TOPICAL RESPONSE 4: NICKEL WATER

Comments have been received on the Draft EIS/EIR questioning one of the sources of water for the Newhall Ranch Specific Plan referred to as the "Nickel water." Specifically, comments claim that the purchase of the Nickel water by the applicant should not be allowed while water shortages are in effect in California. Comments also question the capacity of the West Branch of the California Aqueduct to transmit the Nickel water (and other water supplies), particularly at the Oso Pumping Plant, and some suggest that DWR does not allow "wheeling" agreements of private water in the California Aqueduct, a public facility. Several other comments state that there is no environmental documentation, which discloses and discusses the Nickel water transfer from the lower Kern River to the Newhall Ranch Specific Plan site. Other comments state that no point of delivery agreement exists with the Department of Water Resources (DWR) to transport the Nickel water from the Tubman turnout in Kern County to the Specific Plan site. Other comments state that Kern County has enacted a groundwater ordinance "prohibiting the transfer of groundwater out of the Kern basin" and, as a result, the comments question whether the Nickel water transfer complies with that ordinance. Other comments suggest that the impacts of this water transfer, including impacts in other groundwater basins and aquifers, were never addressed.

This topical response addresses the Nickel-related comments received on the Draft EIS/EIR. The response is based on the information presented in the Draft EIS/EIR, **Section 4.3**, Water Resources, which is summarized below, and other information from both the previously certified Newhall Ranch environmental documentation, including the Revised Draft Additional Analysis, Volumes I and II (November 2002) and the Revised Additional Analysis, Vol. VIII (May 2003; SCH No. 1995011005), as well as information provided by Castaic Lake Water Agency (CLWA) and other retail water purveyors in the Santa Clarita Valley. In addition, for further responsive information, please see revised **Section 4.3** of the Final EIS/EIR.

Before responding to specific comments, background information is provided below concerning the Nickel water supply source for the Newhall Ranch Specific Plan.

Newhall Ranch Specific Plan Water Supplies

The total water demand for the approved Specific Plan is estimated to be approximately 16,400 acre-feet per year (afy). Of this total, potable demand is 8,135 afy and non-potable demand is 8,265 afy. Specific Plan demand also is projected to increase by approximately 10 percent in years with lower than average local rainfall (a "dry year") to a total Specific Plan demand of 18,040 afy in that dry year. (Draft EIS/EIR, p. 4.3-83.) In response to this demand, the Draft EIS/EIR stated:

> In response to the Specific Plan's potable demand, the Specific Plan water supply sources to meet such demand would be: (a) the applicant's historical groundwater pumped from the Alluvial aquifer in Los Angeles County; (b) *the applicant's additional water under contract with Nickel Family LLC in Kern County*; and (c) the applicant's agreement with the Semitropic Water Storage District (SWSD) to bank water needed in dry years. Each of these supply sources is summarized further below . . . (Draft EIS/EIR, p. 4.3-83, emphasis added.)

As to the Nickel water supply source, the Draft EIS/EIR provided the following detailed information:

Nickel Water and Semitropic Groundwater Banking Project. Two other Specific Plan water supplies (imported water referred to as Nickel Water and water from the Semitropic Groundwater Bank) are also available when needed. As indicated in the Newhall Ranch Revised Additional Analysis, Section 2.5, *the applicant has secured water under contract with Nickel Family LLC in Kern County (Nickel water)*. This water is 100 percent reliable on a year-to-year basis, and not subject to the annual fluctuations that can occur in dry year conditions. The Nickel Water is part of a 10,000-acre-foot quantity of annual water supply that Nickel obtained from KCWA in 2001 pursuant to an agreement between Nickel, KCWA and Olcese Water District (Olcese). Under that agreement, Nickel has the right to sell the 10,000 afy to third parties both within or outside Kern County. Nickel Water is not subject to reductions in dry years and, therefore, is an extremely reliable water supply source for the Specific Plan. *The water would be delivered through the KCWA and the SWP system. A point of delivery agreement between the CLWA and DWR would be required to transmit the water between the KCWA and CLWA service areas. DWR controls the SWP facilities, and CLWA controls the treatment and conveyance facilities, for the delivery of Nickel water in future years.*

*Nickel water would only be needed on the Specific Plan site in years when all of the Newhall agricultural water has been use*d, which is estimated to occur after the 21st year of project construction. Up to that point in time, the unused Nickel water would be available for storage in groundwater banking programs on an annual basis. Given that the Specific Plan's potable water demand would mostly be met through the use of the applicant's groundwater, Nickel water would not be needed to serve the Specific Plan until the latter phases.

During the interim, the Nickel water has been acquired by the applicant (1,607 afy purchased annually), and the water stored in the Semitropic groundwater banking program, located in Kern County. **Table 4.3-19** shows that, at an annual storage rate of 1,607 af, a total of 37,281 af of Nickel water could be stored in groundwater banking facilities in the Semitropic water storage district groundwater banking program by Specific Plan build-out year 25. Thereafter, the stored Nickel water would be available for use on the Specific Plan site during dry years, thereby, avoiding the need for additional primary potable water supplies beyond these sources.

