

August 16, 2021

**Sent Via Email**

Tehachapi City Council  
115 S. Robinson Street  
Tehachapi, CA 93561

**Re:** Sage Ranch; Final Environmental Impact Report – Planned Development No. 2019-01 – Amendment No. 5 – Final Master Development Plan (“Project”)

Dear Honorable Mayor Smith and Councilmembers:

This firm serves as legal counsel for Greenbriar Capital Corp, owner of the Sage Ranch Project being considered at this evening’s Council meeting. The purpose of this letter is to provide comments in response to the letter submitted by Pioneer Law Group, LLP on behalf of Tehachapi-Cummings County Water District (“District”), dated July 28, 2021, challenging the sufficiency of the Final Environmental Impact Report (“FEIR”) and related Water Supply Assessment (“WSA”) prepared for the Project.

We are in receipt of Staff’s response to the District’s opposition letter and concur with Staff’s conclusion that the District’s arguments are both misguided and unsubstantiated. A number of the arguments presented in opposition to the FEIR appear to be based on misinformation or information that is taken out of context and misapplied for the purpose of attempting to support its argument. For example, the District places a large emphasis on the number of entitled but unimproved lots both within the City limits, as well as in the surrounding communities, as support for its conclusion that there is not sufficient water available to serve this Project. Such a blanket assertion without taking into account factors such as the timing of entitlement, land use designation and the likelihood of development discredits the conclusion. In the absence of a cogent argument backed by verifiable facts, it is reasonable to conclude that the District is attempting to use our client’s Project as vehicle for pushing a larger agenda.

What is apparent from reading the District’s opposition letter is that there is a fundamental disagreement between the District and the City regarding the interpretation and effect of the M&I Agreement. Indeed, the District’s position is entirely reliant on concluding that the District is not under any legal obligation to sell the City more than five (5) acre-feet of water annually. (*See* Decl. of Tom P. Neisler, ¶ 6.) The District also takes the position that the Project will become a customer of the District and is not entitled to priority over existing M&I customers. (*See* Decl. of Tom P. Neisler, ¶ 5.) As the City correctly points out, neither of these assertions are true. A plain-language review of the M&I Agreement does not support the conclusion that the District’s obligation to sell the City water is limited to five (5) acre-feet. Moreover, the City will be the Project water purveyor, not the District. Per the District’s own reasoning, the City’s water needs

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will be given priority as an existing M&I customer in years of reduced water availability. Therefore, the premise of the District's opposition can be negated.

The District's opposition appears to be further motivated by its agenda for prioritizing other water customers to the detriment of the City. The letter, as well as recent actions taken by the District, strongly suggest that the District intends to prioritize agricultural uses over development. The hearing on this Project and the associated FEIR is not the forum for pushing such an agenda. Without taking a position as to the appropriateness of the District's position in this regard, it is absolutely improper and outside the City Council's purview to entertain such a debate in connection with considering the Project for approval. The District's backdoor approach to pushing this agenda on the shoulders of the Project should be rejected.

The District's motive for challenging the Project becomes more suspect given its position is entirely unchanged by the fact that Sage Ranch recently committed to assigning the City an additional 82 acre-feet of water to serve the Project. That brings the total to 175 acre-feet, which consists of half of what is required under the WSA. Our client heeded the concerns of the City as dictated by the WSA and initially committed 93 acre-feet of water to serve the Project. Additional water has been committed in a good-faith attempt to accommodate the District's concerns as expressed in the opposition letter. Nevertheless, the District remains steadfast in its position, which seems to indicate that its position is related to a bigger agenda beyond the Project and the adequacy of the FEIR.

Any disagreements between the City and the District regarding contract rights under the M&I Agreement or prioritization of water rights should not be debated in connection with the Council's consideration of this Project. To allow the Project to be utilized as a political pawn would ignore your charge under the California Environmental Quality Act ("CEQA") and inequitable to our client. In determining whether to approve the Project, the Council is charged with determining whether the FEIR meets the requirements under CEQA, which Staff has gone to great lengths ensure. For this reason, we respectfully request you look beyond the face of the opposition letter submitted on behalf of the District and approve the Project through certification of the FEIR.

Thank you in advance for your thoughtful consideration of the Project.

Sincerely,

*/s/ Kristin A. Hagan*

Kristin A. Hagan  
Hagan Denison, LLP

**MEMORANDUM**

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TO: Jay Schlosser, P.E., Development Services Director

FROM: Joseph D. Hughes

DATE: August 16, 2021

RE: Sage Ranch CEQA – Water Supply Issues

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Issue & Relevant Facts:

The City of Tehachapi (the “City”) is processing requested approvals for a private development proposed by Greenbriar Capital (US), LLC (the “Developer”) called Sage Ranch. Sage Ranch is a planned residential development consisting of approximately 1,000 occupiable units including multiple housing types, parks, and greenspace. Sage Ranch is located within the City of Tehachapi, and each of the homebuyers would be water customers of the City.

The Sage Ranch project is subject to the California Environmental Quality Act (“CEQA”) and the Subdivision Map Act. Pursuant to Government Code section 66473.7 and Water Code sections 10910, *et seq.*, the City was required to prepare a water supply assessment.<sup>1</sup> In that WSA, the City identified a projected demand of 350 AFY. The water sources identified in the EIR and WSA are groundwater rights owned individually by Jeff Chiachurski (CEO of the Developer) in the Tehachapi Basin (an adjudicated basin)<sup>2</sup> and the City via State Water Project (“SWP”) water or recharge water provided under the City’s Term M&I Agreement [For Existing Recharge Water Customers] with the Tehachapi-Cummings County Water District (“TCCWD”).<sup>3</sup>

TCCWD submitted a comment letter, accompanied by a declaration from Thomas P. Neisler (General Manager of TCCWD), to the Tehachapi City Council concerning the Sage Ranch EIR and WSA.

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<sup>1</sup> In addition to CEQA compliance, Government Code section 66473.7 requires a “written verification” from the applicable public water system that a sufficient water supply will be available for a 20-year projection. In this instance, the “applicable public water system” is the City of Tehachapi.

<sup>2</sup> Chiachurski has pledged in writing to commit 175 AFY of his groundwater rights to the Sage Ranch project. Chiachurski is under contract to purchase up to 305 gross AFY of groundwater rights. He has completed the purchase of 190 gross AFY; the purchase of the remaining 115 gross AFY will be complete by July 15, 2022.

<sup>3</sup> The agreement between the City and TCCWD, dated January 1, 2017, obligates TCCWD to sell up to 1,153 AFY of SWP water to the City for M&I uses.

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In the letter, TCCWD asserts that the EIR and WSA are inadequate because, among other things, they do not demonstrate that an adequate supply of water will be available for the Sage Ranch project. (See July 28, 2021 letter, generally). Regarding the availability of water from the SWP, TCCWD raises four primary contentions:

1. The Sage Ranch end-users are new municipal customers,<sup>4</sup> who would not be entitled to priority over existing customers in the TCCWD service area (i.e., including existing agricultural users).
2. The SWP water provided under contract between the City and TCCWD cannot be relied upon as a long-term water supply because it is limited by a 10-year term.
3. The SWP water contracted for by the City with TCCWD is merely “paper water,” and the City’s projections of expected “wet water” are overstated.
4. Even if the City were to receive all of the SWP water contracted for, the water supply remains inadequate.

The City has requested a brief review of these contentions.

Analysis:

*Contention 1: The Sage Ranch end-users are new municipal customers, who would not be entitled to priority over existing customers in the TCCWD service area (i.e., including existing agricultural users).*

TCCWD’s first contention deals with priority of water deliveries of SWP water. In raising the issue, TCCWD implicitly admits that it has contracted to deliver all, or nearly all, of its

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<sup>4</sup> It appears TCCWD does want to characterize Sage Ranch—the constituents of which are domestic users—as a new M&I user. Giving them the benefit of the doubt, this position would be supported by TCCWD’s Rules & Regulations, which would allow Sage Ranch to apply for its own M&I contract. (The Rules & Regulations define “M&I Water” as water used for any use except agricultural use.) A more calculated view, however, is that TCCWD wants Sage Ranch to apply for its own M&I contract because the recitals TCCWD’s priority ordinance provides “[e]xisting customers should have priority over new customers.”

While the ordinance itself would still give priority to Sage Ranch over agricultural users, TCCWD appears to be posturing to make the argument that, notwithstanding Sage Ranch’s “M&I use” (per their Rules & Regulations), agricultural users should nonetheless have priority because they are “new” users. If, on the other hand, Sage Ranch falls under the umbrella of the City’s contract, Sage Ranch customers would enjoy the City’s preference as (1) a M&I use; and (2) an existing customer.

In any case, the figures discussed in TCCWD’s letter come from the City’s contract with TCCWD. It may be that TCCWD’s position is that Sage Ranch constitutes a new M&I customer, but TCCWD’s commentary appears to acknowledge that Sage Ranch would be supplied under the City’s contract with TCCWD.

