

Comment Letter D3

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November 21, 2017

VIA OVERNIGHT MAIL & EMAIL

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Re: Comments on the Draft Environmental Impact Report/  
Environmental Impact Statement for the North City Project, Pure  
Water San Diego Program (SCH #2016081016 / PTS #499621)

We are writing on behalf of California Unions for Reliable Energy ("CURE") to provide comments on the Draft Environmental Impact Report and Draft Environmental Impact Statement ("DEIR/EIS") prepared by the City of San Diego and by the U.S. Bureau of Reclamation, pursuant to the California Environmental Quality Act, and its regulations ("CEQA"),<sup>1</sup> and the National Environmental Policy Act, and its regulations ("NEPA"),<sup>2</sup> respectively, for the Pure Water San Diego Program, North City Project (SCH #201608101/ PTS #499621) ("Project").

The Project is being proposed by the City of San Diego, Public Utilities Department ("City" or "Applicant") and will include expanding the existing North City Water Reclamation Plant and constructing an adjacent North City Pure Water Facility with a purified water pipeline to Miramar Reservoir.<sup>3</sup> A Project alternative would install a longer pipeline to deliver product water to the San Vicente Reservoir.<sup>4</sup> Federal assistance for the Project is authorized by the Reclamation Wastewater and Groundwater Study and Facilities Act of 1992, which directs the

<sup>1</sup> California Public Resources Code, §§ 21000 et seq.  
<sup>2</sup> National Environmental Policy Act, 42 U.S.C. 4321 et seq.  
<sup>3</sup> DEIR/EIS, ES-1-2.  
<sup>4</sup> DEIR/EIS, ES-1-2.  
3907-017acp

## Response to Comment Letter D3

Adams Broadwell Joseph & Cardozo  
Linda Sobczynski  
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D3-1 Comment noted.

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Secretary of Interior, in cooperation with the City of San Diego, to participate in planning, designing, and constructing demonstration and permanent facilities to reclaim and re-use water in the San Diego metropolitan service area.<sup>5</sup> This authority is delegated to the Bureau of Reclamation.<sup>6</sup>

The North City Project, which includes a variety of facilities, will be located throughout the central coastal areas of San Diego County in the North City geographic area of the University, Mira Mesa, Scripps Miramar Ranch, Clairemont Mesa, Linda Vista, Mission Valley, Kearny Mesa, Tierrasanta, and Navajo Community Plan Areas.<sup>7</sup> A new pure water facility, expanded water reclamation facility, and three pump stations would be located within the corporate boundaries of the City of San Diego.<sup>8</sup> Proposed pipelines would traverse a number of local jurisdictions, including the cities of San Diego and Santee, and the community of Lakeside and other areas in unincorporated San Diego County, as well as federal lands within the Marine Corps Air Station Miramar.<sup>9</sup>

Other project components include: a new pump station and forcemain to deliver additional wastewater to the North City Water Reclamation Plant, a brine discharge pipeline, and upgrades to the existing Metropolitan Biosolids Center.<sup>10</sup> A new North City Renewable Energy Facility is proposed, and would be constructed at the North City Water Reclamation Plant to receive landfill gas from the City's Miramar Landfill gas collection system via a new gas pipeline, providing power to the North City Project components.<sup>11</sup> The landfill gas line would cross Marine Corps Air Station Miramar and will require approval by the United States Marine Corps.<sup>12</sup>

Based on our review of the DEIR/EIS, we conclude that it fails to comply with CEQA and NEPA and must be withdrawn. The document lacks substantial evidence to support its conclusions with respect to air quality, and it does not provide an accurate environmental setting against which to compare the Project's

<sup>5</sup> DEIR/EIS, ES-1-2.

<sup>6</sup> DEIR/EIS, ES-1-2.

<sup>7</sup> DEIR/EIS, ES-1-2.

<sup>8</sup> DEIR/EIS, ES-1-2.

<sup>9</sup> DEIR/EIS, ES-1-2.

<sup>10</sup> DEIR/EIS, ES-1-2.

<sup>11</sup> DEIR/EIS, ES-1-2.

<sup>12</sup> DEIR/EIS, ES-1-2.

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The comment is noted. The comment is acknowledged as an introduction to specific comments that follow.

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<p>November 21, 2017 Page 3</p> <p>environmental impacts. With respect to construction-related emissions, it fails to properly evaluate, analyze, and mitigate the Project's significant environmental impacts on air quality, public health and odor. Finally, it fails to disclose, analyze and mitigate significant impacts from exposure to Valley Fever. The DEIR/EIS, therefore, fails as an information disclosure document.</p> <p>Pursuant to CEQA Guidelines, section 15068.5, the City of San Diego must revise the DEIR/EIS for public review, consistent with these comments. The revisions will result in significant new information. Therefore the EIR/EIS must be recirculated to allow the public a meaningful opportunity to comment upon a substantial adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect.<sup>13</sup></p> <p>These comments were prepared with the assistance of air quality expert, Phyllis Fox, Ph.D., P.E.. Dr. Fox's technical comments are attached hereto and submitted to the City and Bureau of Reclamation, in addition to the comments in this letter. Accordingly the City and Bureau of Reclamation must address and respond to Dr. Fox's comments separately.<sup>14</sup></p> <p><b>I. STATEMENT OF INTEREST</b></p> <p>CURE is a coalition of labor organizations whose members encourage sustainable development of California's energy and natural resources. CURE has an interest in enforcing environmental laws that encourage sustainable development and ensure a safe working environment for the members that they represent. Environmental degradation destroys cultural and wildlife areas, consumes limited fresh water resources, causes air and water pollution, and imposes other stresses on people and the environmental carrying capacity of the State. This in turn jeopardizes future development by making it more difficult and more expensive for industry to expand in San Diego, and by making it less desirable for businesses to locate and people to live and recreate in the City, including the Project vicinity. Its organizations' members live, recreate and work in the communities and regions that suffer the impacts of projects that are detrimental to human health, public safety,</p> <p><small><sup>13</sup> 14 Cal. Code Regs., § 15068.5 ("CEQA Guidelines"). <sup>14</sup> Letter from P. Fox to L. Sobczynski (Nov. 20, 2017) Comments on the Draft Environmental Impact Report/Draft Environmental Impact Statement for the North City Project Pure Water San Diego Program, San Diego, California (hereinafter, "Fox Comments"), Exhibit A (Dr. Fox's letter and CV are provided in hard copy and her references are enclosed on a USB). 2007-017acp</small></p>	<div style="display: flex; flex-direction: column; align-items: center; justify-content: space-around;"> <div style="text-align: center;"> <p>↑</p> <p>D3-2 Cont.</p> </div> <div style="text-align: center;"> <p>↑</p> <p>D3-3</p> </div> <div style="text-align: center;"> <p>↑</p> <p>D3-4</p> <p>↓</p> </div> </div> <div style="display: flex; justify-content: space-between; padding: 10px;"> <div style="width: 15%;"> <p><b>D3-3</b></p> <p><b>D3-4</b></p> </div> <div style="width: 85%;"> <p>The comment is noted. The comment does not specify what significant new information will be presented that would justify recirculation; therefore, no additional response is provided or required.</p> <p>This comment is noted.</p> </div> </div>
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<p>November 21, 2017 Page 4</p> <p>and the environment, including in the San Diego regions that will be negatively impacted by the Project's environmental impacts. CURE therefore has a direct interest in enforcing planning, zoning, land use, and environmental laws to minimize the adverse impacts of projects that would otherwise degrade the environment and threaten public health and safety.</p> <p>Individual members of CURE's affiliates live, work, recreate and raise their families in the City of San Diego, County of San Diego and the surrounding counties, including the areas in and around where the Project is proposed. Accordingly, they will be directly affected by the Project's environmental and health and safety impacts. Individual members of CURE's affiliates may also work on the Project itself. They will, therefore, be first in line to be exposed to any hazardous materials, air contaminants or other health and safety hazards that exist onsite.</p> <p><b>II. THE DEIR/EIS FAILS TO COMPLY WITH NEPA AND CEQA.</b></p> <p>The DEIR/EIS must comply with NEPA's and CEQA's procedural and substantive requirements. As set out in further detail in the following sections, the DEIR/EIS fails to comply with NEPA and CEQA. The DEIR/EIS does not describe the existing setting necessary to adequately analyze potentially significant impacts. Also, the DEIR/EIS fails to disclose potentially significant impacts. Where the DEIR/EIS does discuss impacts, it lacks substantial evidence to support its conclusions and otherwise fails to adequately disclose, analyze, and mitigate those impacts. Consequently, those environmental effects are new or more severe than they are reported. Due to the significant revisions that will be required to adequately analyze undisclosed, potentially significant environmental and public health impacts, and propose all necessary and feasible mitigation to reduce significant impacts, the City and Bureau of Reclamation must revise and recirculate the DEIR/EIS.</p> <p><b>a. National Environmental Policy Act ("NEPA")</b></p> <p>NEPA is "our basic national charter for protection of the environment."<sup>15</sup> Its purpose is "to help public officials make decisions that are based on understanding of environmental consequences, and take actions that protect, restore, and enhance</p> <p><small><sup>15</sup> 40 C.F.R. § 1500.1(a). 3997-017acp</small></p>	<p><b>D3-5</b> The comment is noted. The comment does not raise specific issues related to the adequacy of the environmental analysis in the Draft EIR/EIS; therefore, no additional response is provided or required.</p> <p><b>D3-6</b> The comment is noted regarding the intent of NEPA and EISs.</p>
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the environment.”<sup>16</sup> NEPA therefore requires federal agencies to take a “hard look at [the] environmental consequences” of their proposed actions.<sup>17</sup> In so doing, NEPA makes certain “that environmental concerns will be integrated into the very process of agency decision-making.”<sup>18</sup>