At build-out of the Specific Plan, it is expected that approximately 438 af of water from the Semitropic groundwater bank would be needed in a dry year to meet potable demands of the Specific Plan. Dry years are projected to occur once every four years. At this

> demand rate, the 37,281 af of Nickel water in storage would be available to meet this need for over 340 years. (Draft EIS/EIR, pp. 4.3-84 and 4.3-85, italics added.)[1]

Based on the three available supply sources for the Specific Plan's potable demand, including Nickel water, the Draft EIS/EIR determined that "an adequate supply of water is available to meet the demands of the Specific Plan without creating significant environmental impacts and no new or expanded water entitlements are needed to meet the Specific Plan's water demand." (Draft EIS/EIR, p. 4.3-85.) The Draft EIS/EIR's water demand and supply analysis was based on the Newhall Ranch Revised Additional Analysis, Vol. VIII (May 2003), Section 2.5, Water Resources, which was one of the documents incorporated by reference in the Draft EIS/EIR. (See, Draft EIS/EIR, p. 4.3-9.)[2] Other pertinent documents incorporated by reference in the Draft EIS/EIR include the Nickel water contract and prior environmental documentation. (Newhall Ranch Revised Draft Additional Analysis, Volume VI (November 2002), Appendix 2.5(b), (c); see, Draft EIS/EIR, pp. 1.0-25-1.0-26 and 4.3-10.)

Specifically, the Newhall Ranch Revised Additional Analysis provided the following overview of the Newhall Ranch Specific Plan's water supply and demand, including the Nickel water supply source:

> The second source is the applicant's purchase of water from Nickel Family LLC in Kern County (the "Nickel Water"). Because these two independent primary water sources meet the potable water needs of the Specific Plan, no potable water would be needed from State Water Project (SWP) and Castaic Lake Water Agency (CLWA) supplies. . . .
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> The Nickel Water consists of 1,607 acre-feet per year (AFY) of water purchased by the applicant from Nickel Family LLC. This water is 100 percent reliable on a year-to-year basis, and not subject to the annual fluctuations that can occur in dry year conditions. Pursuant to Nickel's contract water rights, the water delivered to Nickel for sale to Newhall must be high quality water, acceptable for delivery into the California aqueduct. In addition, delivery of the water to Nickel being sold to Newhall is mandatory, unaffected by annual hydrologic conditions. Consequently, the Nickel Water is not subject to unpredictable reductions in quality or quantity typical of other water sources. These characteristics make the Nickel Water a dependable water supply source. *See*, **Section 2.5.5.3**, Newhall Ranch Water Supplies, for additional information. The water would be delivered through the Kern County Water Agency and the State Water Project

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[1] The Draft EIS/EIR estimates of Nickel water provided in this paragraph are different than the figures presented in the previously certified Newhall Ranch Revised Additional Analysis, Section 2.5.5.3, because, since certification of the Revised Additional Analysis, the Specific Plan water demand figures have been revised and Nickel water has been stored in the Semitropic Water Storage District Water Banking and Exchange Program. As of December 31, 2009, the applicant (Newhall) has 18,828 feet of stored water in this Semitropic program. (Please see Final EIS/EIR, **Appendix F4.3**, for letter from Semitropic Water Storage District, Judy Burns, to Newhall Land and Farming (Attn: Steve Zimmer), dated February 22, 2010 and attachment.

[2] The Newhall Ranch Revised Additional Analysis was challenged in court, but was upheld at trial, and the parties ultimately settled the pending appeal in *United Water Conservation District v. County of Los Angeles, et al.*, Case No. 239324-RDR [Consolidated with Case Nos. 239325, 239326, and 239327-RDR], 5th Civil No. F044638. A copy of the "Notice of Settlement and Dismissal of Appeal," effective March 29, 2004, is found in **Appendix F4.3** of the Final EIS/EIR.

> (SWP) system. The Nickel Water would only be needed on the Specific Plan site in years when all of the Newhall Agricultural Water has been used, which is estimated to occur after the 20th year of project construction. Up to that point in time, the unused Nickel Water would be available for storage in groundwater banking programs on an annual basis, which would then be used as a dry year supplemental supply. (Newhall Ranch Revised Additional Analysis (May 2003), p. 2.5-2.)

In Section 2.5.5.3, the Newhall Ranch Revised Additional Analysis provided further information concerning the Specific Plan's Nickel water supply source. On page 2.5-141, the Newhall Ranch Revised Additional Analysis stated that the Nickel water is part of a 10,000 acre-foot quantity of annual water supply that the Nickel Family LLC obtained from Kern County Water Agency (KCWA) in 2001 pursuant to an agreement between Nickel, KCWA, and Olcese Water District (Olcese). This section further stated:

