
WATER SUPPLY CONTRACT EXTENSION PROJECT



FINAL ENVIRONMENTAL IMPACT REPORT



**State of California
Natural Resources Agency
Department of Water Resources**

November 2018

**State of California
The Resources Agency
Department of Water Resources**

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PROJECT
FINAL ENVIRONMENTAL IMPACT REPORT**



NOVEMBER 2018

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WATER SUPPLY CONTRACT EXTENSION PROJECT

Final Environmental Impact Report

Prepared for
State of California
Natural Resources Agency
Department of Water Resources

November 2018

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ACRONYMS AND ABBREVIATIONS

af	acre-feet
AIP	Agreement in Principle Concerning Extension of the State Water Project Water Supply Contracts
Banks Pumping Plant	Harvey O. Banks Delta Pumping Plant
BiOp	Biological Opinion
BDCP	Bay Delta Conservation Plan
CDFW	California Department of Fish and Wildlife
CEQ	Council on Environmental Quality
CEQA	California Environmental Quality Act
Contractors	State Water Contractors
Contracts	Water Supply Contracts
CVP	Reclamation's Central Valley Project
DCR	The State Water Project's Delivery Capability Report
DEIR	Draft Environmental Impact Report
Delta	Sacramento-San Joaquin Delta
DWR	California Department of Water Resources
EIR	Environmental Impact Report
EIS	Environmental Impact Statement
ESA	Endangered Species Act
FEIR	Final Environmental Impact Report
FERC	Federal Energy Regulatory Commission
GHG	greenhouse gas
JPOD	Joint Point of Diversion
MAF	Million Acre-Feet
NBA AIP	North Bay Aqueduct Alternate Intake Project
NEPA	National Environmental Policy Act
NMFS	National Marine Fisheries Service
NOA	Notice of Availability
NOC	Notice of Completion
NOD	Notice of Determination
NOP	Notice of Preparation
OCAP	Operations Criteria and Plan
proposed project	Water Supply Contract Extension Project
PWAs	Public Water Agencies
Reclamation	United States Bureau of Reclamation
RPA	Reasonable and Prudent Alternative
SCH	State Clearinghouse
SGMA	Sustainable Groundwater Management Act
State Water Board	State Water Resources Control Board

SWP	State Water Project
SWRDS	State Water Resources Development System
taf	thousand acre-feet
USACE	U.S. Army Corps of Engineers
USFWS	U.S. Fish and Wildlife Service

1. Introduction

1 INTRODUCTION

1.1 INTRODUCTION

The Department of Water Resources (DWR) circulated the Water Supply Contract Extension Project (proposed project) Draft Environmental Impact Report (DEIR) for public and agency comment from August 17, 2016 to October 17, 2016. During the comment period, DWR held a public hearing in Sacramento. At the end of the circulation period for the DEIR, a total of 12 written comment letters and e-mails were received. There were no comments made at the public hearing.

This document is the Final EIR (FEIR) for the proposed project and it contains written responses to all comments received by DWR from agencies and the public on the DEIR. Because multiple comments were received that addressed a number of key issues, DWR prepared comprehensive responses addressing these issues (master responses). Each master response provides background regarding the specific issue, how the issue was addressed in the DEIR, and additional clarification and explanation as appropriate to address the comments. In addition, individual responses to comments received were prepared. The responses to comments clarify and amplify text in the DEIR and do not change the findings or conclusions of the DEIR. This FEIR also includes a list of commenters, and comment letters received.

This FEIR has been prepared in accordance with the California Environmental Quality Act (CEQA) and together with the DEIR (and appendices) constitutes the EIR for the proposed project.

1.2 SUMMARY OF PROPOSED PROJECT AND PROJECT OBJECTIVES

The proposed project includes amending certain provisions of the State Water Resources Development System (SWRDS) Water Supply Contracts (Contracts). SWRDS (defined in Water Code Section 12931), or more commonly referred to as the State Water Project (SWP), was established in the Burns-Porter Act, passed by the Legislature in 1959 and approved by the voters in 1960. DWR constructed and currently operates and maintains the SWP, a system of storage and conveyance facilities that provide water to 29 State Water Contractors (Contractors also known as Public Water Agencies or PWAs).

In May 2013, DWR and the Contractors entered into public negotiations to extend the term and make other financial improvements to the Contracts. The outcome of these negotiations resulted in the “Agreement in Principle Concerning Extension of the State Water Project Water Supply Contracts” (AIP). The proposed project, would amend

certain financial provisions of the Contracts and extend the term of the Contracts to 2085 based on the AIP. The proposed project would not create new water management measures, alter the existing authority to build new or modify existing facilities, or change water allocation provisions of the Contracts.

DWR and the Contractors agreed to the following proposed project objectives:

1. Ensure DWR can finance SWP expenditures beyond 2035 for a sufficiently extended period to provide for a reliable stream of revenue from the Contractors and to facilitate ongoing financial planning for the SWP.
2. Maintain an appropriate level of reserves and funds to meet ongoing financial SWP needs and purposes.
3. Simplify the SWP billing process.
4. Increase coordination between DWR and the Contractors regarding SWP financial matters.

The changes to the SWP contracts by the proposed project are composed of the following five project elements that meet the proposed project objectives identified above.

1. **Extended Contract Term.** Revise Article 2 to extend the term of the 29 Contracts to December 31, 2085 (subject to the provisions of Article 4).¹
2. **Increased Operating Reserves.** Provide for increased SWP financial operating reserves.
3. **New Billing Provisions.** Implement a comprehensive pay-as-you-go repayment methodology with a corresponding billing system that more closely matches the timing of future SWP revenues to future expenditures. The pay-as-you-go repayment methodology generally means to recover capital, operation, and maintenance costs within the year incurred and/or expended.
4. **Enhanced Funding Mechanisms and New Accounts.** Provide enhanced funding mechanisms and create additional accounts to address SWP financial needs and purposes.
5. **Enhanced Coordination Regarding SWP Finances.** Provide for a finance committee and provide other means to increase coordination between DWR and the Contractors regarding SWP financial matters.

¹ Article 4 provides each Contractor an option for continued service after the date determined in accordance with Article 2. Article 2 is described in footnote 2 on page ES-2 and Article 4 is described in footnote 1 on page ES-1.

1.3 ORGANIZATION OF THE FEIR

The FEIR is organized as follows:

Chapter 1 – Introduction: This chapter summarizes the proposed project, describes the content and format of the FEIR, summarizes the public participation and review process and describes the CEQA certification and project approval process.

Chapter 2 – Responses to Comments: This chapter includes a list of the comment letters received followed by the comment letters and responses to the comments contained in each letter. The responses to comments are numbered consistent with the comment number for each letter. For example, the response to the first comment in Comment Letter 1 is Response to Comment 1-1. This chapter also includes the master responses prepared in response to comments received. Each master response is numbered and that number is referenced in a response that incorporates the master response.

