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RE: Comments of Friends of the River et al. on the Del Puerto Canyon Reservoir Partially Recirculated Draft Environmental Impact Report (SCH #2019060254)

I. INTRODUCTION

Friends of the River ("FOR") is California's statewide river conservation organization dedicated to preserving and restoring California's rivers, streams, and their watersheds. FOR submits these comments on Del Puerto Water District's Del Puerto Canyon Reservoir *Partially Recirculated Draft Environmental Impact Report*, SCH# 2019060254 ("PRDEIR"), on behalf itself, Sierra Club Mother Lode Chapter, Center for Biological Diversity, Save Del Puerto Canyon, Save Mount Diablo, and Mount Diablo Bird Alliance.

This PRDEIR was prepared as the result of a decision by the Court of Appeal of the State of California Fifth Appellate District requiring Del Puerto Water District ("DPWD") to study downstream terrestrial impacts, a case to which FOR and some other signatories were parties. The court found:

> "The "FEIR's section on terrestrial biological resources does not reference downstream Del Puerto Creek, the flows of which will be impacted to some extent by the project (at least in terms of annual volume). Thus, this portion of the FEIR does consider impacts to terrestrial biological resources, but only those in the study area and not those downstream. In contrast, the FEIR's section on impacts to fish does consider whether

there will be downstream impacts... What is missing is analysis of whether there will be impacts to species that are both downstream and terrestrial."[1]

The resulting PRDEIR carefully states that it is focusing on these potential downstream terrestrial impacts of the project, and that all comments should focus on these potential impacts. FOR submits these comments accordingly, while upholding the continuing merits of our earlier comments and prior litigation positions.

II. THE DPWD HAS FAILED TO CONSIDER THE ENVIRONMENTAL IMPACTS OF THE WHOLE OF THE ACTION.

Neither the DEIR nor the PRDEIR have analyzed the whole of the action, as required by CEQA. Cal. Code Regs., tit. 14, § 15378. Critical parts of the proposed Del Puerto Canyon Reservoir are 1) inundation of the area behind the dam by stored water and 2) the subsequent reservoir operations downstream that will impact watershed and local hydrology. Because neither the DEIR nor the PRDEIR have analyzed the whole of the action, the DPWD has again violated CEQA. The DPWD must recirculate for public review a revised DEIR that adequately and accurately assesses the likely environmental impacts of the entire proposed project and alternatives.

III. DPWD'S ANALYSIS OF CUMULATIVE IMPACTS IS INCORRECT AND UNLAWFUL, AND THE DPWD HAS FAILED TO REDUCE CUMULATIVE IMPACTS TO A LESS THAN SIGNIFICANT LEVEL

The current PRDEIR suffers from a lack of understanding or discussion of cumulative impacts on the downstream ecosystem, which point to specific pre-existing conditions on the ground today.[2] Instead, it uses the existing state of development as a key argument to continue to degrade the downstream ecosystem.

In addition to this line of argument creating bad precedent and a race to the bottom to degrade our environment and already-impacted neighborhoods, the PRDEIR clearly indicates that there are considerable lands in their natural or near-natural state. According to "Table 3.4-1: Land Cover Types in the Study area Study Area and Approximate Acreages" [*sic*] on page 3.4-3, there are potentially more acres in a natural state than in a changed or developed state:

[1] Court of Appeal of the State of California Fifth Appellate District, SIERRA CLUB et al., Plaintiffs and Appellants, v. DEL PUERTO WATER DISTRICT, Defendant and Respondent; SAN JOAQUIN RIVER EXCHANGE CONTRACTORS WATER AUTHORITY, Real Party in Interest and Appellant, F085896/F086218, page 14-15.

[2] Impacts of the project as described in the FEIR and the DRPEIR on the current nature of the ecosystem of the study area on the ground today differentiates them from the concerns that the Court found to be "speculative."

Table 1: Another Viewpoint on Table 3.4-1: Better Some Than None

Natural Acres	**Changed / Developed Acres**
Coastal Scrub 1.16	Grassland[a] 17.91
Intermittent Stream 10.41	Ornamental Trees 0.31
Riparian Woodland 16.47	Orchard 2.49
Riparian Wetland 15.77	Vineyard 0.75
Seasonal Wetland 0.02	Unvegetated Areas 0.08
	Developed/Disturbed 39.56
	Canal 0.67
Total Natural Acres: 43.83 (out of 105.59 total study acres[b])	**Total Changed / Developed Acres:** 61.77 (out of 105.59 total study acres[b])
= 41.5% of total study acres	**= 58.5%** of total study acres

[a] As stated by Table 3.4-1 in the PRDEIR, "The Grasslands land cover type in the study area includes primarily ruderal habitats that support non-native grasses and forbs."

[b] As stated in Table 3.4-1of the PRDEIR, the total acres in the study area is approximately 105.59.