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allocation of SWP water.<sup>5</sup> The priorities of water distribution of SWP water come into play where demand for TCCWD water exceeds available supply.

TCCWD's priorities for water distribution of SWP water are dictated by an ordinance adopted annually by TCCWD.

Under the TCCWD ordinance, the City is among the highest priority of SWP water recipients. TCCWD nonetheless asserts that the Sage Ranch end-users would not be entitled to this same priority. While TCCWD does not specify the basis for its assertion, it presumably relies upon Recital F of Ordinance 2021-1, which provides "[e]xisting customers should have priority over new customers." Regardless of the basis of the assertion, TCCWD's assertion is belied by its contract with the City and the declared public policy of the Legislature.

The only parties to the Term M&I Agreement [For Existing Recharge Water Customers] are the City and TCCWD. There is no reference to any particular end-user or group of end users. Nor does the agreement place a limit on the number of end-users or purport to limit water provided under the contract to existing end-users. To the contrary, in Recital A.i of the Term M&I Agreement [For Existing Recharge Water Customers], TCCWD acknowledges that the water supplied under the agreement is, in part, to meet the future needs of the City—which would, of course, include new end-users. Recital A.i is consistent with Section C.2 of TCCWD's rules and regulations, which provides that "[i]n allocating its available water supply, [TCCWD] will first meet the reasonable present and future needs of its existing M&I Term customers, other existing contract customers and existing agricultural customers." [Emphasis added.] There is no basis under the contract to subordinate the City's M&I water purchases simply because of the addition of new end-users in Sage Ranch.

Moreover, subordination of the Sage Ranch users' priorities would contravene the declared public policy of the Legislature. Under California law, domestic use is the highest use of water resources. (See Water Code, § 1254 [State Water Resources Control Board is to be guided by policy that domestic use is the highest use in acting upon applications to appropriate surface water].) This declared public policy informs, if not dictates, the priority schedule for sales of SWP water. That is, subordinating the Sage Ranch end-users to other, lesser uses (e.g., agriculture) would contravene public policy.

In sum, there is no basis for TCCWD to assert that the SWP supply to Sage Ranch should be subordinated to existing end-users.

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<sup>5</sup> The Kern County Water Agency separately has a contract with the California DWR to receive the SWP water. TCCWD, in turn, entered into two contracts with the Kern County Water Agency for entitlement to receive SWP water. TCCWD's combined entitlement under these contracts is 20,000 AFY (15,000 AFY for M&I, 5,000 AFY for agriculture). (See Section 2.i of TCCWD's Rules & Regulations dated November 16, 2016.) By virtue of its contract with TCCWD, the City is entitled to purchase up to 1,153 AFY (5.97%) of TCCWD's entitlement of SWP water.

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*Issue 2: The SWP water provided under contract between the City and TCCWD cannot be relied upon as a long-term water supply because it is limited by a 10-year term.*

TCCWD's second contention derives from the requirement that the Sage Ranch EIR and WSA must analyze water supply over a 20-year projection. TCCWD contends that SWP water sold to the City cannot be included as available water supply because the Term M&I Agreement [For Existing Recharge Water Customers] is only for a term of 10 years.

TCCWD's assertion, however, is belied by its own Rules & Regulations and by California law.

Water Code section 31024 allows a county water district (such as TCCWD) to adopt rules and regulations for the sale, distribution, and use of water. TCCWD has adopted such rules and regulations. The operative rules and regulations were adopted on November 16, 2016 via Resolution No. 25-16.<sup>6</sup> Section C.2 of TCCWD's rules and regulations provides:

It has been and remains [TCCWD's] policy to routinely extend Term M&I Agreements upon conclusion of their stated terms since [TCCWD's] wholesale customers and their retail customers have built water distribution systems, homes, businesses and other public and private improvements in reliance on the long term availability of SWP water from [TCCWD]. Before entering into new Term M&I Agreements or other contracts with new customers, it is [TCCWD's] policy to carefully consider whether any SWP water under the KCWA Contracts, surplus to the anticipated long term needs of [TCCWD's] existing Term M&I and other contract customers, exists and will continue to exist during the entire duration of the new customer's anticipated demand.

In other words, TCCWD routinely renews its term M&I contracts because it recognizes that its customers—including its municipal customers—make planning decisions in reliance on the continued availability of SWP water. TCCWD's assertion in its comment letter would constitute a drastic change in TCCWD's policy and practice.

Moreover, Section 11 of the Term M&I Agreement [For Existing Recharge Water Customers] provides that the agreement automatically renews for successive one-year terms unless either party gives 90-day notice prior to the expiration of the term of the agreement.

In sum, TCCWD has constructed a framework which induces M&I customers to rely on the renewal of their term M&I contracts. TCCWD expressly acknowledges as much in its stated policy. TCCWD's argument that the City should not be able to rely on the term M&I contract for purposes of CEQA or the WSA is, at best, disingenuous.

*Contention 3: The SWP water contracted for by the City with TCCWD is merely "paper water," and the City's projections of expected "wet water" are overstated.*

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<sup>6</sup> The rules and regulations have been further amended since their amendment and restatement in November 2016; however, the provision cited in connection with this issue (Section C.2) remains unchanged.

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At best, TCCWD's third contention is a warning that (a) SWP entitlements are not firm promises to deliver; and (b) based upon historical experience, TCCWD only receives 40-50% of its entitlement of SWP water each year.

At worst, TCCWD contends that its promise to sell M&I water to the City is illusory and cannot be relied upon for purposes of an EIR or WSA.

TCCWD relies upon Section 10 of the Term M&I Agreement [For Existing Recharge Water Customers] to assert that the City cannot rely on SWP water from TCCWD for purposes of the EIR or WSA. Section 10 provides:

[TCCWD's] obligation to supply water hereunder is conditioned upon the availability of sufficient SWP water under the KCWA WATER SUPPLY CONTRACTS to enable [TCCWD] to meet all of its Customers' water demands. In event [TCCWD] in any year has insufficient SWP water available to meet the full needs of [the City] pursuant to the terms of this agreement and its other customers, [TCCWD's] available SWP water in that year shall be allocated in accordance with [TCCWD's] Rules and Regulation or other policies adopted by [TCCWD] from time to time, provided that such policies recognize any priorities mandated by statute or recognized under the KCWA WATER SUPPLY CONTRACTS or KCWA's contract with the State of California referenced therein. Provided, however, [the City] shall draw upon [its] BWRA to make up any such shortages.

As observed above, the City's M&I requirements are among the highest priorities for water distribution under TCCWD's ordinance. According to TCCWD's ordinance, therefore, the DWR would have to reduce water delivery of SWP water nearly to zero in order for the City to not receive any SWP water from TCCWD.<sup>7</sup> From the outset, TCCWD relies on a false premise.

Aside from its false premise, TCCWD asserts that the SWP water under contract amounts to "paper water," i.e., it is not a "firm commitment" to supply water. The language of the Term M&I Agreement [For Existing Recharge Water Customers] belies TCCWD's assertion. Section 1 of the Term M&I Agreement [For Existing Recharge Water Customers] provides:

During the term of this agreement, and each annual period hereunder, [the City] agrees to purchase from [TCCWD] (a) all water used, sold or distributed by [the City] for M&I use as defined in [TCCWD's] Rules and Regulations, over and above quantities of "LOCAL WATER AVAILABLE TO WATER USER"...provided, however, [TCCWD] shall have no obligation to sell to [the

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<sup>7</sup> In its comment letter, TCCWD states that, on a 10-year average, TCCWD has historically received 33.2% of its SWP entitlement—which equates to approximately 6,400 AFY. The 350 AFY projected demand from a fully-built Sage Ranch represents but 5% of TCCWD's projected SWP water.

City] more than 1,153 [AFY]...and (b) sufficient water to establish and maintain [the City's] BANKED WATER RESERVE ACCOUNT...

The language of Section 1 is key for two reasons. First, through Section 1, TCCWD obligates the City to purchase “all” of its M&I water over and above the City’s groundwater allocation under the Tehachapi Basin, Brite Basin, and Cummings Basin adjudications. TCCWD cannot obligate the City to look to TCCWD as its sole supplier of imported water and at the same time disclaim an obligation to sell imported water to the City. Second, by recognizing an upper limit on an “obligation” to sell water (i.e., 1,153 AFY), TCCWD implicitly (if not expressly) acknowledges that it is obligated to sell water to the City.

Further, in asserting the inadequacy of the Term M&I Agreement [For Existing Recharge Water Customers] as a water supply on the basis of fluctuating supply of SWP water, TCCWD ignores the water banking requirements under the agreement. Pursuant to Section 3 of the agreement, the City is required to bank five times its average SWP demand. Stated differently, the City is required to maintain a five-year reserve at all times under the agreement. Section 10 of the agreement obligates the City to draw upon this reserve to make up the difference between supply of new SWP water and the City’s demand. The sum of these provisions is that the City could meet its demand for nearly five years without receiving any new SWP water from TCCWD.