Exhibit A – Proposed Contract Extension Amendment

Exhibit B – Comment letters received on the DEIR with attachments.

1.4 PUBLIC PARTICIPATION AND ENVIRONMENTAL REVIEW PROCESS

DWR notified all responsible and trustee agencies and interested groups, organizations, and individuals that the DEIR on the proposed project was available for review. The following list of actions took place during the preparation, distribution, and review of the DEIR:

- A Notice of Preparation (NOP) and Notice of Completion (NOC) were filed with the State Clearinghouse (State Clearinghouse Number (SCH #) 2014092036) on September 12, 2014 for public review ending on October 13, 2014.
- The NOP and information on the two scoping meetings were provided to: (1) State, local and federal agencies; (2) 28 local libraries; (3) 28 county clerk offices; (4) 29 newspapers; and (5) other interested parties. The NOP was also made available on DWR's website and can be found at: <https://water.ca.gov/Programs/State-Water-Project/Management/Water-Supply-Contract-Extension>.
- Two scoping meetings were held on September 23, 2014 in the Resources Building Auditorium, 1416 Ninth Street, Sacramento, CA 95814 from 2:00 to 4:00 pm and 5:00 to 7:00 pm.
- The NOC and copies of the DEIR were filed with the State Clearinghouse on August 17, 2016 with public review ending on October 17, 2016.

- Notices of Availability (NOA) and information on the public hearing was provided to: (1) State, local and federal agencies; (2) 28 local libraries; (3) 28 county clerk offices; (4) 29 newspapers; and (5) other interested parties. The NOA and the DEIR were also made available on DWR's website and can be found at: <https://water.ca.gov/Programs/State-Water-Project/Management/Water-Supply-Contract-Extension>.
- A public hearing to receive comments on the DEIR was held in Sacramento on September 12, 2016 from 4:00 p.m. to 8:00 p.m. in the Sacramento Central Library Tsakopoulos Galleria, 821 I Street, Sacramento, CA 95814.
- Copies of the DEIR, including appendices, were available for public review at DWR's State Water Project Analysis Office during normal business hours located at 1416 Ninth Street Room 1620, Sacramento, CA 95814. The document was also made available on DWR's website and be found at: <https://water.ca.gov/Programs/State-Water-Project/Management/Water-Supply-Contract-Extension>.

1.5 CEQA CERTIFICATION AND PROJECT APPROVAL

Before DWR makes a decision with regard to the proposed project, CEQA Guidelines Section 15090(a) requires that DWR first certify that the EIR has been completed in compliance with CEQA, that DWR has reviewed and considered the information in the EIR, and that the EIR reflects the independent judgment and analysis of DWR.

In the event DWR approves the proposed project, CEQA requires that it file a Notice of Determination (NOD) and adopt appropriate findings as set forth in CEQA Guidelines Section 15091. Under CEQA Guidelines Section 15092, a lead agency may only approve or carry out a project subject to an EIR if it determines that: (1) that project will not have a significant effect, or (2) that the agency has eliminated or substantially lessened all significant effects on the environment where feasible and any remaining significant effects on the environment that are found to be unavoidable are acceptable due to overriding considerations. This EIR may also be used by the Contractors, as responsible agencies under CEQA, in their discretionary approval processes within their jurisdictions to meet their CEQA requirements.

2. Responses to Comments

2 RESPONSES TO COMMENTS

2.1 INTRODUCTION

This chapter contains written responses to all comments received by DWR from agencies and the public on the DEIR. Table 2-1 lists all of the parties who submitted comments on the DEIR during the public comment period. The commenting parties are organized into the following categories: local and regional agencies, and individuals and other organizations. The comment letters are presented based on the date they were received within each of these categories.

**TABLE 2-1.
LIST OF COMMENTERS**

Letter #	Commenter
Local Agencies	
1	County of Santa Barbara, Public Works
2	Stanislaus County Environmental Review Committee
3	County of Santa Barbara, Executive Office
4	Plumas County Flood Control & Conservation District
5	Central Delta Water Agency
Organizations and Individuals	
6	California Water Impact Network/California Sportfishing Protection Alliance/AquAlliance
7	California Water Impact Network/California Sportfishing Protection Alliance/AquAlliance/Planning and Conservation League
8	Natural Resources Defense Council/Defenders of Wildlife/The Bay Institute
9	Center for Food Safety
10	Planning and Conservation League/Pacific Coast Federation of Fishermen's Associations/Environmental Water Caucus
11	AquAlliance/California Sportfishing Protection Alliance/California Water Network
12	Friends of the River

2.2 MASTER RESPONSES

Because multiple comments were received that addressed a number of key issues, DWR prepared comprehensive responses addressing these issues (master responses). Each master response provides background regarding the specific issue, how the issue was addressed in the DEIR, and additional clarification and explanation as appropriate to address the comments. Each master response is numbered and that number is referenced in a response that incorporates the master response. The following master responses were prepared for this FEIR:

1. No Project Alternative

2. Range of Alternatives
3. Relationship to California WaterFix
4. Regulatory Compliance
5. Recirculation of the DEIR
6. Reduced Table A Deliveries

Master Response 1: No Project Alternative

Comments were received regarding the identification of the No Project Alternative in the DEIR. Some comments suggest that DWR assume a no project alternative that would end the Contracts in 2035 or with a shorter term than DWR used for the No Project Alternative. Some comments suggest that the No Project Alternative should include reduced water service deliveries. Some comments suggest that the No Project Alternative should have included the possibility that some of the Contractors would choose not to renew their Contracts.

CEQA Guideline Section 15126 (1)(3) states that the purpose of the no project alternative is to allow decision makers to compare the impacts of approving the proposed project with the impacts of not approving the proposed project. Section 15126.6(e) provides that the no project alternative should be the project that would be reasonably expected to occur in the foreseeable future if the proposed project were not approved based on current plans. Furthermore, Section 15126.6(e)(3)(a) states that no project alternative is usually the continuation of the existing project. When selecting and analyzing the No Project Alternative for contract extension, DWR considered what was reasonably expected to occur if the Contracts were not extended as negotiated in the AIP. The DEIR describes the No Project Alternative on pages ES-6 and 7-6 to 7-9:

“Under the No Project Alternative, DWR takes no action, and DWR and the Contractors would continue to operate and finance the SWP under the Contracts to December 31, 2035. Upon receipt of Article 4 letters from the Contractors (at least 6 months prior to the existing expiration date for each Contract) the term of the Contracts would be extended beyond their current expiration dates. Under this alternative, the Contracts would not expire beginning in 2035. Water service would continue beyond 2035 to all Contractors, consistent with the Contracts including the existing financial provisions. Annual revenue and water supply cost recovery would continue consistent with the current Contracts. Until the Contractors submit their Article 4 letters to extend their Contract expiration dates and the extended Contract expiration date is determined, DWR would not sell bonds with maturity dates past 2035 to finance SWP capital expenditures and therefore the current compression in the recovery of capital costs and the bond financing costs would be exacerbated.”

