Aquarius Aquarium
INSTITUTE

January 19, 2010
VIA E-MAIL and U.S. Mail

Mr. Jim Bane, Project Manager
California Department of Transportation
2015 East Shields Avenue, Suite 100
Fresno, California 93726-5428

RE:
Island Park Six Lane, 4F to 6F
From Ashlan Ave in Fresno County to Ave 7 in Madera County
06-442600 Fre-99-PM 26.6/31.6, Mad-99-PM 0.0/1.7
SCH# 2009061047

Dear Mr. Bane,

Many thanks to you and the Project staff for meeting with me and Aletha Lang, Chair of our Board of Directors, last Thursday, January 14th, to discuss my letter of July 10, 2009 regarding the proposed "Island Park Six-Lane" Highway 99 widening Project. As I mentioned on the phone today, we have not yet received a formal answer to the concerns expressed in that letter and, as owner of the adjacent property required for the preferred Project Alternative site, our organization has been advised by legal counsel that, without our agreement, your pending MND/FONSI environmental document is not complete and is fatally flawed in light of the new information we have presented.

Congratulations on receiving funding approval on Wednesday from the CTC for the Ashlan to Herndon portion of the Project. We still have significant concerns regarding the lack of coordination between the City of Fresno's Veteran's Boulevard Interchange Project EIR and Caltrans pertaining to this southern portion of the Project and the scope of the City's study. It was disappointing to us that although you stated they were invited and indicated they would attend, the representative from the City of Fresno did not attend the meeting. We also remain concerned about the additional cumulative impacts of the proposed A-3 Alternative alignment for the California High-Speed Rail line in the Project vicinity and just attended a public meeting of the High-Speed Rail Authority this afternoon in Fresno where we confirmed that this Alternative is still being studied.

As we stated at last Thursday's meeting, our concerns primarily, although not exclusively, encompass the northern portion of the Project extending from Herndon Avenue north to Avenue 7 in Madera County. Thank you for agreeing to provide us with the Technical Studies that were bound separately from the Initial Study with Proposed Mitigated Negative Declaration/Environmental Assessment in support of required findings that the significant impacts of this northern portion of the Project may be mitigated to a level not necessitating preparation of an EIS/EIR - especially in the environs of the San Joaquin River. We look forward to receiving copies of these within the next week. Please also include a copy of your allocated budget for this Project, including any contingency funding available.

Your proposal to remove your previously proposed infiltration basin, which would have significantly impaired the scenic vista of our nonprofit 501(c)(3) educational Public Aquarium project, from your preliminary project design and replace it with a linear bioswale to be sited directly adjacent to the proposed new bridge crossing the San Joaquin River seems to be, on the surface, a better design choice from a visual perspective. However, in the absence of your providing us with specific measurements for the bioswale's size (length and width) as will be required to reduce automotive contaminant runoff residue from the new bridge to a level of insignificance or a pictorial depiction of the bioswale's appearance, we must reserve our judgment regarding its suitability to mitigate of our original concern regarding visual blight and scenic vista impairment. We would enthusiastically support moving the bioswale to the northeast side of the bridge, rather than the southwest side facing the Aquarium property. The linear design of the bioswale would seem to be better-suited to siting on the Caltrans/Union Pacific property line. We respectfully request that the bioswale design include a footbridge over the structure to accommodate hiking, bicycling and equestrian passage over it as well as under the new bridge and that the bioswale not include a chain-link fence that would impede foot, bicycle or equestrian traffic or impair the natural view along the river.

Also at last Thursday's meeting, the subject of the new SR-99 bridge design over the San Joaquin River Restoration Project was discussed and it was stated that the support structures would likely mirror the existing bridge support structures in terms of proximity to the river and that these would require rip rap along the river bank to protect them from erosion. We would respectfully suggest that perhaps the design of the new bridge should take into account the investment of both state and federal taxpayer resources in the San Joaquin River Restoration Project and consider a clear span design, eliminating these structures, to accommodate a wider, restored river and increased restoration flows as outlined in the Federal Court Settlement. Similar design standards are in place in Redding, California where a salmon spawning area has been established. Also, if any rip rap is absolutely necessary, it should be of natural appearance (i.e. broken granite rocks) as opposed to chunks of broken concrete or asphalt, which would constitute a visual blight along the restored river and should remain above the water line during all but flood conditions. We will be suggesting the same clear span design standards for a proposed California High-Speed Rail bridge and UP railroad bridge reconstruction as these projects move forward in their CEQA and NEPA processes.

