BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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In the Matter of the Application of Southern California Edison Company (U338-E) for a Certificate of Public Convenience and Necessity Concerning the Tehachapi Renewable Transmission Project (Segments 4 through 11).	Application 07-06-031 (Filed June 29, 2007)

DECLARATION OF JASON M. ACKERMAN IN SUPPORT OF MOTION TO RECONSIDER THE REJECTION OF ANTELOPE VALLEY-EAST KERN WATER AGENCY'S APPLICATION FOR REHEARING

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1. I am an attorney at law, licensed to practice before the courts of the State of California. I practice law at the law firm of Best Best & Krieger LLP, who is general counsel for Antelope Valley-East Kern Water Agency ("AVEK"). I have personal knowledge of the following facts and, if called upon, could competently testify thereto.

2. AVEK is a water agency that was created by the California State Legislature in 1959 to service its approximately 2,300 square-mile service area in portions of Los Angeles, Kern and Ventura counties. Pursuant to its enabling legislation, AVEK is empowered to acquire water works, water rights, and lands, and to maintain and operate pipelines, works and other property useful or necessary to store, convey, and make use of water for the benefit of AVEK and its customers.

3. Tehachapi Renewable Transmission Project, Matter No. A-07-06-031 (the "Project") authorizes the construction of transmission lines across land owned by AVEK that is used for groundwater recharge. I am informed and believe that AVEK became

concerned about the Project because the Project's proponent, Southern California Edison ("SCE"), sought such a restrictive easement across the AVEK property that AVEK would no longer be allowed to perform groundwater recharge activities on large portions of its property.

4. In November 2009, AVEK received a copy of the Project's Final Environmental Impact Report ("Final EIR") and AVEK discovered that the environmental impacts of such a preclusive easement were not analyzed in the Final EIR. Thus, AVEK concluded that it is likely that the California Public Utilities Commission (the "Commission") did not intend to authorize SCE to obtain an easement that precludes AVEK from conducting its groundwater recharge activities. To make the Commission aware of its concerns, AVEK submitted a letter to the Commission on or about November 30, 2009. Attached hereto as Exhibit "A," is what I believe to be a true and correct copy of AVEK's letter to the Commission.

5. On or about December 3, 2009, AVEK representative Russell Fuller appeared at the Commission's hearing and explained AVEK's concerns to the Commission. Mr. Fuller advised the Commission that AVEK had also submitted written comments. The Commission continued the hearing to December 17, 2009.

6. On or about December 17, 2009, Mr. Fuller returned to the Commission to appear at its hearing and further participate in the Commission's process. Mr. Fuller provided additional oral testimony to the Commission concerning AVEK, the Project, and AVEK's concern about how SCE sought to implement the Project across the AVEK property.

7. I am informed and believe that the Commission approved the Project on, or about, December 17, 2009.

8. On or about January 5, 2010, I contacted Commission staff attorney Laurence Chaset related to AVEK's concerns about the Project. I advised Mr. Chaset

that if AVEK and SCE could not negotiate a less restrictive easement that allowed AVEK to perform its statutory duties on the property, then AVEK would have no choice but to seek rehearing and proceed toward litigation. The question of whether AVEK was a party to the proceeding arose during the conversation and Mr. Chaset advised that even if it were not a party to the proceedings, it could become a party by filing a motion for party status concurrently with filing an application for rehearing.

9. On or about January 12, 2010, Mr. Chaset graciously scheduled a meeting with SCE representatives. The meeting was scheduled for January 19, 2010 in the Commission's San Francisco office.

10. On January 19, 2010, Mr. Fuller and I traveled to San Francisco to meet with Mr. Chaset and SCE representatives. Mr. John Boccio was also in attendance. During the meeting, Mr. Chaset did a commendable job facilitating the discussion with SCE and a good deal of headway was made by the parties. However, given the technical complexity of the issues a final settlement agreement could not be reached and authorized by AVEK's Board of Directors before the limitations period for requesting rehearing expired. Consequently, AVEK agreed to file its application for rehearing but to continue to negotiate in good faith.

