



# Save the American River Association

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EL DORADO COUNTY WATER AGENCY

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Gentlemen,

These are the comments of Save the American River Association and the Environmental Council of Sacramento regarding the El Dorado County Water Agency's Draft Environmental Impact Report (DEIR) for 40,000 AF of water from the American River.

## **EL DORADO'S APPLICATION FOR WATER RIGHTS:**

The El Dorado County Water Agency (El Dorado) is requesting approval from the State Water Resources Control Board (SWRCB) for portions of two State Filings with 1927 priority dates in order to obtain high priority access to water in droughts, and to exercise an agreement with the Sacramento Municipal Utility District (SMUD).

The application is for 40,000 acre-feet annually of water (AFA) from SMUD's mountain reservoirs and 15,000 acre-feet (AF) of storage in those reservoirs. The Draft EIR stated that El Dorado may need an additional 60,000 to 86,000 AFA in future years.<sup>1</sup>

The Draft EIR (DEIR) Executive Summary says that there are no environmental impacts that are significant, and therefore no mitigation is required.

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<sup>1</sup> DEIR, Executive Summary, page ES-2

## **Background: Regional Studies on American River Water Supply:**

Understanding the consequences of Eldorado's request requires an understanding of the reliability of the region's water supply.

There have been two major studies on the reliability of the region's water supply, the Bureau of Reclamation's "American River Basin Study"<sup>2</sup> and the Sacramento Water Forum's Ad Hoc Report.<sup>3</sup>

The Bureau's Basin Study said,

"Water managers in the American River Basin continue to experience a growing imbalance between water demands and water supplies due to continued economic development, regulatory updates, and effects from climate change."

The Sacramento Water Forum was created in 1993 and includes almost all of the region's major water agencies, cities, environmental groups, and public interest entities. The Forum's goals are to have a reliable water supply for the greater urban area and to protect the American River. The El Dorado County Water Agency is a member of the Water Forum.

The Forum's Ad Hoc Report showed that the region's water supply has been very reliable in the past, but that modeling of future growth and climate change will make water supplies much less reliable. The report projects that Folsom Reservoir will hit dead-pool in about 10-15 percent of years, depending on the severity of climate change. Dead pool is defined as when the reservoir is at about 10 percent capacity,<sup>4</sup> when water no longer flows by gravity into the pipes that go through the dam to supply the City of Folsom, the City of Roseville, and the San Juan Water District. When Folsom is at dead-pool, all of the water in the reservoir is not available for use in the Sacramento area, as SWRCB's D-893 specifies about 300 cfs is to be released from Folsom Reservoir for Delta needs (in-Delta riparian use and Delta salinity control), amounting to about 18,000 AF per month.<sup>5</sup> Assuming no other inflows or releases, the reservoir would be completely dry in about six months.

Both of these studies conclude that water supply reliability in the American River Watershed is declining due to growth and climate change. It is clear

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<sup>2</sup> Bureau of Reclamation, American River Basin Study, August, 2022

<sup>3</sup> Sacramento Water Forum, Ad Hoc Report, February 2023

<sup>4</sup> Dead pool at Folsom Reservoir is about 110,000 AF, about 10% of capacity.

<sup>5</sup> D-893, pages 43 and 44.

that El Dorado's proposal would reduce the reliability of the water supplies of some water purveyors.

### **Water Supply Impacts to Purveyors, Environmental Impacts of those Impacts:**

The El Dorado DEIR analysis did a comparison of the current situation (without project) as against the "with project" alternative. This approach did not evaluate the impacts on individual purveyors in serious droughts, when water reliability is really important. It should be understood that the El Dorado application is largely about priority to water.

The City of Sacramento has the consumptive water rights to SMUD's mountain reservoirs. Water not used by the City goes to the Central Valley Project, which supplies water to customers in the Sacramento area and elsewhere. The El Dorado proposal, with its 1922 priority, would, in some manner, take drought water supply reliability from the City and the CVP.

In order to evaluate environmental impacts of the El Dorado proposal on purveyors, the final EIR (FEIR) should describe the water impacts of the proposal on the water supplies available to Sacramento area water purveyors and the CVP during various water-year types and especially during multi-year droughts when water users are curtailed and when Folsom storage reaches and then falls below dead pool. Essentially this request is that the FEIR describe how water deliveries to individual purveyors change with El Dorado taking 40,000 AFA of water and 15,000 AF of storage, with a 1927 water priority.