> Under that agreement, Nickel has the right to sell the 10,000 AFY to third parties both within or outside Kern County. *See, Appendix 2.5 for copies of the applicable agreements and attachments to the agreements*. Because it is not subject to reductions in dry years, the Nickel water is an extremely reliable water supply source for the Specific Plan. The water would be delivered through the Kern County Water Agency and the SWP system. [Footnote omitted.] A point of delivery agreement between the CLWA and DWR would be required to transmit the water between the KCWA and CLWA service areas.
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> As shown in **Table 2.5-33**, the Nickel Water would only be needed on the Specific Plan site in years when all of the Newhall Agricultural Water has been used, which is estimated to occur after the 20th year of project construction. Up to that point in time, the unused Nickel Water would be available for storage in groundwater banking programs on an annual basis.
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> As indicated above, the Newhall Agricultural Water to be used as a potable water source for the Specific Plan (*i.e.*, 7,038 AFY) would be completely committed to the Specific Plan by the 21st buildout year. At that time, approximately 224 of the 1,607 acre-feet per year of Nickel Water purchased by the applicant would be needed to meet the Specific Plan's potable water demand. By the 25th buildout year, both the Agricultural Water and the Nickel Water would be fully committed to the Specific Plan. When not needed to meet the potable water demand of the Specific Plan (in buildout years 1 through 20), the 1,607 AFY of Nickel Water would be available for storage in groundwater banking programs like the Semitropic Groundwater Bank, in which the applicant has purchased 55,000 AF of storage capacity. At an annual storage rate of 1,607 AF, a total of 35,598 AF of Nickel Water could be stored in groundwater banking facilities by buildout year 24. Thereafter, the stored Nickel Water would be available for use on the Specific Plan site during dry years, thereby avoiding the need for additional primary potable water supplies beyond these sources. At buildout of the Specific Plan, it is expected that approximately 865 AF of water from the Semitropic Groundwater Bank would be needed in a dry year to meet potable demands of the Specific Plan. Dry years are projected to occur once every four years. At this demand rate, the 35,598 AF of Nickel Water in storage would be available to meet this need for over 160 years. . . .

Kern River Restoration Program. *Nickel acquired the Nickel water as a result of KCWA's Kern River Restoration and Water Supply Program ("the Restoration Program").* KCWA proposed the Restoration Program for the overall purpose of generating a broad local water supply, environmental and community benefits and drinking water benefits within the metropolitan Bakersfield area. The program included four primary components: (i) acquisition of the high flow Kern River Lower Water Right, including associated storage at Lake Isabella; (ii) construction of enough urban area water wells to achieve a target flow capacity in the Kern River; (iii) construction of water quality exchange facilities; and (iv) construction and acquisition of local facilities to enhance groundwater recharge and recovery opportunities. In short, the Restoration Program would allow KCWA to acquire the rights to certain Kern River high flow flood waters and create the physical and regulatory infrastructure necessary to capture and store those flood waters during wet years to provide a reliable water source for urban, agricultural, environmental and recreational uses during dry years. KCWA approved the Restoration Program in September 2000. *A copy of the Initial Study and Proposed Negative Declaration for the Restoration Program is incorporated by reference and provided in Appendix 2.5.*

The key component of the Restoration Program was the acquisition of the high flow Kern River Lower Water Right, also known as the La Hacienda and Garces pre-1914 water right to the Kern River ("the Water Right"). The Water Right water is estimated to be available when the Kern River is at or above 120 percent of normal runoff, or in about one out of every five years. While the Water Right delivery amounts are highly variable, the long-term average annual yield is estimated at 40,000 AFY. *See, Appendix 2.5 for a copy of the Lower Kern River Water Rights agreement*.

When the Restoration Program was proposed, three different entities held an interest in the Water Right: (i) Garces Water Company ("Garces"); (ii) Olcese; and (iii) Nickel. [Footnote omitted.] Garces owned an undivided interest in the Water Right. Olcese owned the remaining interest; however, pursuant to a 1981 agreement between Olcese and Nickel's predecessors in interest, Olcese's interest in the Water Right was subject to Nickel's right to use any portion of Olcese's water that was excess to Olcese's needs. Consequently, KCWA's proposal to acquire the Water Right as part of the Restoration Program amounted to a proposal to acquire it from Garces, Olcese and Nickel. Upon approval of the Restoration Program, KCWA acquired all three parties' interests in the Water Right, acquiring Garces' interest first and then Olcese's and Nickel's.

KCWA acquired both Olcese's and Nickel's respective interests in the Water Right pursuant to the "Contract to Transfer the Kern River Lower River Water Rights," made as of January 23, 2001 ("the Water Right Contract").

In return for transferring its interest in the Water Right to KCWA, Nickel received a substantial cash payment as well as certain non-cash consideration, including the 10,000 AFY of KCWA water, which Nickel was then free to sell to third parties. The provisions of the Water Right Contract are discussed in greater detail below. [Footnote omitted.]

Water Right Contract. Pursuant to the Water Right Contract, Nickel and Olcese agreed to transfer to KCWA all of their right, title and interest in the Water Right, as more completely described in Exhibit A-1 of the Water Right Contract (*See*, Appendix 2.5). In return, Nickel and Olcese received cash payments and other consideration. *See*, Water Right Contract, Sections 4.2, 4.3 and 4.4. As discussed above, Nickel's non-cash consideration for the transfer included 10,000 AFY of KCWA water at the Tupman turnout of the California Aqueduct (Reach 13B as illustrated on Figure 2.5-25, State Water Project Reaches). The Water Right Contract identifies that water as the "Agency Transfer Water," and defines it as: "10,000 acre-feet of water annually, to be provided by the Agency to Nickel for delivery and sale to third parties from the California Aqueduct." *Id.* at Sections 1.10 and 4.4. Section 2.1 of the Water Right Contract states that Nickel intends to sell the Agency Transfer Water "both within and outside of Kern County."

