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August 25, 2017

London Breed, President  
San Francisco Board of Supervisors  
c/o Clerk of the Board of Supervisors  
#1 Dr. Carlton B. Goodlett Place  
Room #244  
San Francisco, CA 94102

Dear President Breed and Board Members:

**Subject:** Hearing of September 5, 2017 - File No. 170893: Appeal of Certification of Final Environmental Impact Report (EIR) - Alameda Creek Recapture Project

The Alameda County Water District (ACWD) has appealed the following decisions relating to the Alameda Creek Recapture Project (Project):

1. Motion No. 19952, approved by the Planning Commission on June 22, 2017, certifying the Final EIR for the proposed Project and adopting related findings; and
2. Resolution 17-0146, approved by the Public Utilities Commission on June 23, 2017, adopting the California Environmental Quality Act (CEQA) findings, including the Statement of Overriding Considerations, adopting the Mitigation Monitoring and Reporting Program, and approving Project No. CUW35201, Alameda Creek Recapture Project.

This appeal includes all of the documents and arguments made by ACWD in its written and oral comments to the Planning Commission and the San Francisco Public Utilities Commission (SFPUC) on the Draft EIR and Project, including but not limited to the July 24, 2017, Letter of Appeal.

ACWD submits the following additional documents in support of the appeal:

**Attached Exhibits**

**Exhibit A:** Frequently Asked Questions (FAQ) Sheet

- Location of Project Map
- Alameda Creek Daily Flow Graphic – Example: Actual CEQA Data (January 2007)

**Exhibit B:** Timeline of ACWD's Request for Daily Flow Data

London Breed, President  
San Francisco Board of Supervisors  
Page 2  
August 25, 2017

**Exhibit C:** Independent Review by Horizon Water and Environment of the SFPUC  
Alameda Creek Recapture Project (ACRP) CEQA Documentation

**Exhibit D:** Legal Basis Supporting Appeal from Hanson Bridgett LLP

**Exhibit E:** Letters from concerned stakeholders, including:

- National Marine Fisheries Service, dated July 27, 2017
- Alameda Creek Alliance, dated August 2, 2017
- Bay Area Water Supply & Conservation Agency, dated August 2, 2017
- California Trout, dated August 18, 2017
- Trout Unlimited, dated August 21, 2017

ACWD requests the San Francisco Board of Supervisors to: 1) reverse the certification of this EIR; 2) ask the Planning Department to revise the methodology used for the CEQA analysis; and 3) instruct SFPUC and the Planning Department to meet with ACWD, fishery experts, groundwater experts, and other stakeholders, to develop a modeling methodology using daily flow data for the Project in a transparent manner which will further promote the steelhead restoration effort. ACWD supports the Alameda Creek Recapture Project. It just needs to be done the right way.

Sincerely,



Robert Shaver  
General Manager

la/ta

Attachments: Exhibits A, B, C, D, E

cc: John Rahaim, San Francisco Planning Department

Lisa Gibson, San Francisco Planning Department

Chris Kern, San Francisco Planning Department

Steve Ritchie, San Francisco Public Utilities Commission

Ellen Levin, San Francisco Public Utilities Commission

Nicole Sandkulla, Bay Area Water Supply and Conservation Agencies (BAWSCA)

Daniel Woldesenbet, Alameda County Public Works

Hank Ackerman, Alameda County Public Works

Gary Stern, National Marine Fisheries Service

Eric Larson, California Department of Fish and Wildlife

Jeff Miller, Alameda Creek Alliance

Tom Engels, Horizon Water

Patrick Miyaki, Esq. Hanson Bridgett LLP

Brett Gladstone Esq. Hanson Bridgett LLP

EXHIBIT A

## *FAQ: ACWD's Request for Appeal of the SFPUC Alameda Creek Recapture Facility Project*

**Who is ACWD?** Alameda County Water District is a public water agency that provides drinking water to over 351,000 people in the southern portion of Alameda County, including the cities of Fremont, Newark and Union City.

**Why does ACWD care about this project?** ACWD owns, operates and maintains facilities in the Alameda Creek watershed downstream of the proposed SFPUC Water Recapture Facility. This proposed facility will recapture water that is released from Calaveras Reservoir and the Alameda Creek Diversion Dam. Operation of the recapture facility will alter streamflow in Alameda Creek upstream of ACWD's facilities.

ACWD has worked side by side with the SFPUC within the Alameda Creek Fisheries Workgroup to ensure that the Alameda Creek watershed can sustainably provide both environmental and water supply benefits. ACWD together with the Alameda County Department of Public Works are making approximately \$48.5 million in investments in fish ladders and screened diversions downstream of the Recapture Project. We don't want to see our shared efforts undermined by avoidable project impacts from SFPUC's Recapture Project that could diminish the same fish population we're working so hard to re-establish. *See attached Map showing the ACWD service area, project location and, adjacent features such as creeks, pumps, dams, etc.*

**What are ACWD's concerns?** ACWD is concerned about the reduction of water flows – both for the endangered steelhead and for ACWD's water supplies downstream of the recapture project.

From the very beginning of this process, ACWD expressed concerns about the methodology the Planning Department proposed for the evaluation of project impacts, as it is clear that the project will have a regional influence over groundwater elevations and surface flow in Alameda Creek. ACWD also advised SFPUC that the impacts to this project need to be considered by looking at flows *each day* because the survival of the steelhead in the creek will depend on how much water is in the creek each day. However, the EIR data was evaluated on a monthly basis.

ACWD has repeatedly asked SFPUC for the critical *daily* flow information since the earliest days of the project. We were disappointed that the only data provided up to very recently was data showing average monthly (and not daily) flow results. The full set of daily data was finally provided, but only after the EIR's public comment period ended, when it was too late to provide meaningful public input on the document.

*The newly available data shows that when one averages water flow over a 30 day period, the average monthly flow rates appear to meet the requirements for fish passage in Alameda Creek. However, this monthly average obscures the fact that on many dryer days within the month water flow is insufficient for fish passage. It does not matter that when low flow days are combined with high water flow days, the average flow (over a 30 day period) allows for fish passage. The attached color chart [attached from ACWD power point presentation to its Board of Directors,*

*FAQ: ACWD's Request for Appeal of the SFPUC Alameda Creek Recapture Facility Project*

*the attached page entitled "Example: Actual CEQA Date-January 2007"] presents an example of the days of water flow that are too low for fish passage, and it shows that the operation of the Recapture Project will result in only 9 days per month that the fish have adequate passage.*

**Are ACWD's concerns shared by others?** There are a number of public agencies and respected non-profits who are very concerned with the data. Attached are two examples – letters from the National Marine Fisheries Service (NMFS) and the Alameda Creek Alliance. We understand that there are others who have or will be sending their communications to the Board of Supervisors.

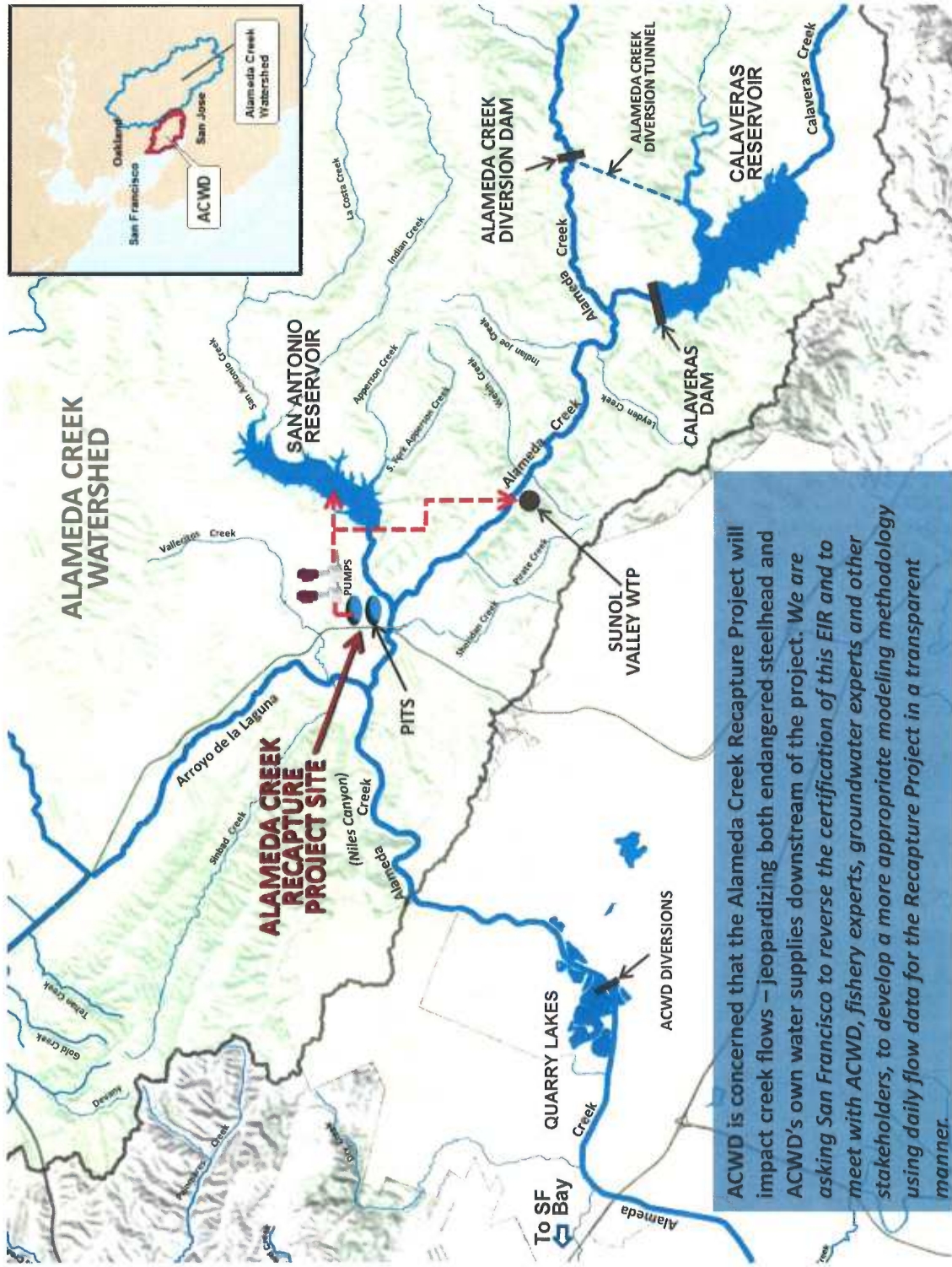
**What does ACWD want?** As we stated in our appeal letter, we are concerned that San Francisco would approve an environmental document based on a flawed analysis that does not address the harm it could cause to endangered fish species.

We are asking you to (1) reverse the certification of this EIR; (2) ask the Planning Department to revise the methodology used for the CEQA analysis; and (3) instruct SFPUC and the Planning Department to meet with ACWD, fishery experts, groundwater experts and other stakeholders, to develop a more appropriate modeling methodology using daily flow data for the Recapture Project in a transparent manner which will further promote the steelhead restoration effort. We support the Alameda Creek Recapture Project. It just needs to be done the right way.

**Will the Requests By ACWD Lead to Additional Water into the ACWD System?** NMFS has established minimum passage flows that are necessary to support the migration of steelhead within lower Alameda Creek. NMFS is requiring ACWD to "bypass" the releases from the Calaveras Reservoir and the Diversion Dam that may reach ACWD's diversion point during fish migration seasons in an effort to share in the obligations ACWD and SFPUC have to ensure adequate migration conditions in this portion of the watershed. Since the SFPUC contributions have been identified as helping to promote steelhead passage in this portion of the watershed ACWD cannot utilize this additional water to augment its local water supply.