With the information from the previous paragraph, the FEIR should describe environmental impacts of the El Dorado proposal on the current and expected urban and agricultural end-use area, including impacts on urban and agricultural landscapes, including trees, shrubs, lawns, agricultural crops, animals, fisheries.

### **Mitigating The Loss Of Water Supply Reliability:**

People and businesses in Sacramento paid for the SMUD's mountain reservoirs and power facilities through electricity bills, with the water going

to water users largely within the City of Sacramento, which was and is the largest local water purveyor in the greater Sacramento Area.<sup>6</sup>

In the very dry year of 2021, the City of Sacramento was curtailed for water diversions from the Sacramento River. Other than small amounts of groundwater, all of the treated water used in the City was from water stored in SMUD's reservoirs for which the City has the water rights. El Dorado's proposal would obtain the first right to the water in the SMUD reservoirs, thus reducing the reliability of the City's water supply.

Because of their responsibilities to customers, most purveyors would be obligated to replace the reliability lost to El Dorado. The FEIR should describe the likely environmental impacts of purveyors reestablishing water supply reliabilities for drought years.

In wetter years, the principal impacts of El Dorado's application will be on the CVP, where El Dorado's proposal would reduce the CVP's agricultural deliveries by 40,000 acre-feet, which is enough to irrigate of about 16,000 acres, assuming 2.5 AFA per acre of farmland.

The FEIR should say whether El Dorado intends to compensate purveyors for the cost of replacing lost water reliability. If yes, the FEIR should evaluate the likely alternatives and the likely environmental impacts, as these are direct consequences of the project. If El Dorado intends to take the City residents' investments in the SMUD facilities without compensating the City, the FEIR should evaluate the likely facilities the City would need and the likely environmental impacts, as these would be direct consequences of the project.

The 2005 SMUD - El Dorado Agreement required El Dorado to pay SMUD for lost energy production at White Rock. If El Dorado does not intend to compensate the City, the FEIR should explain why El Dorado is not proposing to compensate the City and others.

### **The Freeport Project and the RiverArc Project:**

The Lower American River is a state and federal Wild and Scenic River which flows through Sacramento County's American River Parkway. The Parkway receives eight million visitors per year, significantly more than Yosemite.

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<sup>6</sup> The SMUD-City of Sacramento arrangement was mutually beneficial to both parties. The history of the exchange of benefits is not described here because the explanation would be long and complicated.

In order to help maintain existing flows through the Parkway, the County of Sacramento and the East Bay Municipal Utility District constructed a joint project to divert water from the Sacramento River, thus allowing water to be diverted to flow down the American River before being diverted. The cost of the Freeport Project was about \$1 billion, shared about 50-50.

The El Dorado Project's water rights would adversely affect the water rights of the Freeport Project, potentially affecting the ability to pay off the bonds. The FEIR should describe the impact and its consequences.

A number of water purveyors in the greater urban Sacramento area are doing the environmental work for a second project to "retain flows in the American River." The RiverArc Project would be north of the confluence with the American River. The project received a \$5 million grant from the state for environmental evaluation. The El Dorado project could interfere with this project. The FEIR should describe the impact and its consequences.

The FEIR should detail the impacts of the El Dorado proposal on the existing Freeport Project and on being-studied River Arc Project.

### **Water Forum:**

The SMUD – El Dorado agreement of 2005 also required that:

El Dorado Parties will enter into good faith negotiations with the (Sacramento) Water Forum in order to obtain its support ... of the El Dorado Parties' acquisition of water rights and authorizations ... The El Dorado Parties will engage in diligent negotiations through December 31, 2006 ...<sup>7</sup>

El Dorado did not do any negotiations with the Water Forum, before the end of 2006 or afterward.

### **Cumulative Effect and Climate Change:**

CEQA requires evaluation of cumulative effects.<sup>8</sup>

The DEIR evaluates impacts of El Dorado's proposal by evaluating, (1) the current system, and (2) the current system with the project.

