In sum, the DEIR's analysis of the Project's impacts on sensitive habitats does not come close to meeting CEQA's standards because it lacks the required evidentiary basis for its conclusions. The EIR must be revised to remedy this failure. 09-73

**(ii) The DEIR's Analysis Of Impacts On The Endangered Sierra Nevada Yellow-Legged Frog And Its Habitat Is Inadequate.**

The Project site is within known habitat of the Sierra Nevada yellow-legged frog, which is listed as endangered under the federal Endangered Species Act. In fact, the DEIR discloses that the Project's construction may kill or injure individual frogs and result in the loss of its habitat. DEIR 6-51. However, the DEIR fails to adequately analyze this impact because it does not quantify the amount of habitat that would be lost. *See id.* And indeed, the habitat that has the potential to be lost due to the Project falls within proposed critical habitat for the frog. *See* Exhibit 3 at 2. The DEIR must quantify the amount of proposed critical habitat that the Project would impact.

The DEIR further asserts that the Project's operation will have no significant impact on the frog. This is wrong. The DEIR can only reach this conclusion because it completely fails to analyze any of the Project's indirect impacts, including habitat loss and fragmentation, groundwater drawdown, and changes in water quality. Exhibit 3 at 2. Indeed, reduction of ecosystem connectivity could have a significant impact on this endangered species' genetic diversity and long-term survival. *Id.* Instead, all the DEIR considers with regard to operational impacts on the frog's habitat is the groundwater drawdown's impact on creek pool volume (and, as has been shown in this letter, the modelling on which all of the DEIR's groundwater-related impacts rely is fatally flawed, so even this shred of analysis is entirely deficient). DEIR at 6-52. 09-74

In an attempt to support its conclusion that the Project's operation will have a less than significant impact on the frog and its habitat, the DEIR claims that "restoration of Squaw Creek would likely increase the quality of potential dispersal habitat for the [frog]." DEIR at 6-52. However, throughout the DEIR, it is recognized that the creek restoration project may or may not offset loss of riparian habitat. In short, the DEIR preparers have no idea if the creek restoration is even going to work. *See, e.g.*, DEIR at 6-55, 6-67. The DEIR cannot claim otherwise here, where it suits its purposes.

The revised EIR must thoroughly analyze and mitigate the Project's impacts on the Sierra Nevada yellow-legged frog, including its loss of habitat.

**(iii) The DEIR Fails To Adequately Analyze A Number Of Other Impacts On Biological Resources.**

The DEIR lacks evidentiary support for its conclusion that impacts on Sierra Nevada mountain beaver (at 6-58), Sierra Nevada snowshoe hare (at 6-60), and mule deer (at 6-65) would be less than significant. The DEIR asserts that the species' habitat is not likely to be affected by groundwater drawdown and that creek restoration might enhance their habitat. As discussed previously, the DEIR and the WSA analyses are flawed and likely underestimate the Project's impacts on groundwater levels, and there is no evidence that the creek restoration will actually succeed. Consequently, there is a strong likelihood that the Project's impacts on these species would be significant. 09-75

The DEIR also fails to adequately evaluate impacts to special-status plants because, as the DEIR readily admits, "[r]are plant surveys were not yet completed for the western portion of the Village Core Area and the proposed sewer line corridor." DEIR at 6-66. "Thus," the DEIR continues, "conclusions cannot be drawn with regard to presences of rare plants in unsurveyed areas." *Id.* The DEIR provides no explanation of why these surveys have not been completed. This omission violates CEQA. *See, e.g., San Joaquin Raptor Rescue Ctr.*, 149 Cal.App.4th at 669-71 (deferred analysis allowed only if there is a reason or basis for the deferral). 09-76

