES program.²⁰

b) Methods for Compliance with Low Impact Development Best Management Practices are Not Sufficiently Addressed in the EIR.

The Water Quality Management Plan for the project identifies Best Management Practices (BMPs) that have the potential to minimize the project's effect on hydrology; however, the DEIR does not specify how these BMPs will be integrated into the project; where on the project site the BMPs will be incorporated; or how effective these BMPs are at mitigating the specific environmental effects of the project. An EIR for a specific development project must be specific, because it focuses on site-specific effects that can be predicted with some accuracy.²¹ The specific locations in the project area of the BMPs are not shown in the current Specific Plan. (Project Specific Water Quality Management Plan, p. 16.)

Waterkeeper urges the City of Moreno Valley to implement Site Design BMPs from highest to lowest priority: (1) infiltration, (2) harvest and reuse and (3) bioretention.²² Infiltration BMPs have advantages over other types of BMPs, including reduction of the volume and rate of runoff, as well as full treatment of all potential pollutants contained in storm water runoff. Site Design BMPs require the maximization of permeable surfaces such as permeable pavement with infiltration beds, infiltration trenches and surface and sub-surface infiltration basins. Permeable Pavement provides infiltration and evaporation by reducing the volume and peak of storm water runoff as well as mitigates pollutants from storm water runoff.

The DEIR indicates multiple site design BMPs that, in accordance with Riverside County's Water Quality Management Plan, should be implemented. Neither the DEIR or the Specific Plan provide specific details about how these site design BMPs will be implemented or whether or not they will be effective in ensuring the project has as little impact as possible on the local hydrology. Waterkeeper commends the City of Moreno Valley for encouraging minimization of urban runoff, minimization of impervious footprint, conservation of natural areas and minimization of directly connected impervious areas, but is concerned that the practical implementation of these concepts is not fully addressed in the DEIR. The DEIR should detail how Low Impact Development practices will be implemented, where specific designs will be used and the potential effectiveness of such designs.

²⁰ Where a water body is already impaired by a pollutant, a developer may not be entitled to an NPDES permit for a discharge of that pollutant that is the cause of the water body being listed on the 303(d) list. *Friends of Pinto Creek v. United States Environmental Protection Agency*, 504 F 3d 1007 (9th Cir. 2007).

²¹ Cal. Code Reg. tit. 14 § 15151; *Greenebaum v. City of Los Angeles*, 153 Cal. App. 3d 391, 409 (2^d Dist. 1984); *Karlson v. City of Camarillo*, 100 Cal. App. 3d 789, 807 (2^d Dist. 1980); *San Francisco Ecology Center v. City and County of San Francisco*, 48 Cal. App. 3d 584, 594, 596 (1st. Dist. 1975).

²² California Regional Water Quality Control Board, Santa Ana Region, Order No. R8-2010-0033, NPDES No. CAS 618033, § E. 8. A, p. 95

c) Water Quality Impacts to San Jacinto Wildlife Area Are Significant and the Proposed Mitigation is Inadequate.

The majority of the project area drains towards the Gillman Hot Springs Hydrologic Subarea, which lies south of the San Jacinto Wildlife Area (SJWA.) The WLC project borders the northern boundary of the SJWA and four of the six drainage subareas identified in the DEIR flow directly to the SJWA. The hydraulic conditions of wetlands, such as the SJWA, are strongly influenced by sources and distribution of water. The project may result in surface water pollution during operation. (DEIR, § 4.9.6.3, p. 4.9-33). Storm water runoff from the roadways, parking lots, and commercial and industrial buildings can carry a variety of pollutants such as sediment, petroleum products, construction materials, landscaping chemicals and trace minerals. (DEIR, § 4.9.6.3, p. 4.9-33).

The DEIR lists multiple design features such as detention basins and bioswales but fails to analyze how effective these design features will be in capturing and treating polluted runoff before release into the SJWA. The proposed drainage system identifies seven “basins” along the southern border of the project area, facing the SJWA. (DEIR, § 4.9.6.1, Figure 4.9.3, p. 4.9-27.) The detention basins have outlets that drain directly to the SJWA. The DEIR does not describe what types of detention basins are contemplated and whether they will have the capacity to treat polluted water before release. Riverside County Flood Control and Water Conservation District’s Design Handbook for Low Impact Development Best Management Practices recommends the use of Extended Detention Basins, which are designed to detain storm water and maximize opportunities for volume losses through infiltration, evaporation, evapotranspiration and surface wetting. Pollutant removal is provided by sedimentation inside the basin so that pollutants are not released with the water. Infiltration Basins are more effective BMPs than concrete detention basins (or reinforced concrete boxes) because they provide infiltration, evapotranspiration, evaporation and sedimentation.²³

The DEIR is insufficient because it does not designate specific site design BMPs, rather it lists possible BMPs that the developer “should implement as appropriate.” (DEIR p. 4.9-37). Implementation of these BMPs should be mandatory and not a part of the developer’s discretionary decision making. “Reliance on tentative plans for future mitigation after completion of the CEQA process significantly undermines CEQA’s goals of full disclosure and informed decision making;” mitigation plans have been overturned on judicial review as constituting “improper deferral of environmental assessment.”²⁴

Mitigation Measure 4.9.6.3 C states that a pre-construction survey must be “completed to determine general water quality baseline conditions prior to and during development of the southern portion” of the project. (DEIR, § 4.9.6.3, p. 4.9-41). The baseline water quality conditions on the project site, especially the southern border that abuts the San Jacinto Wildlife Area, should be established before any development on the project site is approved because a study conducted after the approval of a project “will inevitably have diminished influence on decision making.”²⁵

²³ Riverside County Flood Control and Water Conservation District’s Design Handbook for Low Impact Development, Best Management Practices, § 3.1.