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<sup>7</sup> EL Dorado – SMUD Cooperative Agreeemnt, 2005

<sup>8</sup> Public Resources Code Sections 21083(b)(3); 21083(b)(2) and (b)(3)

The DEIR ignores the cumulative effect of past and likely future diversions, which have been and will be substantial. These were well evaluated by the Water Forum. Current diversions from the American River currently are about 160,000 AFA. As an example of increased diversions, Placer County Water Agency anticipates their water diversions from the American River will increase from an average of 34,419 AFA to 120,000 AFA for development in the pipeline.<sup>9</sup> As another example, the City of Roseville currently uses 30,000 AFA and projects a need for 60,000 AFA by 2040.<sup>10</sup>

The FEIR should evaluate (1) the current system, (2) the future system with likely actions of other purveyors, with climate change but not with the project, and (3) the future system with other purveyors, climate change, and the project.

**Water Supply And Demand:**

The El Dorado Irrigation District (EID) is the only purveyor with the current ability to obtain water supplies from El Dorado. EID’s water supplies are as follows:<sup>11</sup>

<b>Source</b>	<b>AFA</b>	<b>Comment</b>
Jenkinson Lake	23,000	Camp and Sly Park Creeks
Folsom Lake	7,550	USBR to serve El Dorado Hills, Cameron Park
Folsom Lake	4,560	“Ditch” Water, pre-1914, Warren Act with USBR
Folsom Lake	17,000	Project 184, Warren Act with USBR
Forebay Reservoir	15,080	
Crawford Ditch	5,000	North Fork Cosumnes, raw water, not firm

In 2021, EID’s current water entitlements from the American and Cosumnes River total 81,500 AFA, with 44,200 AFA from the American Watershed.<sup>12</sup>

Water demand in 2023 was about 35,000 AFA. Demand in 2045 is projected at 40,000 AFA.<sup>13</sup>

<sup>9</sup> Placer County Water Agency, Draft Purveyor Specific Agreement, page 13, for the Water Forum, December 2024

<sup>10</sup> City of Roseville, Draft Purveyor Specific Agreement for the Water Forum, Page 1, 2024

<sup>11</sup> From EID’s draft Purveyor Specific Agreement, provided to the Water Forum, page 3

<sup>12</sup> Ibid

<sup>13</sup> Ibid

The FEIR should explain why more water is needed in the foreseeable future, given that the only reasonable user (EID) has supplies of 81,500 AFA and demand in 2040 is only about 40,000.<sup>14</sup>

## **FAZIO WATER AND OTHER WATER SUPPLIES**

In 1990, the Congress approved Public Law 101-514. The authoring act included a provision making 15,000 AFA of CVP water in Folsom Reservoir available to El Dorado County. This has become known as “Fazio Water,” after Congressman Fazio, who encouraged the provision.

The Legislature authorized the creation of El Dorado, but the El Dorado was not permitted to sell water at retail.<sup>15</sup> There was an early agreement that the 15,000 AFA of Fazio water would be split evenly between the El Dorado Irrigation District (EID) and Georgetown.

In 2019, twenty-nine years later, El Dorado obtained a contract with the CVP for this water. Apparently, there was not a need to use the water.

In order to be used, El Dorado would need an agreement with EID and/or Georgetown, but contracts have not been consummated. Of the two agencies that could get the water, only EID currently has the physical capacity to get Fazio water from Folsom Reservoir, but the EID’s relevant treatment plant is near capacity. There doesn’t seem to be any effort to expand the treatment plant.

The FEIR should describe when the Fazio water will be put to use, and how.

The FEIR should (1) describe the total water supplies are available to El Dorado County, including the Fazio water, and (2) the historical and projected of demand.

Given that information, the DEIR should describe why El Dorado needs more, given that its supply is way more than demand.

## **ALTERNATIVES**

The DEIR describes three alternatives: no project, a 30,000 AFA alternative, and the preferred alternative of 40,000 AFA.

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<sup>14</sup> Ibid

<sup>15</sup> In the Agency’s authorizing act, 1959. See Water Code Appendix 96-25.

The FEIR should describe water supply alternatives other than taking water rights from the City of Sacramento.

As described in D-893,<sup>16</sup> there are 1,031,325 AF of State Filings in El Dorado and Placer Counties. This seems to demonstrate that El Dorado has options other than to take the City's water rights. Taking the City's water rights would be cheaper for El Dorado, but expensive for the City (unless El Dorado fully mitigates the cost to the City.)

