

EXHIBIT #6

Note:

Exhibit #6 provides responses to some of the main issues that came up just prior to the appeal hearing before the Board on January 21, 2014 and/or which had been raised in comments on the 2013 DEIR, and provides responses for issues that existed at that specific stage in the environmental review process. The exhibit presents a snapshot-in-time of the consideration of specific environmental issues, and, while accurate at that time, much of this information has now been added to and superseded by the preparation of the Recirculated DEIR and the Recirculated FEIR, as many issues discussed in the Exhibit #6 were revisited and subjected to additional analysis as part of the Recirculation process, and this updated analysis is presented in the Recirculated DEIR and Recirculated FEIR.

EXHIBIT # 6

DETAILED RESPONSE TO APPEAL POINTS RAISED BY SHUTE MIHALY & WEINBERGER (SMW) AND COMMUNITIES FOR A BETTER ENVIRONMENT (CBE)

Introduction:

As previously discussed, most of the appeal points raised by the appellants have already been addressed in the Final EIR. Nonetheless, the County determined that some points raised in the appeal letters required additional clarification. The new clarification provided herein confirms the analyses and conclusions performed in both Draft and Final EIR. The responses below are the ones in which the County is providing additional clarification. See margins of Exhibits # 3 (SMW appeal documents) and Exhibit #4 (CBE appeal documents) for corresponding appeal points.

SMW-8. *The EIR is silent on carbon monoxide (CO) emissions from the entire Project.*

Analysis of the Project-related CO emissions was not included in the EIR discussion of impacts because the Bay Area Air Quality Management District (BAAQMD) CEQA guidelines do not recommend the use of mass emission significance thresholds for project-related CO emissions. This is the case because such emissions tend not to be a concern in the Bay Area relative to regional air quality.

Nonetheless, emissions of CO estimated to be generated by the Project are disclosed in Final EIR Appendix A, *Air Quality and Greenhouse Gas Emissions Documentation*. The total Project-related CO emissions for the proposed boiler, increased locomotive trips, and increased vehicle exhaust is estimated to be approximately 39 pounds per day (see Final EIR Appendix A, Table 2, page 3). The potential for these Project-related emissions to cause or contribute to a violation of a CO ambient air quality standard is extremely low given that existing CO concentrations in the Project area, and the Bay Area Air Basin as a whole, are many orders of magnitude lower than the State and federal ambient air quality standards for CO (see DEIR Table 4.3-1).

It should be noted that the BAAQMD CEQA guidelines have identified screening levels to identify potentially significant local CO emission *concentrations* at affected roadway intersections. For the proposed Project, the applicable screening level for potential significant local CO concentrations at affected intersections is an increase in trips at an intersection that experiences more than 44,000 vehicles per hour. Existing traffic at

Project area intersections are less than 900 trips per hour and Project-related construction and operational trips would total up to 384 trips per the peak hour and 8 trips per day, respectively (see DEIR Figure 4.17-2 and DEIR Section 4.17.5). Therefore, there would be no potential for the Project to result in CO concentrations at affected roadways that would result in a significant impact.

SMW-10: The EIR fails to include criteria pollutant emissions from burning propane/butane.

As a general rule, “[a] project applicant has traditionally been expected to only address emissions that are closely related and within the capacity of the project to control and/or influence.”¹ With respect to the proposed Project, it is unclear where, how, or by whom the propane/butane produced by the Project might be used. Butane may be used as an additive in chemical manufacturing, which does not involve combustion. Further uncertainty exists relative to the baseline concerning the locations, quantities, and types of fuel that might be replaced by the propane/butane that would be sold by Phillips 66 and whether such production could have the potential to affect the overall consumption of propane/butane or the use or non-use of another fuel for which butane or propane may be substituted. These issues are not within the capacity or control of the Project or of the County and are too speculative for inclusion in the EIR analysis.

SMW-12: The EIR’s Analysis of the Project’s Potential to Impact Public Health is Flawed.

Sections 4.3 and 4.9 of the DEIR, provide the general discussion of both air emissions and hazards related to toxic air contaminants (TACs). Sensitive receptors are described in Section 4.3.2.4 of the DEIR as follows:

“The Bayo Vista community contains the nearest sensitive receptors to the active area of the Refinery (e.g., schools, day care centers, libraries). The closest such sensitive receptor is a day care center, located approximately 2,000 feet south of the Refinery. The closest residences in the Bayo Vista neighborhood to the south are approximately 2,300 feet away from the Refinery fuel gas processing unit and approximately 4,000 feet from the proposed propane storage area and propane/butane loading rack.”