At this meeting, we did not discuss issues or costs associated with the proposed encroachment of the Project on property owned by Aquarius Aquarium Institute, which has been granted a Conditional Use Permit (#3073) by Fresno County based upon 10 years of design, CEQA study and permitting costs borne by private citizen donors. After receiving the additional information from you at last Thursday's meeting, we believe the Project will necessitate our complete re-design and reconfiguration of our adjacent educational Public Aquarium project.

At this preliminary, pre-design phase for the Island Park Six-Lane Project, we would like to respectfully propose a REQUEST LIST OF DESIGN ELEMENTS be incorporated into the north-of-Herndon portion of the Project budget moving forward. The following are subject to change depending upon many factors, but we believe these elements will satisfactorily mitigate Project impacts to the Aquarium project as of the date of this letter:

REQUEST LIST OF DESIGN ELEMENTS FOR INCLUSION IN ISLAND PARK SIX-LANE PROJECT BUDGET

1. Reconstruct SR-99/Herndon Avenue undercrossing to accommodate at least 4 lanes, bicycle lanes and pedestrian walkway.
2. Southbound Grantland offramp - Widen to 2 lanes and extend onto an expanded highway shoulder.
3. Northbound Herndon Avenue offramp - Widen to 4 lanes (at base) and extend 1 additional lane onto an expanded highway shoulder.
4. Configure and construct signalization for both of the above offramps and Herndon/Parkway intersection, acquiring property as needed and withdraw the requirement for the Aquarium to pay mitigation previously requested by Caltrans included as a Condition of Approval in the Aquarium's approved CUP.
5. Construct a grade separation (undercrossing) at the Union Pacific/Herndon grade crossing to accommodate at least 6 lanes (4 thru lanes, 1 westbound right and 1 westbound left turn lanes), drop Herndon/Golden State intersection below grade as necessary.
6. Construct a right turn lane from southbound Golden State Boulevard to westbound Herndon, acquiring property as needed.
7. Provide funding for the re-design of all Aquarium plans and specifications, including all architectural and engineering re-design fees, re-permitting and County plan change requirements.
8. Acquire 40 - 50 foot strip of Aquarium property for Project (estimate: $1 million).
9. Terrace new berm encroaching on existing Aquarium property and plant with drought-tolerant, California native shrubs and wildflowers (no trees) and allow Aquarium's design team's input in the terraced planting planning/design process.
10. Install and maintain irrigation system for terraced berm landscaping.
11. Reconstruct frontage road (Parkway Drive) to 4 lanes with street lighting, bicycle lanes, curbing, storm drains, sidewalks and park strip with irrigation system, trees and grass from Herndon Avenue north to Aquarium property, including acquisition and demolition of an existing house located at west Herndon Ave and Parkway Drive.
12. Construct an extension of the City of Fresno's public water and sanitary sewer system to serve both the Project irrigation system (above) and Aquarium's reconfigured site plan.
13. Relocate "Welcome to Fresno County" monument sign and all associated electrical connections within new landscaping (above) and agree to maintain landscaping and irrigation system and provide on-going electric power and lighting maintenance for the sign in perpetuity.
14. Using excess concrete, fill, rebar and other materials from the adjacent Project construction site whenever possible, construct newly configured environmentally-friendly permeable concrete or "grass-crete" Aquarium parking lot and integrate additional parking for river visitor public access and canoe put-in/take-out on Caltrans property under the new bridge with the Aquarium parking lot (to provide for more public parking) and site emergency access/service roads for both Project bioswale maintenance access and Aquarium use per re-configured Aquarium plans and specifications.
15. Construct a small equestrian/bicycle/hiking (non-motorized) clear span bridge over the San Joaquin River high enough to accommodate canoe and small

recreational boat traffic beneath it, southwest and parallel to new Project bridge, linking Madera and Fresno County sides.