In sum, the natural acres in the study area may make up over 40% of the study area, while the potentially changed / developed areas make up just less than 60%. According to the PDEIR,

> "Notably, lower Del Puerto Creek (downstream of the proposed dam and inundation area) has been highly altered from historical conditions by road infrastructure (e.g., highway and canal crossings), losses of riparian and wetland vegetation, agricultural return flows, and water quality degradation… Although agricultural return flows during the summer irrigation season generally provide more stable flow conditions than historically existed within lower Del Puerto Creek, these conditions likely do not support native fish species because of their sensitivity to water quality degradation ..."[3]

[3] PRDEIR page 1.4.

Because the study area is already disturbed, further disturbances are less important than if the land were pristine – an idea echoed throughout the PRDEIR.

What makes the precedent dangerous is threefold: 1) many environmental justice communities and other communities suffering from cumulative pollution impacts already live in areas that have been disturbed, 2) some land in California has been disturbed but may be better than nothing, and 3) this argument leads to the ability of lead agencies and project proponents (in this case, the same entity), to circumvent environmental protection in already disturbed areas where some environmental protection is better than none. Of course, increased environmental protection amongst development would be better.

CEQA specifically requires that the CEQA guidelines

> "shall specifically include criteria for public agencies to follow in determining whether or not a proposed project may have a "significant effect on the environment." The criteria shall require a finding that a project may have a "significant effect on the environment" if…:
>
> (2) The possible effects of a project are individually limited but cumulatively considerable. As used in this paragraph, "cumulatively considerable" means that the incremental effects of an individual project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects."[4]

Indeed, this is the opposite of the approach followed by DPWD, which uses the same type of information to justify further degrading the area. In addition to our logical explanation and the letter of the law, the courts have determined DPWD's approach is wrong. In *Communities for a Better Environment v. California Resources Agency (2002) 103 Cal. App. 4th 98*, the Court indicated "smaller and smaller individual contributions may be cumulatively considerable as the cumulative impact becomes *more* acute. In other words the worse the background cumulative condition is, the less of a project's incremental contribution is needed to find that the project's contribution is cumulatively considerable."

IV. INCORRECT APPROACH TO CUMULATIVE IMPACTS AND CONNECTIVITY

The danger of this precedent shows in the PRDEIR, especially in the treatment of wildlife corridors. According to the PRDEIR:

[4] Public Resources Code Section 21083(b)(2).

> "The 2020 Final EIR describes habitat connectivity and wildlife movement corridors along Del Puerto Creek, including areas downstream of I-5, which overlap the study area in this PRDEIR. … Wildlife corridors are landscape features that facilitate the connectivity and movement of wildlife between two or more habitat areas (Soule and Gilpin 1991; Beier and Loe 1992). The connectivity of wildlife populations and habitats is critical for the conservation of plant and animal species; wildlife and habitat connectivity are important elements of a landscape's ecological value and function."

This description of connectivity is quite well-put. The further discussion describes:

> "Regional-scale and local-scale corridors and habitat areas that facilitate wildlife movement and connectivity exist within the Project footprint and Project vicinity. The area surrounding and within the study area provides an opportunity for local movement and landscape-scale connectivity for a wide variety of species, including invertebrates, reptiles, amphibians, birds, and small and medium-size mammals. The landscape features and habitats in the region provide the structure and function needed to facilitate the movement of a wide variety of species. These include riparian corridors, wetlands, grasslands, and agriculture areas.
>
> The study area is near several regionally recognized wildlife corridors, as depicted in **Figure 3.4-5**. A corridor along the San Joaquin River overlaps both the eastern and western portions of the study area and supports riparian and upland species movement. The University of California, Davis Core Reserves and Corridors study identified approximately 57.6 acres of corridor along the downstream end of the study area as part of a regional linkage that connects conservation lands to the north and south (Huber et al. 2010; DPWD 2020)."[5]

However, upon further discussion of this impact, "Impact BIO-TERR-DS-4", the PRDEIR exhibits the perverse thinking that because it is cumulative, it makes it okay by buttressing their finding of "less than significant" with, "the existing landscape in the study area is fragmented and agriculturally dominated, which inherently limits habitat connectivity."[6] Much like cumulative impacts, saving the remaining connectivity is the very intent behind connectivity analysis.

a. Failure to Consider and Analyze How Presence of Dam will Influence Connectivity, Migration, and Dispersion

The PRDEIR fails to consider how the presence of Del Puerto dam and reservoir will act as a species migration or dispersion barrier on terrestrial species downstream. This project

[5] PRDEIR p. 3.4-18.
[6] *Id.* p. 3.4-36.

introduces permanent physical obstacles (the dam structure, reservoir area, road changes, etc.) that would impede or completely prevent movement of species with limited dispersal capability, such as amphibians, small mammals, and other small terrestrial wildlife.[7] Such species rely on continuous habitat and short range movement along riparian corridors to access breeding areas, refugia, and seasonal resources, and many cannot traverse developed dam infrastructure, steep slopes to pass around the dam, or large open water bodies. The small terrestrial species that can somehow make it around the dam and reservoir are likely to be more heavily impacted by predation and other sources of mortality. This must be analyzed in the PRDEIR. As it stands, the PRDEIR fails to consider an important factor related to survival and persistence of populations of terrestrial species downstream of Del Puerto dam.