FAQ: ACWD's Request for Appeal of the SFPUC Alameda Creek Recapture Facility Project

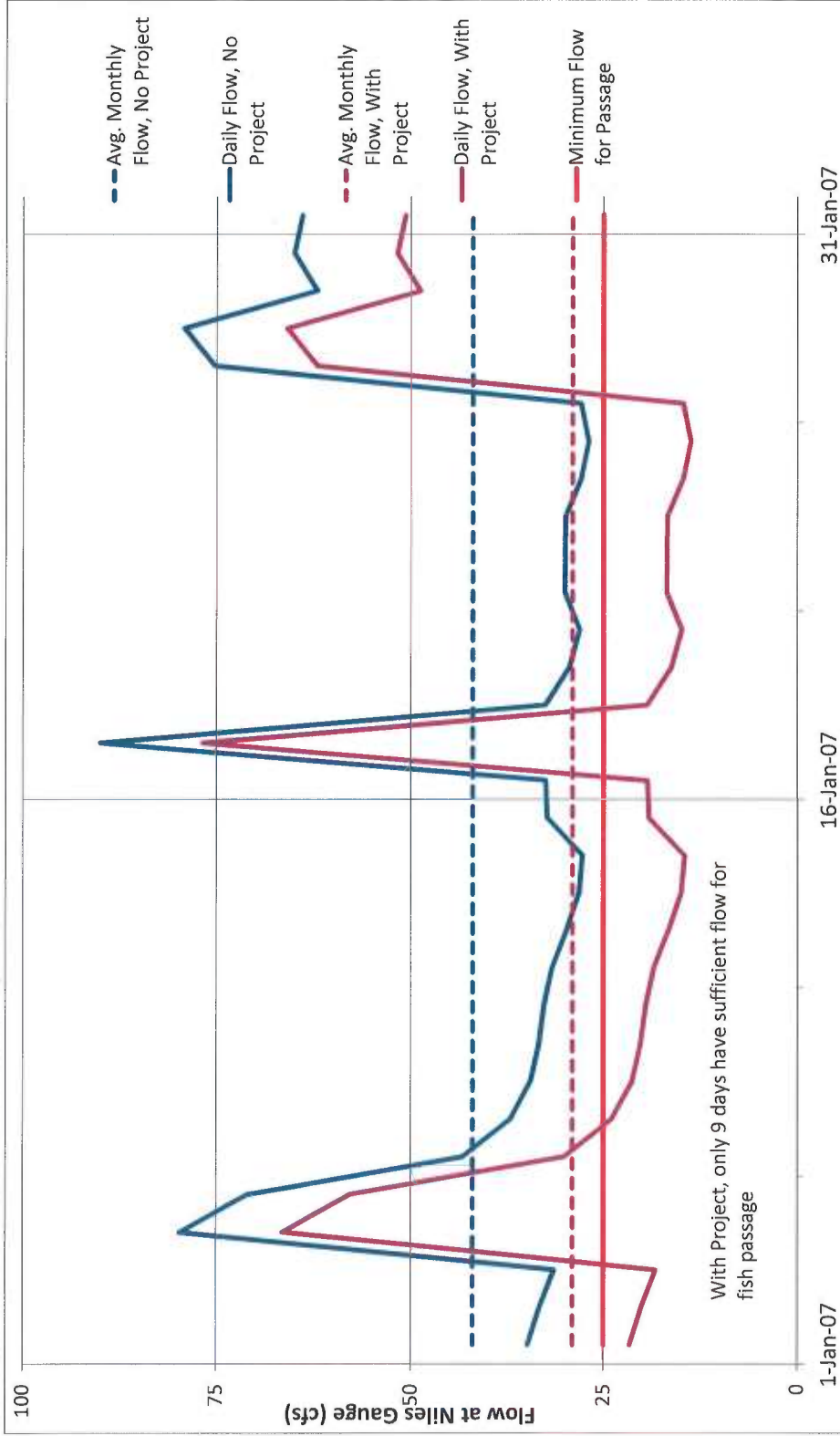
Location of Project



ACWD is concerned that the Alameda Creek Recapture Project will impact creek flows – jeopardizing both endangered steelhead and ACWD's own water supplies downstream of the project. We are asking San Francisco to reverse the certification of this EIR and to meet with ACWD, fishery experts, groundwater experts and other stakeholders, to develop a more appropriate modeling methodology using daily flow data for the Recapture Project in a transparent manner.

FAQ: ACWD's Request for Appeal of the SFPUC Alameda Creek Recapture Facility Project

Example: Actual CEQA Date-January 2007



- Monthly data for both "With Project" and "No Project" exceed the minimum flow requirement for fish passage (25 cfs), which might suggest that the Project does not have an impact on fish
- However, the Daily data used to generate those monthly values indicates that while the "No Project" scenario has sufficient flow for fish passage every day of the month, "With Project" will reduce that to only 9 days of sufficient flow

## FAQ: ACWD's Request for Appeal of the SFPUC Alameda Creek Recapture Facility Project

### Letters of support



**UNITED STATES DEPARTMENT OF COMMERCE**  
**National Oceanic and Atmospheric Administration**  
NATIONAL MARINE FISHERIES SERVICE  
West Coast Region  
777 Sonoma Avenue, Room 325  
Santa Rosa, California 95404-4731

July 27, 2017

Clerk of the Board of Supervisors  
City and County of San Francisco  
1 Dr. Carlton B. Goodlett Place, Room 244  
San Francisco, California 94102

Re: June 22, 2017 Planning Commission Decision Regarding the Final Environmental Impact Report for the Alameda Creek Recapture Project

Dear Clerk of the Board of Supervisors:

NOAA's National Marine Fisheries Service (NMFS) has been notified of the San Francisco Planning Commission's June 22, 2017 decision to certify the Final Environmental Impact Report (EIR) for the Alameda Creek Recapture Project (ACRP). NMFS previously submitted comments regarding the ACRP Draft EIR (Planning Department File No. 2015-004827ENV) via letter dated January 30, 2017, and we have reviewed the Responses to Comments document dated June 7, 2017.

Based on our review of the Final EIR, NMFS believes the document does not contain sufficient information to conclude the ACRP will not result in substantial effects on streamflows that support the migration of CCC steelhead in Alameda Creek. Streamflow simulation results presented in Figure 5.14-9 of the Draft EIR predict hydrologic conditions at a daily time-step, but it is unclear if this plot represents a comparison of "with project" to "without project" conditions. Table HYD6-2 of Appendix HYD1 offers some information regarding predicted changes in streamflows and this table indicates May flows will be reduced by approximately 30 percent with ACRP operations. The conclusion regarding potential impacts to steelhead migration presented in the EIR is based on an analysis of the "long-term" operation of the ACRP which doesn't fully take into account short-term impacts (*i.e.*, dry water years) and, as a result, the analysis presented in the EIR could significantly underestimate potential impacts to steelhead and migratory habitat.

Furthermore, the EIR asserts that steelhead migration will not be impacted by the ACRP because, for both with and without project scenarios, "precipitation-generated streamflows in Alameda Creek are predicted to exceed several hundred cubic feet per second during the December through June migration period<sup>1</sup>." This reasoning fails to consider that steelhead do not migrate only during peak flow events, but may migrate anytime within the migration period when instream flows exceed identified minimum flow levels (*i.e.*, 25 cfs for adults, 12 cfs for juvenile/smolt in lower Alameda Creek). A more appropriate impact analysis would instead

<sup>1</sup> Response to Comments, page 11.4-32; and Draft EIR, page 5.14-126.



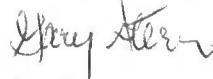


focus on changes in the amount of time flows exceed these minimum migration thresholds. In light of this comment, NMFS reviewed the daily modelling data provided to the Alameda County Water District on June 12, 2017, and found that ACRP operations will diminish migration opportunities for federally-threatened Central California Coast (CCC) steelhead (*Oncorhynchus mykiss*), especially outmigrating steelhead smolts, in some years. For instance, analysis of the daily streamflow data for May 2008 suggests ACRP operations could result in streamflows in lower Alameda Creek (as measured at the Niles Gage) dropping below the smolt passage threshold of 12 cfs for an additional 15 days when compared to the without ACRP condition.

Based on currently available information, NMFS does not concur with the Final EIR's conclusion that ACRP operations would not substantially interfere with the movement or migration of special-status fish species, including CCC steelhead (Impact B1-11 in the DEIR and Impact B1-16 in FEIR). We recommend San Francisco Planning Commission and the San Francisco Public Utilities Commission undertake additional analysis to examine the relationship between groundwater and surface water in the Sunol Valley for the purpose of determining the project's potential impacts on a daily time-step to streamflows in Alameda Creek downstream of the project site.

If you have any questions regarding these comments, please contact Rick Rogers at [rick.rogers@noaa.gov](mailto:rick.rogers@noaa.gov), or 707-578-8552.

Sincerely,



Gary Stern  
San Francisco Bay Branch Supervisor  
North-Central Coast Office

cc: Tim Ramirez, SFPUC, San Francisco CA  
Thomas Niesar, ACWD, Fremont, CA  
Sean Cochran, CDFW, Santa Rosa, CA  
Ryan Olah, USFWS, Sacramento, CA



## Alameda Creek Alliance

P.O. Box 2626 • Niles, CA • 94536  
Phone: (510) 499-9185  
E-mail: [alamedacreek@hotmail.com](mailto:alamedacreek@hotmail.com)  
Web: [www.alamedacreek.org](http://www.alamedacreek.org)

August 2, 2017

San Francisco Board of Supervisors  
1 Dr. Carlton B. Goodlett Place, Room 244  
San Francisco, CA 94102

**Re: Planning Commission Decision Regarding Alameda Creek Recapture Project**

Dear San Francisco Supervisors:

The Alameda Creek Alliance has concerns about the San Francisco Public Utilities Commission's (SFPUC) Alameda Creek Recapture Project and impacts that its operations could have on recovering threatened steelhead trout within the Alameda Creek watershed. We share the concerns about the inadequacies of the recently certified Environmental Impact Report (EIR) that have been raised by the National Marine Fisheries Service (NMFS), California Department of Fish and Wildlife (CDFW), and Alameda County Water District (ACWD). We support the ACWD petition to reverse the certification of the EIR for the project.

The Alameda Creek Alliance has more than 2,000 members and supporters. Since 1997 we have advocated for restoration of steelhead trout in the Alameda Creek watershed. We have worked with the SFPUC since 1999 to improve habitat conditions to support the recovery of steelhead. While we generally support the recapture project and the concept of off-stream rather than in-stream water recapture, state and federal fisheries agencies have determined that the final EIR does not contain sufficient information to support the conclusion that the project will not result in a less than significant impact on streamflows and fish migration in Alameda Creek.

The Alameda Creek Alliance submitted scoping comments on the Alameda Creek Recapture Project in 2015 and commented on the draft EIR for the project in January 2017. We have reviewed the SF Planning Commission's June 22, 2017 decision to certify the final EIR and the June 7, 2017 responses to comments on the EIR. We have also reviewed the ACWD's July 24, 2017 letter of appeal and concerns about the hydrology analysis used for the EIR; the July 24, 2017 comment letter from CDFW; and the July 27, 2017 comment letter from NMFS.

NMFS commented that the final EIR does not contain sufficient information to conclude that the project will not result in substantial effects on streamflows intended to support migration of steelhead trout, and in fact found that project operations will diminish migration opportunities for steelhead, especially outmigrating smolts, in some years. CDFW commented that the modeling analysis used for the EIR may be inadequate for the determination that the project will have "less than a significant impact" on fisheries resources of Alameda Creek.

An ACWD analysis of daily modeling data provided by the SFPUC after the close of the EIR comment period shows that project operations could result in increased numbers of days where streamflows in lower Alameda Creek fall below the threshold for fish passage, as determined by NMFS. ACWD commented that the hydrologic model relied on in the EIR's impact analyses is insufficient to analyze the surface water groundwater interaction necessary to fully evaluate project impacts. CDFW shared this concern that the modeling used in the EIR did not adequately address ground and surface water interaction in the stream reach of the proposed project, and that the EIR analyses do not adequately quantify the stream reach percolation

FAQ: ACWD's Request for Appeal of the SFPUC Alameda Creek Recapture Facility Project

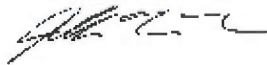
losses of SFPUC releases.

We are also concerned about the potential reduction in the number of days that steelhead could have access to spawning and rearing habitat upstream of the project. Data presented in the EIR shows that the current proposal for project operations will reduce the number of days where adequate streamflow is available for steelhead migration. The EIR uses monthly average changes in surface water flow to conclude that steelhead will not be harmed, whereas analysis of daily flows is needed to assess the effects of suitable streamflows for steelhead. We disagree with the EIR's conclusion that operation of the project will not significantly impact steelhead trout. There is simply not adequate information in the EIR to make a determination about streamflows and impacts to steelhead.

We request that the Board of Supervisors direct the SFPUC and the SF Planning Commission to work with all watershed stakeholders (including the ACA, ACWD, CDFW and NMFS) to undertake additional analysis of the relationship between ground water and surface water in the Sunol Valley, to determine whether the project has impacts on daily streamflows in Alameda Creek downstream of the project which could impede steelhead migration. If the SFPUC is unwilling to do this, the Board of Supervisors should uphold the ACWD appeal and reject the certification of the EIR for the project.

San Francisco has invested significant time and money in the Alameda Creek watershed to monitor and improve habitat conditions for steelhead trout. The future operations of the completed Calaveras Dam and Alameda Creek Diversion Dam will enhance steelhead spawning and rearing in stream reaches managed by the SFPUC. Both the SFPUC and ACWD are required to operate their facilities in Alameda Creek to meet specified flow requirements for steelhead. The Alameda Creek Recapture Project should support rather than undermine these efforts. We understand that this is the last Water System Improvement Project facility to be constructed, but it is important to get it right – the EIR must fully evaluate the potential impacts of the project, and San Francisco should only approve a recapture project that will meet the interests of all watershed stakeholders and adequately protect steelhead trout.

Sincerely,



Jeff Miller  
Director  
Alameda Creek Alliance  
(510) 499-9184  
[jeff@alamedacreek.org](mailto:jeff@alamedacreek.org)

## EXHIBIT B

## **Timeline of ACWD's Requests for Daily Data Supporting the EIR Analysis**

- **June 24, 2015 – Notice of Preparation of Environmental Impact Report Issued**  
Written comments accepted until July 27, 2015.

- **July 27, 2015 – ACWD Comment Letter on NOP of EIR**

Alameda County Water District (ACWD) first raised the issue of daily flow data in its responses to the Notice of Preparation for the Draft Environmental Impact Report (EIR), stating that “while annual [flow] totals may be the same, the actual daily rate of releases or bypass flows will be quantifiably different from the recapture rate provided by [the Alameda Creek Recapture Project],” and that, “[t]he disparity in the release recapture rates may have impacts in a variety of areas of concern and will need to be analyzed in sufficient detail for potential impacts to be understood and ultimately mitigated if necessary.”