16. Using excess concrete, fill, rebar and other materials from the adjacent Project construction site whenever possible, construct two raised building pads per Aquarium's re-designed plans and specifications in accordance with FEMA requirements, including all architectural and engineering re-design fees, re-permitting and County plan requirements.
17. Construct a small (+/- 12,000 square foot) building for Aquarium per Aquarium's re-designed plans and specifications for the purpose of public outreach regarding the reconfigured Aquarium site and in support of its design change, including Aquarium staff time expended for re-design and outreach, all architectural and engineer's re-design fees, re-permitting, re-studies and any other County plan change requirements.
18. Install and maintain SR-99 "Next Exit" signage for Aquarium at Grantland (southbound) and Herndon (northbound).
19. Amend Project traffic study to include all improvements above as it will lessen the level of significance.
20. Should the Project cause any Conditions pertaining to the Aquarium project's construction or operation to be revisited by the City and/or County of Fresno or any other local, state or federal agency or other person, corporation or entity, Caltrans shall indemnify and hold the Aquarium harmless, defending it against all claims arising as a direct or indirect result of the Project, and shall pay any and all costs associated with such defense against judicial and/or administrative actions or requirements, correcting any deficiencies or violations to the satisfaction of the parties, including legal fees.
21. Aquarius Aquarium Institute shall reserve the right to open ended discussions with Caltrans based upon any unforeseen problems caused by the Project to the Aquarium project.

As you know, your Project is at the entrance to both the County and City of Fresno. We want it to present our "best foot forward" on behalf of the fifth largest City in California. We look forward to receiving copies of your studies and Project budget and meeting with you again soon to discuss how we may resolve our CEQA concerns and how Caltrans will agree to implement our REQUEST LIST OF DESIGN ELEMENTS and Project impact mitigation.

Sincerely,

Tom Lang
Executive Director
direct: (559) 930-3474
tlang@AquariusAquarium.org
Aquarius Aquarium Institute
www.AquariusAquarium.org

cc: FHWA, SCH, CTC

July 10, 2009

G. William "Trais" Norris III, Branch Chief
Sierra Pacific Environmental Analysis Branch
California Department of Transportation
2015 East Shields Avenue, Suite 100
Fresno, California 93726-5428

Dear Mr. Norris:

Thank you for the opportunity to comment on the proposed "Island Park" Six-Lane Highway 99 widening project (hereinafter referred to as "the proposed Project"). We formally request that this letter be entered into the public record for this proposed project.

EXECUTIVE SUMMARY

As an adjacent property owner that has spent extensive time and public and private donor resources on its world-class public Aquarium plans, the nonprofit 501(c)(3) Aquarius Aquarium Institute (hereinafter referred to as "the Aquarium" or "we" or "us") has numerous significant concerns about the proposed Project's potential for significant impacts on the Aquarium's private property, the area's traffic circulation and the San Joaquin River's sensitive riparian habitat. The Aquarium believes the proposed Project's Initial Study does not adequately address significant impacts this major construction project will have on the environment under the California Environmental Quality Act (CEQA). We respectfully request that the California Department of Transportation (Caltrans), as the lead agency for this proposed $64.1 million growth-inducing, capacity-enhancing, air-quality-affecting Project, make a determination that a Mitigated Negative Declaration is wholly inappropriate as the CEQA environmental document for the proposed Project and commence to prepare a full Environmental Impact Report (EIR) such as Caltrans has required for other, often less-intensive private development and local government construction projects.

LACK OF ADEQUATE PUBLIC INPUT ON PROJECT DESIGN

In previous communications with District 6 Caltrans officials, the Aquarium repeatedly requested site plans for the portions of the proposed Project in proximity to the Aquarium property. These were not provided and we were told they had not yet been prepared. On June 24, 2009, Caltrans held a public outreach meeting at Rio Vista Middle School where a rough site plan superimposed on an aerial photo and a San Joaquin River bridge design were presented for the first time (see Figures 1 and 2 below).