Pursuant to the terms of the contract, the 10,000 AFY delivered to Nickel must be high quality water, acceptable for delivery into the California aqueduct. *Id*. at Section 4.6. In addition, delivery of the entire 10,000 AFY to Nickel is mandatory, unaffected by annual hydrologic conditions. *Id.* at Section 4.4. Consequently, the 10,000 AFY entitlement is not subject to unpredictable reductions in quality or quantity typical of other water sources. These characteristics make the Nickel water a dependable water supply source.

As shown by the definition of "Agency Transfer Water," the parties to the Water Right Contract understood that Nickel would sell the 10,000 AFY to third parties. Other provisions of the contract indicate that Nickel's right to do so is unconditional. For example, Section 4.9 states: "Any sale of the Agency Transfer Water shall be at the sole discretion and direction of Nickel." The contract also confirms that KCWA had a legal right to the Agency Transfer Water and the legal right to exchange the water as provided in the Water Right Contract. *Id.* at Section 7.2(i). In addition, Section 4.9 of the Water Right Contract, "Agency Transfer Water Sales," states that KCWA may assist Nickel in marketing the Agency Transfer Water and that such assistance may include "entering into contracts for the sale of the Agency Transfer Water and efforts to obtain the approval, cooperation and assistance of DWR and the State Water Contractors in obtaining any necessary approvals from regulatory agencies to effect such sales or transfers."

Other provisions of the Water Right Contract further increase the availability and reliability of the Nickel water as a Specific Plan water supply source. Section 4.4 of the contract states that, in delivering the water for Nickel's use, KCWA "shall use its best efforts to obtain and maintain approvals from the DWR for delivery of any Agency Transfer Water into the California Aqueduct, and if such approvals are not obtained after reasonable efforts the parties shall, in good faith, negotiate alternative mechanisms for delivery of Agency Transfer Water." Section 4.7 states: "The ten thousand (10,000) acre-feet of Agency Transfer Water provided to Nickel shall be transported within the California Aqueduct to the full extent of the Agency's right to use [the] Aqueduct." And, pursuant to Section 4.8, KCWA agreed to "schedule all Agency Transfer Water deliveries with the DWR at the same time and in the same manner as the Agency schedules deliveries of SWP Entitlement Water to the Agency's Member Units[.]" [Footnote omitted.]

> **Newhall/Nickel Water Purchase Agreement.** The applicant obtained an interest in the Nickel Water pursuant to the "Option and Water Purchase Agreement," executed between the applicant and Nickel in October 2002. A copy of the Water Purchase Agreement is provided in Appendix 2.5 [to the Newhall Ranch Revised Additional Analysis].
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> Under the terms of the Water Purchase Agreement, the applicant acquired an option to purchase the use of 1,607 AFY of the 10,000 AFY of water that Nickel obtained from KCWA. The applicant has exclusive use of the 1,607 AFY of water on an annual basis for an initial term of 35 years. After the first 35-year term expires, the applicant may extend the term of the Water Purchase Agreement for another 35 years, provided that certain conditions are met. The applicant is obligated to purchase, and Nickel is obligated to sell, the 1,607 AFY of water each year for a purchase price of $763,245 for the first annual delivery of the Nickel water, with purchase price increases each subsequent year by a set multiplier based on the price in effect the previous year.
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> The terms of the Water Purchase Agreement also require that Nickel will make the Nickel water available to the applicant at the Tupman turnout, as defined in the KCWA Agreement. Nickel and the applicant have also agreed to jointly request that KCWA and CLWA enter into a "point of delivery" agreement with DWR approving delivery of a portion of KCWA's SWP Table A water entitlement, used as SWP exchange water, to CLWA so that the Nickel water can be delivered to CLWA for the entire 35-year term.
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> In addition, Nickel has agreed to cooperate with the applicant in obtaining any other necessary approvals for the transfer of the Nickel water for use by the applicant. Nickel has further acknowledged that the applicant intends to use the Nickel water on the applicant's property within the CLWA and/or Valencia Water Company service areas. (Newhall Ranch Revised Additional Analysis (May 2003), pp. 2.5-141-2.5-147, italics added.)

In addition, the previously certified Newhall Ranch Revised Additional Analysis assessed the impacts of Nickel water use on the Specific Plan site. Specifically, the Newhall Ranch Revised Additional Analysis found that, from an environmental perspective, the Nickel water transfer (1,607 afy) would not require the construction of any new SWP facilities, or the construction or improvement of any new or existing water facilities or infrastructure; the analysis acknowledged, however, that use of the Nickel water would facilitate the phased development of the Specific Plan, the growth of which was addressed in the certified Newhall Ranch environmental documentation. (See, Newhall Ranch Revised Additional Analysis (May 2003), p. 2.5-196.) The Newhall Ranch Revised Additional Analysis also evaluated other environmental issues associated with the use of Nickel water, including the capability to deliver the water to Santa Clarita Valley, the quality of the water, and impacts to sensitive biological resources:

> A report entitled, *Evaluation of Available Capacity in the California Aqueduct from Reach 10A to Reach 30* (November 23, 2002), has been prepared by Provost & Pritchard Engineering Group, Inc. to evaluate the ability of the existing California Aqueduct and associated facilities to convey the 1,607 AFY from areas in Kern County (Aqueduct Reach 10A) to CLWA at Castaic Lake (Aqueduct Reach 30) through the year 2035. As stated in the report, sufficient capacity in the Aqueduct is available to convey an

additional 1,607 AFY of water from Kern County (Reach 10A) to Castaic Lake (Reach 30).