DWR considers this to be the appropriate No Project Alternative for several reasons. As discussed on pages 7-9 to 7-11 of the DEIR, Article 4 of the Contract gives each Contractor the right to extend its Contract with certain key terms similar to the existing Contracts by giving notice to DWR of its intentions to extend its Contract at least six months before the expiration of the Contract. These key terms are the amounts of water delivered (including maximum Table A Amount), the cost of water delivery, the physical conditions of delivery, the water quality, and the ability to make use of transportation facilities. This option was included in the Contracts to give the Contractors guarantees about the continuity and dependability of SWP water service after 2035 and recognizes that the Contractors have been charged under the water supply contracts and paid significant amounts towards the cost of SWP water conservation and transportation facilities during the term of the Contracts, which is 75 years. Article 4 further provides that Contractors have the same option to extend their Contracts with the key terms after their current expiration date.

DWR described the No Project Alternative to continue the Contract beyond 2035 because it is reasonably foreseeable to expect that all of the Contractors will exercise their Article 4 rights before the end of the Contract, based in part on the interest that the Contractors have already expressed in extending their Contracts. All Contractors have already expressed an interest in some form in extending their water supply Contracts. Before starting the negotiations, DWR polled all of the Contractors to determine if they had an interest in extending their Contract beyond 2035 to address the bond compression described on pages 1-1 to 1-2 of the DEIR, and all of them responded affirmatively. Nine of the Contractors have already submitted their Article 4 letter to DWR requesting to extend their Contract, in some cases the letter was sent 25 years before the end of term. (Alameda County Water Agency, Kern County Water Agency, Antelope Valley-East Kern Water Agency, Coachella Valley Water District, Crestline-Lake Arrowhead Water Agency, Little rock Creek Irrigation District, Mojave Water Agency, San Gabriel Valley Municipal Water District, Alameda County Flood Control and Water Conservation District, Zone 7) All of the Contractors participated in the 23 public negotiation sessions to extend the Contract either directly or through a representative from the State Water Contractors, Inc. (<https://water.ca.gov/Programs/State-Water-Project/Management/Water-Supply-Contract-Extension>). These public negotiations ended with 25 of the Contractors signing the AIP, showing that these Contractors were in general agreement to extend the Contracts to 2085 consistent with AIP and subject to CEQA review (see Appendix A of DEIR). The four Contractors that have not signed the AIP have expressed a desire to review and consider signing the AIP at a later date and/or ultimately extend the Contract.

Further support for the selection of the No Project Alternative in the DEIR is that SWP waters supplies are important to meet existing water demands for all of the Contractors, so it is reasonably foreseeable that this water supply will continue after 2035, requiring the extension of the Contracts. Contractors rely on the SWP to meet their regional water demands. The DEIR discusses the importance of SWP water service to each Contractor on pages 5-142 to 5-146. In addition, on pages 5-149 to 5-151 the DEIR discusses the reliance and use of SWP supplies based on information contained in the Urban Water Management Plans prepared by SWP urban Contractors. The importance of the SWP was further demonstrated during the recent droughts from 2011-2015 and from 2007-2009. Without SWP supplies, water users within some of the Contractors' service areas would have likely faced additional shortages, affecting the local economies and quality of life.

In some service areas, it is further anticipated that alternatives to SWP supply could become less available and more expensive. This again suggests that it is reasonably foreseeable that the Contracts will continue beyond 2035 providing similar levels of water service. For example, the Sustainable Groundwater Management Act (SGMA) adopted in 2014, which is discussed on pages 5-83 to 5-84 of the DEIR, requires that groundwater basins designated as high and medium priority identify a local groundwater agency to prepare a groundwater sustainability plan by 2020 or 2022 that results in local groundwater management that limits undesirable effect, including overdraft. SGMA requires the preparation in the plans of a water balance to avoid overdraft and to bring the groundwater basin into balance. For Contractors in basins that have been designated as high and medium priorities, it is anticipated that the continued delivery of SWP water service could be needed to help achieve balance.

DWR also believes that costs associated with the SWP will continue to be affordable for the Contractors and will not serve as a deterrent for some Contractors to extend their Contract. The capital cost for the conservation facilities for the extended Contract were modeled and analyzed on pages 5-3 to 5-8 of the DEIR. The modeling shows that extending the contact now would eliminate the extreme financial repayment obligations that would otherwise occur between 2016 and 2035 due to the bond compression. The proposed project would level out future capital cost, allowing the Contractors to adopt more stable rate structures. As described on pages 3-1 to 3-2 of the DEIR, the Contractors have already paid billions of dollars to DWR under the Contracts to cover the capital costs related to SWP water supply since the SWP began operations. Given the significant amounts of payments from the Contractors used for the construction and repair of the conservation facilities and the facilities to transport water to the individual Contractors, it is reasonable to describe a no project alternative that assumes that the

Contractors would request continued water service beyond 2035 through Article 4, so that they would continue to receive the benefits from those capital facilities.

DWR elected not to specify an expiration date for the No Project Alternative. Article 4 gives Contractors the option to request an extension of the Contract without specifying the term, and the right to receive the same option at the expiration of each term. At the end of each term, DWR and Contractors would need to agree upon a new expiration date. DWR believes that it is reasonable to assume that whatever term was agreed upon after the Contractors invoke Article 4, that Contractors would exercise that option again after each term, and that SWP water service is likely to continue to at least 2085. In the EIR impact analysis, DWR believes it is helpful for the purposes of impact analysis to assume that under the No Project Alternative the Contract will continue to at least 2085 so that it could be more easily compared to the proposed project. This approach is consistent with Section 15126 (1)(3), which provides that one purpose of the no project alternative is to permit a comparison with the proposed project.

Other alternatives besides the No Project Alternative did address several alternatives suggested in the comments. Alternative 2 considered a shorter term with the Contracts ending in 2065, and compared that alternative to the proposed project. Alternative 7 considered an alternative where some Contractors elected not to extend the Contract after 2035 and to cease receiving SWP water service. This alternative analyzed what impacts such Contractors would face in their water service areas. DWR, considered on pages 7-2 to 7-4 of the DEIR, but rejected analyzing an alternative that resulted in reduced Table A deliveries because it did not meet project objectives. See Master Response 6 for more discussion on a scenario that looks at reduce Table A deliveries.