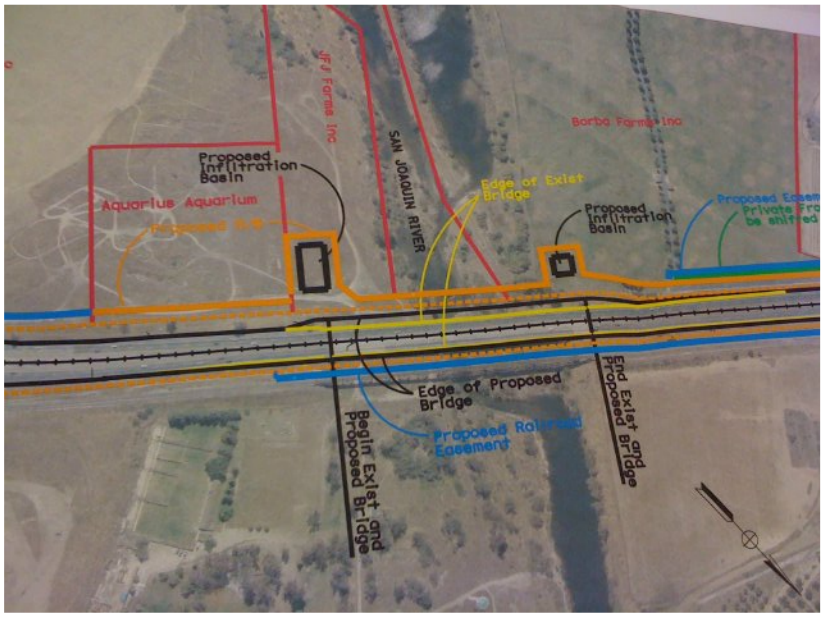

Figure 1

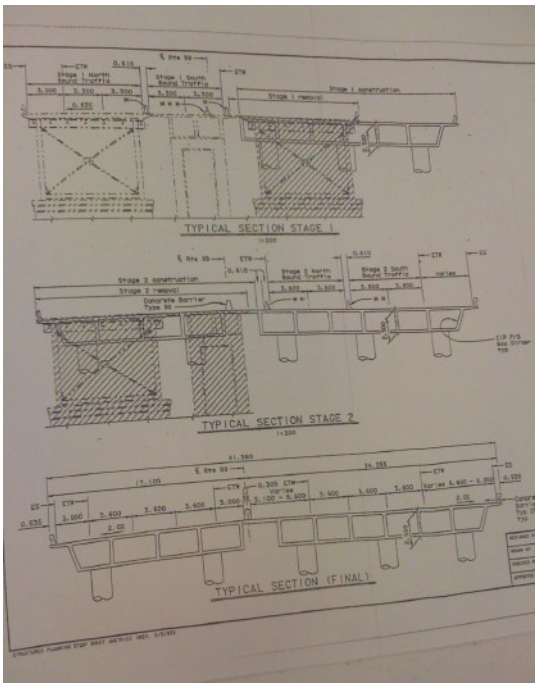

Figure 2

Both designs present and depict significant encroachments onto the Aquarium's private property that is slated for Public Use similar to a park, school or open space based on our nonprofit status. The aerial rendering also showed proposed ponding basins within the sensitive San Joaquin River riparian habitat. The location of a fenced ponding basin directly abutting the Aquarium's northerly property line represents a significant visual blight and scenic vista impairment for future Aquarium visitors as well as a physical barrier to planned river access for this approved educational public institution and regional tourist destination. An EIR would provide the extensive analysis required to address this concern. (see Figure 3 below)

Figure 3 Example of a typical Caltrans fenced ponding basin

Had the Aquarium's input been requested by Caltrans prior to the public outreach, the Aquarium would have proposed alternate routing of the proposed Project's storm drainage system to nearby existing drainage basins operated by the Fresno Metropolitan Flood Control District. This alternative would direct potentially harmful storm runoff from the bridge and the freeway surfaces away from the sensitive riparian habitat. The Aquarium has gone to great lengths, including proposing an expensive permeable concrete parking lot, to avoid the blight of an on-site water retention basin affecting the existing scenic vista between our building and across the San Joaquin River.

POSSIBLE SIGNIFICANT ENVIRONMENTAL IMPACTS

Beginning on October 1, 2009, the U.S. Bureau of Reclamation will begin interim flows in the San Joaquin River as part of a legal settlement between the Friant Water Users Authority (et al) and the Natural Resources Defense Council (NRDC, et al) for the purpose of restoring an historic spawning habitat for "ocean-type" Chinook salmon *(Oncorhynchus tshawytscha)*. The Settlement, which has already received approximately $280 million in state and federal funding, marked the beginning of the largest river restoration ever attempted in the United States and calls for releases of water from Friant Dam to the confluence of the Merced River and the reintroduction of Chinook salmon. State and federal agencies, including the U.S. Department of Interior, Bureau of Reclamation and U.S. Fish and Wildlife Service (USFWS), National Marine Fisheries Service (NMFS), California Department of Fish and Game (DFG), and California Department of Water Resources (DWR) organized a Program Management Team and associated Work Groups to begin work implementing the Settlement. Additional information related to the San Joaquin River Restoration Program (SJRRP) is available on the program's website at: http://www.restoresjr.net

Related to the Settlement, President Obama signed the San Joaquin River Restoration Act on March 30, 2009, giving the Department of the Interior full authority to implement the SJRRP.

