

12/6/10

Dear Supervisors,

My name is Tom Infusino, and I am submitting these comments on behalf of the Calaveras Planning Coalition. As you may recall, the mission of the Calaveras Planning Coalition is to promote public participation in land use and resource planning to ensure a healthy human, natural, and economic environment now and in the future.

## **I. Introduction**

I have reviewed the December 7, Water Issues Study Session outline in the Planning Department Staff Report, and I am submitting the comments below for your consideration.

In addition, I am providing you with the following attachments for your consideration.

1) Water Resources and Land Use Planning: Watershed-based Strategies for Amador and Calaveras Counties. This Local Government Commission report provides useful information on how Calaveras County policies and programs could help improve the management of its local water resources.

2) Planning for Water-Wise Development in the Sierra: A Water and Land Use policy Guide. This Sierra Nevada Alliance publication provides suggestions both for General Plan policies and programs, as well specific site planning techniques that can protect watershed health as communities expand.

3) The CPC's comments on the Draft Water Element, including the proposed edits of CPC member organization the Foothill Conservancy.

We ask that the Board and the Planning Department **give the suggestions from these reports and comments further consideration as you seek to both accommodate future growth under the new general plan, and to mitigate the impacts of that growth**. We are happy to meet with you to discuss these with you.

## **II. Comments on the December 7, Study Session Overview of Water Issues**

The Coalition applauds CCWD for not only looking at the many challenges in the water world of the future, but also presenting your Board with six points of constructive guidance to make the most of the opportunities our water future presents. As is apparent from our comments below, we agree with many of CCWD's general recommendations, and also have some suggestions of our own.

### **A) Outline Page 2, Land Use & Population Projections.**

Future requests from Calaveras County to appropriate water, and future efforts to retain existing appropriations, will rest in part on defensible growth projections. This does not mean simply that the higher the growth number the County estimates, the easier it is for water purveyors to support and defend their water appropriations. If you want your growth estimates to stand up against a water appropriations protest, you will want to have a general plan that shows your ability to provide the entire scope of infrastructure and service needs for that estimated population. If critical needs other than water are not met, your growth number will be exposed as a sham by competing water users and interest groups. For example, growth under your current general plan is dependent on the construction of roads under a 20-year Regional Transportation Plan that is underfunded by \$212 million. (See 2007 Calaveras County RTP, p. 127.) Thus, that growth estimate is very vulnerable to attack. **If you really want a general plan that will help your water providers defend their appropriations, your general plan will include both accurate growth estimates, and the capital programs to ensure that the growth can be accommodated by infrastructure and services.** Those facts will give your water providers' a stronger case than their water competitors.

During the scoping phase of the General Plan Update EIR, the County is required to have at least one meeting with interested agencies with jurisdiction over resources affected by the plan (i.e. school districts, fire districts, water providers, Caltrans, etc). We strongly encourage that you seek to expand that concept, and **request that interested agencies and other entities (including County Departments) provide cost projections and funding mechanisms to support different levels of future growth in the County.** This will help the Board to arrive at the defensible growth projections noted above.

### **B) Outline Page 2, Climate Change.**

Climate change, with its projected longer droughts, has been grasped by some water purveyors as an opportunity to over-inflate water storage needs. This strategy has many limitations, not the least of which are limited supplies of money to build new storage, and limited water to divert to storage. We strongly encourage you to **respond to climate change with an approach that improves water use efficiency, that reduces per-capita water demand, and that ensures some local control over available storage.** It would not be prudent to give EBMUD or San Joaquin County control of the spigot that provides drought-year water supplies for future Calaveras County residents.

### **C) Finding Money for Local Goals and State Mandates.**

Responding to new challenges can inspire you to seek funding contributions from those who are benefiting from your watershed protection and water quality efforts. For example, the County should participate in the reauthorization of power projects, and the extension of water appropriations, and **seek funding from EBMUD and other entities that harvest your water**, degrade your rivers, make hundreds of millions of dollars a year selling your water, and benefit from your watershed protection efforts.

When establishing your response to the new state mandates, **look at the state, federal, and foundation sources of funding and organize to receive them.** In an average year like 2004, about \$200 million of income from Calaveras taxpayers goes to the State and Federal government in taxes. Its time to get more of that money back to grow a sustainable economy, and help meet resource management mandates.

Do not fear **using the market to efficiently respond to these resource challenges.** For example, if the County established water neutral development standards for new developments to meet, new developers competing in the market will find the least cost ways to improve water efficiency.

#### **D) The Six-Point Plan from CCWD**

##### **Item 1, Maximizing the Use of Existing Infrastructure.**

The sprawl pattern of development has always put stress on water agency capital budgets. How can one balance a capital budget both to replace decaying infrastructure that serves existing ratepayers, and finance and construct new infrastructure for prospective future customers? The community centered growth pattern helps to reduce this competition for capital resources. Many more infrastructure projects will both replace decaying infrastructure and expand it to meet new demands. Further, this greater joining of capital can reduce the number of “partially funded” infrastructure projects that remain un-built, and increase the number of infrastructure projects that can be built. **Approving a general plan with community-centered growth will greatly assist entities providing water to Calaveras County.**