The dam will likely cause isolation of populations, reduce recolonization potential, or reduce species' access to habitats that historically supported metapopulation dynamics. Overall, this could reduce the value of the limited remaining habitat in lower Del Puerto Creek. This omission is particularly concerning given the PRDEIR's reliance on assumed stability of downstream conditions. Connectivity loss due to physical barriers is an unaddressed impact pathway affecting terrestrial downstream resources.

V. ACTUAL PROJECT IMPACTS ON DOWNSTREAM TERRESTRIAL RESOURCES

In addition to the incorrect application of the cumulative impacts standard and overlapping issues with connectivity, there are at least two sets of project impacts to the study area that were not considered and are likely to have impacts on downstream wildlife corridors and territorial species as follows:

1. *The inundation of the area upstream behind the dam dislocating species and disrupting the ecosystem in that area.* As planned by the original FEIR,[8] most impacts on species in the reservoir area are to be mitigated through habitat replacement, possibly elsewhere. This both disrupts the entire local stream ecosystem, including downstream, and causes species migration that could easily impact downstream species, including procreation and habitat availability.
2. *Changes to the watershed and local hydrology due to filling the reservoir*. The creation of a reservoir is likely to cause subsequent disruptions to: i) groundwater recharge patterns

[7] Species mentioned in PRDEIR that could experience negative impacts to migration/dispersion from the presence of the dam include, but are not limited to: riparian woodrat, riparian brush rabbit, California tiger salamander, and Western spadefoot toad.

[8] As quoted in Court of Appeal of the State of California Fifth Appellate District, SIERRA CLUB et al., Plaintiffs and Appellants, v. DEL PUERTO WATER DISTRICT, Defendant and Respondent; SAN JOAQUIN RIVER EXCHANGE CONTRACTORS WATER AUTHORITY, Real Party in Interest and Appellant, F085896/F086218, page 19-26.

and subsequent filtration, ii) contamination and sedimentation rates, iii) erosion; and iv) concentration of downstream pollutants caused by changes in water source length of holding and discharge.

However, the PRDEIR Impact Analysis of the "Construction and Operation Impacts" has substantially the same "Significance Before Mitigation" for most of the terrestrial downstream impacts, ignoring and overlooking these two direct significant impacts:

> "Construction of the proposed Project would not affect special-status plant species downstream because construction would not occur in the study area and the existing land cover would remain unchanged. Standard construction BMPs and pollution prevention measures would be implemented to minimize indirect impacts to downstream protected species in the study area during upstream construction activities. Construction impacts would be less than significant.
>
> In addition, the proposed Project would include environmental commitments to mimic natural flow patterns in lower Del Puerto Creek and irrigation return flows and operational spills would be unchanged and would continue to support special-status plant species. Therefore, impacts on special-status plant species that occur downstream of the proposed Project are not anticipated. Impacts would be less than significant."[9]

This calls into question nearly the entire downstream terrestrial significance analysis, and we recommend that DPWD revise and recirculate the entire DEIR to determine the appropriate "Significance Before Mitigation" for this majority of issues.[10]

VI. CONCLUSORY "NO IMPACT" DETERMINATIONS ARE NOT SUPPORTED BY A CLEAR ANALYTICAL PATH OR SUBSTANTIAL EVIDENCE

The DPWD has failed to adequately and accurately assess potential environmental impacts from the Proposed Project to listed species/wildlife. The PRDEIR repeatedly concludes that impacts to

[9] PRDEIR, *Impact BIO-TERR-DS-1a: Impacts on Special-Status Plants and Their Habitats page 3.4-28*

[10] PRDEIR, Impact BIO-TERR-DS-1a: Impacts on Special-Status Plants and Their Habitats, Impact BIO-TERR-DS-1b: Impacts on Valley Elderberry Longhorn Beetle, Impact BIO-TERR-DS-1c: Impacts on Monarch Butterfly, Impact BIO-TERR-DS-1d: Impacts on Least Bell's Vireo, Impact BIO-TERR-DS-1e: Impacts on Northwestern Pond Turtle, Impact BIO-TERR-DS-1f: Impacts on Special-Status Birds and Nesting Migratory Birds, Impact BIO-TERR-DS-1g: Impacts on San Joaquin Kit Fox, Impact BIO-TERR-DS-2: Substantial Adverse Effect on Riparian Habitat or Other Sensitive Natural Community along Del Puerto Creek Downstream of DMC, Impact BIO-TERR-DS-3: Substantial Adverse Effect on State or Federally Protected Wetlands on Del Puerto Creek Downstream of DMC, and Impact BIO-TERR-DS-4: Interference with the Movement of Native Resident or Migratory Wildlife Species, or Established Native Resident or Migratory Wildlife Corridors, or Use of Native Wildlife Nursery Sites on Del Puerto Creek Downstream of DMC, *pages 3.4-28 to 37.*

downstream terrestrial resources would be less than significant and that no mitigation is required. However, the Court of Appeal indicated that the prior EIR failed to expressly reach a conclusion regarding downstream terrestrial impacts. The remedy is not to simply state a conclusion, but to support it with a reasoned and thoughtful analysis. The PRDEIR instead relies heavily on generalized assurances that downstream conditions will remain similar to baseline conditions, without clearly tracing the causal pathway from project operations to hydrologic change, to habitat response, to species-level effects.[11]