In perspective, 1,607 AFY equates to 8.8 cfs flowing for 3 months per year (or 2.2 cfs flowing throughout the year), assuming an Aqueduct conveyance system with an operational capacity range of 1,680 to 6,350 cfs and a storage capacity of 540,520 AF [footnote omitted] within these two reaches. The needed 2.2 cfs of capacity represents just 0.13 percent of the total capacity at the low end of the range and 0.03 percent at the high end of the range. Because this water is a stable source, a very small amount, and could be transferred at anytime during the year, the needed capacity would be available during off-peak periods when the full capacity of the SWP system is not in use. A copy of the Provost & Pritchard report is provided in Appendix 2.5.

The proposed use of Nickel Water would not involve the conversion of any land uses within the CLWA service area. The increased supply of water would also reduce future potential impacts to local groundwater supplies in Santa Clarita Valley. However, the use of Nickel Water in the CLWA service area would be utilized to support phased development of the Newhall Ranch Specific Plan. Therefore, the proposed use of the Nickel Water would facilitate development of the Specific Plan, which would result in the environmental effects previously assessed in the partially certified Newhall Ranch Final EIR (SCH No. 95011015).

Like CLWA's SWP Table A water entitlement, prior to application and use in the Santa Clarita Valley, the Nickel Water would be treated in water treatment plants operated by CLWA in order to meet or exceed local and regional water quality standards. CLWA is presently in the process of completing the environmental documentation necessary to expand their treatment facilities. Consistent with the information presented below in the Subsection entitled, Potential for Degradation of Water Quality in the Alluvial Aquifer, Saugus Formation, or Santa Clara River, no significant water quality impacts would occur. Furthermore, because the Nickel Water would be transmitted through the existing California Aqueduct and associated facilities (*i.e.,* Aqueduct), the water would take on the same water quality characteristics of SWP water.

With respect to potential impacts to riparian vegetation and sensitive species, which are riparian habitat dependent, the use of the Nickel Water would be considered a beneficial impact given that the water would, after use on Newhall Ranch, slightly increase the quantity of flows in the Santa Clara River (the 1,607 AFY of water represents a small 1.7 percent increase in water importation to the Santa Clarita Valley when compared with CLWA's 95,200 AFY entitlement). This increase in river flow would enhance the ability of the river system to support sensitive habitats and species. Such increases in river flow would also beneficially impact downstream water users in Ventura County by providing downstream water basins with added surface/groundwater supplies. Based on this information, no significant environmental impacts are expected in the Santa Clarita Valley and in areas downstream of the Valley due to the use of the Nickel Water. (Newhall Ranch Revised Additional Analysis (May 2003), pp. 2.5-197-2.5-198.)

The Newhall Ranch Revised Additional Analysis also assessed the potential environmental impacts on water delivery and treatment capacity through the use of Nickel water on the Specific Plan site. As to these issues, the Newhall Ranch Revised Additional Analysis determined:

> (2) **Water Delivery/Capacity -- Nickel Water**
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> As stated above, the project applicant has acquired 1,607 AFY of water from Nickel Water Family LLC. Prior to acquiring the Nickel Water, a report was prepared by Provost & Pritchard Engineering Group, Inc. (*see*, Appendix 2.5) to evaluate the ability of the existing California Aqueduct and associated facilities to convey the 1,607 AFY from areas in Kern County (Aqueduct Reach 10A) to CLWA at Castaic Lake (Aqueduct Reach 30) through the year 2035. As stated in the report, sufficient capacity exists in the California Aqueduct to convey an additional 1,607 AFY of water from Kern County (Reach 10A) to Castaic Lake (Reach 30). . . .
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> (3) **Water Treatment -- Newhall/SWP Water and Nickel Water**
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> Imported SWP water is treated at two water treatment plants owned and operated by CLWA, including the Earl Schmidt Filtration Plant, with a current water capacity of 28 million gallons per day ("mgd"), and the Rio Vista Water Treatment Plant, with a water capacity of 30 mgd. The two plants have a current capacity to treat a total of 58 mgd. These plants were designed to accommodate expansion as required. CLWA is currently in the process of expanding the Earl Schmidt plant to increase the plant's treatment capacity from 28 mgd to a total of 50 mgd. The expanded Schmidt plant is scheduled to be available for use by late-2003. As part of CLWA's Capital Improvement Plan ("CIP", herein incorporated by reference), the treatment plants are planned to treat approximately 180 mgd at Valley buildout. CLWA treats the SWP water at its two water filtration plants and then distributes the water to the local retail water purveyors in the Santa Clarita Valley. From CLWA's two existing plants, the treated SWP water is delivered by gravity to the retail water purveyors through CLWA's distribution network of pipelines and turnouts.
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> Based on CLWA's capabilities, there are no expected significant impacts associated with the delivery and treatment of the Newhall/SWP water or the Nickel Water. (Newhall Ranch Revised Additional Analysis (May 2003), pp. 2.5-241-2.5-242.)

The expanded Schmidt Plant is now completed and the combined capacity of the two treatment plants is approximately 86 mgd.