This information was summarized from information contained in the Public Health Supplement (December, 2012) available as part of the cited public administrative record for the EIR. Figure 3 of that supplement provided a figure showing the exact locations of sensitive receptors considered for the Health Risk Assessment for the project. For the purposes of the EIR analysis, summaries of information contained this supplement provide more than adequate disclosure of the underlying analysis in the EIR.

¹ California Air Pollution Control Officers Association, “CEQA & Climate Change – Evaluating and Addressing Greenhouse Gas Emissions from Projects Subject to the California Environmental Quality Act,” pg. 50 (January 2008).

Furthermore, there is no need to provide any discussion on the condition of these nearby sensitive receptors for the purposes of the CEQA analysis as this is part of the existing baseline conditions present in the area. The EIR does describe the impact of the proposed Project on these receptors as is required by CEQA.

The appellants imply that the area surrounding the Refinery is already considered an 'impacted community' per BAAQMD guidelines. Examination of the documents that the appellants cite reveals that this is not the case for the Rodeo area. The BAAQMD guidelines cited by the appellants indicated that the Richmond/San Pablo area is an impacted community and the Rodeo (Selby and Crockett) area is not listed nor mapped as impacted.

In a letter dated January 6, 2014, from Phillips, TAC data from stations nearby the Project area is presented in response to the appellants concerns (See Table 1 and 2 in Phillips66 Exhibit B). These data provides no new significant information and reveal no new environmental impact from the proposed Project. Impact 4.3-3, DEIR page 4.3-22 includes analysis of how the project will have a less than significant impact on TAC emissions.

Additionally, as discussed in the DEIR, the proposed project will remove sulfur from the RFG, which will result in decreased SO₂ emission from combustion of the RFG in refinery heaters and boilers. In regards to the Steam Power Plant, this plant is equipped with selected catalytic reduction (SCR) for nitrogen oxide (NOX) control. The NOX emission estimates reported to the BAAQMD are accurate and the emissions from this plant are less than those of a new boiler. See discussion in DEIR, page 4.3-18 Impact 4.3-2.

SMW-13: The EIR provides no explanation as to why the Project would not result in any odorous emissions.

The Project would add no new sources of odorous emissions, nor would it result in an increase in any odor-causing compounds to the atmosphere, such as H₂S, SO₂, or ammonia relative to baseline conditions. Therefore, there would be no change from existing conditions at the Refinery relative to odors. As stated in the DEIR, Section 4.3.4, the proposed Project represents an odor improvement over current conditions, since sulfur compounds would be removed from the RFG stream. Therefore, there would be no odor impacts associated with the Project.

SMW-19: The EIR Fails to Adequately Analyze the Project's Impacts Related to Geologic Hazards.

As described in Section 4.7.2.3 of the DEIR and Section 2.5 of the FEIR, the mere presence of liquefiable soils and/or seismic hazards does not preclude safe construction

of critical improvements. These adverse site conditions can easily be overcome by appropriate engineering design, correct site preparation, and proper construction. The DEIR states that each of the proposed Project components will receive a site-specific geotechnical investigation as required by Law. The investigations and resultant recommendations made by a state licensed geotechnical engineer would include design parameters to mitigate potential effects of liquefaction, which would be approved by the County Department of Conservation and Development, Building Inspection Division in accordance with the most recent version of the California Building Code. Construction would be in accordance with objective standards and performance criteria embodied in the regulatory codes.

SMW-22: The EIR Contains an Inadequate Description of the Project Area's Existing Biological Resources.

The appellant asserts that the EIR fails to accurately portray the site's underlying environmental conditions, despite also providing page references from the EIR indicating where these conditions are described. The appellant continues that the Project site and vicinity contain several types of wetlands, including northern coastal salt marsh, coastal brackish marsh, and coastal and valley freshwater marsh; that a number of species depend on these habitats, including salt marsh harvest mouse, California clapper rail, and black rail; the Project site drains into San Pablo Bay, which supports diverse marine biota including several federally threatened species. As the appellant admits with page references included in the comment, the EIR does identify and describe all of these habitats types and special-status species in Section 4.4, Biological Resources pages 4.4-2 through 4.4-18.