For example, in the analysis of downstream riparian habitat impacts, the PRDEIR states that although project operations would change the volume and timing of flows, "preserving the existing flow dynamics," the Project would maintain the physical and ecological processes that currently support riparian habitat, resulting in less-than-significant impacts and no mitigation.[12]

CEQA requires a "good-faith effort at full disclosure" and an analytical explanation of why a project will not result in a significant impact, not merely an assertion that it will not. (CEQA Guidelines § 15151). The PRDEIR failed at articulating how altered storage and release patterns affect soil moisture, hydroperiod, riparian recruitment, and habitat persistence under a range of reasonably foreseeable conditions, and why those effects do not rise to significance.

A central premise of the PRDEIR is that downstream terrestrial habitats are already sustained primarily by agricultural return flows and operational spills, and that these inputs will continue to maintain downstream conditions with the Project in place (see footnote 11). However, the PRDEIR does not adequately analyze the variability or reliability of those inputs over time, particularly during drought conditions, changing cropping patterns, or operational adjustments that are reasonably foreseeable over the life of the Project.

Treating return flows and spills as effectively constant background conditions, the PRDEIR understates the risk that reductions or timing shifts in those flows could exacerbate drying, reduce riparian soil moisture, or impair downstream habitat during critical life history periods for terrestrial species. Even further, the PRDEIR itself demonstrates that the Del Puerto Creek system is ***pulse flow-driven*** (figure pasted below from p. 3.4-25).

[11] *See e.g.* PRDEIR p. 3.4-33 ["Downstream flows during Project operation, combined with continued irrigation runoff and operational spills during the dry season (generally April 1 – October 14), are expected to continue supporting existing nesting habitat in the study area."], pp. 3.5-35 through 36 [PRDEIR claims that "…the Project's environmental flow commitments and continued irrigation runoff and operational spills are expected to maintain the structure and function of…" riparian habitats, sensitive natural communities (p. 35), state [and] federal protected wetlands (p. 36), wildlife corridors and native wildlife nursery sites (p. 37), and habitat for special status species and sensitive communities (p. 38)]

[12] *Id.* p 3.4-34.

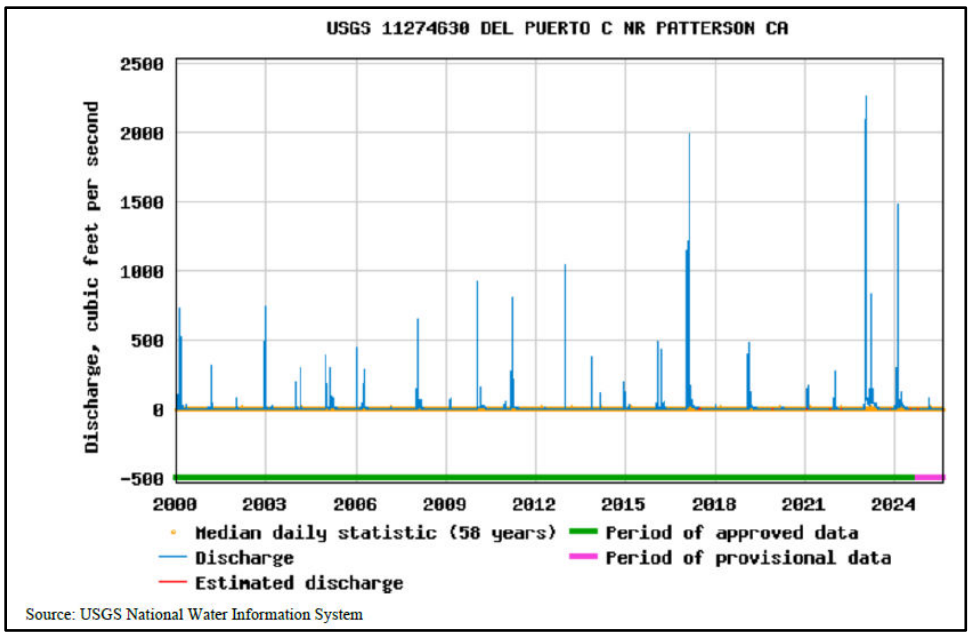

Figure 1. Figure 3.4-6 from the PRDEIR: Del Puerto Creek Flows 2000-2025 (cfs)

The global issue of relying on generalized assertions rather than reasoned analysis and substantial evidence is true for all species analyzed in the PRDEIR. Below, we focus on three species as examples of this issue.

a. Foothill Yellow-Legged Frog

The PRDEIR wrongfully excludes foothill yellow-legged frog from its analysis despite acknowledging its proximity to the Study Area and potential habitat. The document states that as recently as 2025 a foothill yellow-legged frog was located only one mile west of the Study Area.[13] Yet later it concludes that there is lack of suitable habitat and nearby occurrences.[14] This internal inconsistency underscores the broader problem identified above: the PRDEIR states a conclusion without providing a reasoned analytical pathway or substantial evidence to support it. Foothill yellow-legged frogs have specific life history needs related to flow timing, magnitude, and recession, and the PRDEIR's reliance on generalized assurances about maintained "flow dynamics" does not substitute for an analysis of how altered storage release patterns and an altered hydrograph would or could affect breeding habitat, migration, egg mass scour, or drying during critical life stages.