Next, the DEIR's assessment of the impacts of additional trail construction is completely inadequate—in fact, it does not exist at all. The DEIR does not identify the likely locations of any of the trails. *See* DEIR at 6-75. It is our understanding that some, if not many, of these trails would be on Forest Service land and could impact the Granite Chief Wilderness Area. Yet, the whole of the DEIR's "analysis" of the impacts is the vague statement that "[t]rail construction and operation could result in the same environmental effects described above." *Id.* Then, as purported mitigation, the DEIR directs that "[a] qualified biologist shall survey trail routes . . . to determine the biological resources present and the impacts" on those resources, and then "the biologist shall identify mitigation measures" applicable to the trail routes. *Id.* Even if the trail locations are not yet set in stone, the DEIR must disclose as much information about likely trail location and impacts as is possible or explain why it cannot. The so-called "analysis" in the DEIR here completely flouts CEQA's requirement that an EIR analyze a project's impacts and prescribe adequate mitigation. The DEIR cannot defer its assessment of important environmental impacts until after the Project is approved. *See Sundstrom*, 202 Cal.App.3d at 306-07. To do so wholly undermines the DEIR's purpose as an informational document. 09-77

The DEIR also fails to adequately discuss the impacts of water quality degradation during construction. The DEIR states that if best management practices ("BMPs") are followed, impacts to water quality during construction would be minimized. DEIR at 6-75. But if construction activities stray at all from the BMPs, impacts could be significant, including impacts from increased sedimentation and spills of hazardous materials. DEIR at 6-75, 76. These impacts are potentially significant, especially in a sensitive environment like Squaw Creek. To conclude that the Project's impacts on Squaw Creek are less than significant, the DEIR must describe the BMPs and provide evidence of their effectiveness. *See* Exhibit 1 at 8. 09-78

Impact 6-13 regarding long-term impacts on fish and aquatic species from groundwater extraction acknowledges—importantly—that if the Project's wellfield is not configured and operated as planned in the WSA, the Project would have potentially significant, long-term impacts on groundwater supply, including longer and more frequent drying periods in Squaw Creek. DEIR at 6-79. This, in turn, could have a grave effect on the area's sensitive habitats and the species that rely on those habitats. As discussed previously, the wellfield actually will *not* be configured and operated as modelled for the WSA because the modeling assumes more wells in existence than the WSA expects would actually be required. Exhibit 1 at 8-9, 16. To accurately predict impacts relating to groundwater extraction—and to the species that rely on groundwater—the DEIR must analyze the impacts of groundwater drawdown based on the number of wells actually anticipated to be built. 09-79

Finally, as discussed above in Section I.B.1. and in Dr. Myers' Report, the DEIR grossly overestimates the groundwater availability in the Project area and underestimates the water demands of the Project. This problem alone renders the DEIR's analysis of the Project's impacts on biological resources from changes in water availability and quality inaccurate. Due to these serious deficiencies in the DEIR's discussion of the Project's impacts, the DEIR must be revised and recirculated. 09-80

**(c) The DEIR Fails to Provide Adequate Mitigation for the Project's Significant Impacts to Biological Resources.**

CEQA requires that a lead agency adopt all feasible mitigation measures that can substantially lessen the project's significant impacts, and it must ensure that these measures are "fully enforceable" through permit conditions, agreements, or other legally binding instruments. Pub. Res. Code § 21002; Guidelines § 15002(a)(3), 15126.4(a)(2); *City of Marina v. Bd. of Trustees of the Cal. State Univ.* (2006) 39 Cal.4th 341, 359, 368-69. The requirement for enforceability ensures "that feasible mitigation measures will 09-81

actually be implemented as a condition of development, and not merely adopted and then neglected or disregarded." *Federation of Hillside and Canyon Ass'ns. v. City of Los Angeles* (2000) 83 Cal.App.4th 1252, 1261 (italics omitted); Guidelines § 15126.4(a)(2). Here, the DEIR fails to satisfy these clear requirements. 09-81 cont.