The appellant asserts that the EIR relies on insufficient biological surveys that are outdated or entirely absent, that a review of high-resolution satellite imagery in 2013 to augment surveys performed in 1993, 2003, and 2006 is insufficient to identify species occurrences, and the United State Fish and Wildlife Service (USFWS) list of species clearly indicates that surveys should be performed for the species and habitats within the project area. Beginning on page 4.4-2, the EIR identifies the habitats present in the Refinery Complex Vicinity (RCV), the Refinery Complex (RC), and the Proposed Project Area (PA), and the species potentially present in these habitats. The EIR appropriately reduces the scope of the discussion to the habitats and species that could be directly and indirectly impacted by the Project. With all terrestrial impacts occurring within developed areas of the Refinery, the EIR adequately relies on a variety of information including past surveys, a review of the California Natural Diversity Database (CNDDB) and high-resolution satellite imagery, to confirm the habitats present and infer the

potential for encountering any particular species. Additional terrestrial surveys would not contribute to an improved understanding of the biological resources present and/or the project's potential impacts on these resources because the project area (PA) is already developed by industrial facilities and secondary (e.g., noise and visual disturbance impacts) would not significantly increase baseline disturbance levels and may not extend beyond the industrial area. A Phase II aquatic study further evaluating the impact of the thermal plume on aquatic life was underway at the time of the EIR and was not available for review or discussion during the EIR process. The 2006 Tenera Environmental Study demonstrated that the submerged cylindrical wedgewire screens installed on the once-through cooling water intake structure complied with requirements to reduce impingement and entrainment of aquatic organisms and estimated that the configuration significantly reduced entrainment of larval fishes and virtually eliminated impingement of adult fishes. The increase in intake volume under the proposed project is within the operating parameters of the once-through cooling system that was sufficiently proven in the 2006 study; thus, no additional study on the wedgewire system was necessary.

The appellant misapplies the language provided by the USFWS in their species list (DEIR Appendix B); all species on the list were considered in the EIR analysis, and those with potential to occur in the Project area are described in Table 4.4-1 and, where appropriate, discussed in the Impacts section of the DEIR.

SMW-23: The EIR Fails to Adequately Analyze the Project's Impacts on Biological Resources.

The appellant asserts that the EIR fails to analyze impacts to sensitive species that it acknowledges may be present in habitat areas described in the EIR (specifically salt marsh harvest mouse, California clapper rail, and black rail), and further states that the EIR erroneously dismisses impacts to these species based on the Refinery's baseline disturbance levels. The EIR correctly measures impacts against the Refinery's baseline disturbance levels consistent with CEQA Guidelines Section 15125, which states that the physical environmental conditions in the vicinity of the project, as they exist at the time the notice of preparation is published, will normally constitute the baseline physical conditions by which a lead agency determines whether an impact is significant. As stated in the response to SMW-22, above, the DEIR in Section 4.4, Biological Resources, pages 4.4-2 through 4.4-18, identifies the habitats present in the Refinery Complex Vicinity (RCV), the Refinery Complex (RC), and the proposed Project Area (PA); identifies the species potentially present in these habitats; and appropriately reduces the scope of the impact discussion to the habitats and species that could be directly and indirectly impacted by the Project. In the impact discussions beginning on page 4.4-25, the DEIR

analyzes potential impacts to salt marsh harvest mouse, California clapper rail, and black rail, among other species, and finds that impacts would be less than significant based on the environmental baseline and distance from potentially sensitive habitats: the Project would not significantly increase the Refinery's baseline disturbance levels, and potentially sensitive habitats are spatially separated from the PA by existing Refinery operational structures and features.