Finally, in an attempt to minimize the SWP water supply available, TCCWD points to alleged infrastructure deficiencies which limit TCCWD’s ability to receive SWP water to 10,000 AFY—as contrasted with its 19,300 AFY entitlement. It is unclear why TCCWD would choose to announce in a public setting that it does not have the capability to receive its full entitlement, should sufficient SWP supply be available. In any case, TCCWD’s infrastructure issues are not the City’s burden. Section 10 of the Term M&I Agreement [For Existing Recharge Water Customers] conditions TCCWD’s obligation to sell water upon “the availability of sufficient SWP water under the KCWA WATER SUPPLY CONTRACTS”—it does not excuse TCCWD’s performance on the basis of infrastructure limitations. In other words, if DWR allocated 19,300 AF to TCCWD in a given calendar year, TCCWD would be obligated to sell the City up to its full 1,153 AF as provided under the agreement regardless of TCCWD’s infrastructure restraints. If TCCWD were to fail to meet the City’s demand, TCCWD would (a) be liable to the City for breaching its contract, and (b) be liable to the City for breach of the covenant of good faith & fair dealing for depriving the City of its expected SWP supply due to TCCWD’s failure to provide an adequate infrastructure.

In the context of TCCWD’s comment letter, the City should be aware that accrual of a legal claim is not equivalent to supply of “wet water.” Still, the Term M&I Agreement [For Existing Recharge Water Customers]—which obligates TCCWD to sell SWP water to the City, which TCCWD conservatively projects will yield a 6,400 AFY supply, and which requires the City to maintain a five-year reserve of SWP water—appears to satisfy the Subdivision Map Act’s evidentiary requirement of a “written contract” for an identifiable water supply for purposes of a WSA. (See Gov. Code, § 66473.7, subd. (d)(1).)

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*Contention 4: Even if the City were to receive all of the SWP water contracted for, the water supply remains inadequate.*

TCCWD's contention concerning the overall inadequacy of SWP water as a primary water supply is premised upon the Subdivision Map Act's definition of a "sufficient water supply." Under the Subdivision Map Act, "sufficient water supply" is defined as "the total water supplies available during normal, single-dry, and multiple-dry years within a 20-year projection that will meet the projected demand associated with the proposed subdivision, in addition to existing and planned future uses, including, but not limited to, agricultural and industrial uses." (Gov. Code, § 66473.7, subd. (a)(2) [emphasis added]; see also Water Code, § 10910, subd. (c)(3) [requiring assessment of the same].)

TCCWD argues that, by 2040, the City will require 1,560 AFY of SWP water to meet its projected demand. Further, TCCWD argues that under these same projections, even if TCCWD provided the full 1,153 AFY under contract to the City, the water supply will become inadequate by 2034.

This contention misses the point as to the Sage Ranch analysis. In connection with this project, the City has required the Developer to offer to acquire groundwater rights covering at least 50% of the projected demand—a requirement consistent with the City's requirements for at least one other project ("The Address"). In order to meet future projected demand, the City would have to (a) acquire additional groundwater rights it does not presently own; (b) contract for a greater supply of SWP water through TCCWD; or (c) require future developers to secure and commit water rights in excess of their project's projected demand. Each of these three options, however likely to occur, would not likely satisfy the Subdivision Map Act's and Water Code's requirements of a firm assurances of a quantifiable water supply. (See Gov. Code, § 66473.7; Water Code, § 10910; *Vineyard Area Citizens for Responsible Growth v. City of Rancho Cordova* (2007) 40 Cal.4<sup>th</sup> 412, 432-440; *Santa Clarita Organization for Planning the Environment v. County of Los Angeles* (2003) 106 Cal.App.4<sup>th</sup> 715, 720-723.)

While TCCWD raises an issue concerning the City's expected growth, TCCWD also exposes a clear conflict of interest between its general manager, constituent board members, and TCCWD's stated position. Throughout its comment letter, TCCWD references potential harm to TCCWD's "other customers" caused by increased SWP water demand from Sage Ranch. In several instances, TCCWD explicitly references potential harm to agricultural users. As noted above, however, the City's M&I use is a higher priority use both under TCCWD's ordinance and California law.

Moreover, it is worth observing that TCCWD's general manager and several of its board members are engaged in the agricultural industry. When considering the SWP water needs of a M&I user, TCCWD's general manager and board members have a conflict of interest in that increasing M&I allocation will, in the presence of a shortage, necessarily reduce the agricultural allocation.

The reality which underlies TCCWD's position is that TCCWD is already under contract to supply the overwhelming majority of its SWP water allocation to its customers. Sage Ranch,

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which will rely upon M&I water, will have greater priority to the SWP water supply. This means that when the DWR does not deliver at least 10,000 AFY to TCCWD, agricultural users suffer the consequences of a diminished supply. In sum, TCCWD's real concern is that an increase in M&I use in TCCWD's service area will cause friction with TCCWD's general manager, board members, and other agricultural users. But this friction is not the City's concern, and it is unreasonable for TCCWD to burden the City or Sage Ranch with TCCWD's internal difficulties with its agricultural user customers.



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## TEHACHAPI CITY COUNCIL SUPPLEMENTAL STAFF MEMORANDUM

August 16, 2021

TO: Mayor Smith and Members of the City Council  
FROM: Jay Schlosser, P.E., Development Services Director  
SUBJECT: Response to July 28, 2021 Comments from Pioneer Law Group and Tehachapi-Cummings County Water District regarding Sage Ranch Project

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### OVERVIEW

This Supplemental Staff Memorandum responds to and addresses the comments in the July 28, 2021 letter and accompanying attachments from Pioneer Law Group, LLP on behalf of Tehachapi-Cummings County Water District (TCCWD) regarding the Final Environmental Impact Report (Final EIR) and Updated Water Supply Assessment (WSA) prepared for the Sage Ranch Development Project (Project).

As shown in the detailed responses that follow, Staff does not believe that the Pioneer/TCCWD letter undermines or discredits any of the information in the Final EIR and WSA. Many of the Pioneer/TCCWD comments are factually inaccurate or lack foundation for the statements that are made, and therefore ultimately do not support the letter's conclusions.

The City Council may choose to rely on the information provided by City Staff and experts that is supported by substantial evidence and complies with the information disclosure mandate under the California Environmental Quality Act (CEQA) (Pub. Resources Code § 21000, *et seq.*) and the requirements under the Water Code (Water Code § 10910, *et seq.*). Staff further notes that the letter expressly states that TCCWD "takes no position on the Project – TCCWD is not a land use agency" and that the "District is not opposed to Sage Ranch Development Project...." (Pioneer Letter, pp. 1, 27.) This is relevant because despite the espoused concerns, TCCWD ultimately is stating that it is not opposed to the Project.

In short, City Staff continues to stand by the Final EIR and WSA, which comply with all statutory and regulatory requirements under CEQA.

## RESPONSES TO PIONEER LAW GROUP COVER LETTER

### 1. The EIR Complies With CEQA

The crux of the Pioneer letter is that the EIR does not comply with CEQA because the City has not demonstrated that there is sufficient water for the Project. This is incorrect. Contrary to the letter's assertions, the EIR does not assume that water will materialize; instead, the EIR's conclusions are based on available supply and legally-binding commitments (contracts) for the purchase of water rights. The Applicant has secured water rights and, on August 11, 2021, provided the City with a written commitment to provide 175 AF of water for the Project, which is considerably more than the 93 AF required as mitigation identified in the EIR. This provides further assurances that there is available water to meet the Project's demands.

#### A. The EIR's Description of the Environmental Setting and Baseline Is Accurate

These assertions repeat information from the Declaration of Tom Neisler that is attached as Exhibit A to the Pioneer letter. City Staff's detailed responses to Exhibit A are further below in this Supplemental Staff Memorandum.

In the responses, City Staff explains why TCCWD's assertions regarding the Term M&I Agreement between TCCWD and the City are incorrect, including TCCWD's position that the M&I Agreement may not form the basis of any analysis regarding future water service (Pioneer Letter, pp. 6-7) – a position that undercuts the entire purpose of the M&I Agreement. The City is not treating the M&I Agreement as a will-serve letter as TCCWD contends (Pioneer Letter, p. 8). Instead, the City has completed a full analysis of available water supply measured against the Project's demand, imposed feasible and enforceable mitigation by requiring the Applicant to supply 93 AF of water, and the Applicant has committed to providing 175 AF of water for the Project. Nonetheless, the M&I Agreement is a legally-binding agreement and the City is entitled to give it due weight and to expect that TCCWD will honor its commitments to the City as well as all other existing water users with legal rights.

The responses also correct TCCWD's assertion (Pioneer Letter, p. 6) that the Applicant would become a new municipal water user; on the contrary, it is the City that is and has been an existing municipal water user with legal rights and would continue to be so.