ACWD and the San Francisco Public Utilities Commission (SFPUC) worked together with the larger Alameda Creek Fisheries Workgroup to develop the Alameda System Hydrologic Model (ASDHM). ACWD understood that SFPUC modified the original ASDHM model for purposes of modeling the Alameda Creek Recapture Project (ACRP). ACWD refers to the original ASDHM model as “Version 1.0” and the SFPUC modified version of the ASDHM as “Version 2.0.” Prior to the public release of the Draft EIR, ACWD met with various San Francisco staff, including representatives from the Planning Department and Public Utilities.

- **November 16, 2015 – Conference Call with ESA**

During this conference call with the Planning Department's consultant, ESA, the issues identified in ACWD's July 27, 2015, comment letter were discussed and ACWD emphasized the need for daily data, and not annual data.

- **February 29, 2016 – Conference Call with SFPUC SF Planning and ESA**

This discussion focused around existing ACWD operations and to learn about potential alternatives to the project that involve the operation of ACWD's facilities. ACWD requested daily data from the ASDHM analysis (Version 2.0) at this time.

- **October 17, 2016 – Meeting with Planning Department and SFPUC**

ACWD learned that the Planning Department and their consultants, ESA/Orion, were further modifying “Version 2.0” of the ASDHM model for the Planning Department's use in the CEQA analysis. This ESA/Orion-modified ASDHM model is referred to as “Version 3.0.” At this point, ACWD did have modeling results from “Version 2.0,” but did not have information on the “Version 3.0” modifications and resulting outputs. When ACWD asked for detailed “Version 3.0” modeling information, the Planning Department declined to provide the information prior to public release of the Draft EIR.

- **November 30, 2016 – Draft EIR Publicly Released**

- **January 10, 2017 – Request for Extension of Time on Draft EIR**  
 In ACWD's first comment letter to the Draft EIR and request for extension of time, ACWD restated the need for daily flow analysis, adding that, "ACWD review of the analysis of the Draft EIR has also been constrained by the incomplete release of modeling information." Furthermore, ACWD stated, "[i]n order to evaluate potential impacts, ACWD requests an opportunity to review daily flow rates provided by the modeling. Upon review of this additional data, ACWD requests a meeting with San Francisco staff to further discuss potential impacts of the ACRP prior to providing comments on the Draft EIR."
  
- **January 12, 2017 – SF Planning Department Extends Draft EIR Public Comment Period**  
 In addition to agreeing to extend the Draft EIR public comment period until January 30, 2017, in response to ACWD's January 10, 2017, letter, Lisa Gibson, Acting Environmental Review Officer, stated:  
 In regards to the request for modeling information on daily flow rates, this information can be requested from the San Francisco Public Utilities... In response to the request to meet to review the modeling information, pursuant to CEQA, public comments on the Draft EIR are be [sic] accepted during the Draft EIR public hearing, held on January 5, 2017, and in writing during the Draft EIR comment period, now extended until January 30, 2017. The Planning Department can only accept and respond to comments on the Draft EIR through this public process.
  

As directed by the Planning Department, ACWD reached out to SFPUC staff to seek modeling information on **January 17, 2017**.

  
- **January 19, 2017 – SFPUC Provides Data to ACWD**  
 To ACWD's disappointment, SFPUC staff could only provide "Version 2.0" data on **January 19, 2017**, which ACWD already had. ACWD asserted that, since the Draft EIR analysis was based on "Version 3.0," any "Version 2.0" data was not the complete basis for the evaluation of potential impacts under CEQA. ACWD was informed that SFPUC could not provide "Version 3.0" data. When ACWD requested assistance from the SFPUC to get the "Version 3.0" data used in the Draft EIR analysis, it was informed that the Planning Department would not provide the data, reiterating Ms. Gibson's comment that the Planning Department can only accept and respond to comments on the Draft EIR through a public process.
  
- **January 30, 2017 – ACWD Comment Letter on Draft EIR**  
 ACWD provided a second comment letter to the Planning Department regarding the Draft EIR. ACWD commented:  
 [T]he ASDH Model uses a daily time-step to calculate the movement of water throughout the Alameda Creek Watershed, but the results of the modeling work are presented in terms of average annual volumes ... This time-step discrepancy can lead to environmental impacts from operations of the ACRP that are not identified or discussed in the DEIR for the project ... ACWD requests that the SFPUC work with ACWD to identify potential impacts from operation of the ACRP before the Planning Department adopts the EIR for this project.

▪ **June 7, 2017 – Response to Comments Released**

The Planning Department published their Responses to Comments (RTC) document on the Draft EIR. On page 11.2.-6 of the RTC, the Planning Department states, “the SFPUC provided to the ACWD on January 19 and January 20, 2017, the complete daily data sets of the ACRP modeling, that the SFPUC provided to the Planning Department and its consultants for use in preparation of the Draft EIR.” As stated above, since this was “Version 2.0” data, it did not include any “Version 3.0” data that also was used in the EIR and, therefore, was not the complete data set used in the EIR.

Also on page 11.2.-6 of the RTC, the Planning Department states, “All data and reference materials cited in the EIR are available for review as part of the administrative record located at the Planning Department.”

▪ **June 12, 2017 – Daily Data Received**

In a separate transmittal, also dated June 7, 2017, the Planning Department sent ACWD CD’s with “Version 3.0” data, finally providing daily flow data that was critical for ACWD’s evaluation of the Draft EIR analysis. ACWD received this data transmittal on **June 12, 2017**.<sup>1</sup> Therefore, not all data and reference materials were available to ACWD and the public for review until around the date of the RTC publication, well after the close of the public comment period on January 30, 2017, and only ten days before the Planning Commission hearing date to certify the Final EIR on June 22, 2017.

▪ **June 21, 2017 – ACWD Comment Letter on Final EIR**

ACWD provided the following comments on the Final EIR:

The Planning Department failed to provide the data needed to evaluate substantial impacts from the Project and to fully disclose scientific methodology.

Despite the multiple requests made by ACWD for daily modeling data, ACWD only received the relevant requested data on June 12, 2017 – 194 days after the Draft EIR was published and 133 days after the close of the public comment period, including extension. Withholding requested relevant data, and then providing said data with less than 10 business days prior to the Planning Commission meeting to analyze such a complex system deprives the public of a meaningful opportunity to comment on the substantial adverse Project impacts, feasible mitigation, or alternatives.

Moreover, the data provided is still incomplete since it does not include the accounting of water entering and leaving Pit F2, as modified by the Planning Department and used to complete the CEQA analysis. This lack of critical data hinders ACWD’s ability to perform an independent review of the actual analysis and to fully evaluate impacts.

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<sup>1</sup> The letter sent on June 21, 2017, incorrectly identified the date received as June 10, 2017. The date and related references to the date have been revised in the comments cited below and in the new exhibits attached herewith.

EXHIBIT C



## Memorandum

**Subject:** CEQA Review – Alameda Creek Recapture Project

**Date:** August 23, 2017

**To:** Robert Shaver, General Manger  
Alameda County Water District

**From:** Tom Engels, Ph.D., Principal

**RE:** Independent Review of SFPUC Alameda Creek Recapture Project (ACRP) CEQA Documentation

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This memorandum is intended to provide the Alameda County Water District (ACWD) with a summary of Horizon Water and Environment's (Horizon's) independent review of CEQA documentation for the San Francisco Public Utilities Commission's (SFPUC's) proposed Alameda Creek Recapture Project (ACRP). With respect to the ACRP, the San Francisco Planning Department is the lead CEQA agency and prepared the environmental impact report (EIR).

### I. SUMMARY OF FINDINGS

The findings of Horizon's independent review of the ACRP EIR are as follows:

- A. CEQA Procedural Violation #1. The CEQA lead agency failed to provide the public with key data used by the lead agency to evaluate impacts to surface water, groundwater, and fisheries, in a manner required by the CEQA Guidelines. According to the CEQA Guidelines (see §15087(c)(5)), such data must be readily available at the beginning of the public review period for the Draft EIR. In actuality, these data were not readily available to ACWD until over four months after the close of the public review period. This is a procedural violation of CEQA.
  - B. CEQA Procedural Violation #2. The CEQA lead agency failed to disclose significant impacts to hydrologic resources and fisheries in the Draft EIR. These significant impacts are clearly evident in data *used by the lead agency* during preparation of the Draft EIR. Nevertheless, the lead agency did not revise and recirculate the Draft EIR for the required additional 45-day public review period. This is a procedural violation of CEQA.
  - C. CEQA Methodological Flaw #1. The Alameda System Daily Hydrologic Model (ASDHM) used by the lead agency in assessing impacts of the ACRP to downstream surface water flows did not take into account surface water/groundwater interactions. Instead, the lead agency relied on a conceptual model that was over-simplistic and it obscured significant impacts to surface water, groundwater, and fisheries. These two models, as used in the Draft EIR and Final EIR of the ACRP, did not provide an analysis of potential project impacts in good faith, or provide reasoned efforts to assess impacts to the physical environment. The alternative, collaborative analytic approach suggested early on by ACWD was dismissed by the lead agency, even though this collaborative approach was both reasonable and feasible (ACWD has even proposed to contribute both financially and through in-kind services to the development of the new model).
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## II. APPROACH TO THE ADEQUACY REVIEW

Horizon’s independent review of the ACRP EIR involved a review of the Draft EIR, Final EIR, and available information in the administrative record. During Horizon’s review, the following questions were addressed:

1. Did the CEQA lead agency properly follow CEQA procedural requirements?
2. Are the methods of analysis in the ACRP EIR adequate to make valid impact conclusions?
3. What permits or authorizations relating to fisheries would be required for the ACRP?

Answers to these questions are discussed below.

## III. REVIEW OF ACRP CEQA PROCEDURES

CEQA is, in part, a planning process with a prescribed set of required procedures that must be followed by the CEQA lead agency. Under CEQA, the ACRP is considered a project of “statewide, regional, or areawide significance” (see CEQA Guidelines §§15082(c)(1), 15206). As such, CEQA procedural requirements applicable to the ACRP include the following:

1. *Initiation of EIR Preparation.* Preparation of a Notice of Preparation (NOP) of an EIR and proper filing of the NOP at the Office of Planning and Research (OPR) State Clearinghouse and the office of the county clerk of the county or counties in which the project will be located (CEQA Statute §§21080.4(a), 21092.3; CEQA Guidelines §15375).
2. *Scoping.* At a minimum, the lead agency must send a NOP to each responsible agency, each federal agency involved in approving or funding the project, and each trustee agency responsible natural resources that may be affected by the project (CEQA Statute §21080.4(a); CEQA Guidelines §15082(a)). In addition, because the ACRP is a project of statewide, regional, or areawide significance, the lead agency must hold at least one public scoping meeting.
3. *Completion of Draft EIR.*
  - a. Preparation of a Notice of Completion (NOC) and proper filing of the NOC with the OPR State Clearinghouse (CEQA Statute §21161, CEQA Guidelines §§15085(a), 15372);
  - b. Preparation of a Notice of Availability (NOA) of the Draft EIR and proper posting of the NOA (CEQA Statute §21092(a); CEQA Guidelines §15087);
  - c. Public availability of Draft EIR *and all references cited in the Draft EIR* (CEQA Guidelines §15087(c)(5);
  - d. Consultation with other affected local, state, and federal agencies; and
  - e. Public review period of not less than 45 days (CEQA Guidelines §15105).
4. *Completion of Final EIR*
  - a. The lead agency must evaluate all comments received during the public review period and must respond to them in the Final EIR (CEQA Guidelines §15088(a);
  - b. The lead agency must provide a written proposed response to a public agency (e.g., ACWD) on comments made by that public agency at least 10 days prior to certifying an EIR (CEQA Guidelines §15088(b);
  - c. Responses to comments must contain a good faith, reasoned analysis; conclusory statements unsupported by factual information (e.g., daily Niles gauge data) will not suffice (CEQA Guidelines §15088(c);
5. *Recirculation of an EIR Prior to Certification*

The lead agency is required to recirculate an EIR for public review when significant new information is added to the EIR after public notice is given of the availability of the Draft EIR for public review but before certification. The term “information” can include additional data. New information is “significant” if the EIR is changed in a way that deprives the public of 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 (including a feasible project alternative) that the project proponents (i.e., SFPUC) have declined to implement. According to CEQA Guidelines §15088.5, “significant new information” requiring recirculation include, for example, a disclosure showing that:

- a. A new significant environmental impact would result from the project.
- b. A substantial increase in the severity of an environmental impact would result unless mitigation measures are adopted that reduce the impact to a level of insignificance.
- c. A feasible project alternative or mitigation measure considerably different from others previously analyzed would clearly lessen the environmental impacts of the project, but the project’s proponents decline to adopt it.
- d. The Draft EIR was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded (see *Mountain Lion Coalition v. Fish and Game Commission* (1989) 214 Cal.App.3d 1043).