Master Response 2: Range of Alternatives

Some commenters suggested that DWR had improperly defined the scope of the project and that the EIR should evaluate the impacts of the SWP and the Contracts as a whole, including the impacts of the SWP on the Sacramento-San Joaquin Delta (Delta) and the inadequacy and future uncertainty of supplies. Other commenters suggested that the alternatives should include reduced water deliveries, reduced contract durations, different water supply contract amounts, increased Delta flows by reducing exports, and increased water conservation.

The lead agency has the authority and responsibility to initially frame the scope of its proposed purpose and objectives. As discussed in Response to Comment 5-11, the lead agency is free to limit its proposed objectives to the issues it wants to address and is not obligated to look at broader issues or concerns. The scope of analysis in the DEIR is based on the project description provided in Chapter 4, Project Description. As

stated in the DEIR on page 4-2; “The proposed project would amend and add financial provisions to the Contracts based on the negotiated AIP between DWR and the Contractors (see Appendix A). The proposed project would not create new water management measures, alter the existing authority to build new or modify existing facilities, or change water allocation provisions of the Contracts.” To satisfy the requirements of CEQA, an EIR must include a reasonable range of alternatives to the project that would meet all or most of the project’s objectives. (See CEQA Guidelines Section 15126.6(a)). Accordingly, the project objectives are the starting points for DWR in developing the reasonable range of alternatives to be evaluated in detail in an EIR (CEQA Guidelines Sections 15124(b), and 15126.6(a)). The DEIR Chapter 4, Project Description, Section 4.3, Project Objectives describes in detail the project objectives.

CEQA Guidelines, Section 15126.6 (a) states: “There is no ironclad rule governing the nature or scope of the alternatives to be discussed other than the rule of reason.” The rule of reason “requires the EIR to set forth only those alternatives necessary to permit a reasoned choice” and to “examine in detail only the ones that the lead agency determines could feasibly attain most of the basic objectives of the project.” (CEQA Guidelines Section 15126.6(f)) An EIR does not have to consider alternatives “whose effect cannot be reasonably ascertained and whose implementation is remote and speculative.” (CEQA Guidelines Section 15126.6(f)(3))

In Chapter 7, DWR analyzed seven different alternatives in addition to the proposed project. These alternatives are: 1. No Project; 2. Different Contract Term (2065) with Financial Provisions of the Proposed Project; 3. Different Contract Term (2110) with Financial Provisions of the Proposed Project; 4. Extend Contract Term to 2085 without Financial Provisions of the Proposed Project; 5. Extend Contract Term to 2085 and do not Implement Financial Provisions of the Proposed Project until 2035; 6. Extend Contract Term Through the Sale of Bonds; 7. Not All Contractors Sign.

These alternatives represent a reasonable range of alternatives, and the scope of the analysis of alternatives fully complies with CEQA. DWR carefully considered all potential alternatives that were proposed during the scoping process and while the EIR was being prepared (see Appendix B of the DEIR for the scoping comments and the letters received).

Draft EIR Chapter 7, Alternatives, explains the process used to develop the alternatives, and explain why certain potential alternatives were considered but ultimately eliminated by DWR. Out of the 10 alternatives considered in the DEIR, three alternatives to the proposed project were eliminated as they were not found to attain most of the basic project objectives or not to be feasible means to achieve basic project objectives; seven

alternatives to the proposed project (including the No Project Alternative) were developed and analyzed in the DEIR for their ability to meet project objectives; and the proposed project received a full analysis in the DEIR. Each alternative to the project was evaluated to see if the alternative would feasibly attain most of the basic project objectives and avoid or substantially lessen significant project objectives. Table 7-2 on page 7-27 provides a summary of how each alternative compares to the proposed project.

As described in DEIR Chapter 5, Environmental Analysis, there are no impacts associated with the proposed project. Therefore, there are no alternatives that would reduce or eliminate significant project impacts as compared to the proposed project and development of specific alternatives to reduce or eliminate significant environmental impacts is not required by CEQA. However, as an informational document, the DEIR disclosed for public and agency consideration a reasonable range of alternatives to the proposed project in order to provide DWR with sufficient information to foster informed decision-making.

DWR considered the suggestions that the proposed project should cover the SWP or the Contract as a whole or that it should look at how the SWP affected or was affected by other conditions, including impacts on the Delta and the effects of climate change, and that alternatives should include reduced water deliveries, reduced contract durations, different water supply contract amounts, increased Delta flows by reducing exports, or increased water conservation but determined that these suggestions did not meet the proposed project objectives, but were actually different projects with different project objectives. Factors DWR considered include the following:

- The proposed project reflects a negotiated solution to a problem that provides benefits for the parties to the Contracts (SWP contractors and DWR). All the parties recognize that the financial problems identified in the objectives are real and need to be resolved. When a proposed project reflects a negotiated solution to a problem that provides benefits for different parties, the CEQA analysis can reject alternatives that do not achieve all of the objectives concurrently.
- CEQA does not require an agency to examine a project and objectives that are completely different from the one it has chosen to pursue. This is not an EIR on the operation and maintenance of the SWP. See also Response to Comment 5-11 for further discussion of the scope of the proposed project. The DEIR does not evaluate issues such as impacts attributed to the operation of the SWP, all of the problems facing the Delta, or activities relating to water conservation and water supply. These would continue to exist even if there were no proposed project. As a result, under CEQA, they are considered part of the baseline conditions and are not environmental impacts of the proposed project. Therefore, in the DEIR DWR is

not required to mitigate or consider alternatives for impacts attributed to the ongoing operation and maintenance of the SWP.

- The proposed project cannot and does not change hydrologic conditions or regulatory requirements in effect at the time of export, including applicable permits and constraints to protect water quality and listed fish species (see Master Response 4 Regulatory Compliance). DWR has and continues to export SWP water to the Contractors in compliance with all State and federal environmental laws and regulation.
- Even though there are no impacts associated with the proposed project, the DEIR identifies seven alternatives to the proposed project. See DEIR Chapter 7, Alternatives for discussion of the reasonable range of alternatives developed for this DEIR.
- DWR is not avoiding the demands facing the State and the Delta with regard to these issues. As recognized in the DEIR, there are administrative and legislative efforts that address these concerns as part of other comprehensive statewide processes. This EIR does not need to address all issues facing the SWP or the Delta. DWR leaves resolution of these broader issues to other established planning, legislative and regulatory processes.
- See Master Response 6 Reduced Table A Deliveries with regard to the proposal that the parties consider an alternative that reduces Table A amounts, In the interests of providing more information to decision makers and the public on the effects of this scenario, DWR has prepared an analysis of the effects of reducing SWP water supplies. This analysis is not presented as an alternative or as a modification of any alternatives discussed in the DEIR, but as clarification of why DWR rejected the approach as an alternative.