[13] *Id.* p. 3.4-15.
[14] *Id.* p. 3.4-21.

Further, the PRDEIR fails to consider the impact of the presence of the dam on migration and dispersion of this species.

b. <u>San Joaquin Kit Fox</u>

The PRDEIR dismisses potential impacts to San Joaquin kit fox without analyzing movement, foraging, or connectivity. The document concludes that the kit fox are unlikely to occur within the study area, despite documenting a recent occurrence approximately 1.5 miles away—well within the species' typical home range size of more than two square miles. It also fails to analyze impacts to important prey species for the kit fox. Rather than analyzing whether the downstream riparian corridor functions as movement or foraging habitat, or important prey habitat, the PRDEIR relies again on generalized assumptions about habitat suitability to dismiss potential impacts. This is not reasoned analysis and does not meet the substantial evidence standard.

c. <u>Golden Eagle</u>

The PRDEIR's treatment of golden eagles relies on proximity assumptions rather than impact analysis. The document acknowledges the presence of golden eagles in the region and their large home ranges,[15] yet concludes that Project impacts would be less than significant without analyzing how downstream habitat conditions support prey species or contribute to foraging opportunities. In fact, loss of foraging habitat and decrease in prey availability associated with human land uses is considered to be a threat to the species.[16]

The Diablo Range has one of the highest concentrations of golden eagles on the planet.[17] This further underscores both (1) the importance of this area for conservation and protection of this migratory bird species, and (2) the need for adequate analysis to understand the potential impacts of the Project on downstream habitat essential to golden eagles and their prey. Large home ranges do not eliminate the need for analysis, they heighten the importance of understanding how localized changes to this riparian habitat may cumulatively affect species that rely on broad landscapes for survival. This is true for all migratory bird species both considered and not considered by this PRDEIR.[18]

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[15] *Id.* p. 3.4-16.

[16] Kochert, M. N., K. Steenhof, C. L. McIntyre, and E. H. Craig (2002). Golden Eagle (*Aquila chrysaetos*), version 2.0. In The Birds of North America (A. F. Poole and F. B. Gill, Editors). Cornell Lab of Ornithology, Ithaca, NY, USA. https://doi.org/10.2173/bna.684

[17] Wiens, J.D., Kolar, P.S., Fuller, M.R., Hunt, W.G., Hunt, T., 2015, Estimation of occupancy, breeding success, and predicted abundance of golden eagles (*Aquila chrysaetos*) in the Diablo Range, California, 2014: U.S. Geological Survey Open-File Report 2015-1039, iv, 23 p., https://doi.org/10.3133/ofr20151039.

[18] The PRDEIR analysis and conclusions about Swainson's hawk suffers from the same fatal flaws as the analysis and conclusions regarding golden eagles.

VII. IMPROPER EXCLUSION OF CALIFORNIA CONDORS FROM BIOLOGICAL RESOURCES ANALYSIS; SIGNIFICANT NEW INFORMATION

The PRDEIR excludes the California condor (*Gymnogyps californianus*), a special-status wildlife species, from analysis because it is "not expected to occur within the study are due to the absence of recorded occurrences and lack of suitable habitat." However, recent evidence indicates that condors use the northern Diablo Range, including areas near Del Puerto Canyon. Reports in late 2023 documented multiple California condors soaring over northern Contra Costa and Stanislaus counties, with individuals tracked over and near Mount Oso just north of Del Puerto Canyon.[19] Further, data from the National Park Service demonstrates that condors originating in Pinnacles National Park use the Diablo Range extensively (see Figure 2 below).[20]