In light of the procedural requirements above, and upon review of available documentation in the administrative record, Horizon has identified a major flaw in the lead agency’s CEQA process. Specifically, daily Niles gauge modeling data *used by the lead CEQA agency* to evaluate the ACRP’s impacts to surface water and fisheries (i.e., steelhead) were not readily available for independent review during the public review period for the Draft EIR. Throughout the ACRP CEQA process, ACWD requested these data from the lead agency. On January 10, 2017, ACWD sent a letter request for these data, the lead agency did not provide ACWD with these data until June 7, 2017, *more than four months after the close of the Draft EIR public review period. This failure by the lead agency to provide ACWD and other interested parties including NMFS and CDFW with critically important data, data which provided the basis for one of the key impact findings, during the public review period for the Draft EIR is a violation of CEQA procedures.*

As discussed below, the lead agency’s failure to comply with CEQA procedural requirements with respect to the availability of the daily Niles gauge modeling data is serious. In fact, the daily Niles gauge modeling data invalidate the significance determinations for Central California Coast steelhead in both the Draft EIR and Final EIR. Central California Coast steelhead is listed as a threatened distinct population segment under the federal Endangered Species Act. Whereas both the Draft EIR and Final EIR for the ACRP conclude that the ACRP would have no significant impacts on steelhead, the daily modeling data clearly indicate that significant impacts *would* occur. This failure to disclose significant impacts in the Draft EIR necessitates the lead agency’s revision, public notice, consultation and recirculation of the Draft EIR (or, at least, the hydrology and fisheries sections) for another 45-day public review period (see Public Resources Code § 21092.1; CEQA Guidelines §§ 15088.5(d), 15105(a)). The lead agency chose not to do this. **The lead agency’s failure to revise and recirculate the Draft EIR to disclose significant impacts and propose mitigation to offset significant impacts to steelhead is another major procedural violation of CEQA.**

#### IV. REVIEW OF HYDROLOGIC METHODOLOGIES IN THE ACRP EIR

In the ACRP EIR, the assessment of potential impacts of the ACRP to hydrologic and geohydrologic resources is based on the ASDHM for surface water hydrology and on a conceptualized, qualitative hydrogeologic “model” for surface water and groundwater interactions.

The limitations of the ASDHM for understanding surface water hydrology in the Alameda Creek watershed were well known to both SFPUC (the ACRP sponsor) and the CEQA lead agency at least five years prior to issuance of the ACRP Draft EIR in November 30, 2017 (see Dunne et al. 2012). As concluded by Dunne et al. (2012), a physical, *quantitative* model of groundwater-surface water interactions is needed to adequately understand such interactions in the Alameda Creek watershed. Dunne et al (2012) calls for quantitative modeling of hydrology, hydraulics, and ecosystem function along Alameda Creek, even for relatively simple changes to surface water flows. The proposed changes to surface water flows resulting from operation of the ACRP is much more complicated than that evaluated by Dunne et al. (2012). Dunne et al.’s (2012) recommendations were aimed at proper understanding of mitigation measures for a habitat conservation plan (HCP) – a system that was much simpler than would be created by operation of the ACRP. Nevertheless, the purely conceptual model in the ACRP EIR is non-mathematical, non-quantitative, and does little more than oversimplify a complex system with a verbal, conclusory narrative. In fact, the ACRP’s conceptual model (as described in Appendix HYD2 of the ACRP Draft EIR) is based more on invalid assumptions and speculation than on factual evidence representing the system it is attempting to model. As such, a compelling argument can be made that the conceptual hydrogeologic model does not represent “substantial evidence” upon which impact conclusions can be made.

To illustrate the significant inadequacy of the hydrologic analysis in the ACRP Draft EIR, the conceptualized hydrogeologic model assumes that the lower alluvium/Livermore gravels are not water-bearing. Under such an assumption, it is not surprising that the Draft EIR and Final EIR conclude that lowering water in Pit F2 to levels within the lower alluvium/Livermore gravels would not affect the surrounding groundwater level nor the surface water level in Alameda Creek. However, this assumption is incorrect. In fact, as indicated in the ACRP Draft EIR (see p. 5.16-28), the lower alluvium/Livermore gravels are *the* source of supply for *all* domestic groundwater wells in the region. Furthermore, the lower alluvium/Livermore gravels are part of the Sunol Valley groundwater basin as defined by the California Department of Water Resources (2014) and is identified in Bulletin 118. Despite all this, the conceptual hydrogeologic model used in the ACRP EIR completely dismisses the lower alluvium/Livermore gravels as irrelevant to the impact analysis for surface water, groundwater, and fisheries. Consequently, the impact conclusions in the ACRP EIR pertaining to hydrology and fisheries are invalid and do not represent a good faith effort at full disclosure.

Based on Horizon’s independent analysis of these daily Niles gauge data, we have concluded that, in comparison to the baseline used for the fisheries impacts analysis in the DEIR<sup>1</sup>, post-Calaveras Dam Replacement Project (CDRP) conditions, operation of the ACRP would result in significant impacts to

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<sup>1</sup> The DEIR uses multiple baselines in their analysis of project impacts, including “pre-2001,” “existing conditions,” and “with-CDRP” conditions. For fisheries resources, the Final EIR states (on page 11.4-31): “the analysis of long-term, operational impacts on fisheries resources was made assuming the baseline conditions are with implementation of CDRP releases and bypasses in effect. These baseline conditions are the conditions under which the ACRP would necessarily operate, because the ACRP is reliant on implementation of the CDRP instream flow schedules.”

Central California Coast steelhead and to hydrologic resources (e.g., surface water quality, groundwater recharge, and groundwater supply) in the Alameda Creek watershed. Specifically, as compared with post-CDRP conditions, the data show that operation of the ACRP would result in a drop below the critical 25 cubic feet per second (cfs) on a substantially greater number of days during the December to April adult emigration/migration period and the January to June post-spawn adult emigration period. The 25 cfs threshold was identified by the National Marine Fisheries Service (NMFS) and the California Department of Fish and Wildlife (CDFW) as being minimum passage thresholds for adult and juvenile steelhead downstream of the ACRP in the Alameda Creek Flood Control Channel (see NMFS 2016). Additionally, this threshold was integrated into the ASDHM analysis used by the lead agency to conclude CEQA impacts in the ACRP EIR (see Appendix BIO2 of the ACRP Draft EIR).

Horizon conducted an independent analysis of SFPUC’s daily Niles gauge modeling data. These data were provided to ACWD on June 12, 2017 in an Excel spreadsheet and indicate the number of days during each month that flows exceed 25 cfs from October 1995 to September 2013. Based on Horizon’s review of these data, compared with post-CDRP conditions, the modeled daily streamflow at Niles gauge with the ACRP would result in a 19 percent decrease (50 days) in the average annual number of - passable days for steelhead downstream of the ACRP location during the Draft EIR study period. When the analysis focuses solely on the December to April steelhead migration period, the average number of passable days decreases by 11 percent. The impact of the ACRP to steelhead is worse during dry years. Using SFPUC’s designation of a “dry” years (i.e., 2000, 2001, 2002, 2003, 2004, 2007, 2008, 2009, 2010, 2012, and 2013), the average number of passable days during the December to April period decreases by 18 percent. Using ACWD’s designation of dry years (i.e., 2001, 2004, 2007, 2008, 2009, 2012, and 2013), the average number of passable days during the December to April period decreases by 22 percent. To be clear, these comparisons were made between the conditions that will exist when the CDRP has been completed and the conditions that would exist when both the CDRP and the ACRP are both operational. These significant impacts to steelhead by the ACRP, clearly evident in SFPUC’s own modeling data, were neither sufficiently analyzed nor disclosed in the Draft EIR and Final EIR.

## V. PERMITTING REQUIREMENTS OF ACRP

The proposed ACRP would require a variety of permits and approvals prior to construction and operation. Section 3.7 of the ACRP Draft EIR contains a list of such permits and authorizations. However, Section 3.7 does not list any consultation and/or permit from NMFS pursuant to the federal Endangered Species Act (ESA). This omission is due to the conclusion by the lead agency that neither construction nor operation of the ACRP would result in *any* significant impacts to steelhead. Because of this conclusion, not a single mitigation measure is proposed by the lead agency to offset any potentially significant impacts of the ACRP to steelhead.

The ESA (16 U.S. Code Section 1531 et seq.; 50 Code of Federal Regulations Parts 17 and 222) provides for conservation of species that are endangered or threatened throughout all or a significant portion of their range, as well as the protection of habitats on which they depend. The U.S. Fish and Wildlife Service (USFWS) and NMFS share responsibility for implementing the ESA. In general, USFWS manages land and freshwater species, whereas NMFS manages marine and anadromous species (including Central California Coast steelhead).

Section 9 of the ESA and its implementing regulations prohibit the take of any fish or wildlife species listed under the ESA as endangered or threatened, unless otherwise authorized by federal regulations. The term “take” means to “harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.”

For proposed projects with a federal nexus, incidental take of a federally-listed endangered or threatened species is addressed via Section 7 of the ESA. For proposed projects with no federal nexus, incidental take is addressed by Section 10(a)(1)(B) of the ESA.

Based on Horizon’s independent review of the ACRP EIR, the ACRP would result in “take” of steelhead. Assuming, *arguendo*, that the lead agency is correct and there is no federal nexus and no federal permitting required for the proposed project (an issue in dispute), Horizon concludes that the ACRP would require a Section 10(a)(1)(B) incidental take permit from NMFS prior to construction. A habitat conservation plan (HCP) must accompany an application for an incidental take permit under Section 10(a)(1)(B) of the ESA. The HCP associated with the permit would ensure that the effects of the authorized incidental take of Central California Coast steelhead are adequately minimized and mitigated.

## VII. REFERENCES CITED

- California Department of Water Resources (DWR). 2014. California’s Groundwater. Bulletin 118. Last updated on June 30, 2014.
- Dunne, T., B. Cluer, D. Manning, J.E. Merz. 2012. Review of the Alameda Creek Habitat Conservation Plan Modeling Strategy. Prepared for San Francisco Public Utilities Commission by Independent Science Review Panel Members. August 2012.
- National Marine Fisheries Service (NMFS). 2016. Final Coastal Multispecies Recovery Plan. National Marine Fisheries Service, West Coast Region, Santa Rosa, California. Available at: [http://www.westcoast.fisheries.noaa.gov/publications/recovery\\_planning/salmon\\_steelhead/domains/north\\_central\\_california\\_coast/Final%20Materials/Vol%20IV/vol\\_iv\\_ccc\\_steelhead\\_coastal\\_multispecies\\_recovery\\_plan.pdf](http://www.westcoast.fisheries.noaa.gov/publications/recovery_planning/salmon_steelhead/domains/north_central_california_coast/Final%20Materials/Vol%20IV/vol_iv_ccc_steelhead_coastal_multispecies_recovery_plan.pdf).

EXHIBIT D

## Legal Basis Supporting Appeal to San Francisco Board of Supervisors

The Alameda County Water District ("ACWD") has appealed the following decisions relating to the Alameda Creek Recapture Project ("ACRP" or "Project"):

1. Motion No. 19952, approved by the Planning Commission on June 22, 2017, certifying the Final Environmental Impact Report for the proposed Alameda Creek Recapture Project and adopting related findings; and
2. Resolution 17-0146, approved by the Public Utilities Commission on June 23, 2017, adopting the CEQA findings, including the Statement of Overriding Considerations, adopting the Mitigation Monitoring and Reporting Program, and approving Project No. CUW35201, Alameda Creek Recapture Project.

This appeal includes all of the grounds set forth in the July 24, 2017, Letter of Appeal and ACWD's written and verbal comments on the Draft EIR and Project submitted to the Planning Commission and the San Francisco Public Utilities Commission ("SFPUC"). This document addresses how the ACRP Environmental Impact Report ("EIR") fails to achieve the basic primary goals of the California Environmental Quality Act ("CEQA") to 1) avoid or reduce environmental damage, and 2) inform decision-makers and the public.

### I. INTRODUCTION

CEQA (Pub. Res. Code, § 21000 *et seq.*) requires a governmental agency to prepare an Environmental Impact Report ("EIR") whenever it considers approval of a proposed project that may have a significant effect on the environment. (*California Sportfishing Protection Alliance v. State Water Resources Control Bd.* (2008) 160 Cal.App.4th 1625, 1642.)

The EIR has been aptly described as the heart of CEQA. 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.

(*Napa Citizens for Honest Government v. Napa County Bd. of Supervisors* (2001) 91 Cal.App.4th 342, 355; citing *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 563-564; see also *Laurel Heights Improvement Assn. v. Regents of University of California* (1993) 6 Cal.4th 1112, 1123.) To this end, public participation is an "essential part of the CEQA process." (*Id.*; CEQA Guidelines § 15201.)<sup>1</sup>

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<sup>1</sup> "CEQA Guidelines" refers to the Guidelines for Implementation of the California Environmental Quality Act found at California Code of Regulations Title 14, Chapter 3, section 15000 *et seq.*



The EIR for the ACRP fails to comply with CEQA procedural and substantive requirements in its analysis of the surface water-groundwater hydrology and impacts to the federally-threatened Central California Coast (CCC) steelhead.