NEPA requires all agencies of the federal government to prepare a “detailed statement” that discusses the environmental effects of, and reasonable alternatives to, all “major Federal actions significantly affecting the quality of the human environment.”<sup>19</sup> This statement is commonly known as an EIS. An EIS must describe: (1) the “environmental impact of the proposed action”; (2) any “adverse environmental effects which cannot be avoided should the proposal be implemented”; and (3) any “alternatives to the proposed action.”<sup>20</sup> It further requires that “the policies, regulations, and public laws of the United States shall be interpreted and administered in accordance with the policies set forth” therein.<sup>21</sup> The environmental “effects” that must be considered in an EIS include both “direct effects which are caused by the action” and “indirect effects, which are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable.”<sup>22</sup>

Pursuant to the Administrative Procedures Act (“APA”), a reviewing court will set aside a federal administrative agency’s decision if it is “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.”<sup>23</sup> An agency’s decision made pursuant to NEPA is reviewed under this standard.<sup>24</sup> Although, the standard is deferential to the judgment and expertise of the agency, the agency must support its conclusions with studies that the agency deems reliable.<sup>25</sup> “The agency will have acted arbitrarily and capriciously when ‘the record

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<sup>16</sup> *Id.*, § 1500.1(c).

<sup>17</sup> *Robertson v. Methow Valley Citizens Council* (1989) 490 U.S. 332, 350.

<sup>18</sup> *Andrus v. Sierra Club* (1979) 442 U.S. 347, 350.

<sup>19</sup> 42 U.S.C. § 4332(2)(C).

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> 40 C.F.R. § 1508.8(a), (b).

<sup>23</sup> 5 U.S.C. § 706(2)(A).

<sup>24</sup> *Northern Plains Resource Council, Inc. v. Surface Transp. Bd.* (9th Cir. 2011) 668 F.3d 1067, 1074-1075 (citing *City of Sausalito v. O’Neill* (9th Cir. 2004) 386 F.3d 1186, 1206-06).

<sup>25</sup> *Northern Plains Resource Council, Inc., supra*, 668 F.3d at p. 1075 (citing *Lands Council* (9th Cir. 2006) 537 F.3d 961, 994).

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<p>November 21, 2017 Page 6</p> <p>plainly demonstrates that [the agency] made a clear error in judgment in concluding that a project meets the requirements' of NEPA."<sup>28</sup></p> <p>b. California Environmental Quality Act</p> <p>CEQA requires that an agency analyze the potential environmental impacts of its proposed actions in an EIR (except in certain limited circumstances).<sup>27</sup> The EIR is the very heart of CEQA.<sup>28</sup> "The foremost principle in interpreting CEQA is that the Legislature intended the act to be read so as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language."<sup>29</sup></p> <p>CEQA has two primary purposes. First, CEQA is designed to inform decision makers and the public about the potential, significant environmental effects of a project.<sup>30</sup> "Its purpose is to inform the public and its responsible officials of the environmental consequences of their decisions before they are made. Thus, the EIR 'protects not only the environment but also informed self-government.'"<sup>31</sup> The EIR has been described as "an environmental 'alarm bell' whose purpose it is to alert the public and its responsible officials to environmental changes before they have reached ecological points of no return."<sup>32</sup></p> <p>Second, CEQA requires public agencies to avoid or reduce environmental damage when "feasible" by requiring "environmentally superior" alternatives and all feasible mitigation measures.<sup>33</sup> The EIR serves to provide agencies and the public with information about the environmental impacts of a proposed project and to "identify ways that environmental damage can be avoided or significantly reduced."<sup>34</sup> If the project will have a significant effect on the environment, the agency may approve the project only if it finds that it has "eliminated or</p> <p><sup>28</sup> <i>Northern Plains Resource Council, Inc.</i>, <i>supra</i>, 668 F.3d at p. 1074-1075.  <sup>29</sup> <i>See, e.g.</i>, Pub. Resources Code, § 21100.  <sup>30</sup> <i>Dunn-Edwards v. BAAQMD</i> (1992) 9 Cal.App.4th 644, 652.  <sup>31</sup> <i>Communities for a Better Env. v. Cal. Res. Agency</i> (2002) 103 Cal. App.4th 98, 109 ("CBE v. CRA").  <sup>32</sup> CEQA Guidelines, § 15002(a)(1).  <sup>33</sup> <i>Citizens of Goleta Valley v. Board of Supervisors</i> (1990) 52 Cal. 3d 553, 564.  <sup>34</sup> <i>Berkeley Keep Jets Over the Bay v. Bd. of Port Comm'rs.</i> (2001) 91 Cal. App. 4th 1344, 1354 ("Berkeley Jets"); <i>County of Inyo v. Yorty</i> (1973) 32 Cal.App.3d 795, 810.  <sup>35</sup> CEQA Guidelines, § 15002, subd. (a)(2), (3); <i>see also Berkeley Jets</i>, 91 Cal.App.4th at 1354; <i>Citizens of Goleta Valley</i>, <i>supra</i>, 52 Cal.3d at p. 564.  <sup>36</sup> CEQA Guidelines, § 15002, subd. (a)(2).  3907-017sup</p>	<p><b>D3-7</b>      The comment is noted regarding the intent of CEQA and EIRs.</p> <div style="position: relative; height: 600px;"> <div style="position: absolute; top: 0; right: 0; text-align: right;"> <p>↑ D3-6 Cont.</p> </div> <div style="position: absolute; bottom: 0; right: 0; text-align: right;"> <p>↓</p> </div> <div style="position: absolute; left: 50%; top: 50%; transform: translate(-50%, -50%);"> <p>D3-7</p> </div> </div>
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<p>November 21, 2017 Page 7</p> <p>substantially lessened all significant effects on the environment where feasible" and that any unavoidable significant effects on the environment are "acceptable due to overriding concerns."<sup>35</sup></p> <p>While the courts review an EIR using an "abuse of discretion" standard, "the reviewing court is not to 'uncritically rely on every study or analysis presented by a project proponent in support of its position. A clearly inadequate or unsupported study is entitled to no judicial deference.'"<sup>36</sup> As the courts have explained, "a prejudicial abuse of discretion occurs 'if the failure to include relevant information precludes informed decision making and informed public participation, thereby thwarting the statutory goals of the EIR process.'"<sup>37</sup></p> <p><b>III. THE DEIR/EIS FAILS TO PROVIDE AN ADEQUATE DESCRIPTION OF THE ENVIRONMENTAL SETTING.</b></p> <p>The DEIR/EIS fails to provide an accurate environmental setting of the Project. The DEIR/EIS omits relevant information regarding high wind (Santa Ana) events and Valley Fever in the region.</p> <p>According to NEPA, an environmental review document must "succinctly describe the environment of the area(s) to be affected or created by the alternatives under consideration."<sup>38</sup> Without a description of the areas to be affected by a proposal, the potentially significant effects resulting from a proposal cannot be determined.<sup>39</sup> CEQA requires the lead agency to include an accurate description of the environmental setting to establish the baseline physical conditions against which a lead agency can determine whether an impact is significant.<sup>40</sup></p> <p><sup>35</sup> Pub. Resources Code, § 21081; CEQA Guidelines, § 15092, subd. (b)(2)(A) &amp; (B).  <sup>36</sup> <i>Berkeley Jets</i>, supra, 91 Cal. App. 4th 1344, 1355 (emphasis added) (quoting <i>Laurel Heights Improvement Assn. v. Regents of University of California</i> (1988) 47 Cal.3d 376, 391 409, fn. 12).  <sup>37</sup> <i>Berkeley Jets</i>, supra, 91 Cal.App.4th at 1355; <i>San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus</i> (1994) 27 Cal.App.4th 713, 722; <i>Galante Vineyards v. Monterey Peninsula Water Management Dist.</i> (1997) 60 Cal.App.4th 1109, 1117; <i>County of Amador v. El Dorado County Water Agency</i> (1999) 76 Cal.App.4th 931, 946.  <sup>38</sup> 40 C.F.R., § 1502.15.  <sup>39</sup> <i>Half Moon Bay Fishermans' Marketing Ass'n v. Carlucci</i> (9th Cir.1988), 857 F.2d 505, 510.  <sup>40</sup> CEQA Guidelines, § 15024, subd. (a).  3997-017acp</p>	<div style="display: flex; flex-direction: column; align-items: center;"> <div style="margin-bottom: 20px;"> <p><b>D3-8</b></p> <p>The comment is noted regarding the Draft EIR/EIS not including high wind events and Valley Fever in the region. The comment is acknowledged as an introduction to specific comments that follow.</p> </div> <div> <p><b>D3-9</b></p> <p>The comment is noted regarding the discussion of NEPA.</p> </div> </div>
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<p>November 21, 2017 Page 8</p> <p>a. The DEIR/EIS fails to provide an adequate description of the environmental setting because it does not describe high wind events.</p> <p>The description of the environmental setting in the DEIR/EIS is inadequate as it omits highly relevant information regarding reasonably foreseeable high wind events.<sup>41</sup> Dr. Fox writes that the DEIR/EIS assumed a wind speed of 5.8 mph.<sup>42</sup> However, she adds that Santa Ana winds occur regularly and are capable of reaching 30 to 50 mph.<sup>43</sup></p> <p>Omitting these high wind events from the DEIR/EIS's description of the setting is a severe flaw because the proposed Project will involve significant amounts of excavation, thus exposing soil surfaces in freshly graded areas and storage piles.<sup>44</sup> Dr. Fox writes that the DEIR/EIS should have included a separate air quality analysis based on the fugitive dust generated by high wind events over the land and storage piles.<sup>45</sup> Without doing so, Dr. Fox states that the DEIR/EIS has not accounted for significant amounts of PM10, PM2.5 and Valley Fever spores, which would be dispersed by wind during the Project's grading, cut and fill, or soil movement, or from bare graded soil surface.<sup>46</sup></p> <p>For example, the DEIR/EIS states that PM10 emissions and PM2.5 emissions are below the significance threshold.<sup>47</sup> The significance threshold for PM10 emissions is 100 lb/day.<sup>48</sup> The significance threshold for PM2.5 emissions is 67</p> <p><sup>41</sup> Fox Comments, p. 13.  <sup>42</sup> Fox Comments, p. 14 (citing DEIR/EIS, Appx. A to Appx. B and Appx. B to Appx. B, 3, 31, 54, <i>passim</i>).  <sup>43</sup> Fox Comments, p. 14; see also Fox Comments, p. 6 ("Windblown dust" must be separately calculated using methods in AP-42 and added to the CalEEMod total.), p. 13 ("The CalEEMod model that the DEIR/EIS used to calculate construction emissions does not include 'fugitive dust generated by wind over land and storage piles.' Thus, these emissions were not included in the DEIR/EIS's construction emissions inventory, underestimating emissions of PM10 and PM2.5.")  <sup>44</sup> See Fox Comments, p. 13.  <sup>45</sup> Fox Comments, pp. 6, 13.  <sup>46</sup> Fox Comments, p. 14 ("Wind erosion emissions are typically calculated using methods in AP-42, which require detailed information on site topography, wind profiles, and dispersion modeling... Generally, wind erosion impacts are estimated using AERMOD.")  <sup>47</sup> DEIR/EIS, Appx. B, pp. 71-72 (Table 7.2-20), pdf, p. 82-83.  <sup>48</sup> DEIR/EIS, Appx. B, pp. 71-72 (Table 7.2-20), pdf, p. 82-83.  3097-017acp</p>	<p><b>D3-10</b> Please refer to Response to Comment D3A-27 for a complete response to this topic.</p>
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lb/day.<sup>49</sup> The DEIR/EIS reports that daily PM10 emissions for the Miramar Reservoir Alternative are 70.03 lb/day for PM10 and 36.13 lb/day for PM2.5.<sup>50</sup> However, this conclusion — that the PM10 and PM2.5 emissions are below significance thresholds — is not supported by substantial evidence because the Project's emissions are underestimated. Dr. Fox explains that:

A Santa Ana wind event could easily significantly increase total PM10 and PM2.5 emissions, which increase with increasing wind velocity[.] [I]ncluding the omitted windblown dust emissions could increase PM10 and PM2.5 emissions over significance thresholds, resulting in significant unmitigated impacts that require all feasible mitigation.<sup>51</sup>

Not only does the DEIR/EIS fail to consider high wind events, as described above, but it also fails to accurately calculate windblown dust from graded areas and storage piles. The DEIR/EIS solely relies on outdated CalEEMod modeling, which does not include fugitive dust generated by wind over land and storage piles.<sup>52</sup> Consequently, Dr. Fox provides substantial evidence that once windblown dust is correctly accounted for,<sup>53</sup> PM2.5 and PM10 could be significant, unmitigated, and require all feasible mitigation.<sup>54</sup>

Accurately describing existing high wind events is critical to evaluating the Project's potentially significant impacts on air quality and public health.<sup>55</sup> The City and the Bureau of Reclamation are required to gather the relevant data and provide an adequate description of the existing environmental setting in a revised DEIR/EIS. Only with a complete description of the existing environmental setting

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**D3-11** Please refer to Response to Comment D3A-29 for a complete response to this topic.

**D3-12** Please refer to Response to Comment D3A-27 for a complete response to this topic.

<sup>49</sup> DEIR/EIS, Appx. B, pp. 71-72 (Table 7.2-20), pdf, p. 82-83.

<sup>50</sup> DEIR/EIS, Appx. B, pp. 71-72 (Table 7.2-20), pdf, p. 82-83.

<sup>51</sup> Fox Comments, p. 15.

<sup>52</sup> Fox Comments, p. 6; *id.*, at p. 4 ("Construction emissions should be revised to use [the latest] version [2016.3.2]").

<sup>53</sup> Dr. Fox explains that the DEIR/EIS fails to include emissions from off-road travel, which also increases emissions of PM10 and PM2.5. This is discussed in Section IV.a.i.

<sup>54</sup> Fox Comments, p. 15 ("If Santa Ana winds occurred during grading, cut and fill, or soil movement; or from bare graded soil surfaces, even if periodically wetted, significant amounts of PM10, PM2.5, and associated Valley Fever spores would be released. These emissions could result in public health impacts from Valley Fever spores and/or violations of PM10 and PM2.5 CAAQS and NAAQS.").

<sup>55</sup> CEQA Guidelines, § 15125, subd. (a); see also *Communities For A Better Environment v. South Coast Air Quality Management Dist.* (2010) 48 Cal.4th 310, 321, 30977-01743.

<p>November 21, 2017 Page 10</p> <p>can the DEIR/EIS accurately analyze and mitigate the environmental effects of the project.</p> <p>b. The DEIR/EIS discussion of the environmental setting is flawed because it fails to disclose that Valley Fever is endemic in San Diego.</p> <p>The DEIR/EIS fails to disclose that San Diego County (and thus the City) is endemic for Valley Fever, meaning it is native and common to the region.<sup>66</sup> The County had 649 cases between 2007 and 2011.<sup>67</sup> From 2011 to 2016, that number rose to 728 cases.<sup>68</sup></p> <p>The DEIR/EIS fails to disclose Valley Fever in the Project region. Therefore, the DEIR/EIS failed to evaluate the Project's public health impacts and mitigation measures to reduce the impact, as required by CEQA.<sup>69</sup> As discussed in further detail in Section IV.b. below, Dr. Fox provides substantial evidence that the Project's earthmoving activities may expose people to Valley Fever, a significant public health impact that requires mitigation.<sup>69</sup></p> <p>IV. THE DEIR/EIS FAILS TO ADEQUATELY ANALYZE THE PROJECT'S ENVIRONMENTAL EFFECTS.</p> <p>The DEIR/EIS fails as an informational document under NEPA and CEQA by not having substantial evidence to support its conclusions regarding construction emissions, health impacts and odor. Most notably, and despite a federal agency calling for this analysis, the DEIR/EIS also fails to discuss the risk that the Project may expose people to Valley Fever.</p> <p>NEPA requires a full and fair discussion of every significant impact, as well as disclosure to the decision makers and the public of reasonable alternatives, which would avoid or minimize adverse impacts.<sup>61</sup> CEQA requires that an agency</p> <p><sup>66</sup> Fox Comments, p. 29.  <sup>67</sup> Fox Comments, p. 30.  <sup>68</sup> Fox Comments, p. 30 (Table 3: Reported Cases of Valley Fever in San Diego County).  <sup>69</sup> Fox Comments, p. 33.  <sup>69</sup> Fox Comments, p. 35; see generally Fox Comments, section 2.  <sup>61</sup> 40 C.F.R. § 1502.2097-017asp</p>	<p><b>D3-13</b> The comment is acknowledged as an introduction to specific comments that follow.</p> <div style="position: relative; height: 400px;"> <div style="position: absolute; top: 45%; left: 50%; transform: translate(-50%, -50%);"> D3-12 Cont. </div> <div style="position: absolute; bottom: 45%; left: 50%; transform: translate(-50%, -50%);"> D3-13 </div> </div>
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analyze potentially significant environmental impacts in an EIR.<sup>62</sup> The courts may not look for "perfection" but would expect "adequacy, completeness, and a good faith effort at full disclosure [in an EIR]."<sup>63</sup> Incomplete information in an environmental review document will skew the environmental consequences analysis and prevent informed public input.

- a. The DEIR/EIS fails to adequately analyze impacts from construction emissions, which, when recalculated, are significant.

The DEIR/EIS failed to adequately support its analysis, and accurately analyze the environmental effect from the Project's construction emissions. Dr. Fox determined that the Project will have significant PM10 emissions, cumulatively significant health impacts from construction equipment emissions, and significant odor impacts on nearby sensitive receptors.