Master Response 3: Relationship to California WaterFix

Several comments received on the DEIR suggest that the analysis in the DEIR is incomplete because it does not include projects that may be funded through the Contracts, including California WaterFix.

Legal Background

CEQA Guidelines Section 15165 provides that “[w]here one project is one of several similar projects of a public agency, but is not deemed a part of a larger undertaking or larger project, the agency may prepare one EIR for all projects, or one for each project, but shall in either case comment upon the cumulative effect. The California Supreme Court held that “an EIR must include an analysis of the environmental effects of future expansion or other action if: (1) it is a reasonably foreseeable consequence of the initial project; and (2) the future expansion or action will be significant in that it will likely change the scope or nature of the initial project or its environmental effects. Absent these two circumstances, the future expansion need not be considered in the EIR for

the proposed project.” *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal. 3d 376, 396. CEQA does not require DWR to analyze the proposed project in combination with California WaterFix as part of a single project in a single EIR because: (1) the proposed project and California WaterFix are not a reasonably foreseeable consequence of one another; and (2) the proposed project has significant independent utility, including independent benefits and independent purposes and objectives.

The scope of analysis in the DEIR is based on the project description provided in Chapter 4, Project Description. As stated on DEIR page 4-2: “The proposed project would amend and add financial provisions to the Contracts based on the negotiated AIP between DWR and the Contractors (see Appendix A). The proposed project would not create new water management measures, alter the existing authority to build new or modify existing facilities, or change water allocation provisions of the Contracts.” As further described, the changes to the Contracts by the proposed project are composed of the following five project elements that meet the proposed project objectives: (1) extend the Contract term; (2) increase operating reserves; (3) new billing provisions; (4) enhance funding mechanisms and new accounts; (5) enhance coordination regarding SWP finances. The proposed amendments to the Contracts do not include language that would approve or otherwise authorize the construction of new facilities that could be funded through the Contracts in the future, including California WaterFix.

DWR’s decision to focus its analysis on the proposed project is justified in light of the proposed project’s significant independent utility. As specifically stated on DEIR pages 6-3 and 7-5, while the proposed project and California WaterFix are related, the proposed project is a separate, independent project that would occur with or without implementation of California WaterFix. As discussed in Chapter 4 Project Description, one of the primary reasons the Contracts are being amended is to extend the Contracts’ expiration dates to 2085. It has become more challenging in recent years to affordably finance capital expenditures for the SWP since revenue bonds used to finance these expenditures are not sold with maturity dates that extend beyond the year 2035, the year the first Contract would expire. Not extending the Contracts would continue to exacerbate the revenue bond compression problem that DWR and the Contractors are currently facing. Extending the Contracts’ expiration dates to 2085 will enable DWR to finance SWP expenditures beyond 2035 and continue to receive a reliable stream of revenues from Contractors for the construction, operation, and maintenance of the SWP.

The proposed project would have significant independent utility, in terms of its benefits, purposes and objectives. As stated in Chapter 5 on pages 5-7 and 5-8, the proposed project would provide long-term benefits to the SWP by continuing to provide a stable

revenue source, better matching revenues with anticipated costs, and providing for the maintenance of reserves and funds for all SWP purposes during the term of extended Contract. These benefits include the ability to continue to finance projects such as repairs to the California Aqueduct, replacement of aging pumps, generators, and other equipment and implementing low greenhouse gas (GHG) emission energy projects. Capital project that could be financed in whole or in part by the sale of longer term bonds (if available as the result of Contract extension) include: (1) reinforcing Perris Dam at Lake Perris against seismic failure and maintaining other SWP facilities to current seismic safety standards; (2) reconstructing the Ronald B Robie Thermalito pump-generating plant in the aftermath of a damaging fire to the facility; (3) implementing the Oroville hydroelectric license project; and (4) obtaining a renewed Federal Energy Regulatory Commission (FERC) license for the SWP's southern hydroelectric plants.

An EIR or other environmental documentation for each of these projects has been or will be prepared. For future projects, DWR will continue its practice of providing separate CEQA compliance at the time that each such project is proposed. For example, a separate EIR/Environmental Impact Statement (EIS) was prepared for the California WaterFix. In July 2017, DWR certified its Final EIR, adopted Findings of Fact, a Statement of Overriding Considerations, a Mitigation, Monitoring and Reporting Plan (MMRP), approved Alternative 4A - California WaterFix, and filed its Notice of Determination (NOD). The California WaterFix Draft Supplemental EIR/EIS (Draft Supplemental EIR/EIS) with updated environmental analysis covering footprint changes resulting from proposed design modifications that minimize impacts of the California WaterFix was released on July 17, 2018 for public review and comment. The CEQA public comment period on the Draft Supplemental EIR ended September 17, 2018. The Bureau of Reclamation released the EIR/EIS for public review under the National Environmental Policy Act (NEPA) on September 21, 2018. The California WaterFix is addressed in DEIR Chapter 6, Section 6.1.1.1 as a cumulative project and Chapter 7, Alternatives, Section 7.3.3.

DWR and the Contractors agreed to enter into the process for amending the Contracts to confirm and supplement certain provisions for several water management actions, including transfers and exchanges, and to address changes in financial provisions related costs of California WaterFix. This public process was initially noticed in November 2014 for cost allocation of the proposed Bay Delta Conservation Plan (BDCP). In February 2018, DWR and the Contractors resumed the public process to negotiate the proposed amendments. The purpose of the resumed negotiations was to address terms and conditions of water management actions related to water transfers

and exchanges, and to develop terms and conditions for allocation of costs of California WaterFix for Contractors that directly benefit from WaterFix. The negotiations led to development of a non-binding “Agreement in Principle Concerning the State Water Project Water Supply Contract Amendments for Water Management and California WaterFix.” DWR is currently in the process of preparing a separate EIR for this project.

Master Response 4: Regulatory Compliance

Comments were received on the DEIR stating that the SWP does not comply with existing regulatory requirements, including impacts on salmon, Delta smelt and Delta water supplies, and should do so before Contract extension is approved. Some comments also suggested that future regulatory changes could affect the proposed project.

Existing SWP regulatory requirements are covered in the DEIR in Chapter 5, Environmental Analysis under each resource topic. See pages 5-126 through 5-127 of the DEIR for a description of the SWP water rights decisions and orders.

When exporting water from the Delta, DWR must comply with all current State and federal regulatory requirements in effect at the time of the export pumping, including numerous environmental standards, laws, and regulations relating to reservoir releases and Delta inflow and outflow, Delta water quality, fish protection, environmental needs, water rights, and the needs of other users. The needs of other users include in-Delta users and the water rights of the areas of origin of Delta inflow. These requirements include applicable State Water Resources Control Board (State Water Board) orders, United States Army Corps of Engineers (USACE) permits, Biological Opinions (BiOps) and other regulatory constraints including any relevant judicial orders in effect at the time of the operation. They have established water quality and flow requirements and limits on the rate of export of water that can be pumped by the state and federal pumping plants.