TCCWD is further incorrect in claiming (Pioneer Letter, p. 8, fn 9) that the City is "calling on long-term demand projections 20 years early." This statement is factually in error and is a result of mistakes on the part of TCCWD, including unsupported assumptions that "other" growth elsewhere in the City is imminently going to occur such that the sum of this "other" development plus the Project will exceed the early year water increase totals. Tellingly, TCCWD provides no proper factual support, as opposed to mere opinions and a count of connections (which is improper because connections are not uniform in demand and thus are not a specific measure of water demand), to support this assumption, which also incorrectly interprets CEQA's requirements as applied to cumulative project analysis.

City Staff also notes that TCCWD's contentions that the City failed to engage with TCCWD throughout the process of analyzing the Project are false (Pioneer Letter, p. 5). City Staff repeatedly has engaged with Tom Neisler in an attempt to correct TCCWD's factual inaccuracies regarding the Project and to address TCCWD's concerns. And, while TCCWD has not updated its Regional Urban Water Management Plan (RUWMP) since 2015, and is late with its 2020 Update, the City synthesized available information to fill in the gaps left by TCCWD and to provide a complete analysis of available water supply through 2020 as part of its analysis of the Project.

B. The EIR's Evaluation of the Project's Water Supply Impacts Comports With CEQA

As also discussed in greater detail in the responses to TCCWD's Exhibits A and B, the EIR properly analyzes the Project's direct, indirect, and cumulative impacts relative to water resources. Contrary to TCCWD's claims, the City does not "simply assume[] that a solution to potential supply issues will be found." (Pioneer Letter, p. 9.) Instead, the City has analyzed the Project's water demand, analyzed available water supply, compared the two, and imposed feasible, enforceable mitigation.<sup>1</sup>

Nor is the City relying on "paper water." (Pioneer Letter, p. 10.) As TCCWD well knows, the City is not relying on a mere will-serve letter as support for its conclusions. The City has undertaken a full analysis and demonstrated that, with mitigation, there is sufficient supply to meet Project demand. Furthermore, as noted above, the Applicant has now committed to supplying 175 AF of water for the Project, which is considerably in excess of the 93 AF required as mitigation.

City Staff's detailed responses below to Exhibit A address TCCWD's statements regarding surface water availability and historical supply, impacts on other water users, and cumulative impacts. (Pioneer Letter, pp 12-16.)

City Staff notes two specific points here. First, TCCWD's statement that the Project's water demand is not "reflected" in the June 2019 memorandum prepared by Michael K. Nunley and Associates is irrelevant. This memorandum was used to support the current City average residential consumption factor of 118 gallons/day/person. The WSA uses this value as a starting place to consider what is the reasonable expected consumption rate for would-be Project residents. The 2019 Nunley memorandum goes on to estimate areas of potential future growth for the purpose of identifying issues with the water supply network that need to be addressed as development occurs; this has no specific bearing on the accuracy of the Final EIR or the WSA. The

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<sup>1</sup> TCCWD's claim that the City "has acknowledged its [water] fee is below market and the payment of fees is not likely to be sufficient to purchase the necessary additional water supplies" (Pioneer Letter, p. 10, fn 11) is patently incorrect. The City has not made any such statement. The current fee is \$3,148 per single family house. A single family home in the City consumes 0.33 AF/Y on average (the Project is expected to consume less as justified in the WSA). A 20-year supply of water is therefore 6.6 AF (20 years x 0.33 AF/Y). 1 AF of water purchased from TCCWD is \$477 (including surcharges and banking fees). This results in a fee of \$3,148 per single family house (\$477 x 6.6 AF).

WSA stands on its own and its analysis and conclusions are supported outside of the 2019 Nunley memorandum. Furthermore, the fact that the Nunley memorandum did not specifically account for what ultimately became the contours of the Project – which, at that time, was conceptual – actually illustrates why TCCWD’s assumptions about immediate, imminent development of other vacant lots in town is erroneous; a conceived project is far less certain than an entitled project which is, in turn, less certain than a permitted project. Or, in the words of the California Supreme Court, “We do not require prophecy. ... Nor do we require discussion in the EIR of specific future action that is merely contemplated or a gleam in a planner’s eye.” (*Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 398.)

Second, TCCWD’s assertion that the City is “increasing its groundwater use by almost 50%” (Pioneer Letter, p. 14) conflates two separate portions of the City’s analysis. The Project, at buildout, will require up to 350 AF of water per year. This represents 17.9% in groundwater pumping as compared with City 2020 pumping rates (350 AF/1950 AF). For the purpose of determining necessary mitigation, the WSA also analyzes what 2.3% cumulative growth will equate to for the entire City. At the end of that 20 period, groundwater pumping could increase by over 50%. That, however, is not a result of the Project alone, as TCCWD claims. The Project’s impacts on water supplies are mitigated – and, now, with the Applicant’s commitment to bring 175 AF of water, are even more certain to be less than significant.

C. The EIR’s Mitigation Is Feasible and Enforceable

TCCWD is incorrect in asserting that the EIR’s mitigation for the Project’s impacts to water resources is “vague and ineffective.” (Pioneer Letter, p. 17.) On the contrary, the mitigation is feasible and enforceable, including through Mitigation Measure HYD-3, which is imposed on the Project as a condition of approval and satisfies Government Code section 66473.7(b)(1). Furthermore, it is not “speculative” whether the Applicant will obtain sufficient water rights to satisfy the Mitigation Measure and condition of approval – the Applicant *has* secured these rights, as evidenced by the binding and escrowed water transfer agreement between one of the Applicant’s principals and H-Star Investments, LLC, and the August 11, 2021 letter from the Applicant’s principal confirming commitment of 175 AF of these water rights to the Project.

D. No Recirculation of the EIR Is Required

TCCWD’s demand for recirculation of the EIR (Pioneer Letter, p. 18) is without merit. Recirculation of an EIR prior to its certification is required in very limited circumstances (14 Cal. Code Regs. § 15088.5), none of which is present here. The EIR and the updated WSA comply with CEQA and the revisions reflected in the Final EIR and the updated WSA do not require recirculation because they “merely clarif[y] or amplif[y]” the information in the already-adequate EIR that was circulated for public review and comment. (14 Cal. Code Regs. § 15088.5(b).)

E. TCCWD’s Comments on Project Alternatives are Untimely and Meritless

TCCWD’s comments on Project alternatives in the EIR (Pioneer Letter, pp. 18-20) are untimely and meritless. Under CEQA, a lead agency (here, the City) “shall respond to comments raising significant environmental issues *received during the noticed comment period and any extensions* and *may* respond to late comments.” (14 Cal. Code Regs. § 15088(a); emphasis added.) As such responses to late comments are not required and an EIR cannot be deemed inadequate where the lead agency elects not to respond to untimely comments.

Here, the Draft EIR was circulated for a comment period from March 4, 2020 through April 17, 2020. TCCWD was well aware of this comment period as it submitted comments on the Draft EIR. Yet, TCCWD chose not to provide any comments on Project alternatives in that letter, instead waiting until July 28, 2021 to offer those comments. This sandbagging is improper under CEQA and the City is not obligated to respond to these comments.

Nonetheless, City Staff notes that the comments are meritless. Under CEQA, an “EIR shall describe a range of reasonable alternatives to the project, or to the location of the project, which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives.” (14 Cal Code Regs. § 15126.6(a).) The CEQA Guidelines are pragmatic, recognizing that “[a]n EIR need not consider every conceivable alternative to a project.” (14 Cal. Code Regs. § 15126.6(a).) Furthermore, “there is no ironclad rule governing the nature or scope of the alternatives to be discussed other than the rule of reason.” (14 Cal. Code Regs. § 15126.6(a).) The EIR need “set forth only those alternatives necessary to permit a reasoned choice” and “the EIR need examine in detail only the ones that the lead agency determines could feasibly attain most of the basic objectives of the project.” (14 Cal. Code Regs. § 15126.6(f).) Here, the EIR analyzed a range of reasonable alternatives to the Project and explained their potential environmental impacts in comparison to the Project with sufficient detail to allow the City’s decision-makers and the public to understand the differences between the Project and the alternatives. The EIR’s analysis complies with CEQA.

The City is not obligated to analyze TCCWD’s last-minute suggested alternative of a reduced-size project with a different configuration of housing types. “CEQA does not require that an agency consider specific alternatives that are proposed by members of the public or other outside agencies.” (*South of Market Community Action Network v. City and County of San Francisco* (2019) 33 Cal.App.5th 321, 345, quoting *City of Maywood v. Los Angeles Unified School Dist.* (2012) 208 Cal.App.4th 362, 420.)