- Despite repeated requests by ACWD, the daily stream flow data used in the modified model for the CEQA analysis were not made available during the public review period. The failure to include this relevant information precluded informed decision making and informed public participation in violation of CEQA.
- The daily data were finally provided after the close of the public comment period depriving the public of a meaningful opportunity to evaluate the new data and the validity of the conclusions drawn from it, and to comment on substantial adverse project impacts (including the impacts to federally threatened steelhead trout), feasible mitigation or alternatives; requiring recirculation of the EIR.
- The methodology used to determine impacts to steelhead failed to properly analyze the surface water-groundwater interaction in the project area and failed to account for the impacts based on steelhead daily flow requirements.
- The analysis of the daily flow data shows impacts to steelhead trout that were not properly analyzed or disclosed in the EIR.

## II. DISCUSSION

### A. The Failure to Provide Requested Daily Data Used in the EIR Analysis is a Procedural Violation of CEQA Requiring Recirculation of the EIR

The model primarily relied on in the EIR for analyzing impacts to the biological and fishery resources, hydrology and water quality, and the cumulative impacts analysis is the Alameda System Daily Hydrologic Model (ASDHM) as modified two separate times during the EIR preparation. The model was modified by the SFPUC prior to the public release of the Draft EIR. Subsequently, ACWD learned that the Planning Department and its consultants ESA/Orion were further modifying the ASDHM model for the Planning Department's use in the CEQA analysis. The Response to Comments on the Draft EIR ("RTC") acknowledges that two daily flow rates data sets were used; one from SFPUC modeling and a set "with adjustments made by the EIR consultants." (RTC at p. 11.2-6.) Specifically, the EIR consultants modified the modeling data provided by SFPUC "as part of part of the hydrological analysis for the EIR," and "adjusted the ASDHM outputs downstream of San Antonio Creek to incorporate the gains from NPDES quarry discharges and losses to the subsurface between San Antonio Creek and Arroyo de la Laguna." (RTC at pp. 11.2-6 and 11.2-7.)

The Planning Department and the EIR consultants determined these refinements to the model output were necessary for the EIR to analyze the biological resources effects of the ACRP downstream of the NPDES quarry discharge point.

(*Id.*)

Despite the multiple requests made by ACWD for daily modeling data, which is essential data to analyze the environmental impacts of the Project, ACWD only received the relevant requested data on June 12, 2017 -- 194 days after the Draft EIR was published and well after the close of the public comment period on January 30, 2017. (See Timeline of ACWD's Requests for Daily Data Supporting the EIR Analysis ("ACWD Timeline"); Exhibit B to ACWD's August 25, 2017 cover letter attached herewith.) ACWD first raised the issue of daily flow data on July 27, 2015, in its response to the Notice of Preparation for the Draft EIR, stating that "while annual [flow] totals may be the same, the actual daily rate of releases or bypass flows will be quantifiably different from the recapture rate provided by ACRP," and that, "[t]he disparity in the release recapture rates may have impacts in a variety of areas of concern and will need to be analyzed in sufficient detail for potential impacts to be understood and ultimately mitigated if necessary." (See Ex. D to ACWD July 24, 2017 Appeal Letter.)

On January 10, 2017, ACWD restated the need for daily flow analysis, adding that, "ACWD review of the analysis of the Draft EIR has also been constrained by the incomplete release of modeling information." Furthermore, ACWD stated

[i]n order to evaluate potential impacts, ACWD requests an opportunity to review daily flow rates provided by the modeling. Upon review of this additional data, ACWD requests a meeting with San Francisco staff to further discuss potential impacts of the ACRP prior to providing comments on the Draft EIR.

(See Ex. D to ACWD July 24, 2017 Appeal Letter; RTC at pp. COM-13 and 14.) Likewise, the National Marine Fishery Service ("NMFS") indicated in comments on the Draft EIR that "additional information is needed to conclude the proposed ACRP will not significantly impact native fish in upper Alameda Creek, including threatened CCC steelhead," and recommended analysis of the day-to-day changes in surface flow. (January 30, 2017 letter to Lisa M. Gibson from Alecia Van Atta, RTC at p. COM-7.) On January 12, 2017, the Planning Department responded to ACWD stating that modeling information on daily flow rates can be requested from the SFPUC. (See Attachment A, January 12, 2017 letter from Lisa Gibson, Acting Environmental Review Officer; see also RTC at p. 11.2-6.) Regarding the request to meet and review the modeling data, ACWD was informed that "[t]he Planning Department can only accept and respond to comments on the Draft EIR through this public process." (*Id.*)

The SFPUC version of the model was shared with ACWD. (RTC at p. 11.2-6.) However, in subsequent conversations with SFPUC, ACWD was informed that SFPUC could not provide the requested data from the model modified by the Planning Department and its consultant, and could only provide the modeling data it previously provided, prior to the public release of the draft EIR. On January 30, 2017, ACWD again commented on the lack of a daily time-step in the ASDHM analysis in the Draft EIR. (See Ex. D to ACWD July 24, 2017 Appeal Letter at pp. 4-5; RTC at pp. Com-18 and COM-19.)

The Final EIR Responses to Comments states that "[a]ll data and reference material cited in the EIR are available for review as part of the administrative record located at the Planning Department." (RTC at p. 11.2-6.) While these data are currently available, they were not available for public review until after the close of the public comment period. Further the EIR hydrology appendices HYD1 and HYD2 do not provide the daily data requested by ACWD. On June 7, 2017, the same day it published the Responses to Comments, the Planning Department finally provided ACWD the ASDHM daily flow data for the version of the model as modified by

the EIR consultant that was used in the Final EIR. (See Ex. E to ACWD July 24, 2017 Appeal Letter.) ACWD received this data transmittal on June 12, 2017, well after the close of the public comment period on January 30, 2017, and only ten days before the Planning Commission hearing on June 22, 2017, in which the Final EIR was certified.

The failure to provide the requested daily data used in the EIR analysis until after the public comment period is a procedural violation of CEQA. The EIR must be recirculated to allow the public and decision makers time to evaluate the daily data now available, to comment on the methodology and use of the daily data, and to evaluate potential project impacts.

a. **The Failure to Provide The Requested Daily Data Used in the EIR Analysis Amounts to Prejudicial Error in Violation of CEQA.**

One of CEQA's basic purposes is to inform government decision-makers and the public about potential significant environmental effects of proposed projects (CEQA Guidelines § 15002(a)(1).) CEQA achieves its purpose of long-term protection of the environment by functioning as an environmental full disclosure statute, and the EIR is the method of disclosure. (*Rural Landowners Association v. City Council* (1983) 143 Cal.App.3d 1013, 1020; Pub. Res. Code § 21061.)

[O]nly through an accurate view of the project may the public and interested parties and public agencies balance the proposed project's benefits against its environmental cost, consider appropriate mitigation measures, assess the advantages of terminating the proposal and properly weigh other alternatives.

(*City of Santee v. County of San Diego* (1989) 214 Cal.App.3d 1438, 1454.) "This informational purpose cannot be served if the required information is not received and disseminated by the local agency until *after* it has reached a decision." (*Rural Landowners Assn. v. City Council* (1983) 143 Cal.App.3d 1013, 1020–21.) (Emphasis added.) The data relied on in the EIR must be made readily accessible for public review *at the beginning of the public review period*. (CEQA Guidelines § 158087(c)(5).) (Emphasis added.)

[T]he ultimate decision of whether to approve a project, be that decision right or wrong, is a nullity if based upon an EIR that does not provide the decisionmakers, and the public, with the information about the project that is required by CEQA. The error is prejudicial if the failure to include relevant information precludes informed decision making and informed public participation, thereby thwarting the statutory goals of the EIR process.

(*Napa Citizens for Honest Government*, 91 Cal.App.4th at 355–356; citing *Concerned Citizens of Costa Mesa, Inc. v. 32nd Dist. Agricultural Assn.* (1986) 42 Cal.3d 929, 935.)

Here, the critical relevant daily data as modified by the Planning Department and its consultant, was never made available during the public review period. Rather, it was provided less than 10 business days prior to the Planning Commission's certification of the Final EIR, precluding informed decision making and informed public participation, and depriving decision-makers and the public information about potential significant environmental effects of the proposed Project in violation of CEQA.

b. **The EIR Must be Recirculated to Allow Review and Consultation Related to the New Daily Data and ASDHM Model Outputs Modified by the Planning Department and Its Consultant After the Public Notice and Review Period.**

When significant new information is added to an EIR after notice but prior to certification, the public agency shall give notice and consult again before certifying the EIR. (Public Res. Code § 21092.1.) New information specifically includes "new data." (CEQA Guidelines §15088(a).) Recirculation is required when additional information deprives the public of a meaningful opportunity to comment on substantial adverse project impacts, feasible mitigation or alternatives. (CEQA Guidelines §15088(a); *Laurel Heights Improvement Assn. v. Regents of University of California* (1993) 6 Cal.4th 1112, 1129.) Further, recirculation is required when the new information reveals a new substantial impact or a substantially increased impact on the environment. (*Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 448; CEQA Guidelines § 15088.5(a).) A significant environmental impact includes both substantial and potentially substantial adverse changes in the environment. (*Id.* at p. 448; Public Res. Code § 21068.) The purpose of recirculation is to give the public and other agencies an opportunity to evaluate the new data and the validity of the conclusions drawn from it. (*Spring Valley Lake Association v. City of Victorville* (2016) 248 Cal.App.4th 91, 108.) New information that demonstrates that an EIR commented upon by the public was so fundamentally and basically inadequate or conclusory in nature that public comment was in effect meaningless triggers recirculation under section 21092.1. (*Laurel Heights Improvement Assn.* 6 Cal.4th at 1130.)

Here, as discussed above, new daily data based on the ASDHM model outputs modified by the Planning Department and its consultant was provided after the public notice and comment period. The failure to make these data available until after the public review period deprived the public of a meaningful opportunity to evaluate the new data and the validity of the conclusions drawn from it, and to comment on substantial adverse project impacts, feasible mitigation or alternatives, requiring recirculation. (CEQA Guidelines §15088(a); *Spring Valley Lake Association v. City of Victorville* (2016) 248 Cal.App.4th 91, 108.) Further, as discussed below, the analysis of the new data shows significant impacts to federally threatened steelhead trout not adequately analyzed in the Final EIR, thus requiring recirculation. (See *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 449 [Failure to respond to comments indicating that substantial evidence that the loss of stream flows and impacts on migration on a sensitive and listed status fish species deprived the public of meaningful participation and required recirculation of an EIR].)

ACWD requests that the Board of Supervisors reverse the certification of this EIR and require its recirculation, instructing SFPUC (prior to recirculation) to consult with ACWD, fishery experts, groundwater experts, and others, to share the modified daily flow data and modeling methodology in a transparent and straightforward manner, and to discuss mitigations that will allow the Recapture Project to go forward without negatively affecting the huge investment (almost \$50 million) in improvements being made by the County of Alameda and ACWD in the fish restoration project.

**B. The EIR's Analysis of Hydrologic and Fishery Resources is Inadequate and Unsupported**

An EIR should be prepared with a sufficient degree of analysis to provide decision makers and the public with information which intelligently takes account of environmental consequences of a project decision. An evaluation of the environmental effects of a proposed project need not be exhaustive, but the sufficiency of an EIR is to be reviewed in light of what is reasonably feasible. (CEQA Guidelines §15151.) An agency must "do the necessary work to educate itself about different methodologies that are available." (*Berkeley Keep Jets Over the Bay Committee v. Board of Port Com'rs* (2001) 91 Cal.App.4th 1344, 1370.) An EIR must contain facts and analysis, not just an agency's bare conclusions or opinions. (*Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 568.) A clearly inadequate or unsupported study is entitled to no judicial deference. (*Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 409.) When comments on an EIR from another agency indicate that the EIR's analysis of an impact relied on incorrect data or flawed methodology, the EIR must provide a good faith, reasoned analysis in response. Conclusory statements about impacts without supporting evidence are not sufficient. (CEQA Guidelines § 15088(c).)

Here, the methodology used to determine impacts does not analyze surface water-groundwater interactions, is insufficient and not scientifically valid. (See Independent Review by Horizon Water and Environment of the SFPUC ACRP CEQA Documentation ("Horizon Memo"), section IV at pp. 4-5; Exhibit C to ACWD's August 25, 2017 cover letter attached herewith.) The assessment of potential impacts of the Project to hydrologic and geohydrologic resources in the EIR is based on the ASDHM for surface water hydrology and on a conceptualized, qualitative hydrogeologic model for surface water and groundwater interactions. Not only are both the ASDHM and the "conceptualized model" inadequate for the impacts analysis, the conclusions of the analysis were summarized on a monthly time step that failed to adequately illustrate the day to day impacts to fishery resources. Despite multiple comments from ACWD and NMFS that the use of the ASDHM is inadequate to analyze the groundwater surface water interaction, and that daily data (not summarized on a monthly time-step) is required to effectively determine impacts, no changes were made to the methodology or data provided.<sup>2</sup> NMFS remains concerned about the methodology and believes the Final EIR "does not contain sufficient information to conclude the ACRP will not result in substantial effects on streamflows that support the migration of CCC steelhead in Alameda Creek." (See Attachment B, July 27, 2017 letter from Gary Stern, NMFS San Francisco Bay Branch Supervisor.) Likewise, California Trout supports "ACWD's request to develop a more robust and appropriate streamflow modeling tool to study the surface water/groundwater interaction and full suite of potential downstream impacts of the proposed Project." (See Attachment C, August 18, 2017 letter from Patrick Samuel, California Trout Bay Area Conservation Program Manager.)

