



September 6, 2023

John Swiecki, AICP  
Community Development Director  
City of Brisbane  
50 Park Place  
Brisbane, CA 94005

RE: Revised NOP for Brisbane Baylands Specific Plan EIR

Dear Mr. Swiecki:

Contra Costa Water District (CCWD) appreciates the opportunity to submit these comments on the revised Notice of Preparation for the Baylands Specific Plan EIR (NOP). CCWD did not receive the NOP from the City of Brisbane and only recently became aware that the NOP was circulated and was able to review its content. CCWD also is in receipt of the NOP comment letter, dated May 24, 2023, submitted by the San Francisco Public Utilities Commission (SFPUC).

The NOP states that the project applicant, Baylands Development Incorporated (Baylands), "has entered to a Memorandum of Understanding with the Contra Costa Water District (CCWD) for up to 2,500 acre-feet of water annually from CCWD's Los Vaqueros Reservoir Expansion Project along with 10,000 acre-feet of storage in Los Vaqueros Reservoir." The NOP also suggests that approximately 2,500 acre-feet per year would be delivered to the proposed development via water stored in the proposed expanded Los Vaqueros Reservoir and conveyed through the proposed Transfer Bethany Pipeline (TBPL), other third-party facilities, and then through SFPUC facilities to the development. Currently, the referenced Phase 2 Los Vaqueros Reservoir Expansion (LVE) project facilities remain in the planning and design phase.

CCWD believes that the NOP significantly overstates the terms of the MOU. The MOU provides that, after the Final EIR for the Baylands project is certified, the Parties could seek to negotiate a long-term contract for water supplies, storage, and conveyance.

As noted in the SFPUC letter, the LVE project is a proposed regional storage and conveyance project with eight partner agencies who, since development of the MOU, have formed the Los Vaqueros Reservoir Joint Powers Authority (JPA) to provide governance and funding to continue the planning, design, permitting, and possible construction of the LVE project. The LVE project would expand the current Los Vaqueros Reservoir from 160,000 acre-feet to 275,000 acre-feet and construct the TBPL. Should the project be constructed, the JPA would own capacity rights to approximately 115,000 acre-feet of storage space in the expanded reservoir and would own the TBPL and 100% of its conveyance capacity.

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The LVE project does not provide water supply. Rather, the LVE project, if constructed, would provide only regional storage capacity and conveyance, and participating JPA member agencies would need to develop or provide their own water supplies to utilize this storage and conveyance capacity.

As stated in the SFPUC letter, availability of storage and conveyance capacity in the LVE project is not certain. Further, as provided in the MOU, Baylands is responsible to: (1) fund and acquire any water supplies it needs to serve its project, and (2) to fund and acquire any storage and conveyance capacity it needs to convey water supplies to the development location.

Currently, capacity allocation requests by JPA member agencies exceed both the proposed expanded reservoir storage capacity and the proposed TBPL conveyance capacity. Thus, at this time, it does not appear that the LVE project would have conveyance or storage capacity available for the Baylands project to purchase. SFPUC's comments also identify challenges related to SFPUC system capacity and capabilities, including limitations on the conveyance of water via other third-party owned and operated facilities.

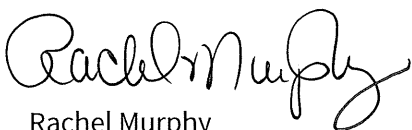
CCWD is not seeking, nor will it receive, any allocation of storage capacity in the expanded reservoir, nor will CCWD obtain allocation in the TBPL conveyance facilities that would be required to convey water to Baylands. Further, no JPA member agencies, including SFPUC and CCWD, have made firm commitments to proceed with the LVE project. JPA member agency decisions with respect to entering into Service Agreements and proceeding to fund and construct the LVE project facilities will not be made until mid-2024 at the earliest.

A water supply assessment requires the project applicant to demonstrate, through existing contracts or water rights, that it has reliable water supplies available to serve the project. The MOU does not constitute an existing water service contract. Rather, the MOU merely states that the parties will attempt to negotiate a water supply contract after the FEIR is certified. For obvious reasons, this type of MOU does not constitute an existing water service contract that can form the basis of a water supply assessment. We trust the City's water supply assessment and related environmental review for the Baylands project will not rely on the MOU as the basis of the water supplies for the project.

CCWD appreciates the opportunity to submit these comments and hopes that they clarify the role of CCWD and the LVE project with respect to the project proposed by Baylands.

If you have any questions, please contact me directly, at (925) 688-8070.

Sincerely,



Rachel Murphy  
General Manager

RM:ks

cc: Steve Richie, Assistant General Manager - Water Enterprise at SFPUC