- i. *The DEIR/EIS underestimates PM10 emissions, which are significant, by omitting emissions from all construction sources.*

The DEIR/EIS contains numerous flaws in its construction emission analysis, rendering the analysis unreliable and underestimated. First, the DEIR/EIS does not explain how construction emissions were estimated.<sup>64</sup> Rather, it directs the public to thousands of pages of data and does not explain how to transition that information to emission summaries used for the air quality analysis.<sup>65</sup> To understand and verify the DEIR/EIS's construction emissions, a technical expert must back-calculate emission factors and discern what assumptions the air quality analysis considered in its modeling.<sup>66</sup>

Second, the DEIR/EIS only uses CalEEMod modeling to estimate construction emissions.<sup>67</sup> As Dr. Fox explains in her letter, "this model does not

<sup>62</sup> See Pub. Resources Code, § 21000; CEQA Guidelines, § 15002.

<sup>63</sup> CEQA Guidelines, § 15151.

<sup>64</sup> Fox Comments, p. 5.

<sup>65</sup> Fox Comments, p. 5.

<sup>66</sup> Fox Comments, p. 5.

<sup>67</sup> Fox Comments, p. 6 ("The DEIR/EIS exclusively used the CalEEMod model to estimate construction emissions.").

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**D3-14** Please refer to Response to Comment D3A-9 for a complete response to this topic.

**D3-15** Please refer to Response to Comments D3A-27 and D3A-30 for a complete response to this topic.

<p>November 21, 2017          Page 12</p> <p>include all sources of PM10 and PM2.5 construction emissions. It omits windblown dust from graded areas and storage piles and <i>fugitive dust from off-road travel</i>.<sup>68</sup> Thus, the City and Bureau of Reclamation lack substantial evidence to support their conclusion that PM10 and PM2.5 construction emissions would be less than significant.<sup>69</sup></p> <p>Dr. Fox provides substantial evidence that the Project would actually result in significant air quality impacts during construction. Dr. Fox calculated the PM10 emissions from off-road travel.<sup>70</sup> To calculate the off-road PM10 emissions from construction, Dr. Fox used the AP-42, section 13.2.2, emissions equation.<sup>71</sup> The equation includes fugitive dust from off-road travel generated by the Project's heavy construction equipment.<sup>72</sup> She found that "the emissions from construction equipment working on site are large enough, when combined with emissions estimated using the CalEEMod model, to result in significant daily PM10 impacts for both [Miramar and San Vicente] alternatives."<sup>73</sup></p> <p>Dr. Fox calculated that, even assuming mitigation, on-site daily PM10 emissions remain significant for both the Miramar Reservoir and the San Vicente Reservoir alternatives.<sup>74</sup> Thus, daily PM10 emissions from both alternatives "are significant and unavoidable, requiring all feasible mitigation for PM10."<sup>75</sup> Dr. Fox recommended additional, feasible mitigation measures to reduce PM10, which are discussed in further detail below in Section V.a.i.</p> <p>When the PM2.5 emissions from off-road travel are added to the Project's CalEEMod modeling, they do not exceed the significance threshold, as they do for PM10. However, as discussed earlier, windblown dust is a critical component in evaluating PM10, PM2.5, and Valley Fever and excluding high wind events from</p> <p><sup>68</sup> Fox Comments, p. 5.  <sup>69</sup> See generally DEIR/EIS, ES-5, <i>id.</i>, section 6.3-14-20.  <sup>70</sup> See generally Fox Comments, section 1.  <sup>71</sup> Fox Comments, p. 6.  <sup>72</sup> Fox Comments, p. 6.  <sup>73</sup> Fox Comments, p. 7.  <sup>74</sup> Fox Comments, p. 9.  <sup>75</sup> Fox Comments, p. 9.          38077-017acp</p>	<p><b>D3-16</b> Please refer to Response to Comments D3A-13 and D3A-14 for a complete response to this topic.</p>
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the air quality analysis has resulted in a flawed DEIR/EIS.<sup>76</sup> According to Dr. Fox, high wind events may result in significant PM<sub>2.5</sub> emissions.<sup>77</sup>

The City and Bureau of Reclamation must revise the DEIR/EIS to add in all emissions sources — windblown dust and fugitive dust from off-road travel — consistent with these comments.<sup>78</sup> The agencies will consequently need to recirculate the revised EIR/EIS to ensure that the public is not deprived of a meaningful opportunity to comment upon the significant PM<sub>10</sub> emissions and proposed mitigation measures to reduce this air quality impact.

*ii. The DEIR/EIS does not adequately analyze health impacts caused by construction equipment.*

Despite the well-known public health impact that construction is known to have on surrounding communities, the DEIR/EIS does not evaluate health impacts from Project construction equipment emissions.<sup>79</sup> According to Dr. Fox, the Project will use diesel-fueled, off-road equipment such as “heavy-duty trucks, cranes, bulldozers, excavators, and graders.”<sup>80</sup> Not only will the equipment emit large amounts of diesel particulate matter (“DPM”), but it will also emit other hazardous air pollutants, such as benzene, which can cause cancer and other acute and chronic health impacts.<sup>81</sup> As Dr. Fox writes in her comments, construction is well known to result in significant health impacts in surrounding communities.<sup>82</sup> And, for this Project, there are sensitive receptors that are very close to construction sites, within 10 feet in some places.<sup>83</sup>

Even though the Project’s emissions of DPM and other hazardous air pollutants will be near sensitive receptors, the DEIR/EIS did not include an

<sup>76</sup> High wind events may result in significant PM<sub>10</sub> and PM<sub>2.5</sub> emissions. Fox Comments, p. 15.  
<sup>77</sup> Fox Comments, p. 15 (“Including the omitted windblown dust emissions could increase PM<sub>10</sub> and PM<sub>2.5</sub> emissions over these significance thresholds, resulting in significant unmitigated impacts that require all feasible mitigation.”).

<sup>78</sup> See, *supra*, Section III.a.; see also Fox Comments, p. 14 (The added emissions during Santa Ana winds must be included in the Project emissions.).

<sup>79</sup> Fox Comments, p. 15; see generally Fox Comments, section 1.7.

<sup>80</sup> Fox Comments, p. 15.

<sup>81</sup> Fox Comments, p. 15.

<sup>82</sup> Fox Comments, p. 15.

<sup>83</sup> Fox Comments, pp. 18, 22 (“[T]here are many nearby sensitive receptors located within 10 to 70 feet from active construction areas.”).

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**D3-17** Please refer to Response to Comment D3A-31 for a complete response to this topic.