11. On January 25, 2010, even though AVEK believes it was a party since November 2009, AVEK filed its Motion for Party Status concurrently with its Application for Rehearing. The Motion for Party Status was deemed filed on January 25, 2010. The Application for Rehearing, attached hereto as Exhibit "B" was rejected by the Commission's Docketing Department.

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this Declaration was executed this 29th day of January 2010 at Riverside, California.

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EXHIBIT A

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ANTELOPE VALLEY-EAST KERN WATER AGENCY
AVEK
ESTABLISHED 1959

A PUBLIC AGENCY

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General Manager

MARILYN L. METTLER
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November 30, 2009

John Boccio
CPUC
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Re: Final Environmental Impact Report for the Tehachapi Renewable Transmission Project

Gentlemen:

On October 30, 2009, the California Public Utilities Commission (the "Commission") released a Final Environmental Impact Report for the Tehachapi Renewable Energy Transmission Project ("EIR"). Antelope Valley-East Kern Water Agency ("AVEK") has reviewed the EIR and is concerned that, in several important respects, the environmental impacts caused by the Tehachapi Renewable Transmission Project ("TRTP") have not been fully analyzed as required by the California Environmental Quality Act, California Public Resources Code, section 21000 et seq. ("CEQA") and the California Code of Regulations, title 14, section 15000 et seq. ("State CEQA Guidelines"). As you are aware, the purpose of an Environmental Impact Report is to inform the public and responsible officials of the environmental consequences of their decisions before they are made. (*Laurel Heights Improvement Association v. Regents of the University of California* (1993) 6 Cal.4th 1112, 1123.) To this end, an EIR must be a detailed statement, prepared in compliance with CEQA, that describes and analyzes all significant effects on the environment of a proposed project, and it must discuss ways of mitigating or avoiding those effects. (Pub. Res. Code, §21100; State CEQA Guidelines, § 15362.) The EIR prepared for the TRTP fails to satisfy these requirements in several respects.

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1. *AVEK is a wholesale water purveyor that, among other things, distributes water to water retailers within its service area so that its customers do not completely deplete groundwater supplies.*

AVEK was created by the California State Legislature in 1959. Its service area consists of approximately 2,300 square miles. Pursuant to its enabling legislation, AVEK is empowered to acquire waterworks, water rights, and lands, and to maintain and operate pipelines, works, and other property useful or necessary to store, convey, and make use of water for the benefit of AVEK and its customers. AVEK historically has delivered to its customers imported water from the State Water Project pursuant to a policy designed to preserve and replenish the groundwater supply within AVEK's boundaries. However, AVEK's customers have only taken a small portion of its State Water Project contract amount because it has not had the facilities in place to store all of the water its contract allows AVEK to take. Since 1972, acting as a water wholesaler AVEK has delivered imported water to its customers in lieu of the groundwater which would have been pumped if the imported supply had not been available. AVEK's customers include among others the following:

1. Los Angeles County Water Works District No. 40 (approx. 45,000 afa)
2. Quartz Hill Water District (approx. 7,000 afa)
3. City of California City (approx. 1,500 afa)
4. Rio Tinto (formerly U.S. Borax) (approx. 2,000 afa)
5. Florida Power and Light (approx. 2,000 afa)
6. Rosamond Community Services District (approx. 1,500 afa)
7. Edwards Air Force Base (approx. 2,000 afa)

If AVEK did not supply imported water to these and other customers, they would most certainly draw from groundwater supplies that are already in a state of perpetual overdraft.

2. *AVEK has sought to protect groundwater supplies within its service area by developing a water bank and storage facility.*

In order to better serve its customers and to provide protections to groundwater supplies within its service area, AVEK completed environmental review and undertook implementation of the WSSP-2 Groundwater Recharge Project ("Project") in 2008. The purpose of the Project is to allow AVEK's customers to exercise the Agency's full State Water Project contractual right by storing water for later use. One important purpose of the Project is to avoid substantial water rationing during a critical drought, or when there are emergencies or regulatory reductions in the California Department of Water Resources' ability to deliver imported water supplies. In short, the Project is designed to allow AVEK's customers to take water when it is available and maintain consistent deliveries when it is unavailable.

