

Comments of Chris Shutes, California Sportfishing Protection Alliance, at May 26, 2026 public meeting regarding the Draft Environmental Impact Report (DEIR) for the proposed Mokelumne Integrated Conjunctive Use Program (MICUP)

Good evening, Mr. Schwabauer, Ms. Spaletta, Mr. Hopkins, Mr. Evanson, and Mr. Chetley,

Chris Shutes for the California Sportfishing Protection Alliance, or CSPA. I am sorry I could not be there in person this evening. I had a site visit in the East Bay this afternoon, and I was not sure I could make it to Lodi on time.

I am truly disappointed with the Draft EIR. Its decision to limit analysis of bypass flow requirements to the Joint Settlement Agreement plus the proposed Mokelumne Voluntary Agreement is a poor decision. In scoping comments in this CEQA process, CSPA explicitly asked you to consider more stringent bypass flow requirements. I had some follow-up communications with the County's water right attorney about alternative flow requirements. I made clear my willingness to discuss additional alternatives. Then I got silence until you released the DEIR.

This is even further disappointing because of previous communications I have had with the County regarding water availability for application 29835. On August 19, 2011, following a meeting with Mr. Brandon Nakagawa, then with San Joaquin County Public Works, I wrote a follow-up letter, which stated: "The greatest concern I expressed in the meeting regarding the County's previous Water Availability Analyses is the assumption that all water present at the point of diversion, beyond the water needed to serve senior diverters and that required to be released pursuant to the Joint Settlement Agreement, is water that would be available for diversion by the County."

A few years later, during the MokeWISE stakeholder process in 2013, 2014, and 2015, I went out of my way to initiate a discussion about flow requirements for water right application 29835. During that process, I insisted that its hydrology analysis not conflate unallocated water in the Mokelumne River with water available for appropriation. That analysis, by the way, was performed by Mr. Dotan, the same modeler who got the contract for your present DEIR.

In short, I've personally invested substantial effort to find a solution for flows for these water rights for fifteen years.

In CSPA's scoping comments, we suggested using a percent of unimpaired flow in the Mokelumne River as a bypass requirement. After communication with you water rights attorney suggesting technical problems with that approach, I suggested a flat 2000 cfs as a high flow threshold. I never got a response, even after I sent a follow-up email.

In CSPA's scoping comments, we attached a document I wrote in 2017 outlining conceptual frameworks for minimum flows for groundwater recharge water rights. I used the metaphors of insurance deductibles and copayments as possible ways of setting flow requirements. Since then, several state agencies have promoted similar approaches, notably for Sites Reservoir.

What I in 2017 called a deductible, the California Department of Fish and Wildlife and the California Department of Water Resources have come to call "pulse protection." It means there's no diversions for a time period after a flow pulse starts. The idea is that fish migrate in response to flow pulses.

What I in 2017 called a copayment, the state agencies have come to call "flow-dependent diversions." Diversions are limited to a percentage of the flow above the required minimum, and this percentage increases as flow increases. I do not believe either of these concepts is contemplated in your DEIR; if I missed them, I'd appreciate being directed to the relevant pages.

Both these concepts form part of the proposed flow requirements on the Draft Water Rights Decision for Sites Reservoir. The concepts are in no way limited to CSPA.

In addition, the Draft Water Rights Decision for Sites proposes, at least initially, a bypass flow requirement that would disallow Sites diversions when Delta outflow was less than 55% of the unimpaired flow. Basing the percent of unimpaired on Delta outflow rather than Mokelumne inflow is yet another potential approach that your DEIR could have evaluated, but did not.

Having no alternative bypass flow requirements other than your preferred approach, in my opinion, does not meet CEQA's requirement for a reasonable range of alternatives. Having no analysis of any other bypass flow requirements than your preferred alternative also does not meet CEQA's requirement to support well-informed decision making. The DEIR very likely overestimates the potential yield of the proposed project. As such, it will not provide a solid basis to evaluate unit costs per acre-foot of water. It will not inform decision makers about the best sizing of project.

I have several additional comments.

First, I appreciate the DEIR's commitment on page 3-2 not to irrigate new acreage under the proposed project. It's good policy. I look forward to seeing how the County plans to memorialize it.

I am concerned about the storage of water in Pardee Reservoir, and how that will affect water-year designation for Lower Mokelumne River flows from November through March. Under the JSA, the water-year type for winter is set based on combined storage

in Camanche and Pardee reservoirs. Delivery of stored water for groundwater recharge under Application 29835 must not drop the winter water-year type for EBMUD.

In addition, I am concerned that delivery of stored water for recharge may make less water available for fall attraction flows for upstream-migrating Chinook salmon in the Mokelumne River. Equally, delivery of water from Pardee for recharge may reduce summer flows in the lower Mokelumne, diminishing the quality and quantity of habitat for over-summering juvenile steelhead.

I am also concerned that there may be an unanalyzed impact of delivery to Stockton East of water stored in Pardee. Such delivery could affect the cold water pool in Pardee and thus, indirectly, in Camanche, and thus also in the summer water temperature of water of water released into the lower Mokelumne.

On pdf pages 324-325 and 326 of the DEIR, it suggests that the proposed project might increase the flow in the Mokelumne River in Critically Dry years due to higher groundwater levels adjacent to the river. This assumes that EBMUD will not reduce releases from Camanche Reservoir to reflect reductions in what EBDUD calls “channel depletions.” However, it is reasonable to expect EBMUD to adjust releases based on enhanced ability to deliver water to Woodbridge due to reductions in channel losses.

In addition, there is no explanation of how a groundwater model estimated reductions in channel losses in Appendix I-3 (pdf p. 1575, esp. pp. 1601 ff.). It simply announces rather large monthly reductions in channel losses, without stating the assumptions that went into the model output or the mechanisms by which the model arrived at the conclusions stated.

Moreover, there is an unstated assumption that groundwater pumping will not increase in response to greater availability of groundwater. Yet the threshold for undesirable effects for groundwater levels appears to be well below recent operating range of groundwater along the lower Mokelumne.

The DEIR suggests that in-lieu recharge may be one means of improving groundwater levels. It is not clear to me that in-lieu recharge comports with the requirement for “conjunctive use” projects as an allowed exception to the Mokelumne River’s status as a fully-appropriated river. On its face, in-lieu recharge is just another name for irrigation with surface water instead of groundwater. So, what the DEIR calls “in-lieu recharge” could also fairly be called direct diversion for irrigation, which the fully appropriated stream status of the lower Mokelumne disallows during irrigation season.

In summary, the overarching concern here is the effort of this project to allow diversion of all flows in the Mokelumne River that are in excess of the existing minimum requirements. CSPA will not be alone in opposing such an effort. The absence of

alternative flow requirements in the DEIR, in my opinion, makes it deficient under CEQA. Equally important, if the County continues an all-or-nothing strategy on bypass flow requirements, it portends a protracted fight at the Water Board.

As we have for 15 years, CSPA stands ready to work with the County to develop bypass flow requirements for this water right application that could work for everybody.

Thank you for the opportunity to comment.