**D3-18** Please refer to Response to Comments D3A-31 and D3A-37 for a complete response to this topic.

<p>November 21, 2017 Page 14</p> <p>evaluation of health impacts from Project construction emissions.<sup>84</sup> Moreover, Dr. Fox comments that the DEIR/EIS failed to evaluate cumulative health impacts of construction:</p> <p style="padding-left: 40px;">[T]he DEIR/EIS fails to recognize that the substantial diesel engine exhaust emissions typically associated with construction equipment, particularly heavy-duty diesel-powered equipment, would occur concurrently with and subsequent to countless other construction projects elsewhere in the County and in the adjacent South Coast Air Basin.<sup>85</sup></p> <p>Consequently, she writes, these health impacts are likely cumulatively significant.<sup>86</sup> To reduce these potentially significant health impacts, Dr. Fox recommends that the Project should require a construction vehicle fleet that includes all Tier 4 equipment.<sup>87</sup> Alternatively, if an all Tier 4 fleet is not available, diesel particulate traps should be used to control DPM.<sup>88</sup></p> <p>The City and Bureau of Reclamation must revise and recirculate the DEIR/EIS to include an adequate analysis of, and require all feasible mitigation to reduce, the potentially significant cumulative health impacts from construction equipment emissions.<sup>89</sup></p> <p style="padding-left: 40px;"><i>iii. The DEIR/EIS does not adequately analyze the odor impacts from construction emissions.</i></p> <p>Rather than conduct an adequate analysis of odor impacts from construction, the DEIR/EIS claims that impacts would be “temporary” or “intermittent” and also that there is no method to evaluate odor impacts.<sup>90</sup> The DEIR/EIS is legally</p> <p style="font-size: small; margin-top: 20px;"> <sup>84</sup> Fox Comments, p. 18.  <sup>85</sup> Fox Comments, pp. 16-18; <i>id.</i>, at p. 16 (Figure 2).  <sup>86</sup> Fox Comments, p. 19.  <sup>87</sup> Fox Comments, p. 20.  <sup>88</sup> Fox Comments, p. 20.  <sup>89</sup> See Fox Comments, p. 20.  <sup>90</sup> Fox Comments, p. 20 (“The DEIR/EIS claims there is no method to evaluate odor impacts. However, this is not true. The analysis of odor is no different than the analysis of air quality impacts.”); DEIR/EIS, section 5.3-7 (“Due to the subjective nature of odor impacts, the number of variables that can influence the potential for an odor impact, and the variety of odor sources, there         20971-017a.p       </p>	<div style="display: flex; flex-direction: column; align-items: center;"> <div style="margin-bottom: 10px;"> <p><b>D3-19</b></p> <p>Please refer to Response to Comments D3A-31, D3A-37, and D3A-40 for a complete response to this topic.</p> </div> <div style="margin-bottom: 10px;"> <p><b>D3-20</b></p> <p>Please refer to Response to Comment D3A-46 for a complete response to this topic.</p> </div> <div> <p><b>D3-21</b></p> <p>Please refer to Response to Comment D3A-42 for a complete response to this topic.</p> </div> </div>
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<p>November 21, 2017 Page 15</p> <p>incorrect, lacks substantial evidence to support its conclusion and contradicts the City's own CEQA guidelines and regulations.</p> <p>First, an EIR must identify all potentially significant environmental effects. Significant effects may be "both short-term and long-term."<sup>91</sup> Thus, even temporary Project impacts may have significant effects on the environment that require mitigation.<sup>92</sup></p> <p>Second, Dr. Fox states that "the odors and accompanying eye and nose irritation associated with diesel exhaust — smoky, burnt, oily, kerosene — have been documented for decades."<sup>93</sup> Due to this well-known objectionable odor, Dr. Fox concludes that "[a] fleet of heavy-duty, diesel-fueled construction equipment serviced by up to 88 truck trips per day<sup>94</sup>, located as close as 10 feet<sup>95</sup> from homes during sensitive nighttime hours, would certainly result in a significant odor impact."<sup>96</sup> Therefore, the DEIR/EIS's conclusion that odor impacts would be less than significant due to its temporary nature is not supported by law or by substantial evidence.</p> <p>Next, the City's own CEQA Significance Determination Guidelines contradict the DEIR/EIS's assertion that there is no method to evaluate odor impacts.<sup>97</sup> The guidelines indicate that information about the quantity of the odor, proximity to sensitive receptors, and concentration of the odor at the receptor is necessary for determining significance.<sup>98</sup> Thus, the City's guidelines set out some methods for determining significance.</p> <hr/> <p>are no quantitative or formulaic methodologies to determine if potential odors would have a significant impact").</p> <p><sup>91</sup> CEQA Guidelines, § 15126.2, subd. (a).</p> <p><sup>92</sup> C EQA Guidelines, § 15126.2, subd. (a).</p> <p><sup>93</sup> Fox Comments, pp. 20-21.</p> <p><sup>94</sup> Fox Comments, p. 22 (citing DEIR/EIS, Table 6.16-4).</p> <p><sup>95</sup> Fox Comments, p. 22. Sensitive receptors live within 10 to 70 feet from active construction areas. <i>Id.</i></p> <p><sup>96</sup> Fox Comments, p. 21.</p> <p><sup>97</sup> Significance Determination Thresholds, City of San Diego (July 2016), available at <a href="https://www.sandiego.gov/sites/default/files/july_2016_ceqa_thresholds_final_0.pdf">https://www.sandiego.gov/sites/default/files/july_2016_ceqa_thresholds_final_0.pdf</a>.</p> <p><sup>98</sup> The guidelines also state that "a more detailed odor analysis may be required to fully evaluate and determine significance of the potential impacts if the proposed project would result in objectionable odors to nearby sensitive receptors." Significance Determination Thresholds, <i>supra</i>, p. 16 (emphasis added).</p> <p>3907-017acp</p>	<div style="display: flex; flex-direction: column; align-items: center;"> <div style="margin-bottom: 10px;">D3-21 Cont.</div> <div style="margin-bottom: 10px;">D3-22</div> <div style="margin-bottom: 10px;">D3-23</div> <div>D3-24</div> </div> <div style="display: flex; justify-content: space-between; padding: 10px;"> <div style="width: 15%;"><b>D3-22</b></div> <div style="width: 85%;"> <p>The comment is acknowledged and it is noted that it does not appear to relate to any physical effect on the environment. The comment will be included as part of the Final EIR/EIS for review and consideration by the decision-makers prior to a final decision on the project. No further response is required because the comment does not raise an environmental issue.</p> </div> </div> <div style="display: flex; justify-content: space-between; padding: 10px;"> <div style="width: 15%;"><b>D3-23</b></div> <div style="width: 85%;"> <p>Please refer to Response to Comment D3A-42 for a complete response to this topic.</p> </div> </div> <div style="display: flex; justify-content: space-between; padding: 10px;"> <div style="width: 15%;"><b>D3-24</b></div> <div style="width: 85%;"> <p>Please refer to Response to Comment D3A-44 for a complete response to this topic.</p> </div> </div>
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<p>November 21, 2017 Page 16</p> <p>Separately, the San Diego Municipal Code provides a proximity-based regulation, which states that odors should not be permitted to emanate beyond the boundaries of the premises upon which the use emitting the contaminants is located.<sup>100</sup> Dr. Fox adds her expert opinion that analyzing odor is no different than analyzing air quality impacts. She explains that the agency can quantify odor by identifying the odiferous compounds, estimating their emission rates, and using modeling to estimate the concentration of those odiferous compounds at the location of sensitive receptors.<sup>100</sup> The DEIR/EIS's conclusion that there is no method to evaluate odor impacts is not supported by the City's guidelines, by municipal code, or by Dr. Fox's expert opinion.</p> <p>Dr. Fox provides substantial evidence, based on her expert experience, that odor impacts will be significant.<sup>101</sup> Mitigation is available and should be required to reduce the significant odor impact from all construction within at least 1,000 feet of sensitive receptors.<sup>102</sup> For example, the construction equipment can be equipped with diesel oxidation catalysts, which eliminate odors.<sup>103</sup> The DEIR/EIS must be revised and recirculated to adequately address and mitigate the Project's significant odor impact.</p> <p>b. The DEIR/EIS fails to disclose and analyze significant impacts due to exposure to Valley Fever.</p> <p>According to Dr. Fox, the Project will have a significant health impact as a result of disturbing soils that may contain Valley Fever spores.<sup>104</sup> Yet, the</p> <p><sup>100</sup> San Diego Municipal Code Chapter 14: General Regulations, §142.0710 (Air Contaminant Regulations), available at <a href="http://docs.sandiego.gov/municode/MuniCodeChapter14/Ch14Art02Division07.pdf">http://docs.sandiego.gov/municode/MuniCodeChapter14/Ch14Art02Division07.pdf</a>.</p> <p><sup>101</sup> Fox Comments, pp. 21-22.</p> <p><sup>102</sup> Fox Comments, pp. 21-22.</p> <p><sup>103</sup> Fox Comments, p. 23.</p> <p><sup>104</sup> Fox Comments, p. 23; see also Fox Comments, p. 23 (discussing Santa Maria Rail Terminal and agency's finding of significant odor impact).</p> <p><sup>104</sup> Fox Comments, p. 28.</p> <p>3907-017a.p</p>	<p><b>D3-25</b> Please refer to Response to Comments D3A-43, D3A-44, and D3A-45 for a complete response to this topic.</p> <p><b>D3-26</b> Please refer to Response to Comment D3A-27 for a complete response to this topic.</p>
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DEIR/EIS failed to disclose this health impact,<sup>108</sup> despite the U.S. EPA's scoping comments advising the City to include a discussion on the disease.<sup>109</sup>

In her letter, Dr. Fox describes the disease and those who are most at-risk.<sup>107</sup> Coccidioidomycosis, also known as Valley Fever, is contracted by inhaling spores of the dimorphic fungus *Coccidioides* spp. (*Coccidioides immitis* and *Coccidioides posadasii*) from soil or airborne dust.<sup>108</sup> The fungus lives in the top 2 to 12 inches of soil.<sup>109</sup> When soil containing the fungus is disturbed during earth moving activities, such as digging or construction, the fungal spores become air borne.<sup>110</sup> The spores are too small to be seen by the naked eye and there is no reliable way to test the spores before working in a particular area.<sup>111</sup> However, some areas carry higher risk because they are native and common, or endemic, to the disease. The Project is in an endemic zone for Valley Fever.<sup>112</sup>

"Typical symptoms of Valley Fever include fatigue, fever, cough, headache, shortness of breath, rash, muscle aches, and joint pain. Symptoms of advanced Valley Fever include chronic pneumonia, meningitis, skin lesions, and bone or joint infections."<sup>113</sup> As Dr. Fox writes, no vaccine or known cure exists for the disease.<sup>114</sup> The disease is debilitating particularly to construction and agricultural workers as it prevents them from working.<sup>115</sup>

Additionally, infection rates generally spike during the hot summer months.<sup>116</sup> This means that in California the majority of Valley Fever cases occur

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The comment is acknowledged and it is noted that it does not appear to relate to any physical effect on the environment. The comment will be included as part of the Final EIR/EIS for review and consideration by the decision-makers prior to a final decision on the project. No further response is required because the comment does not raise an environmental issue.

<sup>107</sup> Fox Comments, p. 35.

<sup>108</sup> DEIR/EIS, at Appendix A (Scoping Letter, NOP/NOI, and NOP Comments), pdf, pp. 76-77 (U.S. EPA Detailed Scoping Comments on the Pure Water Project, San Diego County, California, September 6, 2016, pp. 6-7); see also Fox Comments, p. 36.