The Project consists of recharge facilities located on approximately 1,500 acres within AVEK's service area. The recharge area is intersected by Southern California Edison power lines. (Exhibit "A" [depicted in purple].) The area is more generally described as being located within Segment 4 of the TRTP. (Exhibit "B" [depicted in blue].) The TRTP will have adverse environmental impacts on AVEK's recharge operations because, as discussed below, it imposes restrictions on recharge operations which have not been analyzed in the EIR.

3. *The EIR fails to analyze how the TRTP adversely impacts groundwater supplies.*

The TRTP fails to analyze groundwater impacts because it does not analyze how the acquisition of rights of way and implementation of the TRTP substantially and adversely impact AVEK's groundwater recharge activities. Segment 4 of the TRTP consists of two new transmission lines, each requiring a new 200-foot wide Right of Way to be acquired by Southern California Edison ("SCE"). (EIR, 2.2.4, p. 2-8.) The new transmission lines will be installed immediately to the west of the existing SCE right of way. (EIR, 2.2.4.1, p. 2-9; see also, Exhibit "A.") According to the form of easement document presented to AVEK by SCE, operation of a groundwater recharge and banking facility is not a permissively reserved right. (Exhibit "C", p.2 [Grantee reserves the following rights: (1) underground water pipelines; (2) farming rights; and (3) road access, under certain circumstances].) Indeed, SCE has indicated under threat of condemnation litigation that it will not allow percolation ponds under its transmission lines, even though SCE has allowed this use to occur throughout Southern California, including at Kern Water Bank Authority in Kern County. Thus, it appears that AVEK would be precluded from conducting recharge activities in its best recharge locations. The environmental impacts associated with this preclusion have not been analyzed in the EIR.

4. *The EIR fails to establish an appropriate baseline from which to measure impacts to groundwater supplies.*

In order for an EIR to properly inform decision-makers, relevant public agencies, and the public of the project's potential impacts, it must properly describe the existing environmental conditions of the project site. (See *Stanislaus Natural Heritage Project v. County of Stanislaus* (1996) 48 Cal.App.4th 182, 195; see also *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (2004) 27 Cal.App.4th 712, 729.) By failing to discuss the nature and extent of overdraft within AVEK's service area, in which a large portion of the TRTP is located, the EIR fails to establish an appropriate baseline by which many environmental impacts can be measured. By way of example, a substantial amount of ground subsidence has already occurred within the City of Lancaster, the City of Palmdale and Edwards Air Force Base, all of which receive water supplied by AVEK, due to depletion of the groundwater. Given the substantial restriction on recharge caused by the TRTP, it is likely that subsidence will continue to occur if these and other entities cannot store their imported water supply for consistent delivery to their customers during episodes of drought and when supplies are otherwise constrained. Indeed, if AVEK's customers cannot meet their import water supply demands, they will likely resort to drawing from groundwater supplies that are already severely depleted. The extent of this environmental impact is masked because the EIR fails to adequately establish the state of existing groundwater conditions. The EIR also fails to analyze how the conditions will likely be exacerbated by implementation of the TRTP.

5. *To the extent that the TRTP goes forward, the EIR must first be revised and recirculated for public review and comment to address the issues identified above.*

A lead agency must recirculate an EIR for further public comment when the following occurs:

1. When new information shows that a new, substantial environmental impact will result either from the project or from a mitigation measure;
2. When new information shows a substantial increase in the severity of an environmental impact, except that recirculation would not be required if mitigation that reduces the impact to insignificance is adopted;
3. When new information shows a feasible alternative or mitigation measure that would clearly lessen the environmental impacts of a project and the project proponent declines to adopt the mitigation; or
4. When the daft EIR was so fundamentally and basically inadequate and conclusory in nature that public comment on the draft EIR was essentially meaningless.

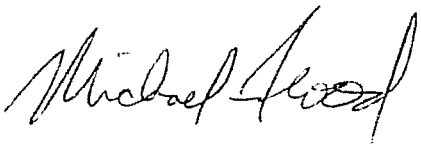
(State CEQA Guidelines, § 15088.5.)