## **HOW WILL EL DORADO SATISFY DUE DILIGENCE?**

State Filings, once issued, are subject to the normal due diligence requirements<sup>17</sup> for putting the water to use. The Agency has significant barriers to putting the water to use:

- The Agency does not have the legal authority to sell water at retail.
- The Agency does not own delivery facilities (pipes, pumps, reservoirs, water tanks)
- The Agency would have a difficult time raising money for facility construction and operation without the ability to sell and then deliver water to customers.
- EID, the most likely user of the water, has water entitlements that are about twice demand.

The FEIR should describe how and when El Dorado intends to meet the due diligence requirements. How will this water be used? What is the plan? Which agencies would receive water, and how much and when. Where would the main piping systems go? What would it cost to construct and operate? How would it be financed? Are the intended beneficiaries willing to pay the costs? What are the environmental consequences and mitigations?

## **Determination Of Significant Effect**

The modeling used by El Dorado assumes that a change from the existing condition of less than five percent was the same as no change, being beyond

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<sup>16</sup> D-893, page 28.

<sup>17</sup> Water Code Section 1396.



the accuracy of the model to estimate change. El Dorado says using five percent is reasonable because DWR has used five percent for large systems such as the Sacramento River, the Tunnel, etc.

In El Dorado's case, the river is largely controlled by dams with good measuring capability. Models should be better at evaluating effects.

If this determination of significant effect were used by every purveyor who wants water from the American, it would be the death of the river by a twenty five percent cuts and there would be no mitigation.

## **Fisheries**

In the Water Forum's Ad Hoc Technical Report, it was found that temperature objectives as defined in the Flow Management Standard (FMS) were exceeded every year regardless of water year type over the past twenty years. The exceedances were far larger during dry and driest years and would most likely be exasperated by the additional withdrawal of 40,000 AF. It would be important to note that the FMS is part of the Bureau's BIOP and as such constitutes an environmental threshold agreed to by the Bureau, WF, and fishery agencies so the exceedance is likely a very significant environmental impact for protected species.

The draft Water Forum Agreement 2.0 says this about fisheries:

Analyses of climate change's impacts on (increasing) river temperatures relative to the needs of fish show that, without action, the survival of populations will be severely threatened.<sup>18</sup>

Water Forum modeling has estimated that an additional 70,000 AF in Folsom Reservoir in the spring would produce a decrease in fall water temperatures by about one degree Fahrenheit. The Water Forum is currently evaluating how increased storage might be implemented. A one degree reduction would be very significant for salmon and listed steelhead.

The DEIR modeling estimates that the project will increase temperatures in the lower American River about +0.3 to +0.4 degrees Fahrenheit at times.<sup>19</sup> The DEIR claims, without evidence, these temperature increases are not significant.

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<sup>18</sup> Page 29 of 99

<sup>19</sup> DEIR, Tab le 4.2-17.

The FEIR should describe reputable research that concludes that increasing river temperatures are not significant for salmon and steelhead. El Dorado should consult with NMFS and state F&W, and include their perspective in the FEIS. If the temperature increase is significant, then El Dorado should mitigate the temperature increase.

## **Water Recreation**

### Lower American River:

The Lower American River is the only urban waterway in the United States to be designated a “Wild and Scenic River” for recreation by Federal and State agencies.<sup>20</sup> The American River Parkway receives about eight million visitors per year, significantly more than Yosemite.

The FEIR should evaluate the impacts to the Lower American River as the result of changes in flows: recreation, fisheries, birds, animals, etc.

### South Fork American River:

The South Fork of the American River has some of the best, medium-skill whitewater recreation in California. In total, the various segments of the American River probably provide the most whitewater recreational use in California.

Whether there is a significant impact by the project on whitewater recreation should not be based on changes in average flows. Instead, impacts should be based on changes in flows at times when whitewater recreational use is likely. For example, recreation flows in the middle of the night are irrelevant for whitewater recreation. Consultation with whitewater organizations should be included.

Flows on the South Fork below about 800 cfs are not used very much for whitewater sports because of the number of exposed rocks. The whitewater experience increases from about 800 to 4,000 as more rocks are covered and waves become larger. Flows above 4,000 are not significantly affected by diversions because the flows are so large.

The FEIR should evaluate methods to maintain flows from Chili Bar to Folsom Reservoir from 800 to 4,000 cfs, during the time when whitewater recreation is likely.