**2. The Final EIR’s Responses to Comments Satisfy CEQA**

The Final EIR’s responses to comments satisfy CEQA and provide good faith, reasoned responses commensurate with the level of detail in timely comments on the EIR. (14 Cal. Code Regs. § 15088(c).) The Final EIR provides written responses to all comments received on the Draft EIR and does so in detail, including multiple pages of responses to the comments that TCCWD timely

submitted. That the Final EIR does not adopt TCCWD's position on all issues does not mean that the EIR is inadequate in any way; considering in good faith and disagreeing is not the same as ignoring. TCCWD's blanket assertion that the responses to comments are insufficient (Pioneer Letter, pp. 20-21) is incorrect.

In addition, TCCWD's contention that the City did not respond to comments from the State Water Resources Control Board (SWRCB) is an intentional red herring. As TCCWD admits, the SWRCB did not submit any comment on the Draft EIR, instead only offering comments on the Notice of Preparation of the EIR to the effect that the EIR must demonstrate that there is sufficient water available to meet Project water demands. The EIR and WSA do exactly that. TCCWD's attempt to bootstrap a preliminary comment from SWRCB into something more significant falls flat.

**3. The City Consulted In Good Faith With TCCWD Staff Multiple Times**

As discussed above, TCCWD's contentions that the City failed to consult in good faith with TCCWD throughout the process of analyzing the Project are incorrect (Pioneer Letter, pp. 21-22). City Staff repeatedly discussed this Project and water supply issues with Mr. Neisler. City Staff made multiple attempts to correct TCCWD's mistaken understanding of the Project and to alleviate TCCWD's concerns. TCCWD has been made aware of the Applicant's binding contract for water rights and its commitment to provide 175 AF of water for the Project yet has chosen to disregard that information.

**4. The Updated WSA Is Supported By Substantial Evidence**

The final portion of TCCWD's comments simply restates TCCWD's prior comments on the context of the WSA rather than the EIR (Pioneer Letter, pp. 22-26.) Those comments are already addressed above or below in response to Exhibits A and B to the Pioneer Letter.

**RESPONSES TO EXHIBIT A – (NEISLER DECLARATION)**

1. I am the General Manager of the Tehachapi-Cummings County Water District (“TCCWD” or “District”). A summary of my qualifications includes, but is not limited to, the following:
  - a. California State Board Water Distribution license and professional land surveyor; engineer for Guinn Construction from 2008 to 2013, focusing on wind, solar and other multi-million-dollar projects.
  - b. In 2013, I began working for TCCWD, first as Operations Manager, then as Assistant General Manager, and finally in my current position, General Manager. I have held the position of General Manager since 2016. I am therefore intimately aware of the TCCWD's operations and obligations. TCCWD serves as the court appointed Watermaster of three adjudicated groundwater basins. These are Tehachapi, Brite and Cummings basins.
  - c. As General Manager, I also serve as Executive Officer of the Watermaster and am responsible for managing the basins and ensuring that groundwater extractions do not exceed court established native safe yields. TCCWD imports State Water Project water as a member unit of the Kern County Water Association ("KCWA"). The KCWA has water supply contracts with the State of California Department of Water Resources and TCCWD has contracts for a portion of that supply with KCWA.

**Response:** Comment noted. The City acknowledges Mr. Neisler’s familiarity with TCCWD’s operations as General Manager.

2. I am personally familiar with the facts set forth herein, and if called as a witness, could and would testify competently thereto of my own personal knowledge.

**Response:** Comment noted.

3. On January 1, 2017, TCCWD and the City of Tehachapi (“City”) entered into a Term M&I Agreement (“M&I Agreement”). A true and correct copy of this agreement is attached hereto as Attachment 1. I am intimately familiar with this agreement, as I am required to implement its terms in my capacity as the General Manager.

**Response:** Comment noted.

4. The M&I Agreement has a 10-year term that automatically renews on an annual basis for one additional year, unless either party provides notice that the agreement will not be extended. TCCWD therefore has the right to terminate the agreement at any time. One purpose of the 10-year term was to ensure that the agreement could not be used as a long-term water supply. I am informed and understand that TCCWD’s policy has been to not approve longer term commitments.

**Response:** The cover Pioneer Letter (p. 7) states that the City “is aware” that the intended purpose of the 10-year clause is to “prevent the City’s reliance on the Term M&I Agreement as a long-term water supply.” This is incorrect. On the contrary, the City’s intent in agreeing to the Term M&I was exactly the opposite. The City agreed to the Term M&I Agreement precisely to have access to imported water supplies. TCCWD’s statement as to the interpretation of the Term M&I Agreement completely undermines any potential reason for the City to desire this Agreement. As noted in Exhibit B, the letter from Mr. Neisler to Mayor Smith dated 7/28/21 (Section 3.d), TCCWD has operational control over the majority of the City’s banked water reserve account. As such, the Term M&I Agreement obligates the City to purchase and maintain large amounts of banked water for TCCWD’s use and yet TCCWD is claiming that it is effectively not obligated in any meaningful way to provide any long-term value to the City in exchange. The City disagrees with this assertion.

Furthermore, the Pioneer letter admits (p. 10) that the standard when preparing a WSA is not absolute assurance of the existence of “wet water” but instead a demonstration of the “likelihood of actually proving available” or a “reasonable probability of accessing an identified source of wet water.” Because the Term M&I agreement has an evergreen clause, it is reasonable to assume that it will last for the duration of the 20 year period of time and thus can be relied upon as a likely or reasonable option.

Lastly, Recital A.(i). of the Term M&I Agreement states that it is “District policy to meet the present and future needs of its Term M&I Agreement Customers from the District’s State Water Project (“SWP”) water supply...”. This statement is the opening recital in this Agreement and directly states that the purpose of the Agreement is to provide for the City’s “future” water needs, which is directly relevant to how the Term M&I Agreement was analyzed in the EIR and WSA.

5. In years when TCCWD does not anticipate that the available supply of imported water will be sufficient to meet demand, the District adopts a Water Priority Ordinance establishing delivery priorities. Ordinance 2021-1 was adopted by the Board of Directors on April 21, 2021. A true and correct copy of Ordinance 2021-1 is attached hereto as Attachment 2. The ordinance provides that the TCCWD’s existing M&I customers have the highest priority for available water supplies (after fire protection). TCCWD has consistently prioritized deliveries in this manner. Given this, the approximate 1,000 additional M&I connections contemplated by the Sage Development Ranch Project (“Project”) would have no priority over existing users. In other words, the approximate 1,000 additional connections could not “jump the line” and injure existing water users. The same would hold true for other growth/development.

**Response:** TCCWD’s interpretation that the Project would constitute a “new” municipal customer is incorrect. As TCCWD is aware and as contained in the WSA and EIR, TCCWD’s customer in this case would continue to be the City of Tehachapi. The City is an existing customer to TCCWD (Term M&I Agreement). Therefore, the impact of the Project would be a background

growth in City water needs that the City would satisfy by annually purchasing the necessary quantity of imported water from TCCWD to be recharged into the Tehachapi basin for extraction by the City. There is no direct link in terms of any imported water going to Sage Ranch versus being used by any given retail customer of the City's. The City of Tehachapi is an existing M&I customer of TCCWD and by direct admission of TCCWD, this provides the City with the "highest priority for available water supplies."

6. The Project, and future City growth, relies almost exclusively on TCCWD for water supply. While the M&I Agreement requires the City to buy water, the District is only required to sell the City 5 acre-feet of water annually. Any additional supply that is made available is expressly conditioned upon the availability of sufficient SWP water to enable TCCWD to meet its customers' water demands.

**Response:** The opening statement in the Term M&I Agreement clearly explains that its purpose is "to meet the present and future needs of [the District's] Term M&I Agreement Customers from the District's State Water Project water supply." This Agreement was drafted by TCCWD which requested that the City enter into it. The above statement from Mr. Neisler is contrary in nature to this Agreement. Furthermore, the opening portion of the Agreement (following the Recitals section) lays out the primary exchange occurring between the two parties. In this exchange, the City agrees that it will purchase all of its needed water (above the City's groundwater allocation) from TCCWD, foregoing any other option. TCCWD, in turn, agrees to sell the water that it has and limits its "obligation" to 1,153 AFY. By way of these CEQA comments, the District now appears to be refusing to sell the City any water in breach of its express contractual obligations, not to mention a marked departure from past practice and in contravention of the stated intent of the contract to be for the express purpose of meeting the City's "future needs." The District now appears to be using the Term M&I Agreement to become the de facto decision maker for all future development within the City, a role that is decidedly not appropriate or legally available to TCCWD.

Furthermore, TCCWD misinterprets the Term M&I Agreement with this comment. It is the City that is obligated to purchase 5 AF as a minimum from the District each year (Article 6, Page 3); TCCWD's obligation is captured in Article 2 of the Agreement, where it is obligated to sell up to 1,153 AF per year of water to the City upon request (subject to availability). In the years in which water is not available, the Agreement forms the Banked Water Reserve Account that is used in drought conditions to satisfy water demands.

7. The Final EIR concludes that a 2.3% growth projection is reasonable. While the City has proposed this growth rate for the draft 2020 RUWMP, neither I nor the District have agreed with this growth rate.