²⁴ *Communities for a Better Environment et al., v. City of Richmond*, 184 Cal.App.4th 70, 73 (2010).

²⁵ *Id.*

VI. The Cumulative Impacts of Development in the Region are Not Adequately Addressed in the DEIR.

Cumulative impacts, by definition, are the impacts of other projects combined with the project's direct and indirect impacts.²⁶ Cumulative impacts include other past, present, and reasonably foreseeable future actions regardless of what agency or person undertakes such other actions.²⁷ Development within the watershed will result in an increase in impervious surfaces in addition to changes in land use and associated pollutant runoff characteristics. Increased impervious surfaces are likely to alter existing hydrology and increase potential pollutant loads. (DEIR §4.9.7, p. 4.9-42.) The DEIR does not contemplate other reasonably foreseeable future projects that may have direct or indirect impacts on receiving waters and the adjacent San Jacinto Wildlife Area, such as the proposed Mid County Parkway Project.

In the DEIR, the City of Moreno Valley dismisses the possibility of cumulative environmental impacts on receiving waters by assuming that since “all new developments will be required to mitigate for impacts to water quality, a less than significant impact to water quality will occur.” This analysis is insufficient. A cumulative impact analysis must be substantively meaningful.²⁸ A cumulative impact analysis “which understates information concerning the severity and significance of cumulative impacts impedes meaningful public discussion and skews the decision-maker's perspective concerning the environmental consequences of the project, the necessity for mitigation measures, and the appropriateness of project approval.”²⁹ For purposes of its cumulative impacts analysis, the City of Moreno Valley should either list other reasonably foreseeable probable future projects that produce related or cumulative impacts, including other projects that are currently under environmental review, or it should contain a summary of projections from previously adopted or certified planning or environmental documents.³⁰ Not only must reasonably anticipated future projects be considered in an environmental impact report, but they also must be discussed in a cumulative analysis.³¹ The DEIR does not contain a discussion of reasonably anticipated future projects and their potential impact on hydrology in the watershed. There are currently numerous development projects planned throughout the San Jacinto River watershed, including improvements to three regional roadways: Cajalco Road, I-215, and SR-79.

Potential cumulative impacts to the San Jacinto Wildlife Area are significant. The WLC project area borders the northern boundary of the SJWA, and the project contemplates a 250-foot “safe zone” set back to help minimize potential impacts on biological resources of the SJWA. (DEIR, § 4.4.6, p. 4.4-63 - 64.) However, the DEIR fails to consider encroachment on the southern border of the SJWA by other reasonably foreseeable future projects. The proposed Mid County Parkway Project would require the acquisition of 3.4 acres of land within the SJWA.³² This would destroy an important ecological buffer zone on the south side of the SJWA, which protects important

²⁶ CA Pub Res. Code § 21803 (b)

²⁷ 40 CFR §1508.7

²⁸ Cal. Code Reg. Tit. 14, § 15130

²⁹ *Joy Road Area Forest and Watershed Ass. v. California Department of Forestry*, 142 Cal App 4th, 656, 676 (2006).

³⁰ Cal. Code Reg., tit. 14, § 15130, subd. (b)(1)(A) and (B); *Terminal Plaza Corp. V. City and County of San Francisco*, 177 Cal. App. 3d. 892 (1984).

³¹ *City of Santee v. County of San Diego*, 214 Cal. App. 3d 1438, 263 Cal. Rptr. 340 (4th Dist. 1989).

³² Mid County Parkway Project, Re-circulated Draft Environmental Impact Report/Supplemental Draft Environmental Impact Statement, Appendix B, Section 7.4.2.)

biological resources. The SJWA is facing a potential loss of habitat on both its north and south sides due to proposed development in the area; the consequences to biological resources in the wildlife area must be analyzed in light of the cumulative impacts of all reasonably foreseeable future development. The potential effects of increased sound and light to the SJWA should be considered in a cumulative analysis. The northern portion of the SJWA will experience increased noise levels during construction and operation and given the potential impacts from other foreseeable projects, a 250-foot set back may not be sufficient to mitigate effects such as behavioral changes in wildlife. (DEIR § 4.4.6 p. 4.4-66.) Lighting associated with the planned development on the southern portion of the project area may also have significant direct and indirect impacts to wildlife in the SJWA. (DEIR § 4.4.6, p. 4.4-67.) These effects, along with all other potential impacts, should be considered in a cumulative impacts analysis.

VII. Necessary Findings: The DEIR Identifies Significant Environmental Effects.

The City of Moreno Valley cannot approve or carry out a project when the EIR identifies significant effects on the environment, unless it makes a finding supported by substantial evidence that: (1) there are no feasible alternatives to the project as proposed; (2) changes have been required which mitigate the adverse effects; or (3) such changes are within the jurisdiction of another agency which has adopted, or should adopt, them; or (4) economic, social, or other considerations make mitigation infeasible.³³

VIII. Conclusion

Waterkeeper supports responsible development and encourages the City of Moreno Valley to develop a DEIR that more specifically addresses how the direct and indirect impacts of the project to the region's water quality will be mitigated.

Please do not hesitate to contact me directly at (714) 850-1965 ext. 307 or email me at colin@iewaterkeeper.org with any questions or comments on our WLC position. We look forward to working with the City of Moreno Valley on resolving these and other issues with this priority project.

Regards,



Colin Kelly
Staff Attorney
Inland Empire Waterkeeper

³³ CA Pub. Res. Code § 21081. *City of Marina v. Board of Trustees of the California State University*, 39 Cal. 4th 341, 346 (2006).