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<sup>20</sup> USBR American River Basin Plan, page 37

### **Adverse Impacts Greater than Five Percent of Current:**

While we disagree with the DEIR-adopted 5% change as a significance test, the DEIR shows impacts on the main whitewater stretch (Chili Bar to Folsom Reservoir) of more than 5%:

PERCENTAGE FLOW CHANGE FROM CURRENT WITH THE PROJECT  
FLOW FROM CHILI BAR TO FOLSOM RESERVOIR  
(From DEIR Table 4.5-6)

<b>YEAR TYPE</b>	<b>JUNE</b>	<b>JULY</b>	<b>AUGUST</b>	<b>SEPT</b>
<b>WET</b>		-5.5	-6.1	-13.7
<b>ABOVE NORMAL</b>		-8.6	-7.1	-15.4
<b>BELOW NORMAL</b>	-5.6	-11.0	-11.7	-13.4
<b>DRY</b>	-8.3	-13.6	-14.9	-18.8
<b>CRITICAL</b>			-11.8	-23.5

Later, the DEIR says, "Overall, long-term averaged monthly river flows for the Proposed Project were almost all found to have negligible differences compared to the existing-conditions baseline."<sup>21</sup> The above data from the DEIR shows these reductions in whitewater flows are greater than five percent, which was adopted as a significance test.

The FEIR should describe why these changes are greater than El Dorado's five percent test but still are deemed negligible in impact.

The FEIR should describe how not to damage whitewater recreation.

Notwithstanding the five percent-test, these reductions are not negligible and not insignificant.

### **Sales Of Water:**

The Lower American River is the only urban river that is in both the federal and state Wild and Scenic Rivers Acts for recreation. If the SWRCB grants the State Filings to the Agency, it is not clear what the Agency would do with those water rights, given that it is not clear that the Agency has demands to use the water for some time, if ever. One option could be for El Dorado to

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<sup>21</sup> DEIR 4.7-10

sell or transfer the water, possibly shifting American River water away from the Wild and Scenic American River to the Cosumnes, and then selling that water.

The EIR should make it clear whether the Agency would sell American River water, directly or indirectly, maybe by selling water from Jenkinson Lake and replacing the water from the American. If El Dorado would sell water, the FEIR should describe the environmental impact on the American River, including flows and temperatures.

If the El Dorado request is to be approved, the SWRCB should consider limiting water sales and transfers so as to not be adverse to the American.

### **It's not our responsibility to mitigate ...**

The El Dorado County Water and Power Authority (EDWAPA), a forerunner to El Dorado, proposed this same "project" in 2010.

The EDWAPA 2010 DEIR recognized that the withdrawal of water from the American River above Folsom will impact other purveyors lower on the stream system, to CVP contractors, and the City of Sacramento, and to instream resources below the withdrawals, including decreasing the cold water pool in Folsom Reservoir. The EDWAPA DEIR claimed that EDWAPA had no responsibility to mitigate significant damages because EDWAPA would receive 1927 water rights, thereby shifting any mitigation to those with lower water right priorities.

There are two problems with the EDWAPA claim. First, EDWAPA would have to comply with CEQA before the SWRCB would issue a state filing, so EDWAPA would not yet have a 1927 water right. Second, the release of a 1927 state filing is a permissive act of the SWRCB,<sup>22</sup> not a mandatory act where the SWRCB must issue state filings to El Dorado, regardless of whether it is in the broader public interest.

El Dorado's DEIR abandons the two problems in the EDWAPA claim. Instead, El Dorado claims that there are no significant impacts, so no mitigation is needed.

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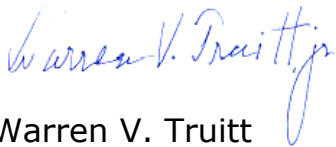
<sup>22</sup> Water Code Section 10405 and 10405.1

For each area of concern, the FDEIR should describe why EDWAPA found significant impacts and El Dorado did not.

Thank you for considering our comments.

If you have questions, please contact Clyde Macdonald, SARA representative to the Sacramento Water Forum at [clydewallace2@yahoo.com](mailto:clydewallace2@yahoo.com).

Sincerely yours,



Warren V. Truitt  
President  
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Heather Fargo  
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ECOS Board of Directors



**ECOS**  
ENVIRONMENTAL  
♦ COUNCIL ♦  
OF SACRAMENTO

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