##### **Item 2, Coordinate with Neighbors.**

Of all the procedural recommendations, this is the most important. Do not make the same mistake EBMUD made in its 2040 WSMP, when it planned to dam a river without asking the people who live there. EBMUD formed a “stakeholder” group to consider expanding Pardee Dam, and then did not include anybody from Amador or Calaveras in the group. When to their surprise the stakeholders group still favored Bay Area locations for water supply and storage, EBMUD ignored the recommendations of their stakeholder committee. As we have stated repeatedly during this general plan update process, a key principle is to “leave no one behind.” Invite the stakeholders into the planning process and listen to what the stakeholders tell you. **Toward that end, we encourage Calaveras County and the water management entities working to update the IRWMP to include broad representation of interested stakeholders.**

While we are on the subject of coordinating with neighbors, we encourage you to be cautious in collaboration with outside water agencies that do not share your interests. As the cautionary proverb says, “Drink water from your own cistern, running water from your own well. Let your fountain be yours alone, not one shared with strangers.” (Proverbs 5: 15 & 17.) Start collaboration with small and less critical projects to see if the outside entity can be relied upon. For example, before embarking on a conjunctive

use project with San Joaquin County and East Bay MUD for future residential water supplies for Calaveras County, try smaller less critical projects first. For example, see if East Bay MUD would rent you some space in Pardee Reservoir in some water years to store otherwise unused Calaveras water for later sale to Fish and Game for timed release as part of its Delta enhancement program. If it does work out well, then great. If it does not, then you may be more reluctant to pin your future water supply hopes on cooperative projects with East Bay MUD.

### **Item 3, Work Collaboratively in Developing Irrigation for Agricultural Production.**

This is another example of a way to use the new state requirements to improve conditions in Calaveras County. Some are upset that the State is looking at stricter requirements for treating wastewater, especially if the effluent is discharged to a stream. Another way to look at that is to note that it promotes the reuse of that water, especially at less treated levels. It does so by lowering the relative cost of providing reclaimed water to agricultural operations within a reasonable distance of the wastewater treatment plant. Thus, if a community wanted a cheaper way to dispose of wastewater than tertiary treatment and stream discharge, and wanted to help improve agricultural productivity on surrounding lands, both agricultural interests buying the water and sanitary district customers paying to dispose of the water have the financial incentive to join funds to accomplish their goals. **The county could facilitate this type of activity in its General Plan by promoting community-centered development and limiting urban intrusion into surrounding agricultural lands.** Also, remember that these water development efforts count in your favor when you need an extension of time to put raw water appropriations to good use.

### **Item 4, Improve Monitoring and the Sharing of Information.**

This is another area in which CCWD has proposed turning new state requirements into a positive for Calaveras County. The Board of Supervisors can help by including in the General Plan provisions for the county to cooperate in implementing water conservation efforts and water reclamation efforts, and to **serve as an information clearinghouse to track the results of water conservation and reclamation efforts.** This data tracking can help you demonstrate compliance with conservation mandates, and can help to secure extensions of the time for perfecting water appropriations. When Water Board staff reviews requests for extensions of time to put water appropriations to a beneficial use, one of the most ironclad excuses a water purveyor can make is that their conservation and reclamation efforts have succeeded so well that they will now be able to serve more people with the existing appropriation. By serving as a central information clearinghouse and archive, the County can help.

### **Item 6, Develop Integrated Approaches to Meet New and Emerging Challenges Before they become Law.**

This is another example of a way to use pending state requirements to improve conditions in Calaveras County. For example, as the state moves closer to requiring more treatment

of to stormwater runoff, the more incentive there is to reduce that runoff using site design techniques, and the more financially feasible it becomes to put that reclaimed water to beneficial use.

**Item 7: Assess Critical Factual Gaps in Defending and Securing Water Rights, and Shore Up the Factual Gaps.**

We would add one additional item to CCWD's the six guiding points. Water purveyors in Calaveras County should work with their staff, consultants, and legal counsel to gather the factual evidence they need to defend their water rights, to secure future rights, and to defend against outside entities who will challenge these water rights. To the extent that County Counsel's Office can, they could be a key player in monitoring and coordinating this effort.

Water purveyors need to ask, "Are we doing at least as well as our water competitors in reducing waste and improving water use efficiency? (The big urban water agencies are not just perusing such efforts to augment their supplies, they are also trying to gain legal leverage against less efficient water purveyors.) Are we documenting the water savings of our conservation and reclamation efforts (so we can both show compliance with state targets and justify delays in putting raw water to beneficial use)? Can we document the volume of actual and continuous use of pre-1914 water rights (so that we can defend against arguments that these water rights were abandoned)? Can we show that entities who might challenge changes in the use of pre-1914 water rights have long been put on notice of those changes (so that we can build latches defenses to challenges)? Can we document recreational use of local waters (so that we can protect that beneficial use from harm by outside agencies)? Can we document fish and wildlife benefits of local waters (so that we can protect that beneficial use from harm by outside agencies)? **This issue of gathering factual evidence is critical. Legal arguments without evidence are like guns without ammunition: they do not protect you.** The longer you wait to fill these data gaps, the more information and documents you lose as a result of inadvertent destruction (as entities routinely dump old record, throw stuff out when they move, change computers, etc.) and as percipient witnesses pass away. Don't make the mistake Amador County made in the 1990's, and wait until your waters are under attack before you try to build a last minute defense. Build your fortress before the enemy is at the gates.

While much of this evidence gathering effort may not be public during its initial phases for attorney-client privilege reasons, the fact that the effort is under way will go a long way to deter attacks on your water rights, long before you make the results of your efforts public at a water rights hearing.

**Please maintain a copy of these comments and attachments for the General Plan Update administrative record.**

Sincerely,  
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