The proposed Project intersects an area of the river identified as *Reach 1* by the SJRRP Draft Fisheries Management Plan (FMP) that was released for public comment in June 2009. The Aquarium has been actively involved in SJRRP Fisheries Management Technical Feedback meetings and based on information received at the meetings has three major concerns about the proposed Project's potential short-term and long-term significant impacts to the SJRRP plans to restore the river:

1. Construction of a new Highway 99 bridge over *Reach 1* will necessarily include significant disturbance of the riparian habitat and will impede migration of Chinook salmon and other fish due to intensive construction activities. The success of the SJRRP and the investment of state and federal funds will be diminished unless construction is scheduled during times of the year when migrating salmon and smolts are not present. Juvenile Chinook may spend from 3 months to 2

years in freshwater before migrating to estuarine areas as smolts and then into the ocean to feed and mature.

2. The location of two fenced ponding basins in the sensitive riparian habitat will represent a threat to migrating salmon, smolts and other species should the river ever flood. In 1997, a flood event caused the river to inundate the areas proposed for these ponding basins. The Aquarium's concern is that during such an event adult salmon and smolts will become entrapped or entrained within these basins causing mortalities.

3. Chemical constituents from the freeway and bridge runoff contained in the proposed basins will contaminate the river water. Without a detailed analysis of the chemical constituents contained in the proposed Project's runoff water, there is not enough information to make an informed evaluation and/or recommendations for mitigation of potential impacts without an exhaustive analysis to determine the level of significance in accordance with CEQA. Again, a full EIR would address these concerns.

LACK OF SECURED FUNDING FOR PROJECT COMPONENTS

Within the proposed Project's Initial Study, the removal of the Grantland Avenue off-ramp from southbound Highway 99 is mentioned along with other project proposals in a table on page 17. The funding for this ramp closure is identified as coming from the developer (O&S Holdings, LLC) of the "El Paseo" shopping center proposed within the City of Fresno on the east side of Highway 99. Since this project has yet to complete its Environmental Impact Report and entitlements for the shopping center have not yet been approved, it is premature to identify this developer as a funding source for any improvements adjacent to, or concurrent with, the proposed Project and needs to be re-evaluated in an EIR, not in a Mitigated Negative Declaration. Compliance with the spirit of CEQA requires identification and assignment of secured financing mechanisms for proposed projects, not speculative development that has not gone through the local entitlement approval process.

In contrast, the Aquarium has completed its environmental work and has a Conditional Use Permit (C.U.P.) in which the Aquarium has agreed to specific mitigation measures including payment to Caltrans for ramp improvements.

On January 27, 2009, the City of Fresno amended its 2025 General Plan to identify the Aquarium property's land use as Public/Quasi-Public Facility, and, on April 15, 2009, the Fresno County Local Agency Formation Commission (LAFCo) voted to approve annexation of the Aquarium's property into the City of Fresno's adopted Sphere of Influence (SOI) – the first such expansion since the Southeast Growth Area in 2006.

To arrive at these decisions, LAFCo and City staff evaluated both current and future traffic conditions in the Herndon Avenue and Highway 99 vicinity using the Aquarium's traffic impact study, which identified certain improvements at the Grantland off- and on-ramps to be funded, in part, by the Aquarium project. Yet the proposed Project lacks any extensive traffic analysis for the affected Herndon Avenue interchange and immediate local street network. When completing the traffic/circulation portion of the EIR, Caltrans needs to reference their own ***GUIDE FOR THE PREPARATION OF TRAFFIC IMPACT STUDIES,*** dated December 2002.

LACK OF COORDINATION WITH VETERANS BOULEVARD PROJECT

On June 18, 2009, the Fresno City Council approved an expenditure of $1.8 million for an Environmental Impact Report for a proposed new "Veterans Boulevard" Highway 99 interchange. The City's Project Study Report (PSR), which was routed to Caltrans, recommended the *Base Alternative* for Veteran's Boulevard, in which the southbound Highway 99 Grantland off-ramp that currently serves the west side of 99 and will serve the Aquarium is projected for closure. In all but the *"no-build"* scenario for Veterans, the implication in this PSR seems to be that the construction of Veterans would reduce the need for improvements to the Herndon/Golden State interchange complex. The Aquarium disagrees with this analysis since the PSR doesn't address future non-peak hour traffic related to approved and pending development such as the Aquarium for which the general motoring public will still be the using the Herndon/99 interchange rather than the proposed Veterans Boulevard/99 interchange. Further, if a new Highway interchange is really needed, the state, rather than local taxpayers through Measure C, should fund it as it did for the new $51.1 million Fairmead interchange – just over twenty miles to the north.