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<sup>2</sup> Since the Project was noticed, ACWD has requested to work initially with the SFPUC and then the Planning Department to develop a new, more robust, and appropriate tool to study the surface water groundwater interaction and the potential impacts of the proposed Project. Development of this analytic tool is both reasonable and feasible. ACWD proposed to collaborate in this effort and to contribute both financially and through in-kind services to the development of a new model which would benefit both agencies' activities in the watershed. ACWD's requests were largely ignored.

The ASDHM is insufficient to analyze the surface water-groundwater interaction necessary to evaluate Project impacts. The deficiencies in the ASDHM were well known to the SFPUC prior to its use in the EIR analysis. The SFPUC commissioned a Blue Ribbon Panel in August 2012 comprised of hydrologists and fisheries biologists to provide an independent scientific review of the ASDHM model and concluded that "a groundwater modeling study will be necessary to evaluate the surface and groundwater interaction within the Alameda Creek watershed, including the effects of lowering of Pit F2 elevations."<sup>3</sup> The ACRP CEQA analysis includes no such effort. Moreover, the data provided is incomplete since it does not include the accounting of water entering and leaving Pit F2, as modified by the Planning Department and used to complete the CEQA analysis. A physical, quantitative model of groundwater-surface water interactions is needed to adequately understand such interactions in the Alameda Creek watershed. (See Horizon.Memo at p.4.)

Further, in the Draft EIR and Final EIR, surface water and groundwater interactions are examined using an overly simplistic description (referred to as a "conceptual model") of the Alameda Creek surface water and groundwater basin. The purely conceptual model in the ACRP EIR is non-mathematical, non-quantitative, and does little more than oversimplify a complex system with a verbal, conclusory narrative. For example, the conceptual model includes a key assumption that the lower alluvium/Livermore gravels are not water-bearing; whereas, as in reality they are the source of all domestic groundwater in the region. (Draft EIR at p. 5.16-28.) Furthermore, the lower alluvium/Livermore gravels are part of the Sunol Valley groundwater basin as defined by the California Department of Water Resources (2014) and is identified in Bulletin 118. The unsupported dismissal of the lower alluvium/Livermore gravels as irrelevant to the impact analysis for surface water, groundwater, and fisheries resources renders the impact conclusions in the ACRP EIR pertaining to hydrology and fisheries invalid. (Horizon Memo at p. 4.)

As discussed above, in comments on the Draft EIR, and in meetings with both the SFPUC and the Planning Department, ACWD repeatedly stated that the flows analysis in the EIR should be at a daily rate or time-step, instead of the monthly analysis conducted in the EIR, and using a model that considers the surface water-groundwater interaction to adequately analyze Project impacts. (See ACWD Timeline.) Likewise, NMFS commented the analysis in the Draft EIR was inadequate and recommended that given the dynamic nature of surface flows in Alameda Creek that information regarding day-to-day changes in surface flow is required to determine impacts to steelhead migration and rearing. (RTC at pp. COM-7 and 8.) Importantly, NMFS continues to believe that additional analysis of the relationship between surface water and groundwater in a daily time-step is required to adequately analyze potential impacts. (See Attachment B, July 27, 2017 letter from Gary Stern, NMFS San Francisco Bay Branch Supervisor.)<sup>4</sup> Analyzing impacts to surface water hydrology from ACRP on an aggregated monthly time-step serves to mask

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<sup>3</sup> Dunne, T., B. Cluer, D. Manning, J.E. Merz. 2012. Review of the Alameda Creek Habitat Conservation Plan Modeling Strategy. Prepared for San Francisco Public Utilities Commission by Independent Science Review Panel Members. August 2012.

<sup>4</sup> Further, NMFS has commented that the Final EIR fails to account for steelhead migration patterns and agrees that a "more appropriate impact analysis would instead focus on changes in the amount of time flows exceed these minimum migration thresholds" of 25 cfs for adults and 12 cfs juvenile/smolt in Lower Alameda Creek. (See Attachment B, July 27, 2017 letter from Gary Stern, NMFS San Francisco Bay Branch Supervisor.)

critical day-to-day changes in flow rates which in turn masks impacts to aquatic biology and surface water hydrology downstream of the Project.

This is not a case where experts disagree on the appropriate methodology for the impacts analyses. (See *State Water Resources Control Bd. Cases*, 136 Cal. App. 4th 674, 795. [The lead agency is free to reject criticism from an expert or a regulatory agency on a given issue as long as its reason for doing so are supported by substantial evidence].) Rather, the substantial evidence presented in the daily data, when finally provided after the close of the public comment period, actually shows impacts to steelhead that were not properly analyzed in the EIR. In a short period of time since the daily data was made available on June 12, 2017, both ACWD and NMFS have independently evaluated the data and determined there are impacts to steelhead from the operation of ACRP (discussed below). It was clearly reasonably feasible to evaluate the daily data and the Planning Department should have conducted this level of analysis. (See *Berkeley Keep Jets Over the Bay Committee v. Board of Port Com'rs* (2001) 91 Cal.App.4th 1344, 1370 [the lead agency must "do the necessary work to educate itself about different methodologies that are available."].) Further, both SFPUC and the Planning Department knew the ASDHM is flawed and incapable of conducting the required analysis and did not "do the necessary work to educate itself about different methodologies that are available." The EIR fails to provide a good faith, reasoned analysis in its response to comments clearly indicating that that the analysis of impacts to steelhead relied on incorrect data and flawed methodology.

Therefore, ACWD requests that the Board of Supervisors reverse the certification of this EIR and require its recirculation, instructing SFPUC to meet with ACWD, fishery experts, groundwater experts, and others, and to develop a methodology to adequately evaluate Project impacts, including an analysis of daily flow impacts and surface water-groundwater interaction.

**C. The Daily Flow Data Shows Significant Impacts to Steelhead that were not Adequately Analyzed in the EIR.**

The Central California Coast (CCC) steelhead (*Oncorhynchus mykiss*) is federally listed as threatened. (See 14 CCR § 15380(c)(2).) ACWD, together with the SFPUC and other watershed stakeholders, is actively involved in the ongoing steelhead restoration efforts to restore the steelhead run in the Alameda Creek Watershed. ACWD and Alameda County are making approximately \$48.5 million dollar investments in fish ladders and screened diversions downstream of the Project. Additionally, Alameda County will be making additional significant investments to improve Alameda Creek to facilitate steelhead migration. The operation of the ACRP will put in jeopardy the efforts to restore steelhead to Alameda Creek. Analysis of the daily flow data received after the close of the public review period indicates the operation of the ACRP will result in severe impacts to steelhead that were not properly analyzed or mitigated for in the Final EIR in violation of CEQA.

The overriding and primary goal of CEQA is to provide long-term protection to the environment. (Pub. Res. Code §§ 21001-21002; *Mountain Lion Foundation v. Fish & Game Com.* (1997) 16 Cal.4th 105, 112.) Specifically, Public Resources Code section 21001(c) provides the policy in California to

[p]revent the elimination of fish or wildlife species due to man's activities, insure that fish and wildlife populations do not drop below self-perpetuating levels, and preserve for

future generations representations of all plant and animal communities and examples of the major periods of California history.

An EIR should not just generate paper, but should act as "an environmental 'alarm bell' whose purpose is to alert the public and its responsible officials to environmental changes before they have reached the ecological points of no return." (*County of Inyo v. Yorty* (1973) 32 Cal.App.3d 795, 810.) "The EIR is also intended to demonstrate to an apprehensive citizenry that the agency has, in fact, analyzed and considered the ecological implications of its action." (*Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 392.) Under CEQA a "potential substantial impact on endangered, rare or threatened species is per se significant." (*Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 449; citing CEQA Guidelines § 15065(a)(1)). Mandatory findings of significance are required for projects that 1) substantially reduce the habitat of a fish species, 2) cause a fish population to drop below self-sustaining levels, or 3) substantially reduce the number or restrict the range of threatened species. (CEQA Guidelines § 15065(a)(1).)

In addressing Project impacts to steelhead, the EIR concludes that the analysis of long-term operation of the project would not result in substantial changes to flow and habitat conditions for migrating steelhead, with limited effects on habitat functions for steelhead, and project operations would have a less-than-significant impact on steelhead. (RTC at p. 11.4-32.) As a result, the Planning Department determined that no additional information is needed to support this determination. (RTC at p. 11.4-31.) The EIR asserts that the no impact determination was based on an analysis of daily flow estimates derived from the ASDHM daily output to predict hydraulic conditions at a daily time-step that migrating steelhead would be anticipated to experience. (Draft EIR § 5.14.5.3; RTC at p. 11.4-32.) However, while the ASDHM contains the word "daily," the results presented in the EIR were compiled from the daily data and analyzed at a monthly time-step. As discussed above, the EIR's analysis of hydrologic and fishery resources is inadequate and unsupported.

When ACWD finally received the daily flow data it had long been requesting, it retained a third party consultant, Horizon Water and Environment (Horizon), to review the data and the impacts analysis in the EIR. Horizon's independent analysis of the daily Niles gauge modeling data indicates that significant impacts would occur as a result of the operation of ACRP. (See Horizon Memo at p 5.) Likewise, NMFS independently reviewed the daily modeling data provided to ACWD on June 12, 2017, and found that "ACRP operations will diminish migration opportunities for federally-threatened [ ] steelhead, especially outmigrating steelhead smolts in some years." (See Attachment B, July 27, 2017 letter from Gary Stern, NMFS San Francisco Bay Branch Supervisor.)

The daily data shows that the operation of the ACRP would result in a drop in flows below the critical 25 cubic feet per second ("cfs") on a substantially greater number of days during the December to April adult emigration/migration period and the January to June post-spawn adult emigration period for steelhead. These thresholds were identified by NMFS and the California Department of Fish and Wildlife ("CDFW") as being minimum passage thresholds for adult and juvenile steelhead downstream of the Project location in the Alameda Creek Flood Control Channel, and were integrated into the ASDHM analysis used in the CEQA impacts analysis in



the Final EIR (Table 14, Dhakal et al, 2012; cited in EIR Appendix HYD-1, page 48: Section 4, Note 1.)<sup>5</sup>

[C]ompared with post-CDRP conditions, the modeled daily streamflow at Niles gauge with the ACRP would result in a 19 percent decrease (50 days) in the average annual number of passable days for steelhead downstream of the ACRP location during the Draft EIR study period. When the analysis focuses solely on the December to April steelhead migration period, the average number of passable days decreases by 11 percent. The impact of the ACRP to steelhead is worse during dry years. Using SFPUC's designation of a "dry" years (i.e., 2000, 2001, 2002, 2003, 2004, 2007, 2008, 2009, 2010, 2012, and 2013), the average number of passable days during the December to April period decreases by 18 percent. Using ACWD's designation of dry years (i.e., 2001, 2004, 2007, 2008, 2009, 2012, and 2013), the average number of passable days during the December to April period decreases by 22 percent.

(Horizon Memo at p. 5.) Further, NMFS independent analysis of the daily streamflow data for May 2008 indicates that "ACRP operations could result in streamflows in the lower Alameda Creek dropping below the smolt passage threshold of 12 cfs for an additional 15 days when compared to the without ACRP condition." (See Attachment B, July 27, 2017 letter from Gary Stern, NMFS San Francisco Bay Branch Supervisor.) These are significant impacts not analyzed in the Final EIR.

The EIR also incorrectly states that the flows resulting from the Project would continue to provide suitable conditions for adult upstream migration and smolt downstream migration consistent with the NMFS Biological Opinion for the Calaveras Dam Replacement Project. (RTC at p. 11.4-30; DEIR section 1.2.2 at p. 1-5.) This is incorrect, and the daily flow data indicates that the Biological Opinion's required migration flows would be negatively impacted. Specifically, pages 48-52 of the Biological Opinion indicate that bypass flows are intended to provide suitable migration conditions from Alameda Creek below the Alameda Creek Diversion Dam and out to the bay.<sup>6</sup> The daily data indicates that the operation of ACRP will conflict with this requirement. Tellingly, NMFS does not agree with the Final EIR's conclusion that ACRP operations would not substantially interfere with the movement or migration of steelhead. (See Attachment B, July 27, 2017 letter from Gary Stern, NMFS San Francisco Bay Branch Supervisor.)<sup>7</sup>

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<sup>5</sup> National Marine Fisheries Service (NMFS). 2016. Final Coastal Multispecies Recovery Plan. National Marine Fisheries Service, West Coast Region, Santa Rosa, California. Available at: [http://www.westcoast.fisheries.noaa.gov/publications/recovery\\_planning/salmon\\_steelhead/domains/north\\_central\\_california\\_coast/Final%20Materials/Vol%20IV/vol\\_iv\\_ccc\\_steelhead\\_coast\\_multispecies\\_recovery\\_plan.pdf](http://www.westcoast.fisheries.noaa.gov/publications/recovery_planning/salmon_steelhead/domains/north_central_california_coast/Final%20Materials/Vol%20IV/vol_iv_ccc_steelhead_coast_multispecies_recovery_plan.pdf).

<sup>6</sup> National Marine Fisheries Biological Opinion, Calaveras Dam Replacement Project, March 5, 2011, with respect to Effects to Steelhead Migration in Niles Canyon and Lower Alameda Creek (Flow through Niles Canyon and Lower Alameda Creek to San Francisco Bay), pages 48-52.