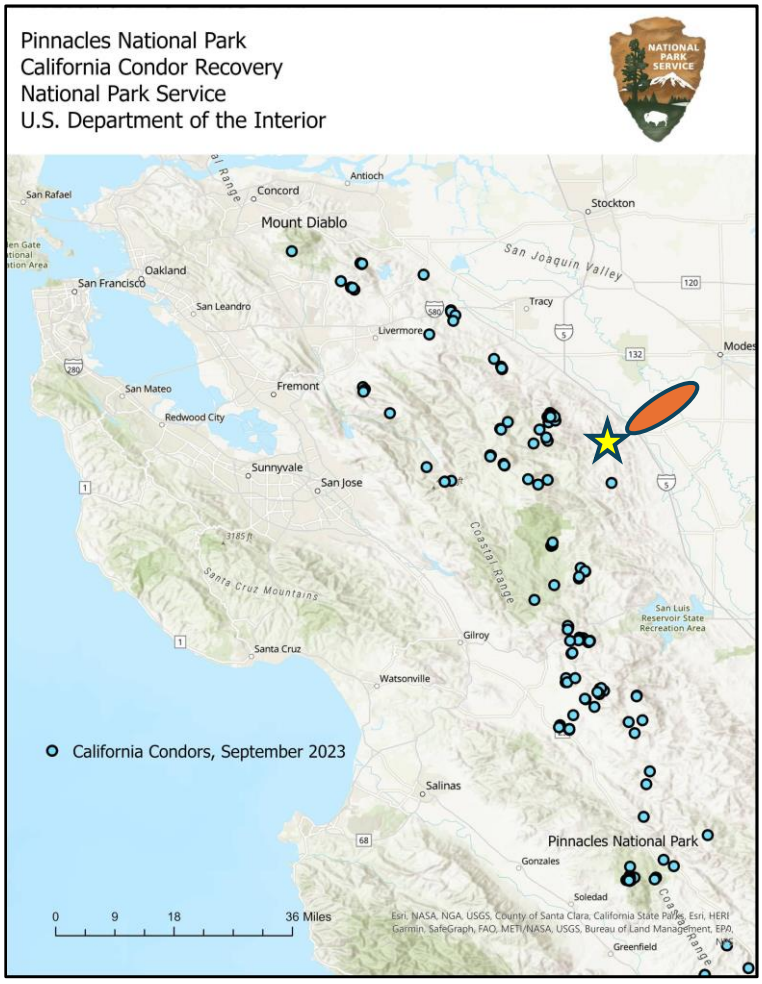

Figure 2. National Park Service GPS data showing locations of Condors in September 2023. Star indicates approximate location of Del Puerto Canyon, oval indicates approximate location of PRDEIR Study Area.

[19] Hicks, Tony. "California Condor Flock Soars Over Contra Costa County for First Time in 100 Years." KQED News, 25 September 2023, https://www.kqed.org/news/11962399/california-condor-flock-soars-over-contra-costa-county-for-first-time-in-100-years.

[20] *Id.*

Further, California condors are known to fly more than 124 miles in a single day,[21] and their home range size varies from 200-400 square miles throughout the year.[22] Therefore, the Study Area of the PRDEIR is well within the home range of the condors inhabiting Diablo Mountain Range and Pinnacles National Park. In fact, the United States Fish and Wildlife Service (USFWS)—the agency responsible for protecting listed species including the condor—has included the Study Area within the species' geographic range (Figure 3).[23]

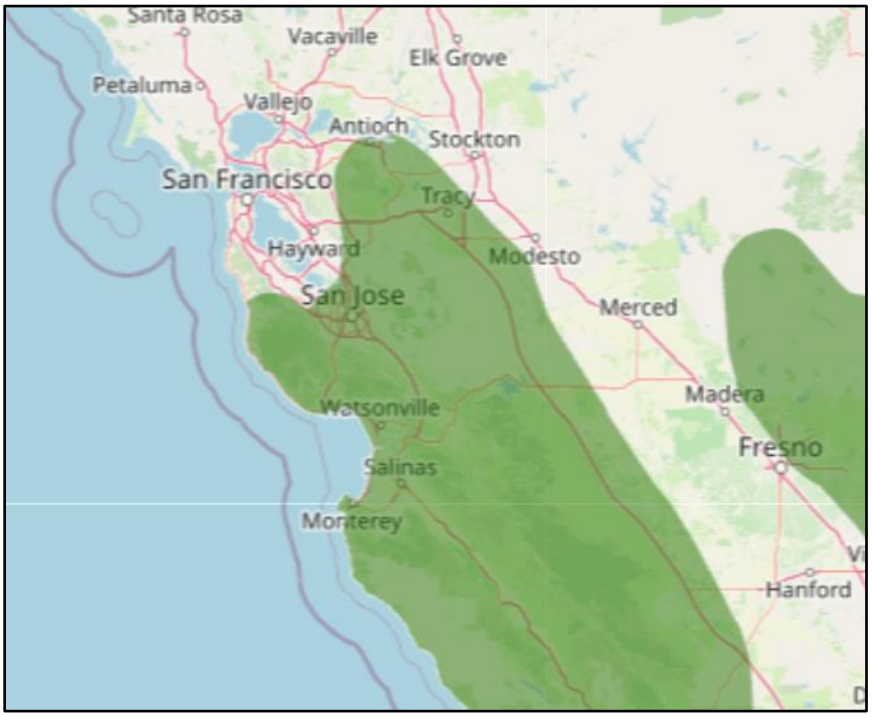

Figure 3. Portion of USFWS map of the California condor's geographic range (green)

The PRDEIR's claims that the Study Area does not contain suitable habitat for condors is not supported by evidence or adequate analysis. In fact, grassland, which constitutes 17% of the Study Area, is listed as important foraging habitat in the 1996 USFWS Recovery Plan for the