The Aquarium believes the Veterans PSR is deficient and fatally flawed due to the fact that it fails to analyze non-peak hour Herndon Avenue traffic that will be generated by the proposed Project, the Aquarium and other future

Herndon/99 vicinity projects as well as significant cumulative impacts to the Shaw and Herndon interchanges as mandated by CEQA. Without the extensive analysis provided by an EIR encompassing an expanded Veterans Project Study Area including both the Shaw and Herndon interchanges, the level of impact significance and appropriate mitigation measures cannot be determined.

In written comments to the Fresno City Council dated June 18, 2009, the Aquarium stated that we could not support funding of a stand-alone EIR for Veterans without first completing a Cost/Benefit Value Analysis comparison for Herndon Avenue improvements without Veterans Boulevard. The recommendations contained in such an analysis would have significant impacts upon the proposed Project as currently proposed. For example, if, under a *"no-build"* scenario for Veterans, the analysis recommended widening of the Herndon Avenue undercrossing and a reconfiguration of the Herndon/Parkway intersection S/B Highway 99 on- and off-ramp complex and a grade separation at Herndon/UP Railroad to accommodate increased traffic, the proposed Project would need to include the costs for such improvements in its budget since it is within the proposed Project area.

CONCLUSIONS

The proposed Project should not proceed under CEQA unless all the improvements at Herndon proposed within the Veterans PSR including a grade separation at the Herndon/UP Railroad are studied and funding is identified as a part of a more comprehensive transportation circulation plan for the area. The City of Fresno should also be required to expand its Project Study Area for Veterans to include both Shaw and Herndon Avenue interchanges and mitigation for Veterans should include improvements to these interchanges as part of that project's CEQA approval process.

A full EIR for the proposed Project in coordination with the Veterans Boulevard EIR would better serve the general motoring public by providing relief from the current poor levels of service at both the Shaw and Herndon Avenue Highway 99 interchanges.

Without the level of study that would be included in a full EIR, there is not enough information contained in the *Island Park Initial Study with Proposed Mitigated Negative Declaration/Environmental Assessment* to determine whether significant impacts exist or the extent of adequate mitigation measures that will be required under CEQA for the proposed Project.

Caltrans is the leader in highway construction in the State of California and should be following the highest of standards when processing their own projects. To dismiss the need for an EIR for a $64.1 million major project results in a perception of a double standard, especially when Caltrans is a major reviewing and commenting agency for local development projects and their impacts on state facilities. Caltrans should not be so focused on speedy project delivery, but rather with providing the appropriate environmental document and mitigation under CEQA for this proposed project.

The Aquarium would appreciate being routed on all future decisions and rulings pertaining to this proposed Project and requests that Caltrans advise us as to our rights of appeal of any decision with which we may disagree. Also, if any Aquarium property or property to which the Aquarium holds a duly recorded easement is determined to be required for the proposed Project, we would expect to be informed of such determination prior to any public announcement of final Project plans.

The Aquarium thanks Caltrans for the opportunity to comment on this matter and looks forward to working with Caltrans as plans continue through the approval process.

Respectfully submitted by:

Tom Lang
Executive Director
Aquarius Aquarium Institute

cc: Roy and Betty Jura/JFJ Farms, Inc.
The Honorable Dave Cogdill, Dean Florez, Juan Arambula, Danny Gilmore, Mike Villines
Fresno City Councilmember Andreas Borgeas, Fresno County Supervisor Phil Larson
Jim Boren, Lisa Maria Boyles, Brad Branan, Russ Clemings, Bill McEwen - The Fresno Bee
Tony Boren – Council of Fresno County Governments
Randell Iwasaki, Bruce Behrens, Macolm Dougherty, Sharri Bender-Ehlert, John Liu - Caltrans
Pamela Creedon – Central Valley Regional Water Control Board
Laura Peterson-Diaz, Dean Marston - CA Department of Fish and Game
Paula Landis - Department of Water Resources
Walter C. Waidelich, Jr. - Federal Highway Administration
Monty Schmitt - Natural Resources Defense Council
Melinda Marks - San Joaquin River Conservancy
Dave Koehler - San Joaquin River Parkway and Conservation Trust
Rod Meade - San Joaquin River Restoration Program
Seyed Sadredin - San Joaquin Valley Air Pollution Control District
John Engbring, Jeff McLain, Rocky Montgomery - U.S. Fish and Wildlife Service
Doug Hampton, Rhonda Reed – National Marine Fisheries Service
Alicia Gasdick, Jason Phillips - U.S. Department of the Interior – Bureau of Reclamation