<sup>109</sup> See Fox Letter, section 2.

<sup>110</sup> Fox Comments, p. 28.

<sup>111</sup> Fox Comments, p. 28.

<sup>112</sup> Fox Comments, p. 29.

<sup>113</sup> Fox Comments, p. 34.

<sup>114</sup> Fox Comments, p. 34.

<sup>115</sup> Fox Comments, p. 32 ("The longest period of disability from occupational exposure in California is to construction workers, with 62% of the reported cases resulting in over 60 days of lost work.")

<sup>116</sup> Fox Comments, p. 34.

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<p>November 21, 2017 Page 18</p> <p>during the months of June through December.<sup>117</sup> These months are typically periods of peak construction activity.<sup>118</sup></p> <p>Dust exposure is one of the primary risk factors.<sup>119</sup> Construction workers, alongside agricultural workers, are the most at-risk populations.<sup>120</sup> In particular, construction workers, who are in close contact with soil are at greater risk, especially if the work involves digging operations.<sup>121</sup></p> <p>Other people are also at risk from contracting Valley Fever from construction sites.<sup>122</sup> As Dr. Fox writes, an individual does not need to have direct soil contact to contract Valley Fever.<sup>123</sup> Here, sensitive receptors live within 10 to 70 feet from the Project's active construction areas.<sup>124</sup> In addition, spores can travel as much as 500 miles from their point of origin.<sup>125</sup> Therefore, Project construction may expose people who live, work or travel within 500 miles of the Project's active construction areas.<sup>126</sup></p> <p>The Project site will be located in an endemic area and will require extensive earthmoving activities. Dr. Fox provides substantial evidence that construction activities could create a significant health risk to workers and nearby residents. In light of the substantial evidence that Dr. Fox provides, the DEIR/EIS will require significant revisions to address this undisclosed, potentially significant public health impact, and propose all necessary and feasible mitigation to reduce this impact.<sup>127</sup> The City and Bureau of Reclamation will need to recirculate the revised DEIR/EIS to enable meaningful public review and comment.</p> <p><sup>117</sup> Fox Comments, p. 34.  <sup>118</sup> Fox Comments, p. 34.  <sup>119</sup> Fox Comments, p. 34.  <sup>120</sup> Fox Comments, p. 32.  <sup>121</sup> Fox Comments, p. 32; see DEIR/EIS, section 6.3-9 (construction timeline indicating some construction will occur in summer months).  <sup>122</sup> Fox Comments, pp. 32-33.  <sup>123</sup> Fox Comments, p. 33.  <sup>124</sup> Fox Comments, p. 22.  <sup>125</sup> Fox Comments, p. 33.  <sup>126</sup> Fox Comments, p. 33.  <sup>127</sup> DEIR/EIS, <i>passim</i>; see also Fox Comments, p. 35.  3007-017sup</p>	<p><b>D3-28</b> Please refer to Response to Comment D3A-27 for a complete response to this topic.</p>
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<p>November 21, 2017 Page 19</p> <p><b>V. THE DEIR/EIS FAILS TO REQUIRE ALL FEASIBLE MITIGATION TO REDUCE SIGNIFICANT IMPACTS.</b></p> <p>The DEIR/EIS fails to require all feasible mitigation to reduce impacts from construction emissions, and the DEIR/EIS must include mitigation measures to reduce the public health impact from exposure to Valley Fever spores to less than significant.</p> <p>Pursuant to NEPA, an EIS must include a discussion of "appropriate mitigation measures not already included in the proposed action or alternatives."<sup>128</sup> Mitigation includes "minimizing impacts by limiting the degree or magnitude of the action and its implementation."<sup>129</sup> Under CEQA, an EIR is inadequate unless it includes "a detailed statement setting forth . . . mitigation measures proposed to minimize [the project's] significant effects on the environment."<sup>130</sup> An EIR may conclude an impact is significant and unavoidable only if all available and feasible mitigation measures have been proposed, but are inadequate to reduce the impact to a less than significant level.<sup>131</sup> Mitigation measures must be fully enforceable through permit conditions, agreements or other legally binding instruments.<sup>132</sup> A CEQA lead agency may not rely on mitigation measures of uncertain efficacy or feasibility.<sup>133</sup> This approach helps "insure the integrity of the process of decision by precluding stubborn problems or serious criticism from being swept under the rug."<sup>134</sup></p> <p><b>a. Construction emissions are significant and require all feasible mitigation measures.</b></p> <p>The DEIR/EIS must include all feasible mitigation measures to reduce impacts from PM10 and NOx emissions from off-road vehicles to less than significant levels.</p> <p><sup>128</sup> 40 C.F.R., § 1502.14(f).  <sup>129</sup> 40 C.F.R., § 1508.20(b).  <sup>130</sup> Pub. Resources Code, § 21100, subd. (b)(3); CEQA Guidelines, § 15126, subd. (e).  <sup>131</sup> Pub. Resources Code, § 21081; CEQA Guidelines, § 15092, subd. (b)(2)(A) &amp; (B).  <sup>132</sup> CEQA Guidelines, § 15126.4, subd. (a)(2).  <sup>133</sup> <i>Kings County Farm Bur. v. County of Hanford</i> (1990) 221 Cal.App.3d 692, 727-28 (a groundwater purchase agreement found to be inadequate mitigation because there was no record evidence that replacement water was available).  <sup>134</sup> <i>Concerned Citizens of Costa Mesa, Inc. v. 32nd Dist. Agricultural Assn.</i> (1986) 42 Cal.3d 929, 935, 3907-017sup</p>	<p><b>D3-29</b> Please refer to Response to Comments D3A-50 and D3A-51 for a complete response to this topic.</p> <p><b>D3-30</b> Please refer to Response to Comments D3A-14 and D3A-49 for a complete response to this topic.</p>
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<p>November 21, 2017          Page 20</p> <p><b>i. Mitigation Measure MM-AQ-1 is not adequate to mitigate significant off-road PM10 impacts.</b></p> <p>The DEIR/EIS includes some <i>on-site</i> particulate fugitive dust control measures in Mitigation Measure MM-AQ-1<sup>135</sup>. However, as Dr. Fox writes, none of those mitigation measures would reduce particulate matter from <i>off-road equipment travel</i> to less than significant levels. At most, MM-AQ-1 would reduce particulate matter by 40%, which Dr. Fox accounted for in her revised PM10 calculations.<sup>136</sup></p> <p>Dr. Fox explains that there are seven reasons for why MM-AQ-1 would not reduce particulate matter from <i>off-road equipment travel</i> to less than significant levels.<sup>137</sup> Mitigation Measure MM-AQ-1 states<sup>138</sup>:</p> <p>The following best management practices shall be implemented during construction to comply with applicable San Diego Air Pollution Control District (SDAPCD) rules and regulations and to further reduce daily construction emissions:</p> <p>Best management practices that could be implemented during construction to reduce particulate emissions and reduce soil erosion and trackout include the following:</p> <ul style="list-style-type: none"> <li>• Cover or water, as needed, any on-site piles of debris, dirt, or other dusty material.</li> <li>• Use adequate water and/or other dust palliatives on all disturbed areas in order to avoid particle blow-off. Due to current drought conditions, the contractor shall consider use of a SDAPCD-approved dust suppressant where feasible to reduce the amount of water to be used for dust control. Use of recycled water in place of potable water shall also be considered provided that the use is approved by the City of San Diego and other applicable regulatory agencies prior to initiation of construction</li> </ul> <p><sup>135</sup> DEIR/EIS, section 6.3-21-22.  <sup>136</sup> Fox Comments, pp. 9-10 (discussing her calculations, which assumed 40% reductions of PM10).  <sup>137</sup> Fox Comments, pp. 9-10.  <sup>138</sup> DEIR/EIS, section 6.3-21-22; DEIR/EIS, Appendix B, p. 74.          2007-017ncp</p>	<p><b>D3-31</b> Please refer to Response to Comment D3A-16 for a complete response to this topic.</p> <p><b>D3-32</b> This comment is acknowledged that it is an introduction to specific comments that follow.</p>
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<p>November 21, 2017 Page 21</p> <p>activity. Use of recycled water shall be in compliance with all applicable City of San Diego Rules and Regulation for Recycled Water (City of San Diego 2016a), particularly for the protection of public health per the California Code of Regulations, Title 22, Division 4.</p> <ul style="list-style-type: none"> <li>• Wash down or sweep paved streets as necessary to control track out or fugitive dust.</li> <li>• Cover or tarp all vehicles hauling dirt or spoils on public roads if sufficient freeboard is not available to prevent material blow-off during transport.</li> <li>• Use gravel bags and catch basins during ground disturbing operations.</li> <li>• Maintain appropriate soil moisture, apply soil binders, and plant stabilizing vegetation.<sup>140</sup></li> </ul> <p>First, the DEIR/EIS contains no discussion of who would be responsible to develop these measures or oversee their implementation.<sup>140</sup></p> <p>Second, MM-AQ-1 requires covering or watering stockpiles.<sup>141</sup> As Dr. Fox explains, watering stockpiles does not eliminate off-site, unpaved road dust from flat surfaces, unpaved roadways, and active working areas.<sup>142</sup> Relatedly and third, water or dust palliatives do not control dust from active working areas where excavators, and other equipment, are operating.<sup>143</sup> Dr. Fox estimates that this measure, coupled with moisture control, would control at most 40% of the dust.<sup>144</sup></p> <p>Fourth, according to Dr. Fox, washing and sweeping paved streets does not control dust from either on-site or off-site unpaved areas.<sup>145</sup> Fifth, covering trucks</p> <p><sup>140</sup> DEIR/EIS, section 6.3-21-22; <i>id.</i>, Appendix B, p. 74.  <sup>141</sup> Fox Comments, p. 9.  <sup>142</sup> Fox Comments, pp. 9-10.  <sup>143</sup> Fox Comments, p. 10.  <sup>144</sup> Fox Comments, p. 10.  <sup>145</sup> Fox Comments, p. 10.  3007-017acp</p>	<p><b>D3-33</b> Please refer to Response to Comment D3A-17 for a complete response to this topic.</p> <p><b>D3-34</b> Please refer to Response to Comment D3A-18 for a complete response to this topic.</p> <p><b>D3-35</b> Please refer to Response to Comment D3A-19 for a complete response to this topic.</p> <p><b>D3-36</b> Please refer to Response to Comment D3A-20 for a complete response to this topic.</p> <p><b>D3-37</b> Please refer to Response to Comment D3A-21 for a complete response to this topic.</p>