Further, the Newhall Ranch Revised Additional Analysis adopted a mitigation measure specific to the Specific Plan's Nickel water supply source. Specific Plan Mitigation Measure 4.11-20 requires that the applicant, or its successors, assign the acquired Nickel water rights to Valencia Water Company or CLWA, and, in consultation with those agencies, the applicant must ensure that the Nickel water is delivered to the appropriate place of use necessary to serve the Specific Plan at the time of need - - with the Valencia Water Company, CLWA, or a designee, taking delivery of the Nickel water, so that such water will be used, or stored for use, for the Specific Plan in future years. The mitigation also addressed the term of the Nickel water agreement. Specific Plan Mitigation Measure 4.11-20 provides as follows:

> The Specific Plan applicant, or its successors, shall assign its acquired Nickel Water rights to the Valencia Water Company or Castaic Lake Water Agency (CLWA), and, in consultation with the Valencia Water Company, CLWA or their designee(s), the applicant shall ensure that the Nickel Water is delivered to the appropriate place of use necessary to serve the Newhall Ranch Specific Plan at the time of need, as determined by the County of Los Angeles through required SB221 and/or SB610 analyses for future subdivision map applications. Upon approval of the Specific Plan, the applicant, Valencia Water Company, CLWA or a designee, will take delivery of the Nickel Water, so that such water will be used, or stored for use, for the Specific Plan in future years.
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> To ensure that an adequate supply of water is available for the Specific Plan over the long-term, the decision of whether or not the Nickel Water agreement should be extended or otherwise canceled cannot occur without first obtaining CLWA's concurrence. If the applicant, or its designee, seeks to not extend the Nickel Water agreement beyond its initial 35-year term, or seeks to cancel said agreement prior to the expiration of its initial 35-year period, or the expiration of the 35-year option period, if exercised, then the applicant, or its designee, must obtain CLWA's written concurrence and that concurrence must include findings to the effect that other equivalent water supplies are available at a comparable cost and that non-extension or cancellation of the agreement will not impact the water supplies of Newhall Ranch and the rest of the Santa Clarita Valley. (Newhall Ranch Revised Additional Analysis (May 2003), Mitigation Measure 4.11-20, pp. 2.5-246-2.5-247.)

Based on the above analysis, the Los Angeles County Board of Supervisors determined that "adequate water supplies are available for build-out of the Newhall Ranch Specific Plan," without creating significant water-related impacts onsite, in the Santa Clarita Valley, or downstream in Ventura County. (Newhall Ranch Additional Analysis (May 2003), p. 2.5-247.) This determination was supported by the information and analysis presented in the previously certified Newhall Ranch Revised Additional Analysis (May 2003), which was incorporated by reference in the Draft EIS/EIR.

Transfer of Nickel Water to the Newhall Ranch Specific Plan Area

Although the environmental effects of the Specific Plan's use of the Nickel water source have been analyzed, comments received on the Draft EIS/EIR claim, generally, that the purchase of Nickel water by the applicant (Newhall) should not be allowed while shortages are in effect elsewhere in California. As stated above, the applicant already has secured water under contract with the Nickel Family LLC in Kern County, and no known limitations have been, or can be, placed on this purchase based on the state of water supplies locally or regionally throughout California. The Nickel water supply sources are considered 100 percent reliable on a year-to-year basis and are not subject to the annual fluctuations that can occur in dry year conditions. The Nickel water is part of a 10,000 acre-foot quantity of annual water supply that Nickel obtained from KCWA in 2001 pursuant to an agreement between Nickel, KCWA and Olcese. As part of the purchase, and as outlined in the supporting contractual documents: (a) Nickel can sell its water to third parties both within or outside Kern County; (b) the water will be transported in the California Aqueduct to the full extent of the KCWA's right to use the Aqueduct; and (c) KCWA agreed to schedule deliveries with DWR at the same time and in the same manner as KCWA schedules deliveries of its SWP water to KCWA's Member Units. Therefore, there is no compelling reason to invalidate or

prohibit the purchase of Nickel water by the applicant, nor would such a prohibition be within the authority or jurisdiction of the Corps or CDFG.

California Aqueduct Capacity

In addition, comments received on the Draft EIS/EIR question the capacity of the West Branch of the California Aqueduct to transmit the Nickel water and other water supplies to the Specific Plan site. Other comments state that the California Aqueduct, a public facility, cannot be used to transmit the Nickel water because DWR would not allow such an agreement (*i.e.*, a "wheeling agreement"). As stated above, the Nickel water would be delivered through KCWA to CLWA through the existing California Aqueduct and associated facilities. The use of the California Aqueduct capacity to transport Nickel water was addressed in the Newhall Ranch Revised Additional Analysis, which states that:

> California State Water Code §1810 requires that any available capacity in any water conveyance facility be made available if needed. Specifically, the Code section states '. . . neither the state, nor any regional or local public agency may deny a bona fide transferor of water the use of a water conveyance facility which has unused capacity, for the period of time for which that capacity is available, if fair compensation is paid for that use . . . .' (Newhall Ranch Revised Additional Analysis, Section 2.5, p. 2.5-142.)