[21] Vicky J. Meretsky, Noel F. R. Snyder, Range Use and Movements of California Condors, *The Condor: Ornithological Applications*, Volume 94, Issue 2, 1 May 1992, Pages 313–335, https://doi.org/10.2307/1369205
[22] Rivers JW, Johnson JM, Haig SM, et al. An analysis of monthly home range size in the critically endangered California Condor Gymnogyps californianus. *Bird Conservation International*. 2014;24(4):492-504. doi:10.1017/S0959270913000592
[23] *Gymnogyps californianus (California Condor). U.S. Fish and Wildlife Service,* U.S. Department of the Interior, https://www.fws.gov/species/california-condor-gymnogyps-californianus. Accessed 28 Jan 2026. Screenshot of condor home range map taken 28 Jan 2026.

California condor.[24] The USFWS website on condors also lists rural areas "influenced by humans in a less substantial way than cities" as important for condors. The Study Area and surrounding region would reasonably be described as rural.

California condors are among the rarest birds in North America and are still critically endangered, with recovery efforts ongoing and fewer than 120 free-flying individuals in Central California as of early 2026.[25] Given their capacity to fly long distances every day, tendency to make exploratory flights into new habitat, enormous home range, and documented home range in the vicinity of the Project and Study Area, condors could reasonably be expected to occasionally use habitats in the Study Area for foraging, roosting, or transient passage.

CEQA requires evaluation of impacts on endangered, rare, or threatened species and their habitats. CEQA's overarching purpose is to prevent the elimination of fish or wildlife species due to human activities and to ensure that populations do not drop below self-sustaining levels.[26] California condors are federally and state listed as endangered and are thus within the scope of CEQA's required biological impact analysis. (CEQA Guidelines §15380(b)(c)). The PRDEIR's omission of condors from its analysis is unjustified, particularly in light of recent sightings in the vicinity of the Project. At a minimum, the PRDEIR should include a reasoned analysis of the potential for condor presence and the Project's effects on condors and their habitat, and provide substantial evidence supporting the conclusion that the project would not affect this critically endangered species. (Pub. Res. Code § 21082.2(a)).

Expansion of condor range closer to the Project and Study Area constitutes a "new significant environmental impact" requiring recirculation of the DEIR (Cal. Pub. Res. Code § 21092.1; CEQA Guidelines §15088.5).

VIII. ADDITIONAL MATTERS THAT MAY RESULT IN SUBSEQUENT ENVIRONMENTAL REVIEW

a. Road Relocation

The PRDEIR requests that comments be confined to the subjects and text of the PRDEIR. We try to respect that. Nevertheless, it cannot be unhelpful to highlight additional matters that may

[24] *California Condor (Gymnogyps californianus) Recovery Plan, Second Revision.* U.S. Fish and Wildlife Service, U.S. Department of the Interior, Apr. 1996, https://ecos.fws.gov/docs/recovery_plan/960425.pdf. Accessed 30 Jan. 2026.

[25] FitzRandolph, John. "116 Condors are Now Flying Free in Central California Skies – Most Since 1979." The San Luis Obispo Tribune, 10 Jan 2026, https://www.sanluisobispo.com/news/local/environment/article314238136.html. Accessed 28 Jan 2026.

[26] Pub. Res. Code § 21001(c).

require subsequent environmental review. According to the PRDEIR, "[t]he Project also includes relocating … a section of Del Puerto Canyon Road."[27]

The trial court held that the FEIR failed "…to adequately address the relocation of Del Puerto Canyon Road."[28] Although we did not agree with the reasoning of the appeals court, it conceded the requirement that the relocation was necessary for the Project:

> "The proposed reservoir will inundate a portion of Del Canyon Road, requiring that portion be relocated. While the FEIR described the proposed alignment of the relocated road, it noted that '[t]he roadway alignment has been developed at a conceptual level and is subject to refinement during design. Any alignment revision would be evaluated to determine if supplemental environmental documentation is required.' The proposed new alignment would essentially follow the shoreline of the new reservoir, including a large number of horizontal curves with relatively small radii."[29]

Even at the time of the FEIR, there was considerable question on whether the road alignment described above and in the FEIR would be selected. According to the appeals court, "[t]he FEIR identified Stanislaus County as the agency responsible for approving the

proposed relocation of Del Puerto Canyon Road."[30] The Stanislaus County Board of Supervisors subsequently did, indeed, recommend another road alignment. During the February 4, 2025, County Board of Supervisor's meeting received a verbal report and presentation from the Del Puerto Water District on the Del Puerto Canyon Reservoir Project.[31] The Board accepted the staff recommendation to recommend the relocation of Del Puerto Canyon Road by the Del Puerto Water District to Route Alternative 9; and, directed Public Works staff to continue coordination of route relocation development and refinement with the Del Puerto Water District[32] The FEIR conceded this possibility:

> "The Project Partners will continue working with County staff to develop an acceptable alignment and understand that further environmental review would be needed for a revised roadway alignment."[33]