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<p>November 21, 2017 Page 22</p> <p>does not control dust raised by truck wheels on unpaved surfaces.<sup>146</sup> Sixth, gravel bags and catch basins are storm water management controls and do not control dust raised by equipment wheels and active construction equipment.<sup>147</sup> Seventh, soil moisture control is redundant with the use of water for dust control.<sup>148</sup></p> <p>Based on these flaws, construction PM10 impacts would remain significant. Therefore, the City and Bureau of Reclamation do not have substantial evidence to support their conclusion that MM-AQ-1 is adequate to reduce PM10 impacts to less than significant levels.<sup>149</sup> Rather, Dr. Fox provides substantial evidence that additional feasible mitigation is required. Dr. Fox identifies feasible mitigation measures that are necessary to reduce the significant PM10 construction emissions.<sup>150</sup> These measures include installing windbreaks on the windward side of actively disturbed areas of construction,<sup>151</sup> and requiring that all contractors use equipment that meets CARB's most recent certification standard for off-road heavy-duty diesel engines,<sup>152</sup> among others.<sup>153</sup> These measures must be included in a revised DEIR/EIS and evaluated to determine if they will reduce PM10 construction emission<sup>154</sup> to less than significant levels.</p> <p><i>ii. All feasible NOx mitigation is required for the San Vicente Reservoir Alternative.</i></p> <p>The DEIR/EIS concluded that the San Vicente Reservoir Alternative would have a significant and unavoidable air quality impact due to daily NOx emissions.<sup>155</sup> Most of the emissions would arise from the Mission Trails Booster</p> <p><small><sup>146</sup> Fox Comments, p. 10. <sup>147</sup> Fox Comments, p. 10. <sup>148</sup> Fox Comments, p. 10. <sup>149</sup> DEIR/EIS, section 6.3-13-26. <sup>150</sup> Fox Comments, p. 10. <sup>151</sup> Fox Comments, p. 11. <sup>152</sup> Fox Comments, p. 11. <sup>153</sup> Fox Comments, pp. 11-12. <sup>154</sup> Fox Comments, p. 12 (noting that further fugitive PM10 mitigation measures, designed to protect against Valley Fever spores, should be required). <sup>155</sup> DEIR/EIS, 6.3-21 ("Daily construction emissions for the San Vicente Reservoir Alternative would exceed the threshold for NOx and PM10 during construction of the North City Project in 2019 and 2020, resulting in a significant impact under CEQA . . . the San Vicente Reservoir Alternative would exceed the annual significance threshold for NOx during the 2019 construction year, resulting in a significant impact under CEQA."). 3007-017a.p</small></p>	<div style="text-align: center;"> <p>↑ D3-37 Cont. ↑ D3-38 ↑ D3-39</p> <p>↓ D3-40</p> <p>↓ D3-41</p> </div> <p><b>D3-38</b> Please refer to Response to Comment D3A-22 for a complete response to this topic.</p> <p><b>D3-39</b> Please refer to Response to Comment D3A-23 for a complete response to this topic.</p> <p><b>D3-40</b> Please refer to Response to Comment D3A-25 for a complete response to this topic.</p> <p><b>D3-41</b> This comment is acknowledged that it is an introduction to specific comments that follow.</p>
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<p>November 21, 2017 Page 23</p> <p>Station, which requires a substantial amount of excavation work and significant haul trips.<sup>156</sup></p> <p>As required by law, the DEIR/EIS proposed mitigation measure MM-AQ-2<sup>157</sup> to reduce significant NOx emissions.<sup>158</sup> MM-AQ-2 states:</p> <p>The following measures shall be adhered to during construction activities associated with the North City Project to reduce oxides of nitrogen (NOx):</p> <ul style="list-style-type: none"> <li>a. All diesel-fueled construction equipment shall be equipped with Tier 3 or better (i.e., Tier 4 Interim or Tier 4 Final) diesel engines.</li> <li>b. The engine size of construction equipment shall be the minimum size suitable for the required job.</li> <li>c. Construction equipment shall be maintained in accordance with the manufacturer's specifications.<sup>159</sup></li> </ul> <p>MM-AQ-2 does not account for all feasible mitigation for three reasons, as explained by Dr. Fox.<sup>160</sup> First, subsection (a) of MM-AQ-2, which states that all diesel-fuel construction equipment shall be equipped with Tier 3 or better, is meaningless.<sup>161</sup> According to Dr. Fox, the CalEEMod model already assumes that all construction equipment will use Tier 3 engines. Thus, Tier 3 engines are the existing, "base case."<sup>162</sup> The DEIR/EIS therefore improperly relies on measures that are not enforceable mitigation, but merely part of the Project description.<sup>163</sup></p> <p><sup>156</sup> DEIR/EIS, 6.3-26 ("The exceedance in daily maximum NOx emissions is driven by the Mission Trails Booster Station phase of the San Vicente Reservoir Alternative, which requires a substantial amount of excavation work. The haul trips associated with the excavation work comprise the majority of the NOx emissions for that phase in 2019.")</p> <p><sup>157</sup> DEIR/EIS, section 6.3-23.</p> <p><sup>158</sup> See Pub. Resources Code, § 21002.</p> <p><sup>159</sup> DEIR/EIS, section 6.3-23.</p> <p><sup>160</sup> Fox Comments, section 1.9.</p> <p><sup>161</sup> Fox Comments, p. 24.</p> <p><sup>162</sup> Fox Comments, p. 24.</p> <p><sup>163</sup> CEQA Guidelines, § 15126.4, subd. (a)(2); <i>Kings County Farm Bur. v. County of Hanford</i> (1990) 221 Cal.App.3d 692, 727-28; see also <i>Lotus v. Department of Transportation</i> (2014) 223 Cal.App.4th 645, 650 (applicant erroneously included mitigation measures that were "part of the project"). 3987-017cep</p>	<p><b>D3-42</b> Please refer to Response to Comment D3A-47 for a complete response to this topic.</p>
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<p>November 21, 2017 Page 24</p> <p>Second, the same subsection defines “or better” as “Tier 4 Interim” or “Tier 4 Final” diesel engines.<sup>164</sup> As Dr. Fox writes, Tier 4 Interim NOx limits are identical to Tier 3 limits.<sup>165</sup> Once again this mitigation measure does nothing.<sup>166</sup></p> <p>Third, the measure mentions Tier 4 Final engines as an option, but does not require them.<sup>167</sup> Dr. Fox suggests that the measure should be modified to require that all diesel-fueled off-road construction of more than 50 hp be equipped with Tier 4 Final engines.<sup>168</sup> If Tier 4 Final engines are not available, then additional NOx mitigation must be required.<sup>169</sup> Therefore, the City and Bureau of Reclamation lack substantial evidence to support their conclusion that all feasible mitigation measures have been included in the DEIR/EIS for the significant NOx emissions.</p> <p>Dr. Fox identifies additional feasible mitigation measures to control NOx emissions from construction.<sup>170</sup> These measures include, for example, maintaining all construction equipment in proper tune according to manufacturer’s specifications,<sup>171</sup> modifying engines with CARB verified retrofits,<sup>172</sup> and requiring that all construction equipment, diesel trucks, and generators be equipped with Best Available Control Technology for emission reductions of NOx.<sup>173</sup></p> <p>Although most of the emissions would arise from the Mission Trails Booster Station,<sup>174</sup> the DEIR/EIS asserts that evaluating other options — <i>i.e.</i> redesigning the facility footprint, reducing associated grading — is “outside the scope of this EIR/EIS.”<sup>175</sup> The law not only permits, but actually requires this type of evaluation</p> <p><sup>164</sup> See Fox Comments, p. 24.  <sup>165</sup> Fox Comments, p. 24.  <sup>166</sup> See CEQA Guidelines, § 15126.4, subd. (a)(2).  <sup>167</sup> See Fox Comments, p. 25.  <sup>168</sup> Fox Comments, p. 25.  <sup>169</sup> Fox Comments, p. 25.  <sup>170</sup> Fox Comments, pp. 25-27.  <sup>171</sup> Fox Comments, p. 26.  <sup>172</sup> Fox Comments, p. 27.  <sup>173</sup> Fox Comments, p. 27 (in addition to reducing particulate matter).  <sup>174</sup> DEIR/EIS, section 6.3-26.  <sup>175</sup> DEIR/EIS, section 6.2-7 (“In order to reduce the impact, the MTBS would need to be redesigned to reduce the facility footprint (and reduce associated grading), reshape cuts and fills to appear as natural forms, retain trees to screen earthwork contrasts, or be relocated to an area with less slope where less excavation would be required, the feasibility and analysis of which is outside the scope of this EIR/EIS.”).  3007-017.nwp</p>	<div style="display: flex; flex-direction: column; align-items: center;"> <div style="margin-bottom: 20px;">D3-43</div> <div style="margin-bottom: 20px;">D3-44</div> <div>D3-45</div> </div> <div style="display: flex; flex-direction: column;"> <div style="margin-bottom: 20px;"> <p><b>D3-43</b> Please refer to Response to Comment D3A-48 for a complete response to this topic.</p> </div> <div style="margin-bottom: 20px;"> <p><b>D3-44</b> Please refer to Response to Comment D3A-49 for a complete response to this topic.</p> </div> <div> <p><b>D3-45</b> Please refer to Response to Comments D3A-49 and D3A-50 for a complete response to this topic.</p> </div> </div>
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<p>November 21, 2017 Page 25</p> <p>when determining the scope of imposing mitigation for a significant and unavoidable impact.<sup>176</sup> The DEIR/EIS must be revised to include additional feasible construction mitigation measures to reduce the significant NOx emissions to below 250 lb/day.<sup>177</sup> The City must then recirculate the revised DEIR/EIS for public review.</p> <p style="padding-left: 40px;"><b>b. Public health impacts from Valley Fever are significant and require all feasible mitigation measures.</b></p> <p>As discussed above, the DEIR/EIS did not disclose, or analyze significant health impacts from exposure to Valley Fever spores.<sup>178</sup> Dr. Fox provides substantial evidence that the public health impacts are significant and require mitigation. Although the DEIR/EIS includes a conventional dust control measure to address construction impacts on air quality (Mitigation Measure MM-AQ-1),<sup>179</sup> Dr. Fox writes that the measure is inadequate to address the health risk posed by exposure to Valley Fever spores.<sup>180</sup> Therefore, the DEIR/EIS must be revised and recirculated to include mitigation measures that specifically mitigate the public health impact from exposure to Valley Fever spores.</p> <p>Dr. Fox explains that conventional dust control measures are not adequate to address Valley Fever because those measures "largely focus on visible dust or large dust particles — the PM10 fraction — not the very fine particles where the Valley Fever spores are found."<sup>181</sup> Even after applying dust control measures, and observing that the air appears relatively clear and dust free,<sup>182</sup> the spores, can remain aloft for long periods and be carried hundreds of miles from their point of</p> <p><small><sup>176</sup> Pub. Resources Code, § 21002. ("the policy of the state that public agencies <i>should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental effects of such projects</i> [italics added].")</small>  <small><sup>177</sup> DEIR/EIS, Appx. B, Table 7.2-29.</small>  <small><sup>178</sup> Fox Comments, p. 35.</small>  <small><sup>179</sup> Dr. Fox identifies flaws in MM-AQ-1, which she describes on pp. 41-42 of her comment letter. For example, "the DEIR/EIS contains no discussion of who would be responsible to develop these measures or oversee their implementation." <i>Id.</i></small>  <small><sup>180</sup> Fox Comments, pp. 36, 41.</small>  <small><sup>181</sup> Fox Comments, p. 36 (discussing Mitigation Measures MM-AQ-1).</small>  <small><sup>182</sup> Fox Comments, p. 37 ("Spores of <i>Coccidioides</i> <i>ssp.</i> have slow settling rates in air due to their small size (0.002 mm) and low terminal velocity, and possibly also due to their buoyancy, barrel shape, and commonly attached empty hyphae cell fragments.").</small>  <small>39877-017sep</small></p>	<div style="display: flex; flex-direction: column; align-items: center; justify-content: center;"> <div style="display: flex; align-items: center; margin-bottom: 20px;"> <div style="writing-mode: vertical-rl; transform: rotate(180deg);">D3-45 Cont.</div> <div style="border-left: 1px solid black; height: 20px; margin: 0 5px;"></div> </div> <div style="display: flex; align-items: center; margin-bottom: 20px;"> <div style="writing-mode: vertical-rl; transform: rotate(180deg);">D3-46</div> <div style="border-left: 1px solid black; height: 40px; margin: 0 5px;"></div> </div> <div style="display: flex; align-items: center;"> <div style="writing-mode: vertical-rl; transform: rotate(180deg);">D3-47</div> <div style="border-left: 1px solid black; height: 20px; margin: 0 5px;"></div> </div> </div> <div style="margin-top: 20px;"> <p><b>D3-46</b> Please refer to Response to Comment D3A-51 for a complete response to this topic.</p> <p><b>D3-47</b> Please refer to Response to Comments D3A-54 and D3A-66 for a complete response to this topic.</p> </div>
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origin.<sup>183</sup> Thus, in the lead agencies' response to these comments, the City and Bureau of Reclamation may not claim that the DEIR/EIS's conventional dust control measures<sup>184</sup> will adequately address the significant health impact from Valley Fever.<sup>185</sup>