This Water Code provision requires that public agencies make available unused conveyance capacity of their facilities, subject to payment of fair compensation and other conditions. The legislative findings adopted when this provision was passed state that: "[i]t is the policy of the state to facilitate the voluntary sale, lease or exchange of water, or water rights in order to promote efficient use." (Wat. Code, § 1810 [Historical and Statutory Notes].) DWR has conveyed non-SWP water for the SWP contractors in SWP facilities prior to the Monterey Amendment when sufficient capacity was available. For example, in 1990, a critically dry year, non-SWP water purchased from Yuba County was transported to three contractors: Tulare Lake Basin Water Storage District, Santa Clara Valley Water District, and Empire West Side Irrigation District. The amounts conveyed using SWP facilities were 31,211 af, 28, 962 af, and 2,031 af, respectively. The Monterey Agreement also allows the conveyance of non-SWP water. Under the Monterey Agreement, Article 12(f) specifically assigns priority to the conveyance of non-SWP through SWP facilities when sufficient capacity is available. As noted in the Draft EIS/EIR and discussed further below, separate agreements called "point of delivery" agreements would allow conveyance of the Nickel water through SWP facilities (*e.g.*, Tubman turnout, Oso Pumping Plant) to the Semitropic Water Storage District (Semitropic) for storage and the conveyance of the stored water from Semitropic to CLWA.

In addition, as stated in the previously certified Newhall Ranch Revised Additional Analysis, a report entitled, "Evaluation of Available Capacity in the California Aqueduct from Reach 10A to Reach 30" (November 23, 2002), was prepared by Provost & Pritchard Engineering Group to evaluate the ability of the existing California Aqueduct and associated facilities to convey the 1,607 afy from areas in Kern County (Aqueduct Reach 10A) to CLWA at Castaic Lake (Aqueduct Reach 30) through the year 2035. This report was reviewed and had the input of CLWA and the Metropolitan Water District. As stated below, the report concluded that sufficient capacity in the California Aqueduct is available to convey the additional Nickel water. Specifically, the report provided:

> Purpose
>
> The purpose of this report is to evaluate the ability of existing SWP facilities to convey the remaining 1,607 af/y from areas in Kern County (Aqueduct Reach 10A) to Castaic Lake (Aqueduct Reach 30 on West Branch) through the year 2035. In perspective, 1,607 af/y equates to 8.8 cfs flowing for 3 months per year (or 2.2 cfs flowing throughout the year) in a Aqueduct conveyance system with an operational capacity of 1,680-6,350 cfs and a storage capacity of 540,520 af [footnote omitted] within these reaches.
>
> Executive Summary
>
> Sufficient capacity in the California Aqueduct is available through 2035 to convey an additional 1,607 af/y of water from Kern County (Reach 10A) to Castaic Lake (Reach 30). Although a theoretical situation exists in which that capacity could be temporarily unavailable, that situation is very unlikely to occur. Further, that situation would occur only in an extremely wet year in which all SWP contractors received and requested delivery of 100% of their SWP water allocations to locations south of the Tehachapi Mountains. In such a year, CLWA would have an abundance of water from CLWA's existing SWP supplies (including the 41,000 af/y SWP entitlement recently acquired by CLWA and 7,648 af/y being acquired by NLF from BMWD) and the water needs of the NLF development could be met using CLWA and/or BMWD water, eliminating the need for the 1,607 af/y that could theoretically be temporarily displaced from the California Aqueduct.
>
> Furthermore, approximately 53,000 af/y in supplemental SWP conveyance capacity is conservatively estimated to be available in the California Aqueduct and the West Branch . . . from other SWP West Branch contractors and Aqueduct design features that provide operational flexibility and other unscheduled contingencies. Additional conveyance capacity is likely; as in years with 100% SWP entitlement allocations, significant quantities of SWP water from SWP contractors south of the Tehachapi Mountains would be expected to be delivered to areas north of the Tehachapi Mountains to groundwater banking programs and/or sales through the SWP Turnback Pool Program. (Newhall Ranch Revised Additional Analysis (May 2003), pp. 1-2.)

Since approval of the Newhall Ranch Additional Analysis in May 2003, the capacity of the Aqueduct's West Branch also has been expanded. The Gorman Creek Channel Bypass was constructed and is now operational. This bypass provides an additional 500 cubic feet per second (cfs) of capacity on the West Branch. Table B-6 of DWR Bulletin 132-09, provided in **Appendix F4.3** of the Final EIS/EIR, provides a reporting of historic and projected flows through the Oso Pumping Plant (see Sheet 8 of 10). DWR's SWP Data Handbook (2003), incorporated by reference, indicates that the Oso Pumping Plant has a total unit capacity of 3,252 cfs (approximately 2.35 million afy). As shown on Table B-6 (Sheet 8 of 10), in 2004, deliveries through the Oso Pumping Plant exceeded 800,000 af. After accounting for a seven percent capacity outage factor, the 1,607 af of Nickel water represents approximately 0.07 percent of the adjusted Oso Pumping Plant capacity of approximately 2.18 million afy.

Because this water is a stable source, a very small amount (1,607 af), and could be transferred at anytime during the year, the needed capacity would be available during off-peak periods when the full capacity of

the SWP system is not in use. (A copy of the Provost & Pritchard report was provided in the Newhall Ranch Revised Draft Additional Analysis, Volume I (November 2002), Appendix 2.5. It is also provided in **Appendix F4.3** of the Final EIS/EIR.)