So did the appeals court:

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[27] PRDEIR p. 1-3.
[28] Fifth Appellate District decision describing the Trial Court decision as reproduced in the PRDEIR Appendix 1, p. 6.
[29] PRDEIR Appendix 1, pp. 34–35.
[30] *Id.* p. 34.
[31] https://www.stancounty.com/bos/agenda/2025/20250204/DIS01.pdf.
[32] https://www.stancounty.com/bos/minutes/2025/min02-04-25.pdf, p. 4.
https://www.stancounty.com/bos/agenda/2025/20250204/DIS01.pdf, p. 1.
[33] PRDEIR Appendix 1, p. 35. Appeals court ruling quoting from the FEIR.

> "If, due to rejection by the board of supervisors or for some other reason, the Project Partners ultimately seek approval for a different alignment than the one analyzed in the FEIR, they may very well be required to do a subsequent or supplemental EIR to study the new alignment. (See Pub. Resources Code, § 21166.) The FEIR acknowledges as much."[34]

The relationship among the Board of Supervisor's necessity for "approval," the Board's subsequent "recommendation," and the Del Puerto Water District's role in the road relocation part of the Project remains unclear. We look forward understanding this issue better through viewing whatever subsequent environmental review follows and commenting on it then.

b. Potential Project Delay

The U.S. Bureau of Reclamation recently issued and received comments on its federal Draft Environmental Impact Statement (DEIS). A group of commenters (Friends of the River (FOR), Save Del Puerto Canyon, Save Mount Diablo, Center for Biological Diversity, and the Mother Lode Chapter of the Sierra Club) took the opportunity to discuss the feasibility and timely implementability of the Project.[35]

One obstacle to implementability is the necessity for the Bureau of Reclamation to obtain a new point of rediversion of CVP waters to storage in the proposed Del Puerto Canyon reservoir. This step is out of the control of the District and Exchange Contractors. Successful action is also out of the control of Reclamation since approval is required from the State Water Resources Control Board.[36]

As described by the commenters, undescribed impediments expected by Reclamation for a similar change in Reclamation's water rights was one of the nearby Santa Clara Valley Water District's reasons to drop its proposed 140,000-acre-foot Pacheco Dam project.[37] Santa Clara is a state and federal water service/repayment contractor, although, unlike the Del Puerto Water District is a municipal and industrial (M&I) contractor. In that case, Reclamation's shortage policy provides even greater reliability for such rediversions to storage than the largely federal agricultural contracts enjoyed by the Del Puerto Water District.[38]

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[34] *Id.* p. 36, footnote 12.
[35] Comments of Friends of the River et al. on the Del Puerto Canyon Reservoir Project Draft Environmental Impact Statement. Friends of the River, 12 January 2026. Available online at: https://www.friendsoftheriver.org/wp-content/uploads/2026/01/2025-1-12-FOR-et-al.-comments-on-DPCD-DEIS.pdf.
[36] *Id.* pp. 2, p. 19 footnote 54.
[37] *Id.* pp. 7–8.
[38] *Id.* pp. 4–5.

Costs, of course, could escalate as they have done here and for other recently proposed dams.[39] The Project documents describe the project as largely for irrigation purposes. Irrigation customers are more price sensitive than M&I users, again raising feasibility concerns.[40]

Water rights changes can take a while. Operational issues affecting feasibility can delay and kill projects. Escalating costs and affordability can do the same. In that environment, earlier environmental reviews can grow stale.

IX. SUMMARY

In summary, FOR requests and recommends that DPWD revise and recirculate its EIR to correct deficiencies in its analysis and mitigation, including:

A. Correct its reasoning of a partially disrupted environment as a justification to go forward with the project with less concern (i.e. its cumulative impacts analysis),
B. Evaluate the effect of the project on connectivity,
C. Examine the multi-layered impacts of the aspects of the project and operations,
D. Correct issues with biological resources analysis, including:
    a. Provide a reasoned analysis of the potential for California condor presence in the Project area and Study Area, and analyze the Project's potential effects on this critically endangered species,
    b. Fully disclose impacts to species, and support any conclusions with reasoned analysis and substantial evidence (including, but not limited to, foothill yellow-legged frog, San Joaquin kit fox, golden eagle, Swainson's hawk, California tiger salamander, etc.)
E. Provide additional environmental analysis of the relocation of Del Puerto Canyon Road as the location becomes more clear, as indicated by the appeals court, and
F. Carefully consider costs and feasibility in the analysis before the project goes forward.

Thank you for your consideration of these comments. We look forward to further discussion.

With gratitude,

(Signatures begin on next page)

[39] *Id.* pp. 6–8.
[40] *Id.* pp. 8–9.

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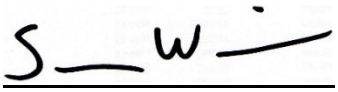

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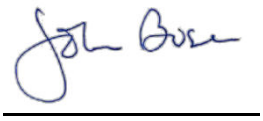

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