**Response:** The 2.3% growth rate is based on historical population numbers from 2003 to 2020 which saw an average growth rate of 2.38% in the City over that time period. Furthermore, a meeting was held between the City of Tehachapi (Jay Schlosser, Development Director and Don Marsh, Public Works Director) and TCCWD (Tom Neisler, General Manager and Jon Curry,

Operations Manager) on November 9, 2020 in the Tehachapi City Hall Annex Conference Room at 2:00 pm. In that meeting, the issue of the City's growing water needs was discussed in detail. TCCWD initially argued that no water would be available for the City for the future. When the City pressed TCCWD on the origin of the TCCWD imported water system and upon the known and acknowledged justification for TCCWD's existence (which was explicitly formed for the growth in this community), TCCWD agreed that it could support the City's "reasonable" growth needs. When asked to quantify that value, General Manager Neisler informed City Staff that TCCWD would support a 2% growth rate. The City agreed that this value was acceptable and prepared an analysis to quantify this need in detail. That analysis was prepared and conveyed to TCCWD on January 27, 2021. The 2.3% growth rate was included in the analysis of the current WSA.

Finally, the initial draft of the 2020 Regional Urban Water Management Plan prepared by TCCWD was provided to the City of Tehachapi on July 28, 2021 and includes the 2.3% growth rate as the expected growth rate for the City of Tehachapi.

8. The Water Supply Assessment ("WSA") assigns 75% of this 2.3% growth rate to the Sage Ranch development with no supporting documentation. The WSA fails to account for the fully entitled, yet to be built, lots in the City. The City reports that 450 lots are included in approved tentative maps. Despite a California Public Records Act request, the City did not provide data on the number of fully improved (ready to build with street and utility improvements in place) lots. I estimate this number to be between 50 - 100 additional lots. In addition to the 995 lots in the Project, the City has already entitled 500 - 550 lots yet to be built upon. The City currently has approx. 3,000 connections. The total quantity of additional connections (including the Project) would be approximately 1500-1550, a 50% increase. This equates to 17 years of growth without accounting for any additional development whatsoever.

**Response:** The basis of this statement is incorrect, as entitled lots do not inherently result in actual water demand. The City has vacant entitled lots dating back to the initial town formation in 1892. Vacant "lots", when developed, may yield widely varying water demand. The City currently has approximately 3,000 connections, many of which are not residential in nature. As such, a 50% increase in "connections" may seem like a large value but ignores the actual numbers.

For the sake of clarity, the following is an actual accounting of water based upon Mr. Neisler's noted concern. The average single family home in the City of Tehachapi consumes 1/3 acre-foot per year of potable water. Accepting Mr. Neisler's value of 550 entitled but undeveloped residential lots results in a projected annual demand of 181.50 AF. Added to the Sage Ranch projection of 175 AFY (350 AF minus 175 AF of water rights being contributed by the applicant) yields a projected water use increase of 356.50 AFY. The WSA analysis reaches this threshold 7 years into the projection model (as opposed to the 17 years projected by Mr. Neisler). The 2.3%

growth model excluding Sage Ranch reaches a growth in water consumption of 1,560.5 AFY in year 2040. This argument is both flawed and highly specious.

In addition, while other future residential developments are also likely to occur in the City, it is anticipated that the Sage Ranch Project would provide the majority of residential growth in the City as the Project is built out. Based on the City's historic growth rate of 2.3%, it is unlikely that development of the Project, in addition to non-Sage Ranch residential developments, will occur at a pace that results in a growth rate higher than 2.3%. However, the calculations shown in the WSA and EIR are based on conservative assumptions that the Project will be built out completely over the next seven years (approximately 143 units/year for a total of 1,000 units) in addition to other growth in the City. The analysis accounts for anticipated population growth in the City; existing water demands and allocations; population projections with the Project included; and future water demand needed to serve the Project as well as other future development in the City over the next 20 years.

9. TCCWD has kept a record of State Water Project allocations going back to at least 1997. A true and correct copy of these allocations is attached hereto as Attachment 3.

**Response:** Comment noted.

10. Over the past 20 years, the Department of Water Resources ("DWR") has dramatically reduced the amount of State Water Project ("SWP") water it delivers to the TCCWD. In an average water year, TCCWD can only expect to receive 40% of its contracted water supply. Given this reality, the Updated WSA assumption that TCCWD will receive an average of 60% of its contracted SWP deliveries is erroneous.

**Response:** The WSA states that the long-term average SWP deliveries are 60%, which is a correct statement because it is the 25-year average. The WSA does not declare that TCCWD receives this average amount every year.

The City acknowledges the potential reduction in SWP water availability but believes it is being presented solely to support TCCWD's position and ignores historical precedent. California is experiencing a multi-year drought cycle which is not unprecedented. Long-term drought cycles have occurred in California as recently as the 1990's and 1970's. Therefore, using a 10-year or 15-year average without adjusting for water banking potential in wet years is unsupported and incorrect. Using a longer term average is therefore more reasonable.

Regardless, even if the SWP deliveries dropped to 40%, the District still obtains 7,720 AFY of imported water from the SWP. As an existing District customer who has the "highest priority" to District water, it is reasonable and defensible for the City to conclude that sufficient, reliable water is therefore available (the Project needing only 175 AFY). This information does not change the conclusions of the WSA or the EIR.

11. As demonstrated by Attachment 3, while the 25-year average of SWP allocations is 61.04%, the ever-increasing environmental restrictions combined with climate change make this an unreliable predictor of future allocations. Given these factors plus the fact that the SWP reservoir storage is at an all-time low, the 10-year 40.5% allocation and 15-year 44.7% allocation are more realistic estimates of future allocation trends. It is worth noting that these estimates may even be optimistic, given the increasingly difficult drought conditions that place ever-growing strains on both TCCWD's and the state's resources.

**Response:** The City acknowledges these statistics provided by the District. See also response to #10.

12. Further restricting TCCWD's ability to meet water demands is the fact that its pumping capacity is limited to a maximum of 10,000 acre-feet per year ("AFY"). Thus, even though TCCWD's combined SWP allocation is 19,300 AFY, TCCWD cannot import more than 51.8% (10,000/19,300) of its Table A allocation in a given year. Thus, estimated deliveries must take into account the acute restriction on TCCWD's ability to import water in years when SWP allocation exceeds 51.8%.

**Response:** The 10,000 AFY quantity is an arbitrary value assigned by TCCWD staff and includes significant system downtime for maintenance. It is not the absolute limit of the District's pumping capacity. This analysis also fails to acknowledge that TCCWD can and has banked excess water in wet years in the Bakersfield area for extraction in subsequent dry years.

13. When SWP allocations are adjusted to factor in system capacity, actual SWP deliveries are reduced to 33.2% on a 10-year average and 37.5% on a 15-year average.

**Response:** The City acknowledges these statistics but believes they are being presented solely to support TCCWD's position and ignore historical precedent. California is experiencing a multi-year drought cycle which is not unprecedented. Long-term drought cycles have occurred in California as recently as the 1990's and 1970's. Therefore, using a 10-year or 15-year average without adjusting for water banking potential in wet years is prejudicial. Using a longer term average is therefore more reasonable.

Regardless, at 33.2%, the District still obtains 6,407.6 AFY of imported water from the SWP. As an existing District customer with the "highest priority" to District water, it is reasonable and defensible for the City to conclude that sufficient, reliable water is therefore available (the Project needing 175 AFY). This information does not change the conclusions of the WSA or the EIR.

14. In addition to the City of Tehachapi, TCCWD has Term M&I agreements with a number of other customers, including three public water purveyors. These are Golden Hills, Bear Valley and Stallion Springs Community Services Districts. While these communities are master-planned, they also have significant numbers of undeveloped lots that will further decrease the available imported water supply.

**Response:** As noted in Response #8, the City does not agree with the assumption by TCCWD that entitled lots elsewhere, alone, is a determinative indicator of future water demand. The City's General Plan and the County's Greater Tehachapi Specific Plan were created to specifically estimate long-term growth trends. These documents are final, conclusive, and beyond challenge. As noted above, the City has entitled vacant lots dated back over 100 years. Bear Valley, Stallion Springs, and Golden Hills have entitled lots that are similarly dated with no meaningful plan for development in the near future. As such, their existence alone is not conclusive. Instead, accurately assessed growth rates (like the City's 2.3% value) are a far more accurate indicator of future water demand.

Further, it is not the City's obligation to plan for nor account for potential future water demands elsewhere within the TCCWD boundaries. The City's obligation, which was satisfied here, was to analyze the Project's direct, indirect, and cumulative impacts to water resources and to mitigate any such impacts.

15. Given these factors, TCCWD does not have sufficient water supplies and recharge capacity to meet the City's anticipated demand. TCCWD's supply is already strained and imported water supplies vary year to year. TCCWD cannot reliably meet a fixed demand for residential development with a variable imported water supply.