In view of the deficiencies identified above, the EIR must be redrafted and recirculated. (See, e.g., *Laurel Heights Improvement Association v. Regents of the University of California* (1993) 6 Cal.4th 1112, 1129.) The deficiencies in the document as they relate to (1) a failure to analyze the TRTP's impacts on groundwater supplies, and (2) the failure to establish an appropriate environmental baseline, demonstrate that additional analysis and mitigation is required.

6. *Conclusion.*

As discussed herein, the EIR is flawed and violates CEQA in that it fails to disclose and analyze many significant impacts of the TRTP. Thus, the EIR fails to fulfill its function as an informational and decision-making document and it must be revised before the Project can move forward.

Thank you for your time and consideration.



Michael Flood

Interim General Manager, Antelope Valley East-Kern Water Agency

EXHIBIT 'A'

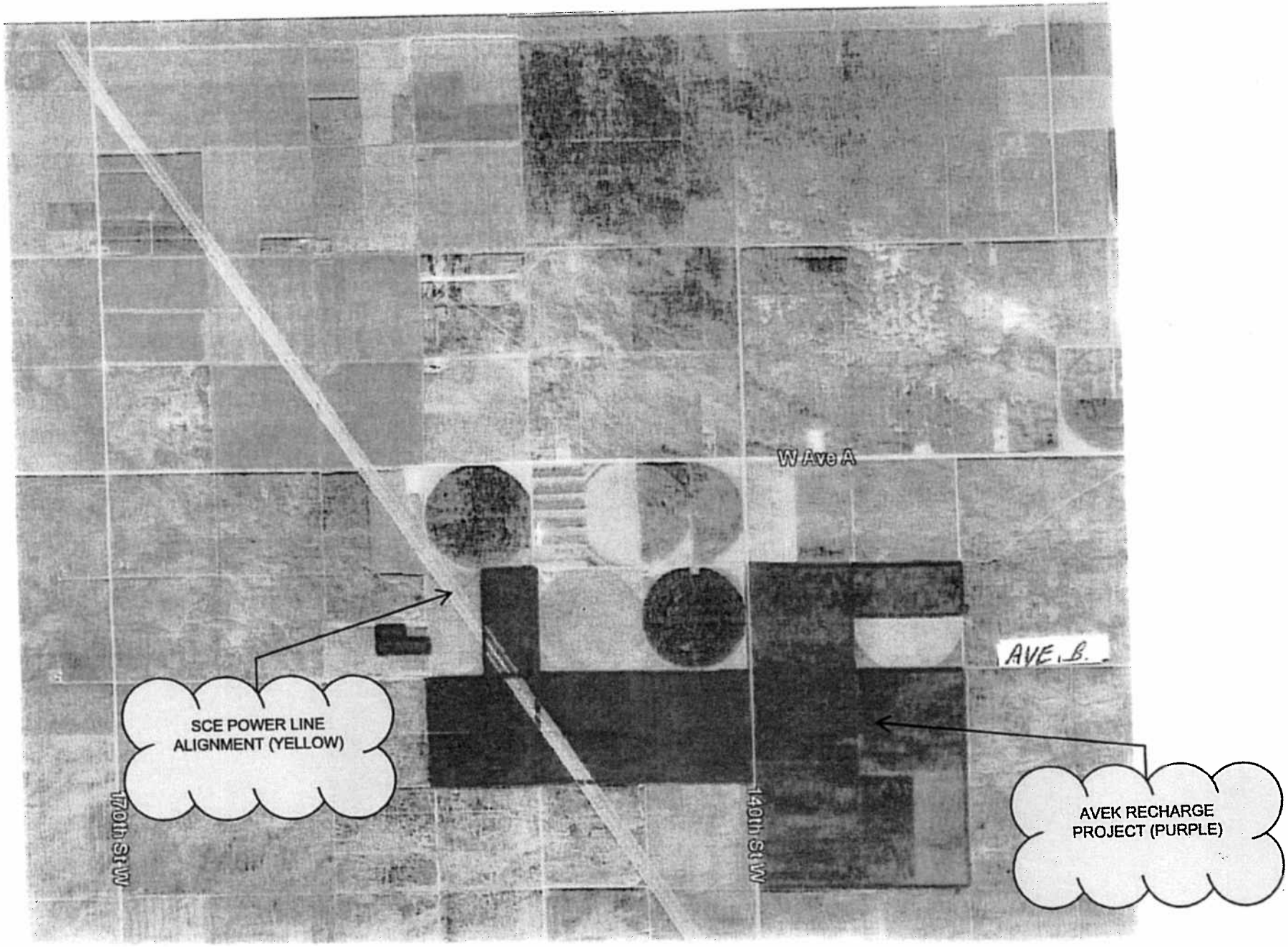

W Ave A
AVE. B.
SCE POWER LINE
ALIGNMENT (YELLOW)
170th St W
140th St W
AVEK RECHARGE
PROJECT (PURPLE)

EXHIBIT B

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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ANTELOPE VALLEY-EAST KERN WATER AGENCY'S APPLICATION FOR REHEARING

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ANTELOPE VALLEY-EAST KERN WATER AGENCY'S APPLICATION FOR REHEARING

Pursuant to California Public Utilities Commission Rules of Practice and Procedure, Article 16, Antelope Valley-East Kern Water Agency ("AVEK") respectfully applies for rehearing of the decision of the California Public Utilities Commission (the "Commission"), made December 17, 2009, related to the Tehachapi Renewable Transmission Project (the "TRTP"). At the December 17, 2009 hearing, the Commission tentatively approved the TRTP, granting its Certificate of Public Convenience and Necessity and certifying its Final Environmental Impact Report ("TRTP EIR"), pending the preparation of concurrence letters by several Commissioners. Oral argument is requested because of the complexity of the legal issues and the public importance of the Commission's decision. Moreover, AVEK requests oral argument because in responding to comments previously submitted by AVEK, Southern California Edison ("SCE") has misconstrued the relationship between itself and AVEK, and AVEK should be afforded

the opportunity to present a fair and balanced portrayal of the issues omitted from analysis in the Project EIR.[1]

This application is submitted concurrently with AVEK's Motion to Become a Party to the Proceedings.