**(i) The DEIR Identifies No Mitigation For The Project's Significant Impacts On Sierra Nevada Yellow-Legged Frog Habitat.**

As discussed previously, the DEIR fails to provide any mitigation for the Project's significant impacts on the endangered Sierra Nevada yellow-legged frog's habitat. The mitigation measure for this impact, Measure 6-2, concerns *only* avoiding frog injury or mortality. *See* DEIR at 6-53 – 6-54. It does not provide any mitigation for habitat loss. This violates CEQA, which requires an EIR to prescribe mitigation for *all* of a project's significant impacts. CEQA Guidelines §15126.4. 09-82

**(ii) The DEIR Improperly Defers Mitigation And Relies On Mitigation Measures That Are Vague Or Unenforceable.**

Many of the DEIR's mitigation measures that are intended to address the Project's impacts on biological resources are excessively vague, unenforceable, unnecessarily deferred, and lacking performance criteria. For example, Mitigation Measure 6-1a states that "[t]his project plans to construct all or a portion of replacement wetlands onsite." DEIR at 6-47. But the DEIR does not describe what habitat would be replaced, what mitigation wetlands would look like, whether the proposed Project hydrology would support wetland replacement, whether supplemental irrigation would be required, and what demands supplemental irrigation might have on groundwater. *See* Exhibit 2 at 10-11. Without these critical details, the DEIR lacks the evidence to support its conclusion that impacts to wetlands would be mitigated to a less than significant level. 09-83

Measure 6-1a further requires the Project applicant to prepare a Mitigation and Monitoring Implementation Program ("MMIP") for various mitigation measures, but fails to provide specific criteria and standards by which the effectiveness of the mitigation would be measured. *See* DEIR at 6-47. Without such detail, this measure is unenforceable. Mitigation Measures 6-8 (DEIR at 6-68 – 6-69) and 6-12 (DEIR at 6-77) likewise fail to provide the required level of detail for future development of an MMIP.

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Mitigation Measure 6-3 is too vague with regard to avoiding loss of yellow warbler and olive-sided flycatcher nests during construction. The measure provides that if a nest is found before construction, "modifications to the project design to avoid removal of occupied habitat while still achieving project objectives shall be evaluated, and implemented to the extent feasible." DEIR at 6-56. If such modifications are not feasible or in conflict with project objectives, "appropriate buffers . . . and limiting operating periods will be established." DEIR at 6-57. The measure does not ensure that the impact would be mitigated because it fails to set specific criteria, such as describing what, exactly, an "appropriate buffer" is. Measure 6-3 also relies on Mitigation Measures 6-1a, 6-1c, and 13-4, which are significantly flawed as discussed in this letter. 09-84

Measures 6-4 and 6-5 do not adequately mitigate for construction impacts on the Sierra Nevada mountain beaver and snowshoe hare because the measures provide only that "buffers *may* be established" if a burrow or reproductive site in a construction area is occupied. DEIR at 6-58, 6-60 (emphasis added). Allowing optional or discretionary mitigation does not ensure that the mitigation is enforceable and the that impact will be avoided. *See Woodward Park Homeowners Ass'n., Inc. v. City of Fresno* (2007) 150 Cal.App.4th 683, 730. These mitigation measures must be revised to require the Project applicant to take actions that would protect these species. 09-85

**(iii) The DEIR Contains Other Significant Mitigation Deficiencies.**

Multiple other mitigation measures that are intended to protect the area's biological resources from the Project's impacts fall short of this goal. Mitigation Measure 6-1c suffers from several problems. First, this measure relies in part on Measure 13-4, which, as discussed in Section I.B.1, provides only vague and deferred mitigation for the Project's impacts. Next, Measure 6-1c requires that the Project applicant "record baseline locations of riparian and meadow vegetation" before construction. DEIR at 6-49. As previously discussed, such baseline surveys must be conducted before and discussed in the DEIR—mitigation is not the place for first assessment of a Project's environmental setting. Also, Measure 6-1c requires monitoring of vegetation for only five years. *Id.* at 6-49. As explained in Dr. Myers' and the CBI Reports, a five-year monitoring period is far too short where long-term, gradual groundwater drawdowns could cause vegetation impacts to manifest slowly. *See* Exhibit 1 at 7-8; Exhibit 2 at 11. Monitoring must continue until the Project has been fully built out. Exhibit 1 at 8. 09-86

Measure 6-1c also calls for the Project to compensate for riparian vegetation die-off caused by the Project's groundwater impacts, including by irrigating the vegetation.

