

Overview of Stanislaus County Farm Bureau (“Farm Bureau”) Concerns Regarding the Modesto Irrigation District (“MID”)’s Current SFPUC Water Transfer-Related Proposals

As expressed in previous comments to and before the MID board, and in our public communications on the subject to date, Farm Bureau has serious reservations concerning any long-term out-of-basin of water to the San Francisco Public Utility District (“SFPUC”). In addition to the various concerns raised to date, Farm Bureau has specific concerns regarding MID’s latest water transfer proposals as reflected in three recent documents:

1) MID’s June 26, 2012 Revised Draft “Agreement of Modesto Irrigation District and San Francisco Public Utilities Commission for a Firm Long-Term Transfer of 2 mgd of Water Supply”;

2) MID’s June 25, 2012 Draft Resolution “Approving Actions Related to the Transfer of 2 Million Gallons Per Day of Water from the Modesto Irrigation District to the San Francisco Public Utilities Commission”; and

3) MID’s June 26, 2012 Draft Resolution “Directing Staff to Commence Water Supply Assessment and Compliance with CEQA on Proposal to Transfer 25,000 Acre Feet of Water Annually to the San Francisco Public Utilities Commission.”¹

Based on our review of the latest information from MID regarding the proposed water transfers, Farm Bureau has the following concerns at this time:

First, regarding staff’s proposed Draft Resolution and Revised Draft contract for the proposed 2 mgd transfer, we believe that MID has not yet met its minimal obligations as a “responsible agency” with ultimate, discretionary approval authority over the transfer within the meaning of the California Environmental Quality Act (“CEQA”). Due to this failure, MID’s purported reliance on the existing SFPUC analyses to date is inadequate. Until MID has affirmatively met its minimal obligations under CEQA, our current assessment is that to approve the transfer would be illegal.

Second, regarding the larger, proposed 25,000 af/yr. transfer, we believe that to authorize negotiation of potential specifics of a transfer, along with fast-tracked environmental review of the transfer, is premature and at odds with the MID’s fiduciary duty to protect the best interests

¹ In addition to these operative documents, for purposes of these comments, we have also taken into consideration various ancillary and supporting documents including 1) the SFPUC’s October 30, 2008 Final Programmatic Environmental Impact Report “For the San Francisco Public Utilities District’s Water Supply Improvement Program”; 2) the San Francisco Planning Department’s May 8, 2012 “Supplemental Review on 2 mgd Water Transfer from MID to SFPUC,” under the existing 2008 PEIR for the SFPUC’s Water Supply Improvement Program; 3) the SFPUC’s May 9, 2012 “Note to File for [the] Water System Improvement Program Programmatic Environmental Impact Report,” regarding the “2 mgd Water Transfer from MID to SFPUC”; and 4) the April 27, 2012 “Memo” from MID General Manager, Allen Short to the MID Board of Directors, regarding the proposed 2mgd and 25 taf/yr. transfers from MID to the SFPUC, including the “Frequently Asked Questions” document appended as an attachment to that memorandum.

of its customers. This situation will persist *at least* until MID has completed a conscientious “water supply availability” analysis sufficient to show that MID in fact *has* any water that is surplus to the long-term, in-basin needs of MID’s own customers. Any such analysis should be an *independent study* funded by MID, rather than the SFPUC, and should *not* look at any transfer in particular. Instead, it should look in a general way at the broader question of *whether*, and under what different circumstances or scenarios, MID might have *any* water that is surplus to its own customers’ long-term needs.

Only when it has responsibly determined that MID has *any* surplus water supplies, should the board contemplate any subsequent steps relating to any specific water transfer. Moreover, MID’s independent “water supply availability” analysis (and, of course, any subsequent environmental review of a larger transfer) should conservatively consider the potential direct, indirect, and cumulative impacts of relevant factors that may impact MID’s future, in-basin water needs, including at minimum 1) MID’s existing 50-year transfer of 67,200 acre-feet of water to the City of Modesto; (2) the State Water Resources Control Board (“SWRCB”)’s proposed San Joaquin River Instream Flow Standards; (3) potential terms or conditions of New Don Pedro hydropower license renewal through the Federal Energy Regulatory Commission (“FERC”); (4) potential basin-wide impacts of the San Joaquin River Restoration Program; (5) recent major changes in operations of the Central Valley Project and State Water Project, and possible additional changes within the next several years; (6) potential water rights, water quality, and other regulatory changes associated with implementation of the proposed Bay-Delta Conservation Plan; and (7) potential long-term changes in regional hydrology.

Third, as discussed below, Farm Bureau has concerns regarding certain specific provisions of MID’s June 26, 2012 Revised Draft “Agreement of Modesto Irrigation District and San Francisco Public Utilities Commission for a Firm Long-Term Transfer of 2 mgd of Water Supply.” Farm Bureau is particularly concerned that these provisions might, in any way, set an undesirable precedent for a potential larger long-term water transfer. In the context of a larger transfer especially, Farm Bureau is concerned that MID could incur potential liabilities under a larger transfer agreement, including potential third-party contractual liabilities, or that such an agreement could otherwise compromise the district’s ability to meet various existing obligations, including the district’s *primary* obligation to provide reliable water supplies to its own customers. Furthermore, Farm Bureau has specific concerns relating to the draft contract’s current “termination” and “right of first refusal” provisions.

In light of the concerns here outlined and explained in greater detail below, Farm Bureau strongly urges the MID Board and its staff to revisit some of the objectionable features of the current transfer proposals. Our intent in raising these concerns is not to unreasonably foreclose the potential avenues or options by which MID can effectively accomplish the district’s purposes. However, we do ask and *fully expect* that the MID will consider its customers’ present and future needs first and foremost. For the reasons explained herein, the current proposals do not meet this critical and very basic standard.