1. Factual Background

Since 1972, AVEK has acted as a water wholesaler by delivering imported water to its customers in lieu of the groundwater which would have been pumped if the imported supply had not been available.[2] In order to better serve its customers and to provide protections to groundwater supplies within its service area, AVEK completed environmental review and undertook implementation of the WSSP-2 Groundwater Recharge Project (the "Recharge Project"). The Recharge Project consists of facilities located on approximately 1,500 acres within AVEK's service area. The Recharge Project's banking property is intersected by existing SCE power lines and the TRTP proposes the construction of new transmission lines across the property. Despite SCE's contention that the banking property is nothing more than alfalfa fields, AVEK has banked water on the property and anticipates banking significantly more water in the future.

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[1] On January 19, 2009, AVEK met with Commission Staff Members Laurence Chaset and John Boccio and several representatives from SCE to discuss potential resolution of AVEK's concerns. If the parties are able to resolve AVEK's concerns by way of agreement, AVEK will withdraw this request.

[2] On November 30, 2009, AVEK submitted a comment letter to the Commission related to the Project, which is attached hereto and Exhibit A and incorporated by reference.

While AVEK received the notice of the TRTP, the notice did not indicate that SCE would seek to reduce or eliminate water banking activities of the Recharge Project. SCE has now made it clear that it wishes to eliminate water banking within the existing and proposed easement areas. SCE's position is contrary to the rights and obligations established in the existing easement and is inconsistent with its past practices related to other water recharge facilities.

AVEK does not object to the production and transmission of renewable energy and the policies which support such power generation. However, if the Commission, by virtue of its approval of the TRTP, authorizes SCE to prohibit AVEK from engaging in water conservation and banking activities --purposes for which AVEK was statutorily created-- then the Commission must, at the very least, balance the competing water conservation and supply policies impacted by such a decision and analyze in the TRTP EIR the environmental impacts of authorizing such restrictive easements.

