



SIERRA  
CLUB  
FOUNDED 1892

P.O.Box522 Mendocino, CA 95460

Mendocino Group, Redwood Chapter

13 February 2009

Mendocino County Board of Supervisors

Low Gap Road

Ukiah, CA

Re: Final EIR and General Plan

A Different Approach on the Water Sections

Members of the Board;

We are enclosing three comment letters that address the water sections of the Draft Environmental Impact Report. We urge the Board to take a careful look at what is being proposed by the Planning Group and their professional consultant. These comment letters from the Sierra Club, our attorney, and the Mendocino County Water Agency concur on the gross inadequacy of the draft water sections of the EIR and General Plan. A review of the comment listings shows that agencies such as the Department of Fish and Game and the Regional Water Control Board share our critical evaluation of the draft documents regarding water resources.

Based on our experiences over the last three years, we do not expect the final EIR and General Plan (now due out on the 26<sup>th</sup>) to be meaningfully different from the inadequate draft presented. Those who have created the draft documents do not seem to have the understanding or motivation to create:

- An accurate description of the present degraded conditions of our water resources, or
- A comprehensive identification of the environmental issues, or
- A detailed plan to fix the problems.

Attorney Paul Carroll states:

*The general plan and its EIR are expected to comprehensively analyze the availability of water to the environment and the*

*potential adverse effects of its depletion. This obligation includes identifying future water sources and analyzing the impacts of their procurement. Under these criteria, the County's updated General Plan/Draft EIR is a failure. Among its deficiencies, it fails to address the greatest threat to the County's rivers and streams, namely the depletion of streamflows from diversions, many illegal; it fails to consider the availability of groundwater in connection with the demands of future development; it proposes to address water quality impacts with mitigations that do not apply to the problem at hand or that will apply for years to come; it eliminates mitigations deemed necessary by the current General Plan, such as a riparian protection/grading ordinance; and it evidences a fundamental misunderstanding regarding cumulative impacts, positing that they can be readily controlled by project-level permits and best management practices.*

The Mendocino Water Agency comment letter raises six pages of material deficiencies and questions such as:

*Why does this EIR not discuss the effects that lack of a Grading Ordinance for the last 25 years has had on water quality and riparian corridor conditions?*

*Why does this EIR not require the adoption of a Grading Ordinance as a mitigation measure?*

*How do policies provide mitigation when they do not have implementation measures, state what department is responsible, or have a timeline?*

*Since the EIR correctly points out that the County currently has no codes or ordinances that provide mitigation for construction activities and none are proposed in the EIR, how is the EIR conclusion that no mitigation measures are required justified?*

*How does policy language that involves "promoting", and "supporting" result in implementation sufficient to justify the EIR conclusion that no mitigation is necessary for development impacts?*

*The EIR states that "lack of current knowledge...impacts are considered **significant and unavoidable**". The mitigation measures are listed as "none available". Is not a reduction in the development patterns that would affect groundwater supplies, a mitigation measure?*

The Sierra Club comment letter raises water issues missed or avoided in the EIR such as illegal diversions:

*The Division of Water Rights has the opportunity to consider the environmental effects of applications for diversion prior to any taking or the construction of storage facilities by the applicant. However, the current situation is that growers have built dams onstream and later applied for their permit. The result is an administrative logjam of noncompliant diversion dams. This results in a very significant illegal taking of water with environmental effects to water supply and water quality that is not been addressed in the DEIR. The county has a legitimate interest in regulating construction of these projects and an obligation to limit the adverse environmental consequences. These diversions, being taken without right of law, diminish the opportunity for other development by those who would comply with water rights laws and county building codes.*

*While the DEIR acknowledges the problem of illegal construction of dams, it dismisses the issue without further examination or response in the document. At page 4.8-2 it states:*

*"...there are many illegal diversions and impoundments of surface water occurring in the unincorporated area of the county; however, the amount of water being diverted and the extent of diversions countywide are currently unknown."*

*Planning was provided with the AB 2121 survey, which has identified the number and location of 496 unauthorized dams in the county and the DWR investigation of the Navarro River. The information is available. We know that when water quantity is diminished, water quality is degraded. The language of the DEIR above appears indifferent to the theft of this major resource.*

And marijuana cultivation (page 11) not mentioned at all in the EIR:

*The Mendocino County Sheriffs Department Statistical Report for 2007 at page 11 shows that the department has dealt with 300 to 400 marijuana sites each year for the last ten years. Each of these sites has taken water from local streams to grow their crop. Of course these records do not include the plots that were not detected. The damage from these sites is usually in more remote tributary streams where spawning takes place. All of this water is taken in the spring and summer months most critical to the impaired fisheries.*

*The report also shows the number of plants destroyed for each of the last ten years. It shows a major increase from 2004 to 2007 of 365%. The representative of the US Forest Service responsible for the Mendocino Forest reported that this trend is due to much larger sites manned continuously primarily by foreign nationals. The environmental damage at these sites is extreme due to the fuel oil, fertilizers and waste from the continuous habitation getting into the rivers and riparian areas.*

*The Department of Fish and Game in their draft report on Outlet Creek, a tributary of the Eel River in Mendocino County, cite the following:*

- Decreases in the salmon populations and reduced habitat quantity and quality have occurred.*
- Extensive legal and illegal water extraction and diversion occurs throughout this sub basin*
- Most of the water extraction is for illegal marijuana cultivation, which occurs during the summer and fall months, when natural flows are at the lowest point and crucial for the survival of juvenile salmonids.*
- During low flow periods, this section of Outlet Creek may be polluted by nutrients, bacteria, and sewage from upstream conditions*

*This is a significant environmental impact that is not mentioned nor addressed in any way in the current DEIR or DGPU. The Draft General Plan's section on Law Enforcement, page 3.0-45, does not mention this well-known community problem. We cannot continue to ignore this*

*problem in our CEQA review. This issue also requires policies and action items in the DEIR and Draft General Plan.*

We ask that you consider the formation of a small water group headed by the Mendocino County Water Agency to pull together all the scattered water-related issues into a single Water Section advocated by Board members during the comment period. The group would be assigned the task of revising the section to reflect the actual conditions of our watersheds and water resources, and to address environmental impacts requiring CEQA compliance and the measures needed to address them. We believe this would be the most expeditious way of drafting a good water element for the General Plan and a defensible EIR.

We would welcome the opportunity to contribute in such an effort should you choose to proceed in that direction.

To spend over three years on this project and then put out a document that fails to comply with the basic environmental protections of CEQA is unacceptable and will not stand.

Yours,

Daniel Myers for  
The Mendocino Group of the Sierra Club

Attachments as shown above

CC Paul Carroll  
Mendocino Water Agency