**Response:** Taken at face value, TCCWD appears to be stating that it will not honor its commitments either to the City or to any of its other existing water customers. This would be a significant departure from TCCWD's position and its statements in governing agreements, and would have ramifications for every existing customer that TCCWD serves. The City would expect that if this were TCCWD's position, TCCWD would have communicated this position to every one of its other existing water users and informed them that TCCWD cannot meet its obligations. To the City's knowledge, TCCWD has not done this and therefore the City assumes that TCCWD and Mr. Neisler did not intend to make such a far-reaching statement.

The WSA provides a growth projection for the City of Tehachapi for the express purpose of determining anticipated Project water demands and if mitigation is required for the Sage Ranch Project. To that end, the analysis indicates that the Applicant must bring 93 AF of water rights to the City to mitigate the Project's impact on the City's water supplies; the Applicant has committed, in writing, to bring 175 AF of water rights and has provided documentation of an existing water rights transfer agreement under which it is performing.

Even considering the EIR's and WSA's analysis prior to the Applicant's commitment to this additional water, the Project itself is estimated to require 350 AFY in additional water supply to offset the corresponding demand. With the Applicant bringing 175 AF of pumpable water rights to the City, a remaining 175 AFY must be identified. This alone is the quantity of additional water that must be identified to satisfy applicable requirements. Accepting TCCWD's most conservative estimate (which the City does not accept) of reliable future water supply (33.2% of 19,300 AFY imported water), TCCWD will receive over 6,000 AFY of imported water supply on average going

forward. The 175 AF needed for the Project is 2.7% of that supply, and the City's conclusions as to the availability of this amount of are supported.

16. Implementing the Project as proposed will have significant and unavoidable impacts on water resources and public utilities that the EIR fails to disclose; it will decrease supplies for existing TCCWD water users and exacerbate shortages. The EIR fails to analyze the dire consequences of supplying the City with water while substantially reducing water deliveries to TCCWD's other customers.

**Response:** Mr. Neisler's assertion that the Project will have significant and unavoidable impacts that the EIR fails to disclose constitutes an unsubstantiated legal conclusion that he is not qualified to make. Based on Response #15, it is also unreasonable to conclude that the Project will have "dire consequences" to other TCCWD customers, particularly in light of the Applicant's commitment to deliver 175 AF of water for the Project. Even utilizing the District's most conservative estimate of SWP water deliveries (33.2% of 19,300 AFY), the Project would require only 2.7% of that amount. In fact, the majority of the District's current customers are seasonal agricultural growers who rent or lease land on a temporary basis. The District's statements here are insufficient to justify further analysis and they do not accurately reflect the situation. Considering the volume of TCCWD water serving short-term farming, it is not anticipated that any existing customers would suffer "dire consequences" from a project requiring 175 AF. The 175 AF would be phased in over 7 years and would represent only a 2.7% change in water allocation. In addition, this is consistent with the City's projected 2.3% growth rate.

17. For example, alternative water supplies for agricultural use are limited, and the need for new supplies is likely to exceed available alternatives. As a result, following and potential permanent loss of agricultural resources would add to the significant adverse impacts of the Project, including cumulative impacts that will occur over time.

**Response:** This statement is speculative and no evidence is presented that suggests the scenario noted is likely. The City agrees that future water desires from the myriad of TCCWD customers may exceed available supply. As TCCWD noted, it has prepared a Water Priority Ordinance to govern precisely who will receive this supply. As an existing M&I customer, the City is, by TCCWD's direct admission and own document, to receive "highest priority". Representing a mere 2.7% of the District's supply, it is reasonable for the City to expect to receive the needed water. It is unreasonable for the District to attempt to burden the Sage Ranch Project with the District's potential future difficulties in addressing its broader water supply issues unrelated to the Project.

18. The Tehachapi Basin is adjudicated and the available supply of water rights for sale is limited. Since the Watermaster has currently set pumping allocations at two-thirds (2/3) of Base Water Rights, the Project applicant would need to purchase 139 AF of Base Water Rights to be able to pump 93-acre feet. Though the WSA contemplates that the Project applicant will be required to purchase these water rights as a mitigation measure, it does not identify the water contract or source of these water rights.

**Response:** TCCWD is and has been aware of the source of the water rights the Applicant intends to dedicate to this Project. TCCWD had obtained a copy of that purchase agreement over six months prior to this response and understood the Applicant's binding commitment to provide the necessary water. Furthermore, the Applicant's representative stated, on the record at the Planning Commission hearing held for the Project on July 12, 2021, that it has the necessary water rights. Since then, the Applicant has reaffirmed this commitment and further dedicated 175 AF of water to the Project.

19. In times of water supply shortage, the District has historically met existing current year demands first and deferred water recharge. The City estimates that it will require 1560.5 AFY to meet its 2040 demand - an increase of 1,213 AF over the next 20 years. TCCWD recharges water for many customers including Golden Hills CSD, Stallion Springs CSD, and Bear Valley CSD. Further, there are entitled undeveloped lots in the pipeline that expect to draw from the District. Bear Valley CSD and Stallion Springs CSD, for example, have approximately 1,000 entitled undeveloped lots. TCCWD simply does not have sufficient water supplies, pumping capacity, and recharge capacity to meet the City's anticipated demands and also meet the planned demands of TCCWD's existing customers.

**Response:** First, the City is an existing customer and meeting its reasonable projected needs is exactly one of TCCWD's obligations. Second, TCCWD's assertions do not support its conclusions. The Project is not responsible for the expected increase of 1,213 AF noted above; this is the City's projection of water demand growth over the next 20 years without the Project. This analysis was performed to evaluate the baseline of City water demands without the Project in order to determine necessary mitigation for the Project. With mitigation, the Project will only require an additional 257 AFY – and that is prior to the Applicant's commitment of 175 AF.

Furthermore, TCCWD does not represent the only available option of water for these neighboring jurisdictions and, in any event, they were required to perform their own analyses of water supply as well and presumably did so. That said, 1,000 vacant lots consuming water at a rate of 1/2 acre-foot per year (an estimate only, as the City's average is closer to 1/3 acre-foot per year), is a new burden of 500 AFY only. Added to the Project's demand of 257 AFY and compared to the District average pumping estimate of 6,407.6 AFY, the additional purported 1,000 lots do not demonstrate that the District has insufficient water.

To provide clarity, the following is a brief cumulative analysis of all of the District's concerns:

1. 20-year water demand increase for the entire City of Tehachapi = 1,213 AF (this includes the mitigated Project per the WSA)
2. 550 entitled but undeveloped lots within the City of Tehachapi =  $550 \times 1/3$  (AF/lot) = 181.5 AF
3. 1000 entitled but undeveloped lots in Golden Hills, Bear Valley, & Stallion Springs =  $1000 \times (1/2)$  (AF/lot) = 500 AF
4. Total = 1,894.5 AFY compared with an average annual supply of 6,407.6 AFY

5. The total impact of all of the District's M&I customers, existing and potential, (including 2.3% growth for the entire City of Tehachapi) drawing water from TCCWD in the next 20 years remains below 1/3 of the water available to the District.
6. Conclusion: water is available.

20. The EIR fails to analyze the consequences of the City's proposal - that TCCWD should meet the City's surging demands while substantially reducing water deliveries to TCCWD's other customers. Even if supplies were available, the City would need to take the water on the surface and treat the water to potable standards. The WSA incorrectly assumes that TCCWD would deliver the water as a recharge.

**Response:** As shown in Response #17 above, the Project requires now only 175 AFY from TCCWD, an amount that is 2.7% of TCCWD's worst-case anticipated supply of water. The Term M&I Agreement recognizes that the City would likely take the needed water via recharge. Recital A.(iv) states that TCCWD may allow recharge water in place of direct delivery. Further, Recital A.(v) provides justification for taking the water as recharge versus taking it as surface supply. The intent of that Agreement is to facilitate the very water transaction envisioned in the WSA and EIR.

21. The WSA states that the "City anticipates that sufficient supplies will be reasonably available for purchase from the TCCWD and will have been previously recharged for recovery during the average, single dry, and multiple dry years." There is no evidence in the record supporting this assumption and the City has not asked TCCWD for its projections of available supply and recharge capacity. (See Updated WSA, July 2021, p. 21.) It is unlikely that TCCWD will have sufficient water available to provide 1,560.5 AFY for the City and meet the requirements of TCCWD's other customers.

**Response:** By TCCWD's own calculations, it acknowledges that it will have sufficient water to meet this demand. Response #13 above notes a reliability of at least 33.2% (unreasonably worst-case scenario in the City's opinion). This equates to over 6,400 AFY in average supply. As such, this is not a matter of available supply but instead a matter of the District's willingness to provide that water to the City of Tehachapi. The District's own Water Priority Ordinance requires the District to meet its M&I customer needs first but TCCWD apparently simply does not want to do so for growth in the City. TCCWD's position is contrary to its obligations as Watermaster and designed to protect non-local farming interests at the expense of local development. This position also is not aligned with the City/District Term M&I Agreement nor with the District's current regulatory policy.