Consequently, Dr. Fox provides several recommended measures that go beyond conventional dust control measures<sup>186</sup> and that specifically address Valley Fever, such as:<sup>187</sup>

- (1) Re-evaluating and updating the Project's Injury and Illness Prevention Program and ensuring that safeguards to prevent Valley Fever are included<sup>188</sup>
- (2) Training all employees about Valley Fever<sup>189</sup>
- (3) Controlling dust exposure by providing high-efficiency particulate-filtered, air conditioned enclosed cabs on heavy equipment<sup>190</sup>
- (4) Preventing transport of cocci outside endemic areas by thoroughly cleaning equipment<sup>191</sup>
- (5) Improving medical surveillance for employees by ensuring that employees have prompt access to medical care<sup>192</sup>
- (6) Positioning workers upwind, when possible, when they are digging a trench or performing other soil-disturbing tasks.<sup>193</sup>

D3-47  
 Cont.

<sup>183</sup> Fox Comments, p. 37.

<sup>184</sup> See DEIR/EIS, section 5.3-21-22; *id.*, Appendix B, p. 74 (Mitigation Measures MM-AQ-1).

<sup>185</sup> Fox Comments, p. 43 ("In sum, construction mitigation measures in the DEIR/EIS are not adequate to control Valley Fever. Projects that have implemented conventional PM10 dust control measures, such as those proposed in the DEIR/EIS, have experienced fugitive dust issues and reported cases of Valley Fever.").

<sup>186</sup> Fox Comments, p. 37 ("The recommended measures go far beyond the conventional dust control measures recommended in the DEIR/EIS to control construction emissions, which primarily control PM10."); *id.* p. 41 (describing additional reasons why MM-AQ-1 is inefficient and inadequate).

<sup>187</sup> Fox Comments, section 2.6.

<sup>188</sup> Fox Comments, p. 38.

<sup>189</sup> Fox Comments, p. 38.

<sup>190</sup> Fox Comments, pp. 38-39.


<sup>191</sup> Fox Comments, p. 39 ("Thoroughly clean equipment, vehicles, and other items before they are moved off-site to other work locations.").

<sup>192</sup> Fox Comments, pp. 39-40.

<sup>193</sup> Fox Comments, p. 42.

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<p>November 21, 2017 Page 27</p> <p>Dr. Fox concludes that "[e]ven if all the [recommended] measures are adopted, a recirculated DEIR/EIS is required to analyze whether these [recommended] measures are adequate to reduce [the Valley Fever] significant impact to a level below significance."<sup>194</sup> The lead agencies must propose mitigation measures that go beyond conventional dust control measures and that are specifically designed to reduce the significant health impacts due to Valley Fever and then analyze their effectiveness.</p> <p>VI. CONCLUSION</p> <p>The DEIR/EIS contains legal errors and lacks substantial evidence to support its conclusions. Instead, substantial evidence shows that the Project will result in significant, unmitigated air quality and public health impacts. Therefore, the City and Bureau of Reclamation must prepare a revised DEIR/EIS. The agencies must then recirculate the revised DEIR/EIS to ensure that the public is not deprived of a meaningful opportunity to comment on the significant impacts and feasible ways to mitigate or avoid those impacts.</p> <p>Sincerely,  Linda Sobczynski</p> <p>LTS: acp Attachments</p> <p><sup>194</sup> Fox Comments, pp. 43-44. 3987-017acp</p>	<p><b>D3-48</b> Please refer to Response to Comment D3A-68 for a complete response to this topic.</p> <p><b>D3-49</b> This comment is acknowledged that it is a summary to specific comments that preceded it.</p>
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