<sup>7</sup> Based on the daily Niles Gauge streamflow data, the operation of the Project would likely result in "take" (as defined in the federal Endangered Species Act) of Central California Coast steelhead. An incidental take permit (ITP) from the National Marine Fisheries Service would be required under Section 10(a) of the federal Endangered Species Act. (Horizon Memo at pp. 5-6.)

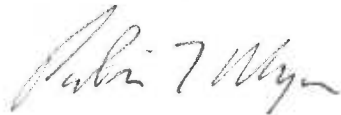
The ACRP EIR's analysis fails entirely to address potential impacts to threatened steelhead in violation of CEQA. The analysis of significant environmental impacts is inadequate and incomplete, the EIR fails to function as a full disclosure environmental document and the findings are not supported by substantial evidence. These significant impacts to steelhead were neither disclosed nor sufficiently analyzed in either the Draft EIR or Final EIR and renders unsupported the conclusions of no impact. Under CEQA, the Planning Department had an obligation to make the findings under Guidelines section 15065(a)(1) related to 1) reduction in steelhead habitat, 2) potential population drop below self-sustaining levels, and 3) reducing the number of or restricting the range of steelhead. The EIR failed to analyze the effects in depth, make detailed findings on the feasibility of alternatives or mitigation measures to substantially lessen or avoid the significant effects, make feasible changes in the project to substantially lessen or avoid the significant effects, and adopt a statement of overriding considerations related to biological and fishery resources in violation of CEQA.

The analysis of this data indicates a significant impact under CEQA that is neither disclosed nor mitigated and invalidates the significance determinations for Central California Coast steelhead in both the Draft EIR and Final EIR. ACWD joins in NMFS request that SFPUC and the Planning Department revise the analysis of the environmental effects of the Project, to effectively account for surface water-groundwater interaction and to fully address impacts to steelhead based on daily flows in Alameda Creek.

### III. CONCLUSION

ACWD request that the San Francisco Board of Supervisors grant ACWD's appeal and to (1) reverse the certification of this EIR; (2) ask the Planning Department to revise the methodology used for the CEQA analysis; and (3) instruct SFPUC and the Planning Department to meet with ACWD, fishery experts, groundwater experts and other stakeholders, to develop a more appropriate modeling methodology using daily flow data for the Recapture Project in a transparent manner which will further promote the steelhead restoration effort.

Hanson Bridgett LLP



Patrick T. Miyaki  
General Counsel, Alameda County Water District

A



# SAN FRANCISCO PLANNING DEPARTMENT

January 12, 2017

Robert Shaver, General Manager  
Alameda County Water District  
43885 South Grimmer Boulevard  
Fremont, CA, 94537

Re: Response to Request to Extend the Draft EIR Comment Period (SFPUC - Case No. 2015-004827ENV)

Dear Mr. Shaver,

The purpose of this letter is to respond to a recent letter received on January 10, 2017 from the Alameda County Water District regarding a request to extend the public comment period for the Draft EIR beyond the January 17, 2017 close of public comment period date. The letter also requests modeling information on the daily flow rates, and to have a meeting with Planning Department staff.

The Planning Department's Acting Environmental Review Officer has agreed to extend the Draft EIR public comment period to 5:00 p.m. on January 30, 2017, for a 61-day public review period.

In regards to the request for modeling information on the daily flow rates, this information can be requested from the San Francisco Public Utilities by contacting Ellen Levin, Deputy Assistant General Manager, Water Enterprise at [elevin@sflower.org](mailto:elevin@sflower.org). In response to the request to meet to review the modeling information, pursuant to CEQA, public comments on the Draft EIR are accepted during the Draft EIR public hearing, held on January 5, 2017, and in writing during the Draft EIR comment period, now extended until January 30, 2017. The Planning Department can only accept and respond to comments on the Draft EIR through this public process.

If you have any questions, regarding this matter, please do not hesitate to contact me at 415-575-9032 or Chelsea Fordham 415-575-9071.

Sincerely,

for 

Lisa Gibson, Acting Environmental Review Officer

CC: Elaine Warren, Deputy, City Attorney  
Chris Kern, San Francisco Planning Department  
Irina Torrey, San Francisco Public Utilities Commission  
Tim Ramirez, San Francisco Public Utilities Commission

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B



UNITED STATES DEPARTMENT OF COMMERCE  
National Oceanic and Atmospheric Administration  
NATIONAL MARINE FISHERIES SERVICE  
West Coast Region  
777 Sonoma Avenue, Room 325  
Santa Rosa, California 95404-4731

July 27, 2017

Clerk of the Board of Supervisors  
City and County of San Francisco  
1 Dr. Carlton B. Goodlett Place, Room 244  
San Francisco, California 94102

Re: June 22, 2017 Planning Commission Decision Regarding the Final Environmental Impact Report for the Alameda Creek Recapture Project

Dear Clerk of the Board of Supervisors:

NOAA's National Marine Fisheries Service (NMFS) has been notified of the San Francisco Planning Commission's June 22, 2017 decision to certify the Final Environmental Impact Report (EIR) for the Alameda Creek Recapture Project (ACRP). NMFS previously submitted comments regarding the ACRP Draft EIR (Planning Department File No. 2015-004827ENV) via letter dated January 30, 2017, and we have reviewed the Responses to Comments document dated June 7, 2017.

Based on our review of the Final EIR, NMFS believes the document does not contain sufficient information to conclude the ACRP will not result in substantial effects on streamflows that support the migration of CCC steelhead in Alameda Creek. Streamflow simulation results presented in Figure 5.14-9 of the Draft EIR predict hydrologic conditions at a daily time-step, but it is unclear if this plot represents a comparison of "with project" to "without project" conditions. Table HYD6-2 of Appendix HYD1 offers some information regarding predicted changes in streamflows and this table indicates May flows will be reduced by approximately 30 percent with ACRP operations. The conclusion regarding potential impacts to steelhead migration presented in the EIR is based on an analysis of the "long-term" operation of the ACRP which doesn't fully take into account short-term impacts (*i.e.*, dry water years) and, as a result, the analysis presented in the EIR could significantly underestimate potential impacts to steelhead and migratory habitat.

Furthermore, the EIR asserts that steelhead migration will not be impacted by the ACRP because, for both with and without project scenarios, "precipitation-generated streamflows in Alameda Creek are predicted to exceed several hundred cubic feet per second during the December through June migration period<sup>1</sup>." This reasoning fails to consider that steelhead do not migrate only during peak flow events, but may migrate anytime within the migration period when instream flows exceed identified minimum flow levels (*i.e.*, 25 cfs for adults, 12 cfs for juvenile/smolt in lower Alameda Creek). A more appropriate impact analysis would instead

<sup>1</sup> Response to Comments, page 11.4-32; and Draft EIR, page 5.14-126.

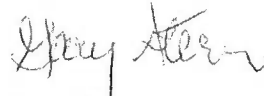


focus on changes in the amount of time flows exceed these minimum migration thresholds. In light of this comment, NMFS reviewed the daily modelling data provided to the Alameda County Water District on June 12, 2017, and found that ACRP operations will diminish migration opportunities for federally-threatened Central California Coast (CCC) steelhead (*Oncorhynchus mykiss*), especially outmigrating steelhead smolts, in some years. For instance, analysis of the daily streamflow data for May 2008 suggests ACRP operations could result in streamflows in lower Alameda Creek (as measured at the Niles Gage) dropping below the smolt passage threshold of 12 cfs for an additional 15 days when compared to the without ACRP condition.

Based on currently available information, NMFS does not concur with the Final EIR's conclusion that ACRP operations would not substantially interfere with the movement or migration of special-status fish species, including CCC steelhead (Impact B1-11 in the DEIR and Impact B1-16 in FEIR). We recommend San Francisco Planning Commission and the San Francisco Public Utilities Commission undertake additional analysis to examine the relationship between groundwater and surface water in the Sunol Valley for the purpose of determining the project's potential impacts on a daily time-step to streamflows in Alameda Creek downstream of the project site.

If you have any questions regarding these comments, please contact Rick Rogers at [rick.rogers@noaa.gov](mailto:rick.rogers@noaa.gov), or 707-578-8552.

Sincerely,



Gary Stern  
San Francisco Bay Branch Supervisor  
North-Central Coast Office

cc: Tim Ramirez, SFPUC, San Francisco CA  
Thomas Niesar, ACWD, Fremont, CA  
Sean Cochran, CDFW, Santa Rosa, CA  
Ryan Olah, USFWS, Sacramento, CA

C



CALIFORNIA TROUT



August 18, 2017

City and County of San Francisco  
Clerk of the Board of Supervisors  
Lisa Gibson, Environmental Review Officer  
#1 Dr. Carlton B. Goodlett Place Room #244  
San Francisco, CA 94102

Re: Support for Alameda County Water District's July 24 Request for the Board of Supervisors to Remand Final EIR of the Alameda Creek Recapture Project to the Planning Commission, Require Collaborative Analysis of Impact on Streamflows

Dear Lisa Gibson and Members of the Board of Supervisors:

I am writing in support of Alameda County Water District's reasonable and prudent request that the Board of Supervisors reverse the certification of the EIR and approval of Case No. 2015-004827ENV, the "Alameda Creek Recapture Project" (Project), and remand the final EIR to the Planning Commission to require the collaborative development of a new modeling tool to fully analyze potential Project impacts to federally threatened Central California Coast Distinct Population segment of steelhead (*Oncorhynchus mykiss irideus*) and downstream water users.

We support ACWD's request to develop a more robust and appropriate streamflow modeling tool to study the surface water/groundwater interaction and full suite of potential downstream impacts of the proposed Project. Operation of the Project as proposed will have the potential to significantly alter the availability and timing of sufficient flows to allow upstream passage of spawning adult and downstream passage of juvenile steelhead during critical migration windows below established thresholds (25cfs for adults, 12cfs for juveniles), causing potential "take" of steelhead in violation of the Endangered Species Act. These impacts were not sufficiently described nor analyzed in the Final EIR and should have been examined more closely.

SFPUC has been working with partners in the Alameda Creek watershed through the Alameda Creek Fisheries Work Group to improve stream conditions and passage for steelhead since 1997. California Trout recognizes the importance of Alameda Creek and its essential independent population<sup>1</sup> of steelhead to the recovery of the Central California Coast Distinct Population Segment, and is interested in engaging further with the Fisheries Work Group toward this goal.

We respectfully voice our support for ACWD's request, and look forward to working with SFPUC and other Alameda Creek stakeholders to improve fish passage and water supply reliability.

Thank you for your consideration.

Sincerely,

/s/ Patrick Samuel  
California Trout Bay Area Conservation Program Manager

<sup>1</sup> National Marine Fisheries Service, 2016. *Final Coastal Multispecies Recovery Plan*. 649-681pp. Santa Rosa, CA.

EXHIBIT E



**UNITED STATES DEPARTMENT OF COMMERCE**  
**National Oceanic and Atmospheric Administration**  
NATIONAL MARINE FISHERIES SERVICE  
West Coast Region  
777 Sonoma Avenue, Room 325  
Santa Rosa, California 95404-4731

July 27, 2017

Clerk of the Board of Supervisors  
City and County of San Francisco  
1 Dr. Carlton B. Goodlett Place, Room 244  
San Francisco, California 94102

Re: June 22, 2017 Planning Commission Decision Regarding the Final Environmental Impact Report for the Alameda Creek Recapture Project

Dear Clerk of the Board of Supervisors:

NOAA's National Marine Fisheries Service (NMFS) has been notified of the San Francisco Planning Commission's June 22, 2017 decision to certify the Final Environmental Impact Report (EIR) for the Alameda Creek Recapture Project (ACRP). NMFS previously submitted comments regarding the ACRP Draft EIR (Planning Department File No. 2015-004827ENV) via letter dated January 30, 2017, and we have reviewed the Responses to Comments document dated June 7, 2017.

Based on our review of the Final EIR, NMFS believes the document does not contain sufficient information to conclude the ACRP will not result in substantial effects on streamflows that support the migration of CCC steelhead in Alameda Creek. Streamflow simulation results presented in Figure 5.14-9 of the Draft EIR predict hydrologic conditions at a daily time-step, but it is unclear if this plot represents a comparison of "with project" to "without project" conditions. Table HYD6-2 of Appendix HYD1 offers some information regarding predicted changes in streamflows and this table indicates May flows will be reduced by approximately 30 percent with ACRP operations. The conclusion regarding potential impacts to steelhead migration presented in the EIR is based on an analysis of the "long-term" operation of the ACRP which doesn't fully take into account short-term impacts (*i.e.*, dry water years) and, as a result, the analysis presented in the EIR could significantly underestimate potential impacts to steelhead and migratory habitat.

Furthermore, the EIR asserts that steelhead migration will not be impacted by the ACRP because, for both with and without project scenarios, "precipitation-generated streamflows in Alameda Creek are predicted to exceed several hundred cubic feet per second during the December through June migration period<sup>1</sup>." This reasoning fails to consider that steelhead do not migrate only during peak flow events, but may migrate anytime within the migration period when instream flows exceed identified minimum flow levels (*i.e.*, 25 cfs for adults, 12 cfs for juvenile/smolts in lower Alameda Creek). A more appropriate impact analysis would instead

<sup>1</sup> Response to Comments, page 11.4-32; and Draft EIR, page 5.14-126.



focus on changes in the amount of time flows exceed these minimum migration thresholds. In light of this comment, NMFS reviewed the daily modelling data provided to the Alameda County Water District on June 12, 2017, and found that ACRP operations will diminish migration opportunities for federally-threatened Central California Coast (CCC) steelhead (*Oncorhynchus mykiss*), especially outmigrating steelhead smolts, in some years. For instance, analysis of the daily streamflow data for May 2008 suggests ACRP operations could result in streamflows in lower Alameda Creek (as measured at the Niles Gage) dropping below the smolt passage threshold of 12 cfs for an additional 15 days when compared to the without ACRP condition.