DEIR at 6-49. This is an absurd way to deal with overuse of groundwater causing drawdown: by withdrawing more groundwater. And, in any case, mitigation measures like this one would likely have their own environmental impacts, yet these impacts have not been analyzed in the DEIR. *See* Guidelines § 15126.4(a)(1)(D). 09-86 cont.

Further, Measure 6-1c improperly gives the applicant the option to forego conducting actual mitigation if it conducts groundwater modelling to predict conditions for sensitive habitats. DEIR at 6-50. If this modelling indicates there would not be significant effects on the vegetation, no monitoring would be necessary. DEIR at 6-50. First, as discussed above, CEQA requires that the evaluation of the impacts on this riparian vegetation be conducted in the EIR, prior to approval of the Project. Allowing this analysis to occur after the EIR is certified and the project is approved subverts CEQA's purposes, causing the EIR to fail as an informational document. *See Sundstrom*, 202 Cal.App.3d at 306-07. Further, modelling is not a substitute for monitoring—monitoring is necessary to confirm that the modelling is accurate and to inform management changes based on what is happening on the ground. *See* Exhibit 1 at 8. 09-87

Mitigation Measure 6-6 is deficient because it calls for removing bat roosting sites as the only option if the roosting sites are in the way of construction. DEIR at 6-63. This approach is absurd. The EIR must identify feasible mitigation measures that would allow the bats' roosting habitat to remain intact. As California courts clearly explain, an EIR is inadequate if it fails to suggest feasible mitigation measures that would lessen the Project's impacts. Pub. Res. Code § 21002; Guidelines § 15126.4; *San Franciscans for Reasonable Growth*, 151 Cal.App.3d at 79. Finally, Mitigation Measure 6-13 is inadequate because it requires implementation of Measures 13-4 and 6-1c to be effective, but, as discussed, neither of these measures adequately achieve the mitigation they purport to. 09-88

**(d) The DEIR Lacks the Evidentiary Support that Restoration of Squaw Creek Would Mitigate the Project's Significant Impacts.**

As discussed previously, the DEIR relies heavily on its claim that the restoration of Squaw Creek would mitigate the Project's significant impacts and generally improve the environment. *See, e.g.*, DEIR at 6-79. However, Dr. Myers' Report notes that the "suggested biologic impacts may be overstated." Exhibit 1 at 9. For example, the DEIR notes that the restoration would allow areas of deep pools at low flow to increase, but this could be countered by greater groundwater drawdown from the Project's water demands, Exhibit 1 at 9. Also, the fact that the restoration would enhance spawning habitat for 09-89

trout species, DEIR at 6-80, could actually cause greater harm to the endangered Sierra Nevada yellow-legged frog, upon which trout prey. *See* Exhibit 3 at 2. Furthermore, the DEIR repeatedly notes that there is a chance that the "creek restoration may not provide the anticipated benefits." *See, e.g.*, DEIR at 13-76. With its benefits far from assured, the DEIR cannot rely on the proposed restoration of Squaw Creek to mitigate the Project's significant impacts.

In sum, the DEIR errs because it provides only vague and unenforceable mitigation measures and provides no evidence that the measures would, in fact, mitigate the impacts as they are supposed to. The revised EIR must provide feasible, effective mitigation measures for the Project's myriad significant impacts to biological resources.

09-89 cont.