Therefore, compliance is included in the proposed project and all of the alternatives analyzed in the DEIR. Approval of the proposed project would not alter the SWP obligation and commitment to comply with all current and future applicable regulatory requirements, including biological opinions and water rights decisions.

Master Response 5: Recirculation of the DEIR

Several comments suggest that the DEIR is insufficient and requires a revised project description for a different project, more alternatives, and more analysis of environmental impacts leading to significant changes that would require recirculation. See Master Response 2 for more details on the range of alternatives selected and evaluated in the DEIR, and Response to Comment 5-11 for more details on definition of the project.

CEQA requires a lead agency to recirculate an EIR when significant new information is added to the EIR after public notice is given of the availability of the DEIR for public review but before certification. (CEQA Guidelines, Section 15088.5 (a))

Although new information is included within this FEIR, the new information is not considered significant new information requiring recirculation. For instance, no new information was included that would result in: (1) a new significant environmental impact resulting from the project or from a new mitigation measure proposed to be implemented. (See *Laurel Heights Improvement Association v. Regents of University of California* (“*Laurel Heights II*”) (1993) 6 Cal.4th 1112, 1129); (2) a substantial increase in the severity of an environmental impact unless mitigation measures are adopted that reduce the impact to a level of insignificance; and/or (3) a feasible project alternative or mitigation measure considerably different from others previously analyzed were added that would clearly lessen the environmental impacts of the project.

All information included in this FEIR clarifies or amplifies information provided in the DEIR. (See *Laurel Heights II*, *supra*, 6 Cal.4th 1112, 1129-1130.) Therefore, recirculation is not required.

Master Response 6: Reduced Table A Deliveries

A number of comments state that the proposed project should include a reduction of the Table A amounts set forth in the Contracts. These comments also cite a desire to reduce SWP exports from the Delta as a means of potentially reducing environmental effects in the Delta, and single out Table A amounts as a mechanism to achieve that goal. In response, it is helpful to review the background and purpose of the Table A amounts as well as other provisions of the Contracts, and address the issues with placing limitations on SWP pumping from the Delta. These comments appear to reflect a misunderstanding of the calculation and delivery of SWP water under the Contracts.

The Contracts and Table A Amounts

The Contracts are agreements between DWR and the Contractors which primarily define how costs of the SWP are determined and allocated, and how water available to the SWP is allocated. Each Contract has a table, Table A, which lists maximum annual amounts of water estimated by each Contractor to reflect their increased water needs through the years due to urban or agricultural growth in their service area (see Chapter 2, State Water Project, and Appendix C, Sample Water Supply Contract). These Table A amounts are *not* used in DWR’s annual determination of SWP water supply, but instead are used in the proportioning of available Table A water among the Contractors.

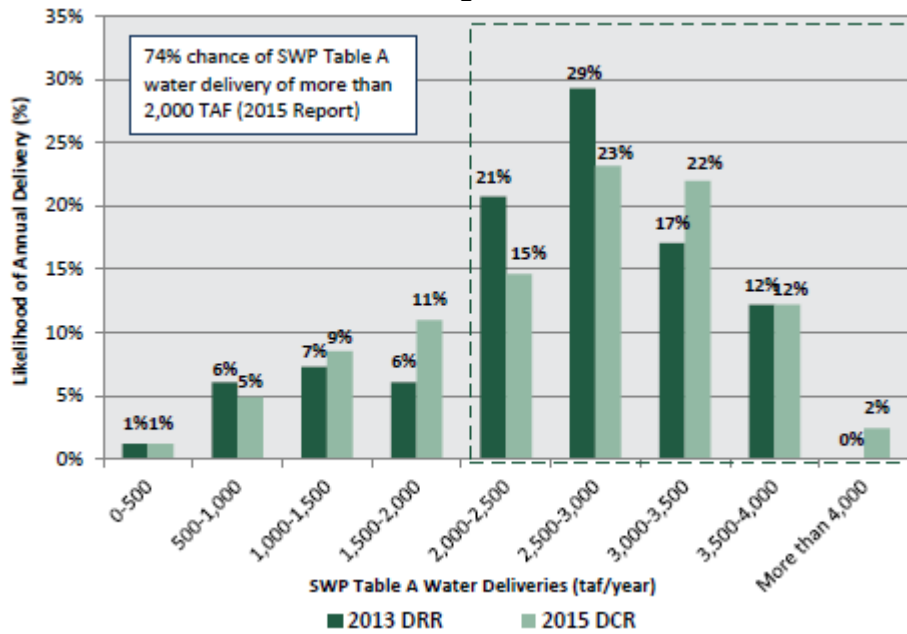
DWR annually determines the supply of SWP water that can be scheduled for delivery throughout the year based on hydrology, SWP reservoir storage, SWP facility constraints, and regulatory constraints. The initial determination of water supply is forecasted in December and the Table A water is prorated among the Contractors in relation to their maximum Table A amounts. As winter and spring progress, updated rainfall and snowpack typically increase the available SWP water supply, which includes Table A water and other types of water. Whenever the supply of Table A water is less than the total of all Contractors' Table A requests, the available supply of Table A water is allocated among all Contractors in proportion to each Contractor's annual Table A amount.

It is important to note that the SWP as originally envisioned has not been completed, and that the reliability of SWP water supply fluctuates for many reasons, including physical and regulatory causes. Additional storage upstream of the Delta in conjunction with facilities to transport water across the Delta has not been constructed. Additionally, listing of Delta smelt and winter-run Chinook salmon as endangered and threatened under the federal Endangered Species Act (ESA), as well as more stringent water quality standards in the Delta, contributed to a reduced probability of delivering 100 percent of the maximum Table A amounts from when the Contracts were executed in the 1960s. To help Contractors better evaluate their SWP water supply, DWR every two years provides the reliability of SWP water supplies under a range of hydrologic conditions and publishes the results in a report entitled "The State Water Project – Delivery Capability Report" (DCR).

In the 2015 DCR, the capability of the SWP to deliver Table A water is presented, utilizing a range of past hydrology from 1922 through 2003. This range incorporates dry years, multi-year droughts, average years, and wet years, thereby allowing Contractors to understand the probability of receiving maximum Table A amounts under various hydrologic conditions. This analysis is important since the maximum Table A amounts cannot be delivered every year due to the above reasons and other constraints. As shown in DCR Figure 6-2 (presented below), there is a 74 percent chance of a total Table A water delivery of more than 2,000 thousand acre-feet (taf).^{*} However, the chance of a total Table A water delivery of more than 4,000 taf is only 2 percent. It is not the Contract Table A amounts that set this delivery probability, but the hydrological, physical, and regulatory constraints pertaining to the SWP.