The appellant erroneously asserts that the EIR does not analyze impacts to sensitive fish species. Species are identified in Section 4.4, Biological Resources, in Table 4.4-1, and potential impacts are discussed on page 4.4-27 in *Impact 4.4-2: Special-status fishes could be adversely impacted by an increase in once-through intake water piped in from San Pablo Bay to use as coolant in the Refinery processes* and *Impact 4.4-3: Special-status fishes could be adversely impacted by an increase in effluent temperature*. The DEIR in Section 4.4, Biological Resources, pages 4.4-27 through 4.4-28, and the FEIR in Section 3.2, Response to Organization Comments, pages 3.2-121 through 3.2-123, discuss the baseline and future Project conditions relative to once-through cooling and effluent temperatures and, while referring to maximum thresholds allowed in the Project-specific National Pollutant Discharge Elimination System (NPDES) permit, identify that thresholds in the NPDES permit are based on several plans and scientific studies including the *Water Quality Control Plan for Control of Temperature in the Coastal and Interstate Water and Enclosed Bays and Estuaries of California; Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California; Policy for Compliance Schedules in National Pollutant Discharge Elimination System Permits*; and the project-specific studies *Cooling Water Discharge Thermal Plume Study* (Tenera Environmental, 2007) and *Technology Installation and Operation Plan* (Tenera Environmental, 2006 in RWQCB, 2011). These plans serve to guide activities in San Francisco Bay and protect aquatic species from unsafe temperatures and other environmental conditions; the project-specific studies do the same for the Refinery environment. The finding of no significant impact to special-status fishes (page 4.4-27) incorporates the existing baseline intake volumes and effluent temperatures relative to the changes under the proposed project and relative to thresholds identified in the plans and studies upon which the project-specific NPDES thresholds are based (e.g., upon the Tenera 2007 Cooling Water Discharge Thermal Plume Study, which concluded that thermal plume effects would be of a minor nature due to their being a surface phenomena that dissipates rapidly in the nearshore area of the discharge and the study's documentation of natural solar heating of nearby tidal flats that produce natural thermal plumes that significantly exceed temperatures of the ConocoPhillips thermal plume). The finding is further based on existing or proposed design features that avoid and minimize impacts, such as use of a wedgewire screen

configuration and low through-screen velocity that virtually eliminates impingement of adult and juvenile fishes and significantly reduces the entrainment of larval fishes and use of sufficient cooling water to lower effluent temperatures.

The appellant states that CEQA mandates a finding of significance for any impacts that "restrict[s] the range of an endangered, rare, or threatened species" and continues to reference various case law and CEQA guidelines. Nowhere does the appellant suggest how the proposed Project would restrict the range of an endangered, rare, or threatened species or what species is/are being referred to. The EIR does not make findings regarding whether the proposed Project would restrict the range of an endangered, rare, or threatened species because this is not a potential outcome of the Project.

SMW-23: *The EIR Fails to Analyze Cumulative Impacts to Biological Resources.*

The appellant states that the EIR fails to disclose the extent and quality of biological resources that historically occurred in the Project area, or the amount of resources already lost in the region, and fails to evaluate the cumulative impacts of this Project and other projects on this habitat and the listed species that use it. As described in the response to SMW-22, the EIR identifies the habitats present in the Refinery Complex Vicinity (RCV), the Refinery Complex (RC), and the proposed Project Area (PA), and the species potentially present in these habitats. The EIR appropriately reduces the scope of the discussion to the habitats and species that could be directly and indirectly impacted by the Project. The impact discussion is thus limited to a discussion of potential indirect impacts (e.g. noise and visual disturbances) on marsh birds and nesting birds, and potential direct impacts on fishes.

The cumulative impact discussion considers the Project's potential for "cumulatively considerable" impacts on fishes in San Pablo Bay and, following the guidance of CEQA Section 15130 (b) to follow standards of practicality and reasonableness in the cumulative analysis, finds the Project's incremental contribution to once-through cooling volume and thermal plume temperature is not cumulatively considerable. This is because the project's anticipated increases in thermal plume temperature and once-through cooling volume are within the operational parameters of the existing Refinery, very localized, and considered less than significant (DEIR at pages 4.4-23, 4.4-27, 4.4-28, and 5-9; FEIR at pages 3.2-137 and 3.2-138). The Bay is a highly regulated environment where individual and cumulative project impacts on water quality are carefully monitored, as described on Page 5-9 of the DEIR. The San Francisco Bay Basin (Region 2) Water Quality Control Plan (Basin Plan) is the Regional Water Board's master water quality control planning document, designating beneficial uses and water quality

objectives for the Bay and providing a definitive program of actions designed to preserve and enhance water quality and to protect beneficial uses for the maximum benefit to the people of California. These water quality objectives are, in fact, controls on cumulative effects to water quality from all sources, natural and man-made. Industrial wastewater point source discharges are regulated through the NPDES program, and the management approach includes a Strategic Plan and Watershed Management Initiative that finds integrated solutions through the expertise and authority of multiple agencies and organizations, and measures success through monitoring and other data collection. The NPDES program includes project oversight by agencies such as the National Marine Fisheries Service and California Department of Fish and Wildlife with specific interest in protecting fisheries resources and direct input into NPDES permit conditions. As stated on Page 5-10 of the DEIR, permit maximums are based on scientific studies and data collected by the RWQCB and other regulatory and research agencies. As long as the individual permit maximums of projects in the Bay, which themselves take into account the potential cumulative effects of each point source discharge, are not breached, it follows that cumulatively considerable impacts are not likely to occur.