**RESPONSES TO EXHIBIT B – (July 28, 2021 Letter)**

**\*\*Numbering follows letter numbering.\*\***

1. Comment noted, the City was unable to locate the 4/28/20 email correspondence referenced.
2. Comment noted. To the City's knowledge no specific project is recognized in the 2015 RUWMP. The Draft EIR and WSA contain information from the RUWMP; from more recent water use information from the June 2019 *City of Tehachapi – Water and Sewer Systems Modeling, Planning, and Fee Studies Update* prepared by Michael K. Nunley and Associates; and Annual Reports from the Tehachapi Basin Watermaster for calendar years 2016-2020. Other source documents were used to support the analysis and are cited as applicable within the Draft EIR and WSA.
3. No response required.
  - a. The City disagrees. No specific data was provided to dispute the water reduction measures and therefore no specific response can be provided. Please refer to the revised WSA.
  - b. No response required.
    - i. No response required.
      1. Comment noted.
      2. Comment noted. The analysis provided in the revised WSA does not differentiate between projects other than the focus of the study itself, the Sage Ranch Project. The analysis compares water supply and demand, with and without the Project. The analysis includes the entire 238 lot project known as The Address both from a supply and demand standpoint. The City is also working to acquire a few additional water rights (See Response #4) which explains the difference between the WSA's stated value of 1,897 AF and the TCCWD calculated 1,895.3. This discrepancy is minor and does not affect the accuracy or conclusions of the WSA. As acknowledged by TCCWD, the 2015 RUWMP growth rate of 1.1% for the City of Tehachapi is superseded by the more accurate current projected growth rate of 2.3%. See also Response 3(g) for more information regarding the 2.3% growth rate.
  - c. No response required.
    - i. The City disagrees with this comment. The values contained in this report may not be potable water but they do represent water available to offset City of Tehachapi water demands and are therefore appropriately used.

The City disagrees that treated wastewater effluent is considered in the Tehachapi water basin native safe yield, as asserted by the District.

- d. No response required.
  - i. Comment noted. The City has maintained a storage balance of an estimated five-year supply (of banked groundwater in excess of the 1,897 AFY already allocated to the City for pumping).
  - ii. Comment noted.
  - iii. The City disagrees with this assertion. A basic definition of an “evergreen” contract is as follows: An evergreen contract is one that automatically renews after its initial term expires. The parties agree that the contract rolls over automatically and indefinitely until one gives the other notice to terminate it. An evergreen contract is, by definition, designed to operate in perpetuity. It is therefore reasonable to use this contract in preparing the project WSA. Further, Recital A.(i) of the Term M&I Agreement states that it is “District policy to meet the present and future needs of its Term M&I Agreement Customers from the District’s State Water Project (“SWP”) water supply...” This statement is the opening recital in this Agreement and directly states that the purpose of the Agreement is to provide for the City’s “future” water needs.
- e. TCCWD’s 2021 Water Priority Ordinance and all prior ordinances of this nature clearly prioritize M&I demands over other non-M&I demands despite this assertion. By TCCWD’s own admission and statement of policy, Term M&I customers have the “highest” priority for available imported water supply. The WSA does not request that TCCWD “address future demand,” it simply projects, for the sake of the required CEQA analysis, what the City will request from TCCWD in any given year. The Term M&I agreement, however, does clearly speak to the issue of “future demand”. The opening Recital states that the Agreement is formed to fulfill the District’s “policy to meet the present and future needs of its Term M&I Agreement Customers from the District’s State Water Project water supply.” As TCCWD is aware and as contained in the WSA and EIR, TCCWD’s customer here is and would continue to be City of Tehachapi. The City is an existing customer to TCCWD (Term M&I Agreement). Therefore, the impact of this Project would be a background growth in City water needs that the City would satisfy by annually purchasing the necessary quantity of imported water from TCCWD to be recharged into the Tehachapi basin for extraction by the City, pursuant to its contractual rights under the M&I Agreement. There is no direct link in terms of any imported water going to the Project versus being used by any given retail customer of the City’s.
- f. By TCCWD’s analysis provided with this letter, the 25-year average SWP water allocation is 61.04%. This is neither “outdated” nor “used incorrectly”. The City agrees that TCCWD has pumping capacity limitations that affect how much of this

supply can be delivered to this region in one year. The City further acknowledges that a shorter term average yields a lower average SWP projection. This comment fails to acknowledge that TCCWD can and has banked excess water in wet years in the Central Valley to pump up in future dry years. Further, the shorter term averages are incorrectly used by TCCWD to project forward drought conditions that are unlikely to persist in the long-term. Regardless, whichever projection is used, ranging from 33.2% on the low end to 61.0% on the high end, the City's WSA analysis remains unchanged and the conclusions drawn remain accurate and reasonable.

That said, the Project itself is estimated to require 350 AFY in additional water supply to offset the corresponding demand. With the Applicant obligated to bring 93 AF of pumpable water rights to the City, a remaining 257 AFY must be identified – and this was prior to the Applicant's updated commitment to bring 175 AF. This is the quantity of additional water that must be and is identified. Accepting TCCWD's most conservative estimate (which the City questions) of reliable future water supply (33.2% of 19,300 AFY imported water), TCCWD will receive over 6,000 AFY of imported water supply on average going forward. The 257 AF needed for the Project is 4.0% of that supply. When taking into account the Applicant's updated commitment of 175 AFY, it represents only 2.7% of the TCCWD's estimated water supply. Based thereon, the City's conclusions are well supported.

- g. The 2.3% growth rate is based on historical population numbers from 2003 to 2020 which saw an average growth rate of 2.38% in the City over that time period. TCCWD's apparent rejection of this value is not consistent with prior actions, nor is it refuted by credible information. A meeting was held between the City of Tehachapi (Jay Schlosser, Development Director and Don Marsh, Public Works Director) and TCCWD (Tom Neisler, General Manager and Jon Curry, Operations Manager) on November 9, 2020 in the Tehachapi City Hall Annex Conference Room at 2:00 pm. In that meeting, the issue of the City's growing water needs was discussed in detail. TCCWD initially argued that no water would be available for the City for the future. When the City pressed TCCWD on the origin of the TCCWD imported water system and upon the known and acknowledged justification for the TCCWD's existence (which was explicitly formed for the growth in this community), TCCWD agreed that it could support the City's "reasonable" growth needs. When asked to quantify that value, General Manager Neisler informed City Staff that the District would support a 2% growth rate. The City agreed that this value was acceptable and prepared an analysis to quantify this need in detail. That analysis was prepared and conveyed to TCCWD on January 27, 2021. The 2.3% growth rate was included in the analysis of the current WSA. Furthermore, the initial draft of the 2020 Regional Urban Water Management Plan prepared by the District and submitted to the City on July 28,

2021 includes the 2.3% growth rate as the expected growth rate for the City of Tehachapi.

- h. No response needed.
  - i. The City disagrees that the “entire analysis relies on faulty assumptions”.
    1. This statement is incorrect. The WSA analysis projects water demands for the City for a 20-year period. This analysis assumes that the Project represents 75% of the City’s growth in water demand for the next 7 years only. This analysis allows room for other water demands during that 7 year period as well as continuing growth (at 2.3%) for the remaining 13 years of the examined period. The estimate of 500 entitled lots elsewhere in the community would amount to an additional water demand of 165 AFY. Added to the mitigated Project demand of 257 AFY (350 AF-93 AF), results in a total demand of 422 AFY. The 2.3% growth rate projects a change in demand of 1,213 AF over the 20 year period. TCCWD fails to support its stated conclusion that “the entire analysis relies on faulty assumptions”.
    2. The values listed here are annual increases and TCCWD’s conclusion of inadequacy is provided without any supporting evidence or argument.
    3. This statement is provided without any usable context. It is not clear at all what TCCWD means by “gross GPCD” or “net GPCD”. In Table 4-1, the water consumption rates by person are calculated and expressed in acre-feet per year per person as opposed to gallons per capita daily (GPCD). The rates are “gross” in nature both for the “with” and “with-out” Project calculations.
- 4. As TCCWD is aware, the City has procured an additional 2 AF of pumpable water right and has submitted the appropriate transfer paperwork to TCCWD. The City is in the process of obtaining the remaining documents requested by TCCWD. This additional quantity of water brings the City’s 2022 total to 1,897 AF as noted in the WSA analysis. The discrepancy has no meaningful effect on the accuracy or sufficiency of the WSA.
- 5. See Response to comment #1 above. This comment has no meaningful effect on the accuracy or sufficiency of the WSA.
- 6. See Response to comment #3.e above.
- 7. Comment noted.

8. Closing unnumbered comment: The District has failed to quantify how the Project will “negatively impact water supplies for all 40,000 customers within TCCWD.” The City stands by its analysis in the EIR and updated WSA.