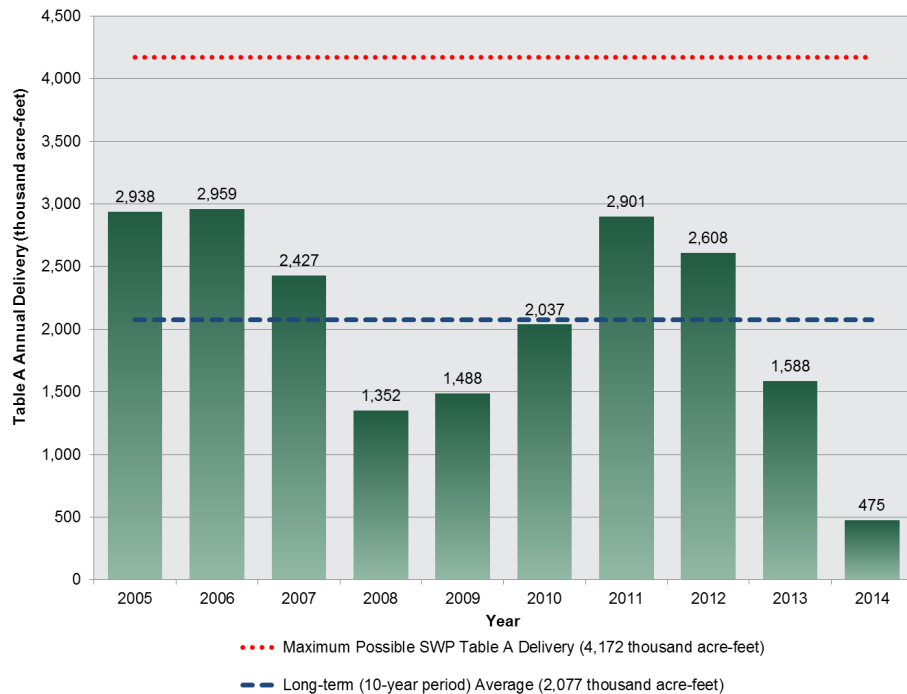
DCR Figure 5-1 (presented below) shows that the average historical deliveries of Table A water for 2005-2014 are 2,077 taf/year. During this 10-year period, the hydrology was trending more on the below normal and dryer side, plus the addition of two new Delta requirements for fish in 2007/2008 reduced both the SWP and Central

DCR Figure 6-2



* The probability of delivering less than 2 million acre-feet (MAF) is the sum of 1 percent (%) + 5% + 9% + 11% = 26%; therefore, the probability of delivering more than 2 MAF is 100% - 26% = 74%.

DCR Figure 5-1



Valley Project's (CVP) ability to capture water at their Delta export facilities. Again this history affirms that Table A amounts do not dictate the hydrology or Delta export restrictions, but that hydrology and other regulatory requirements dictate how much Table A water can be delivered to Contractors, and how much water can be exported by both the SWP and CVP (Reclamation) projects from the Delta.

The Contract and Other Water

The Contract includes provisions for Contractors to take delivery of SWP or non-SWP water and to better manage all of their SWP water supplies. There is "Article 21" water, "Carryover" water, "Turnback Pool" water, "Article 55" water (transfer water), "Article 54" water (flexible storage in two Southern California SWP reservoirs), and other provisions for the delivery and management of water for the Contractors.

Article 21 water is an interruptible water supply made available only when certain conditions exist, namely that the SWP share of San Luis Reservoir is full or nearly so, other SWP reservoirs are full, the Delta is in excess conditions (releases from upstream reservoirs and unregulated flow exceed the water supply needed to meet Sacramento Valley in-basin uses and exports from the Delta), Table A deliveries are being met, and the Harvey O. Banks Delta (Banks) Pumping Plant has additional available capacity consistent with regulatory constraints. DWR then offers Article 21 water to those Contractors that can, on relatively short notice, put it to beneficial use. As with all SWP water, Article 21 water is supplied under existing SWP water rights permits, and is pumped from the Delta under the same regulatory, environmental, and operational constraints that apply to all SWP Delta exports. When Article 21 water is available, DWR may only offer it for a short time, and the offer may be discontinued when the necessary conditions no longer exist. Typically, Contractors have used Article 21 water to meet needs such as additional short-term irrigation demands, and storage in local surface reservoirs and groundwater basins, all of which provide Contractors with opportunities for better water management.

SWP conveyance of non-SWP water is another important aspect of total Delta exports. Article 55 of the Contracts provides the conveyance of non-SWP water for the Contractors. The Contractors and other water agencies often enter agreements with water agencies upstream of the Delta for temporary water supplies when SWP and other local supplies are forecasted to be less than the target supply needed to meet their demand for the year. These temporary transfer supplies represent additional water to the downstream system that would not be otherwise available. Water transfers considered for approval by DWR or Reclamation are usually based on crop idling or shifting, groundwater substitution, and reservoir reoperation. Transfer water made

available by the willing sellers can be exported at Banks between July 1 and September 30, consistent with the requirements of BiOps issued by United States Fish and Wildlife Service (USFWS) and National Marine Fisheries Service (NMFS) in December 2008 and June 2009, respectively, along with certain other operational restrictions for the SWP. DWR is willing to approve the conveyance of the transfer water for the buyers provided certain conditions are met including available Banks capacity, and that DWR can determine that the transfer will not result in impacts to SWP operations.

Delta Exports

An important fact about total Delta water exports is that Reclamation and DWR have historically shared capacity at their Delta export pumping facilities when it is advantageous to do so. Sharing of the pumping facilities can help both projects deliver water to their contractors when demand is high or some facilities are out of service in emergencies or during maintenance. The sharing of facilities is referred to as the Joint Point of Diversion (JPOD). In 1978, DWR agreed to, and the State Water Board permitted, the CVP to use the SWP's Banks Pumping Plant capacity to divert and export up to 195,000 acre-feet (af) annually from the Delta to replace pumping capacity lost at the CVP's Jones Pumping Plant. Pumping capacity was lost as a result of restrictions contained in the State Water Board's Decision 1485. In 1986, Reclamation and DWR formally agreed that "either party may make use of its facilities available to the other party for pumping and conveyance of water by written agreement."