SMW-24: 2. *The EIR Fails to Adequately Analyze the Project's Cumulative Environmental Impacts From Other Refining-Related Projects.*

The appellants assert that the EIR fails to analyze adequately cumulative impacts. Section 5.4.2 of the DEIR provides Table 5-1 which states all cumulative Bay Area refinery projects known to the authors of the DEIR prior to publication in June of 2013. Since that time, a number of other projects involving refineries and rail have been announced. Given that the baseline date for the proposed Project as defined by the publication of the Notice of Preparation for the EIR (July 2012) was well before this, the DEIR authors conducted their cumulative analysis according to CEQA (as further discussed in response B4-22 in the FEIR) requirements with the best list then available of potential cumulative projects.

The appellants assert that this analysis should have considered cumulative rail traffic within California. This was not possible as the destination of the project's rail cars is not knowable and could be anywhere. It would have been speculative to have done so and contrary to CEQA section 15145.

The thread that appellants are following is indicated by the statement that "Each of the Bay Area refineries have either recently permitted projects or have pending permits that will facilitate transporting and refining tar sands crude." This expands on their claim of a "larger project" for the Propane Recovery Project, in order to link all projects and refineries in an overall action that requires a cumulative analysis, regardless of whether it

is warranted under CEQA. The appellants then assert that comments by another organization (NRDC) about another refinery project, a proposed project at the Valero Benicia Refinery, support the appellants unsupportable claims and conclusions about a "larger project". Since the appellants' only physical evidence in support of their "larger project" claim is not true, their claim for the "larger project" is also unsupportable. The County cannot provide a response to these general and unsupportable assertions.

Finally, as is discussed in detail in Section 5.4.3 of the DEIR, the proposed Project was analyzed for its potential to have a cumulative considerable impact on all appropriate CEQA categorical areas. In many cases the proposed Project had no project-related impacts and when considered with other projects described in Section 5.4.2, after analysis, no cumulative considerable impacts were found as well. The appellants do not suggest otherwise but simply assert that the analysis was inadequate.

CBE-11: Significant Biological Resource Impacts due to OTC system.

The appellant states that the Regional Water Quality Control Board (RWQCB) has ordered the Project proponent to study replacing the once through cooling (OTC) system, that the study is referenced and attached to Citizens for a Better Environment's (CBE's) comments on the DEIR, and that the FEIR denies the existence of the study. As a condition in the NPDES permit for existing Refinery operations, the RWQCB required that ConocoPhillips conduct a study evaluating the feasibility of replacing the existing OTC technology. The FEIR does not deny the existence of the study (page 3.2-122, last paragraph). On pages 3.2-137 and 3.2-138, the FEIR responds to Karras' Comments 31, 32, and 33, by informing that the Cooling Tower Replacement Feasibility Evaluation required under the current NPDES permit was not finalized at the time of the FEIR and therefore the findings were not available for review; as such, any discussion or analysis of the feasibility evaluation would be speculative and thus outside the scope of the DEIR. Additionally, the FEIR responds on page 3.2-122 that no fundamental change to the Refinery cooling system, such as conversion from the existing OTC system to a closed-loop cooling system, is proposed as part of the Project; therefore, it is beyond the scope of the DEIR to explore the advantages and disadvantages of alternate cooling systems.

CBE-17: The County Failed to Adequately Notify the Community of this Project.

In advance of the November 19, 2013 Public Hearing on certification of the proposed Projects' EIR, the County on November 6, 2013, performed the following steps to properly notice the hearing in accordance with CEQA guidelines:

- 1) The project noticed all property owners and occupants within 300 feet of the project parcels (357-010-001 and 357-300-005).

- 2) The project noticed all speakers from the scoping session.
- 3) The project noticed all required public agencies and those that requested to be noticed (e.g. City of Martinez).
- 4) The project noticed all people and organizations who expressed interest in the project and requested to be noticed.
- 5) The project was noticed in the West County Times.
- 6) Hard copies of the FEIR were sent to those people, organizations, and agencies who commented on the DEIR. A hard copy was also available for public review at the district supervisor's office and the Rodeo and Pleasant Hill public libraries.
- 7) Copies of the staff report were also mailed to various people, agencies, and organizations.

Furthermore, there is no known CEQA requirement to notice parties who might be subject to 'taking' or decreased property values as suggested by the appellant. In fact such action might be considered speculative as well. The County properly noticed the public hearing per CEQA requirements.

F-21. The EIR did not include criteria pollutant and GHG emissions relative to electricity use.