Based on currently available information, NMFS does not concur with the Final EIR's conclusion that ACRP operations would not substantially interfere with the movement or migration of special-status fish species, including CCC steelhead (Impact B1-11 in the DEIR and Impact B1-16 in FEIR). We recommend San Francisco Planning Commission and the San Francisco Public Utilities Commission undertake additional analysis to examine the relationship between groundwater and surface water in the Sunol Valley for the purpose of determining the project's potential impacts on a daily time-step to streamflows in Alameda Creek downstream of the project site.

If you have any questions regarding these comments, please contact Rick Rogers at [rick.rogers@noaa.gov](mailto:rick.rogers@noaa.gov), or 707-578-8552.

Sincerely,



Gary Stern  
San Francisco Bay Branch Supervisor  
North-Central Coast Office

cc: Tim Ramirez, SFPUC, San Francisco CA  
Thomas Niesar, ACWD, Fremont, CA  
Sean Cochran, CDFW, Santa Rosa, CA  
Ryan Olah, USFWS, Sacramento, CA



# Alameda Creek Alliance

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August 2, 2017

San Francisco Board of Supervisors  
1 Dr. Carlton, B. Goodlett Place, Room 244  
San Francisco, CA 94102

**Re: Planning Commission Decision Regarding Alameda Creek Recapture Project**

Dear San Francisco Supervisors:

The Alameda Creek Alliance has concerns about the San Francisco Public Utilities Commission's (SFPUC) Alameda Creek Recapture Project and impacts that its operations could have on recovering threatened steelhead trout within the Alameda Creek watershed. We share the concerns about the inadequacies of the recently certified Environmental Impact Report (EIR) that have been raised by the National Marine Fisheries Service (NMFS), California Department of Fish and Wildlife (CDFW), and Alameda County Water District (ACWD). We support the ACWD petition to reverse the certification of the EIR for the project.

The Alameda Creek Alliance has more than 2,000 members and supporters. Since 1997 we have advocated for restoration of steelhead trout in the Alameda Creek watershed. We have worked with the SFPUC since 1999 to improve habitat conditions to support the recovery of steelhead. While we generally support the recapture project and the concept of off-stream rather than in-stream water recapture, state and federal fisheries agencies have determined that the final EIR does not contain sufficient information to support the conclusion that the project will not result in a less than significant impact on streamflows and fish migration in Alameda Creek.

The Alameda Creek Alliance submitted scoping comments on the Alameda Creek Recapture Project in 2015 and commented on the draft EIR for the project in January 2017. We have reviewed the SF Planning Commission's June 22, 2017 decision to certify the final EIR and the June 7, 2017 responses to comments on the EIR. We have also reviewed the ACWD's July 24, 2017 letter of appeal and concerns about the hydrology analysis used for the EIR; the July 24, 2017 comment letter from CDFW; and the July 27, 2017 comment letter from NMFS.

NMFS commented that the final EIR does not contain sufficient information to conclude that the project will not result in substantial effects on streamflows intended to support migration of steelhead trout, and in fact found that project operations will diminish migration opportunities for steelhead, especially outmigrating smolts, in some years. CDFW commented that the modeling analysis used for the EIR may be inadequate for the determination that the project will have "less than a significant impact" on fisheries resources of Alameda Creek.

An ACWD analysis of daily modeling data provided by the SFPUC after the close of the EIR comment period shows that project operations could result in increased numbers of days where streamflows in lower Alameda Creek fall below the threshold for fish passage, as determined by NMFS. ACWD commented that the hydrologic model relied on in the EIR's impact analyses is insufficient to analyze the surface water groundwater interaction necessary to fully evaluate project impacts. CDFW shared this concern that the modeling used in the EIR did not adequately address ground and surface water interaction in the stream reach of the proposed project, and that the EIR analyses do not adequately quantify the stream reach percolation

losses of SFPUC releases.

We are also concerned about the potential reduction in the number of days that steelhead could have access to spawning and rearing habitat upstream of the project. Data presented in the EIR shows that the current proposal for project operations will reduce the number of days where adequate streamflow is available for steelhead migration. The EIR uses monthly average changes in surface water flow to conclude that steelhead will not be harmed, whereas analysis of daily flows is needed to assess the effects of suitable streamflows for steelhead. We disagree with the EIR's conclusion that operation of the project will not significantly impact steelhead trout. There is simply not adequate information in the EIR to make a determination about streamflows and impacts to steelhead.

We request that the Board of Supervisors direct the SFPUC and the SF Planning Commission to work with all watershed stakeholders (including the ACA, ACWD, CDFW and NMFS) to undertake additional analysis of the relationship between ground water and surface water in the Sunol Valley, to determine whether the project has impacts on daily streamflows in Alameda Creek downstream of the project which could impede steelhead migration. If the SFPUC is unwilling to do this, the Board of Supervisors should uphold the ACWD appeal and reject the certification of the EIR for the project.

San Francisco has invested significant time and money in the Alameda Creek watershed to monitor and improve habitat conditions for steelhead trout. The future operations of the completed Calaveras Dam and Alameda Creek Diversion Dam will enhance steelhead spawning and rearing in stream reaches managed by the SFPUC. Both the SFPUC and ACWD are required to operate their facilities in Alameda Creek to meet specified flow requirements for steelhead. The Alameda Creek Recapture Project should support rather than undermine these efforts. We understand that this is the last Water System Improvement Project facility to be constructed, but it is important to get it right – the EIR must fully evaluate the potential impacts of the project, and San Francisco should only approve a recapture project that will meet the interests of all watershed stakeholders and adequately protect steelhead trout.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeff Miller", written in a cursive style.

Jeff Miller  
Director  
Alameda Creek Alliance  
(510) 499-9184  
[jeff@alamedacreek.org](mailto:jeff@alamedacreek.org)



August 2, 2017

Ms. Lisa Gibson, Director of Environmental Planning and Environmental Review Officer  
Ms. Angela Calvillo, Clerk of the Board of Supervisors  
City and County of San Francisco  
#1 Dr. Carlton B. Goodlett Place, Room 244  
San Francisco, California 94102

**Re: ACWD's Appeal of the June 22, 2017, Planning Commission Decision, and the  
June 23, 2017, SFPUC Decision Regarding the Alameda Creek Recapture Project**

Dear Ms. Gibson, Clerk of the Board, and Members of the Board of Supervisors:

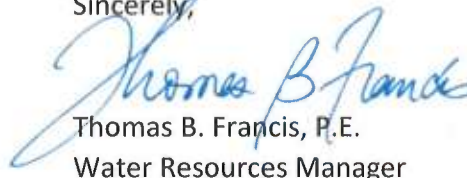
The Bay Area Water Supply and Conservation Agency (BAWSCA) has prepared this letter in regards to Alameda County Water District's (ACWD) appeal of the June 22, 2017 Planning Commission decision, and the June 23, 2017 Public Utility Commission (SFPUC) decision concerning the Alameda Creek Recapture Project (ACRP). BAWSCA represents the interests of 24 cities and water districts, an investor-owned utility, and a university, that purchase water wholesale from the San Francisco Regional Water System.

ACWD has copied BAWSCA on their letter in which they detail their requested appeal of the decisions as noted above. We are therefore aware of the concerns they have.

BAWSCA believes that the ACRP is an essential water supply project in the Water System Improvement Program. Its implementation is critical to meeting the water supply reliability needs of the 1.8 million residents served by our member agencies. We urge the parties (SFPUC and ACWD) to come together to resolve any outstanding issues that may be present, and to go about resolution of issues in a way that does not significantly impact ACRP's schedule or modify the overall scope.

If BAWSCA can play a role in helping to facilitate discussions between SFPUC and ACWD on the ACRP, please do not hesitate to contact us.

Sincerely,



Thomas B. Francis, P.E.  
Water Resources Manager

cc: BAWSCA Board of Directors  
Nicole Sandkulla, BAWSCA CEO / GM  
Allison Schutte, Hanson Bridgett  
Bob Shaver, ACWD, General Manager  
Steve Ritchie, SFPUC, Assistant General Manager, Water Enterprise



August 18, 2017

City and County of San Francisco  
Clerk of the Board of Supervisors  
Lisa Gibson, Environmental Review Officer  
#1 Dr. Carlton B. Goodlett Place Room #244  
San Francisco, CA 94102

Re: Support for Alameda County Water District's July 24 Request for the Board of Supervisors to Remand Final EIR of the Alameda Creek Recapture Project to the Planning Commission, Require Collaborative Analysis of Impact on Streamflows

Dear Lisa Gibson and Members of the Board of Supervisors:

I am writing in support of Alameda County Water District's reasonable and prudent request that the Board of Supervisors reverse the certification of the EIR and approval of Case No. 2015-004827ENV, the "Alameda Creek Recapture Project" (Project), and remand the final EIR to the Planning Commission to require the collaborative development of a new modeling tool to fully analyze potential Project impacts to federally threatened Central California Coast Distinct Population segment of steelhead (*Oncorhynchus mykiss irideus*) and downstream water users.

We support ACWD's request to develop a more robust and appropriate streamflow modeling tool to study the surface water/groundwater interaction and full suite of potential downstream impacts of the proposed Project. Operation of the Project as proposed will have the potential to significantly alter the availability and timing of sufficient flows to allow upstream passage of spawning adult and downstream passage of juvenile steelhead during critical migration windows below established thresholds (25cfs for adults, 12cfs for juveniles), causing potential "take" of steelhead in violation of the Endangered Species Act. These impacts were not sufficiently described nor analyzed in the Final EIR and should have been examined more closely.

SFPUC has been working with partners in the Alameda Creek watershed through the Alameda Creek Fisheries Work Group to improve stream conditions and passage for steelhead since 1997. California Trout recognizes the importance of Alameda Creek and its essential independent population<sup>1</sup> of steelhead to the recovery of the Central California Coast Distinct Population Segment, and is interested in engaging further with the Fisheries Work Group toward this goal.

We respectfully voice our support for ACWD's request, and look forward to working with SFPUC and other Alameda Creek stakeholders to improve fish passage and water supply reliability.

Thank you for your consideration.

Sincerely,

/s/ Patrick Samuel  
California Trout Bay Area Conservation Program Manager

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<sup>1</sup> National Marine Fisheries Service, 2016. *Final Coastal Multispecies Recovery Plan*. 649-681pp. Santa Rosa, CA.





August 21, 2017

San Francisco Board of Supervisors  
1 Dr. Carlton, B. Goodlett Place, Room 244  
San Francisco, CA 94102

**Re: Planning Commission Decision Regarding Alameda Creek Recapture Project**

Dear SF Board of Supervisors:

Trout Unlimited (TU) has serious concerns about the San Francisco Public Utilities Commission's (SFPUC's) Alameda Creek Recapture Project, and the impacts that its operations will have on recovering federally threatened Central California Coast Steelhead populations within the Alameda Creek Watershed. TU has 800 members in the East bay, and has recently been working with the SFPUC in an effort to improve habitat conditions to support the recovery of steelhead.

TU and our supporting members are specifically concerned about the drastic reduction in the number of days that steelhead will have access to habitat upstream of the project location. Data presented in the EIR for this project clearly shows that the current proposal for operating the project will dramatically reduce the number of days available for access, and biologists have warned that this reduction will severely impact the recovery of this federally protected species. The SFPUC has not addressed these warnings, and tried to mask the impacts that the operation of the ACRP will have by using monthly average changes in surface water flow as proof that steelhead will not be harmed.

Using a monthly average is dangerously misleading since the true impacts to the environment happen during changes in day to day operations. TU has reviewed publicly available data for this project and strongly disagrees with the conclusion that operation of the project will not significantly impact federally protected steelhead trout.



The citizens of the City and County of San Francisco have invested significant time and money in the Alameda Creek watershed to enhance spawning and rearing habitat on properties owned by the SFPUC, and the SFPUC may be significantly undermining that effort by approving this project as it is currently proposed.

TU requests that the Board of Supervisors take this opportunity to prevent this dangerous course of action and direct the SFPUC and the SF Planning Commission to re-develop a recapture project involving all the stakeholders involved in the Alameda Creek steelhead recovery effort. When this direction is given, TU and its 800 members will continue to work diligently with the SFPUC in order to sustainably build upon the two decades of existing steelhead recovery efforts in the Alameda Creek Watershed. We are committed to working cooperatively to identify solutions for a recapture project that will meet the interests of all watershed stakeholders and protect the Central Coast Steelhead

Thank you for this opportunity to comment on the DEIR, please do not hesitate to contact me if you have any questions regarding the above comments.

Sincerely,

Peter Mangarella

President

John Muir East Bay Chapter of Trout Unlimited

510 289 8163 (m)

[info@JohnMuirTU.org](mailto:info@JohnMuirTU.org)