2. <u>Legal Authority</u>

The purpose of an Environmental Impact Report is to inform the public and responsible officials of the environmental consequences of their decisions before they are made. (*Laurel Heights Improvement Association v. Regents of the University of California* (1993) 6 Cal.4th 1112, 1123.) To this end, an EIR must be a detailed statement, prepared in compliance with CEQA, that describes and analyzes all significant effects on the environment of a proposed project, and it must discuss ways of mitigating

or avoiding those effects. (Pub. Res. Code, §21100; State CEQA Guidelines, § 15362.) The TRTP EIR fails to analyze groundwater and water supply impacts within the TRTP project area.

Moreover, in order for an EIR to properly inform decision-makers, relevant public agencies, and the public of the project's potential impacts, it must properly describe the existing environmental conditions of the project site. (See *Stanislaus Natural Heritage Project v. County of Stanislaus* (1996) 48 Cal.App.4th 182, 195; see also *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (2004) 27 Cal.App.4th 712, 729.) Additionally, by failing to discuss the nature and extent of overdraft within AVEK's service area, the EIR fails to establish an appropriate baseline by which many environmental impacts can be measured. (See Cal. Code Regs. tit. 14, § 15125(a); *Friends of the Eel River v. Sonoma County Water Agency* (2003) 108 Cal.App.4th 859, 874; *Save Our Peninsula Comm. v. Monterey County Bd. of Supervisors* (2001) 87 Cal.App.4th 99, 120-121; *County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931, 952.)

The deficiencies in the document as they relate to (1) a failure to analyze the TRTP's impacts on groundwater supplies, (2) the failure to described the existing environmental conditions of the project, and (3) the failure to establish an appropriate environmental baseline, demonstrate that additional analysis and mitigation is required.

3. Conclusion

If it is the Commission's intent to authorize SCE to construct the TRTP in such a way that precludes AVEK from undertaking water recharge activities within the TRTP project area, then rehearing should be granted to allow for a more complete discussion of California water policy and the defects that accompany the TRTP EIR.

Respectfully submitted,

Dated: January 25, 2010

By: MICHAEL T. RIDDELL

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CERTIFICATE OF SERVICE
A. 07-06-031

I hereby certify that I have this day served a copy of "ANTELOPE VALLEY-EAST KERN WATER AGENCY'S APPLICATION FOR REHEARING" on all known parties to **Application 07-06-031** by using the following service:

[X] **E-Mail Service:** sending the entire document as an attachment to all known parties of record who provided electronic mail address.

mpo@cpuc.ca.gov; dbp@cpuc.ca.gov; dsh@cpuc.ca.gov; gxh@cpuc.ca.gov; jbx@cpuc.ca.gov; lau@cpuc.ca.gov; rmm@cpuc.ca.gov; sjl@cpuc.ca.gov; tbo@cpuc.ca.gov; vsk@cpuc.ca.gov;

[X] **U.S. Mail Service:** mailing by first-class mail with postage prepaid to all known parties of record who did not provide electronic mail addresses.

Executed this 25 day of January, 2010, in Riverside, California.

Frances A. White

FRANCES A. WHITE

PROOF OF SERVICE A. 07-06-031

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CERTIFICATE OF SERVICE

A. 07-06-031

I hereby certify that I have this day served a copy of "**DECLARATION OF JASON M. ACKERMAN IN SUPPORT OF MOTION TO RECONSIDER THE REJECTION OF ANTELOPE VALLEY-EAST KERN WATER AGENCY'S APPLICATION FOR REHEARING**" on all known parties to **Application 07-06-031** by using the following service:

[X] **E-Mail Service:** sending the entire document as an attachment to all known parties of record who provided electronic mail address.

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[X] **U.S. Mail Service:** mailing by first-class mail with postage prepaid to all known parties of record who did not provide electronic mail addresses.

Executed this 29th day of January, 2010, in Riverside, California.

Tammy L Valverde

TAMMY L. VALVERDE

PROOF OF SERVICE A. 07-06-031

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