Point of Delivery Agreements

Comments received on the Draft EIS/EIR state that no agreement exists with DWR to transport the Nickel water to the Specific Plan site. As noted in the Draft EIS/EIR, separate agreements, called "point of delivery" agreements, will be required to allow conveyance of the Nickel water through SWP facilities (including the Tubman turnout) to the Semitropic Water Storage District for storage, and the conveyance of the stored water from Semitropic to CLWA. The agreements would involve KCWA and CLWA, which control the treatment and conveyance facilities, and DWR, which controls the SWP facilities. (Draft EIS/EIR, **Section 4.3**, p. 4.3-84.) The agreements would require separate California Environmental Quality Act (CEQA) compliance by different lead agencies (KCWA/CLWA).

The Nickel water will not need to serve the Specific Plan site until approximately the 20th year of project construction; therefore, a point of delivery agreement between DWR and CLWA is not needed at this time. However, CLWA has successfully negotiated such agreements with DWR in the past, and does not expect any difficulty in obtaining the agreement, when needed, in the future.

Environmental Documentation of the Transfer

Comments received on the Draft EIS/EIR state that no environmental documentation exists for the transfer of Nickel water to the Newhall Ranch Specific Plan site and, consequently, that the impact of the transfer on other aquifers was not assessed. The Nickel water transfer was evaluated thoroughly in the previously certified Newhall Ranch Revised Additional Analysis (May 2003). As indicated in that analysis and above, Nickel acquired the Nickel water as a result of KCWA's Restoration Program, which was approved by KCWA in September 2000. As part of the approved Restoration Program and the supporting contractual documents, the Nickel water will be transported in the California Aqueduct to the full extent of the KCWA's right to use the Aqueduct; and KCWA agreed to schedule deliveries with DWR at the same time and in the same manner as KCWA schedules deliveries of its SWP water to KCWA's Member Units. A copy of the Initial Study and Negative Declaration prepared for the Restoration Program, dated July 27, 2000, as well as the subsequent Negative Declaration addressing the transfer of water to Nickel, are included in the Newhall Ranch Revised Draft Additional Analysis Volume I (November 2002), Appendix 2.5, which was incorporated by reference in the Draft EIS/EIR and available for public review at the County of Los Angeles Public Library, Valencia Branch, 23743 West Valencia Boulevard, Santa Clarita, California 91355-2191. This environmental analysis concluded that no significant environmental impacts would occur with respect to the Nickel water source.

The transfer of the Nickel water to the CLWA service area would not require the construction of any new SWP facilities or the construction or improvement of any other new or existing water facilities or infrastructure. As a result, the use of the Nickel water is not expected to cause any potentially significant impacts to the physical environment in the Santa Clarita Valley. However, as indicated in the Newhall Ranch Revised Additional Analysis, summarized above, the use of the Nickel water would facilitate the phased development of the Newhall Ranch Specific Plan. The growth associated with the Specific Plan was addressed in the previously certified Newhall Ranch environmental documentation, which concluded that the Specific Plan would induce growth with respect to the removal of an impediment to growth and

due to the stimulus of economic growth associated with commercial, industrial, and office development. (See Newhall Ranch Specific Plan Program EIR, Section 11.0, Growth Inducing Impacts (SCH No. 1995011015)). This growth also was evaluated as an indirect impact associated with implementation of the RMDP/SCP project in the Draft EIS/EIR, **Section 7.2**, Growth Inducing Impacts.

Kern County Ordinances

Comments received on the Draft EIS/EIR state that Kern County has enacted a groundwater ordinance "prohibiting the transfer of groundwater out of the Kern basin," and, therefore, question how the Nickel water transfer would comply with that ordinance. Comments raising this topic did not specify the Kern County groundwater ordinance, and a review of the Kern County Code reveals no Kern County groundwater ordinance prohibiting the transfer of groundwater from the Kern County basin to areas outside of Kern County. However, it is assumed that commentors are referring to Kern County Ordinance No. G-6502, which was adopted in 1998 to regulate the transport or transfer of "native groundwater" outside of Kern County and its watersheds. (See Final EIS/EIR, **Appendix F4.3** [Kern County Municipal Code §§ 19.118 and 19.102.190].)

Ordinance No. G-6502 does not prohibit the transport or transfer of the Nickel water from the KCWA service area to CLWA. This is primarily because Ordinance No. G-6502 applies only to "native groundwater," which is defined as including "connate water and percolating groundwater originating as precipitation within Kern County or its watershed areas." (Kern County Municipal Code, § 19.118.020.) In this case, the Nickel water is part of the 10,000 acre-foot quantity of annual water supply that the Nickel Family LLC obtained as part of its agreement with KCWA and Olcese. The source of the water is the high flow Kern River lower water rights, including associated storage at Lake Isabella. It is not, therefore, "native groundwater" as defined by the Kern County Code. Nor does Ordinance No. G-6502 prohibit the transfer of "native groundwater" from the Kern County basin. Instead, the ordinance regulates such transfers by requiring a conditional use permit and associated findings. (See Final EIS/EIR, **Appendix F4.3** [Kern County Municipal Code, sections 19.118.030, 19.118.050].) Therefore, the transfer of Nickel water would comply with the Kern County Municipal Code.