Electrical power would be supplied to the proposed Project from Pacific Gas and Electric Company (PG&E)'s existing regional power grid. It is generally not possible to determine the exact generation source(s) of electricity on the power grid that would supply the proposed project, or whether or not the electricity would even be generated within the Bay Area Air Basin. Since analysis of criteria pollutants is dependent on the air basin of the Project-related sources, indirect emissions of criteria pollutants associated with electricity use from the regional power grid are not addressed in the air quality analysis.

GHG emissions associated with use of electricity from the existing power grid are generally addressed independent of air basin due to the global nature of the effects of GHG emissions. Refer to the *Indirect Emissions from Increased Electrical Demand* on DEIR page 4.8-17 for a discussion of electricity-related GHG emissions and emission factors that would be associated with the proposed Project.

F-25: V. Cumulative Air Quality Impact Analysis is Inadequate

As mentioned in response SMW-24, the baseline date (July 2012) for the proposed Project predates both the projects mentioned by the appellant (Santa Maria and Ferndale Refineries). The Santa Maria Refinery's relationship to the proposed Project was discussed in detail in Section 2.2 of the FEIR as was a discussion of the relationship of refinery feedstocks to the proposed Project. The Ferndale Refinery project is in another state (Washington) and its status is outside what would be considered by CEQA. Whether the Phillips refinery could or could not

receive crude oils or other feedstocks from the Ferndale refinery by marine vessel merely represents an existing, baseline condition that would not be altered by the proposed project.

Response to CBE Supplemental Evidence- Letter received January 7, 2014

The appellant claims the EIR's baseline level for once-through, non-contact saltwater flow volume is erroneous and underestimates the percent increase of the proposed project, and as a result underestimates the severity of potential project impacts related to the discharge of this water. The EIR used average daily flow volumes for the year 2012 to best represent current conditions of operations at the facility in order to analyze potential impacts from the proposed changes with the project. In accordance with CEQA requirements, "an EIR must include a description of the physical environmental conditions in the vicinity of the project, as they exist at the time the notice of preparation is published." (Article 9 Section 15125). Reviewing the data provided by the appellant which includes data from 2013 that was not available at the time of preparation of the DEIR, shows relatively similar average flow volumes compared to 2012 (44.76 for 2012 and 43.26 for 2013) further supporting the appropriate use of the 2012 data as baseline conditions. Further, in reviewing the data from the years 2010 through 2013 provided by the appellant, there is no clear correlation between average flow volumes and temperature of discharge. Comparing 2010 data to 2012 shows an approximate increase of 20% in flow and yet the highest recorded monthly average temperature² for the year only increases by 1.2% while the average for the year actually decreases by 0.6%. Regardless, despite fluctuations in flow volumes of once-through, non-contact saltwater for process cooling, the Refinery has a history of compliance with the effluent permit limitations including temperature.

The EIR has disclosed on page 3-27 and on page 4.4-27 of the DEIR that the Project would result in an increase of once-through cooling volume to approximately 40,000 gallons per minute from an existing 31,500 gallons per minute. A flow of 31,500 gallons per minute is the equivalent of 45.4 million gallons per day which compares well with the data provided by the appellant showing an average daily flow of 44.6 million gallons per day. The magnitude of the flow increase has been conveyed to the reader in another meaningful way by describing the change as a 25% increase in flow volume from an existing baseline level of 31,500 gallons per minute. However, it should be noted that the analysis does not rely solely on this percent increase. The increase in flow volume to 40,000 gallons per minute as proposed by the Project would be accommodated by the existing five pumps and would continue to operate within the National Pollutant Discharge Elimination System (NPDES) permit thresholds determined by the Regional Water Quality Control Board (RWQCB). As described in the DEIR (page 4.4-27) and in ESA's Response to Appeal Comment SMW-23, permit thresholds are based on various studies including the project-specific study by Tenera (2006) regarding use of wedgewire screens and maximum intake flows. The appellant provides no information to support the claim that the proposed Project's increase in once-through cooling volume to 40,000 gallons per minute would result in significant impacts on special-status fishes.

² The NPDES effluent permit limitation for temperature is based on the monthly average of daily measured temperatures.

Therefore, based on the appropriate use of 2012 monitoring data as representative of existing baseline conditions for the Refinery for the EIR and the lack of data supporting a direct correlation between increases in flow volumes and an inability to meet water quality permit requirements which are protective of receiving waters and habitat, the EIR has adequately characterized the potential impacts of the proposed Project.