**(e) The DEIR Does Not Adequately Analyze the Project's Cumulative Impacts on Biological Resources.**

A cumulative impacts analysis is essential to adequately analyzing a Project's contribution to environmental impacts in an area. Such an analysis is especially important in areas like the Project area, which contains Sierra Nevada meadows that are some of the most altered, impacted, and at-risk landscapes in the area. Exhibit 2 at 13. The DEIR's analysis of cumulative biological resources impacts mentions historic losses to meadows in the region, but it fails to adequately discuss existing or future impacts to meadow habitat on-site. DEIR at 18-10.

The DEIR concludes that the Project would not contribute significantly to cumulative impacts on those habitats in the region because of the Project's proposed mitigation (Mitigation Measures 6-1a – 6-1d). However, as explained above, these measures are inadequate, and thus do not support the DEIR's claim that they prevent the Project's contribution to cumulative degradation of sensitive habitats. This problem—reliance on inadequate mitigation to avoid cumulative impacts—also undercuts the DEIR's conclusion that the Project's cumulative impacts on special-status wildlife (DEIR at 18-10 – 18-11), special-status plants (DEIR at 18-11 – 18-12), and fish and aquatic habitat (DEIR at 18-12 – 18-13) would be less than significant.

09-90

In its analysis of cumulative impacts to fish and aquatic species, the DEIR concludes that because "[m]itigation has been recommended to reduce these impacts to a less-than-significant level[,] . . . the project would make a less-than-significant contribution to the overall significant cumulative effect on fish and aquatic habitat in Olympic Valley." DEIR at 18-13. That one of the Project's impacts would be mitigated

09-91

to a less-than-significant level does not mean that the Project would necessarily not contribute to a cumulatively significant impact on that resource.

The whole point of a cumulative impacts analysis is to ensure that the DEIR discloses the contribution of a single project's impacts that alone may be insignificant to larger, cumulative environmental impacts. *See* Guidelines § 15355(b) ("Cumulative impacts can result from individually minor but collectively significant projects taking place over a period of time."). As the courts have recognized, "One of the most important environmental lessons that has been learned is that environmental damage often occurs incrementally from a variety of small sources. These sources appear insignificant when considered individually, but assume threatening dimensions when considered collectively with other sources with which they interact." *Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1214. 09-91 cont.

The DEIR errs further in its analysis of cumulative impacts to fish and aquatic species because it considers only impacts on Squaw Creek. *See* DEIR at 18-12 – 18-13. The DEIR completely fails to consider any contribution of the Project to impacts on the Truckee River. Specifically, as discussed below in section I.B.3, the Project would impact water quality in Squaw Creek, which flows into the Truckee River, and could therefore contribute to cumulative degradation of the Truckee River's water quality and affect the aquatic species that inhabit Truckee River. The DEIR must analyze this potential impact. 09-92

Finally, the DEIR also identifies a number of probable future projects in the region, but it does not evaluate the combined effects of these projects. *See* DEIR at 18-3 – 18-5, Table 18-2. At a bare minimum, the DEIR must consider the cumulative impacts to sensitive habitats for those projects that are approved, under construction, or finalized and then analyze the combined impact of the effects of those projects. 09-93

The EIR must be revised to correct the numerous flaws in the DEIR's analysis of cumulative impacts to biological resources. If these impacts are determined to be significant, the EIR must identify feasible mitigation measures or alternatives capable of reducing or eliminating these impacts. 09-94

**3. The DEIR Does Not Adequately Analyze the Project's Impacts on Hydrology and Water Quality.**

**(a) The DEIR's Description of the Environmental Setting for Hydrology and Water Quality is Insufficient.**

The discussion in Section I.B.1, above, explains in detail the inadequacy of the DEIR's description of the environmental setting for water supply. This includes failure to take into account existing severe drought conditions, failing to consider climate change, erroneous assumptions relating to the amount of precipitation in Squaw Valley, and reliance on inaccurate modelling—all of which render the DEIR's analysis of water-related impacts inaccurate. *See* Exhibit 1 at 9-10. The same faults underlie the DEIR's analysis of the Project's impacts on hydrology and water quality.

In addition to these flaws, the DEIR relies on sediment discharge equations that grossly underestimate the total suspended sediment ("TSS") in Squaw Creek. Dr. Myers's Report explains why the equations are faulty and underestimate TSS from the Project site under both existing and with-Project conditions. *See* Exhibit 1 at 11. The underestimation of TSS load results in the DEIR underestimating the Project's impacts and could also cause the development of a flawed design for the streambed channel through the site. *Id* at 11-12. Specifically, failing to consider the correct sediment load could result in more sediment settling in the channel than it is designed for, thereby decreasing the stream's conveyance capacity. *Id.*

09-95

**(b) The DEIR's Analysis of the Project's Impacts on Hydrology and Water Quality is Flawed.**

The DEIR acknowledges that the Project's impacts on surface and groundwater quality during construction may be significant. DEIR at 13-47. However, the DEIR does not adequately analyze these impacts and thus fails to provide the detailed, complete, and full disclosure that CEQA requires. Guidelines § 15151. For example, the DEIR mentions, in passing, that the Project may include pumping shallow groundwater out of construction sites ("dewatering"). DEIR at 13-48. But there is no discussion of the details of this process, which are essential to assessing dewatering's environmental impacts. Such details include identification of how much water is likely to be pumped for dewatering at the site, how many sites would require dewatering, which areas and habitats are likely to require dewatering, how dewatering would be conducted, where and how pumped water would be disposed, and how frequently dewatering would occur. Describing these details is certainly feasible because the depth to groundwater and its

09-96

seasonal and annual variation on the Project site are known. By failing to estimate the quantity and frequency of dewatering and its attendant impacts, the DEIR fails to disclose a potentially significant impact of the Project.

09-96 cont.

With regard to surface water bypass diversions and dewatering during construction, the DEIR states that the Project's impact would be less than significant in part because "[s]tandard NPDES permit conditions and typical requirements of the CDFW streambed alteration agreement would include measures" that would limit impacts. DEIR 13-52. This description is insufficient to allow a reader to determine whether the Project would have significant impacts from water diversions and dewatering. *See* Guidelines § 15151 (An EIR must contain "sufficient degree of analysis to provide decision-makers with information which enables them to make a decision which intelligently takes account of environmental consequences."). An EIR cannot require the reader to conduct independent research to assess how the project would be conducted and whether its impacts would be significant.

09-97

Further, merely requiring compliance with agency regulations does not conclusively indicate that the Project would not have a significant and adverse impact. Here, the regulations and standard permit conditions may not be strong enough to protect against environmental impacts. Indeed, California courts have recognized as much. In *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 716, for example, the court found that the fact that the EPA and the local air pollution control district had issued the necessary air emission permits for the construction of a coal fired cogeneration plant did not nullify the CEQA requirement that the lead agency analyze the significant air quality impacts of the entire project.

The DEIR's evaluation of the impacts of groundwater pumping on interactions between groundwater and surface water (Impact 13-5) is flawed in numerous respects. First and foremost, the analysis is inaccurate because it is based on the same faulty groundwater modelling discussed in section I.B.1 above. Second, as Dr. Myers explains, the modelling was not calibrated to estimate flow into or from Squaw Creek. *See* DEIR at 13-67. We can find no logical explanation for failing to calibrate the model since, as Dr. Myers explains, sufficient data exists to undertake this calibration in groundwater studies completed since 2011. *See* Exhibit 1 at 16. Third, the DEIR preparers did not present a simulated hydrograph of the areas between the groundwater and the Creek for each of the seven reaches of the Creek. In order to provide a comprehensive analysis of the Project's effects on groundwater and surface water interactions, it is necessary to evaluate each reach of the Creek because the stream/groundwater interactions are different at various points. Exhibit 1 at 16.

09-98