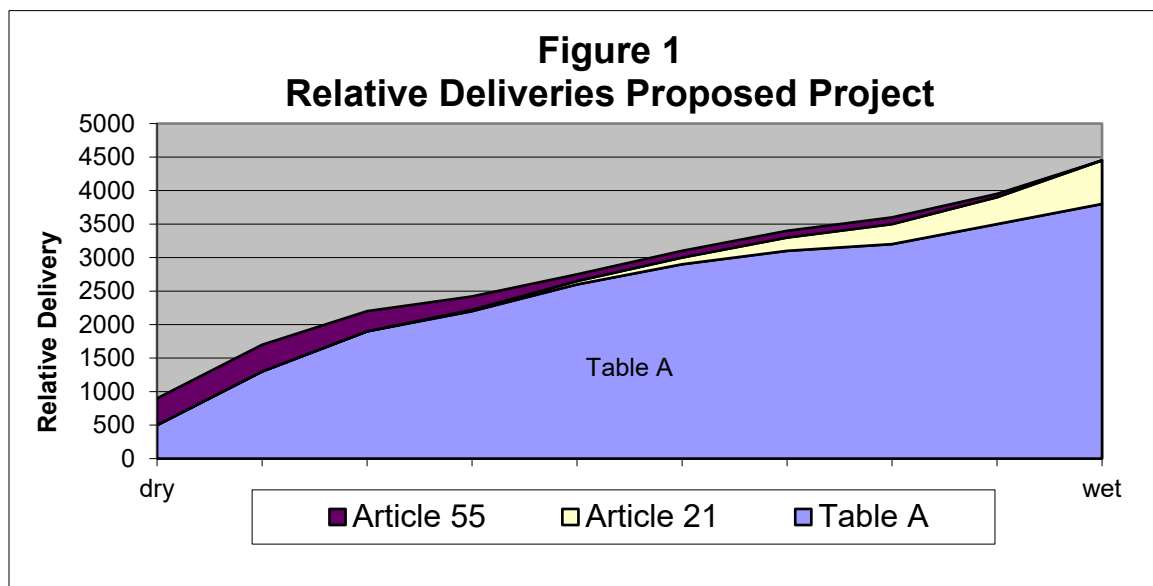
Several commenters incorrectly believe that if Table A amounts were reduced, that total exports from the Delta would be reduced as well. If Table A amounts were reduced to some limit below the capability of DWR to schedule delivery of those supplies, the Contractors would try to make up their reduction by requesting other water. Article 21 water and transfer water from north of the Delta would increase, all of which are exported from the Delta.

As mentioned earlier, other components of Delta exports include JPOD use by Reclamation, whereby CVP water is exported at Banks under current regulations when certain conditions have been satisfied. In addition, if the SWP reduces its export pumping and added pumping is permitted under the regulatory constraints, Reclamation and/or other Delta exporters may increase their pumping once DWR had fulfilled the deliveries to its Contractors first. Additionally, there are other "in-basin" users who pump water for use on Delta islands for irrigation, municipal, recreation, and environmental purposes.

Reduced Delivery Scenarios

DWR presents two scenarios to address comments on Delta exports and Table A deliveries, to further the discussion of Delta exports: (1) A reduction in Table A amounts to a lower value of 3.2 MAF per year; and (2) a total delivery scenario on combined Table A and Article 21 deliveries of 3.2 MAF per year. Conceptual figures provide a visual explanation of the classification of the water available to the SWP that can be exported from the Delta under regulatory constraints. Both scenarios assume that non-SWP water exports would continue because of the requirements of California Water Code Sections 1810-1814, which in part provide that a public agency not deny access to available capacity, subject to certain conditions. Additionally, both scenarios would require DWR to negotiate and execute a Contract amendment for these reductions.

It is necessary to first present the delivery capability of the SWP in various hydrologic years for Table A, Article 21, and Article 55 water (which were obtained from the 2015 DCR). Figure 1 below shows the relative distribution of SWP deliveries among these three types of water, with a potential for a maximum delivery in a wet year of close to 4,500 taf. Figure 1 also represents the delivery probabilities without the constraints of the two scenarios described below. However, this value does not indicate the probability of occurrence. The probability of occurrence of a 4,000 taf delivery as noted previously is 2 percent (CDR Figure 6-2).



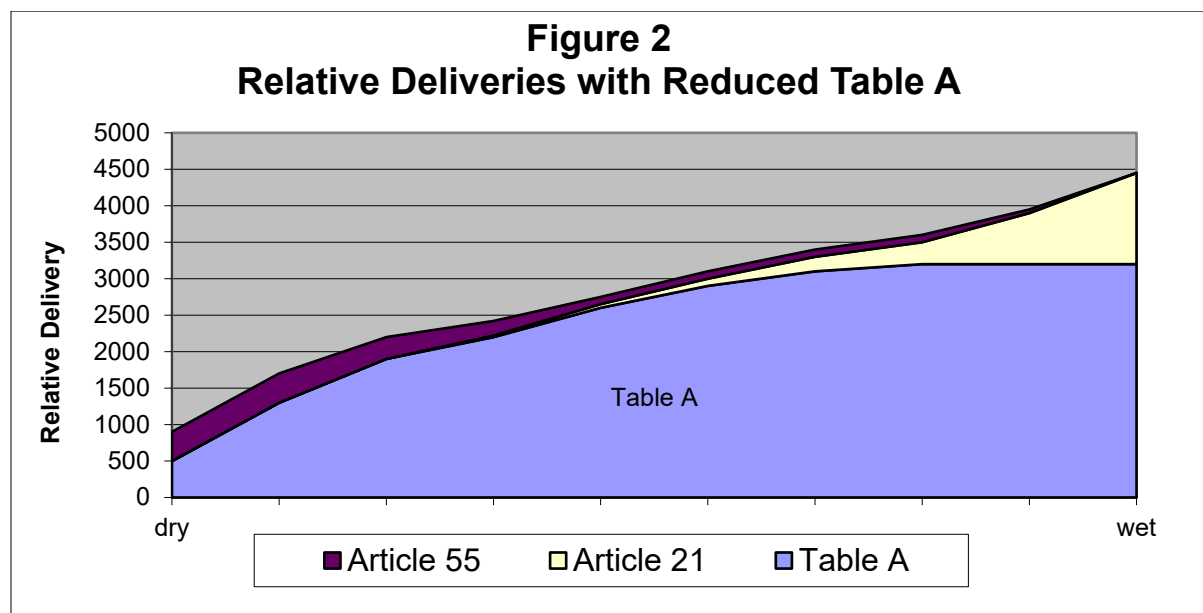
Scenario 1: Reduction of Table A Deliveries to 3.2 MAF per Year

Scenario 1 is a reduction in Table A amounts to 3.2 MAF per year. Figure 2 illustrates that other types of water would be requested by Contractors to make up the reduction. If Table A amounts were reduced in the Contract, it would not change the amount of water

available to the SWP in any particular year, but would primarily affect the type of water delivered by DWR – with the reduction being made up by Article 21 water and Article 55 water (transfer water).

Analysis

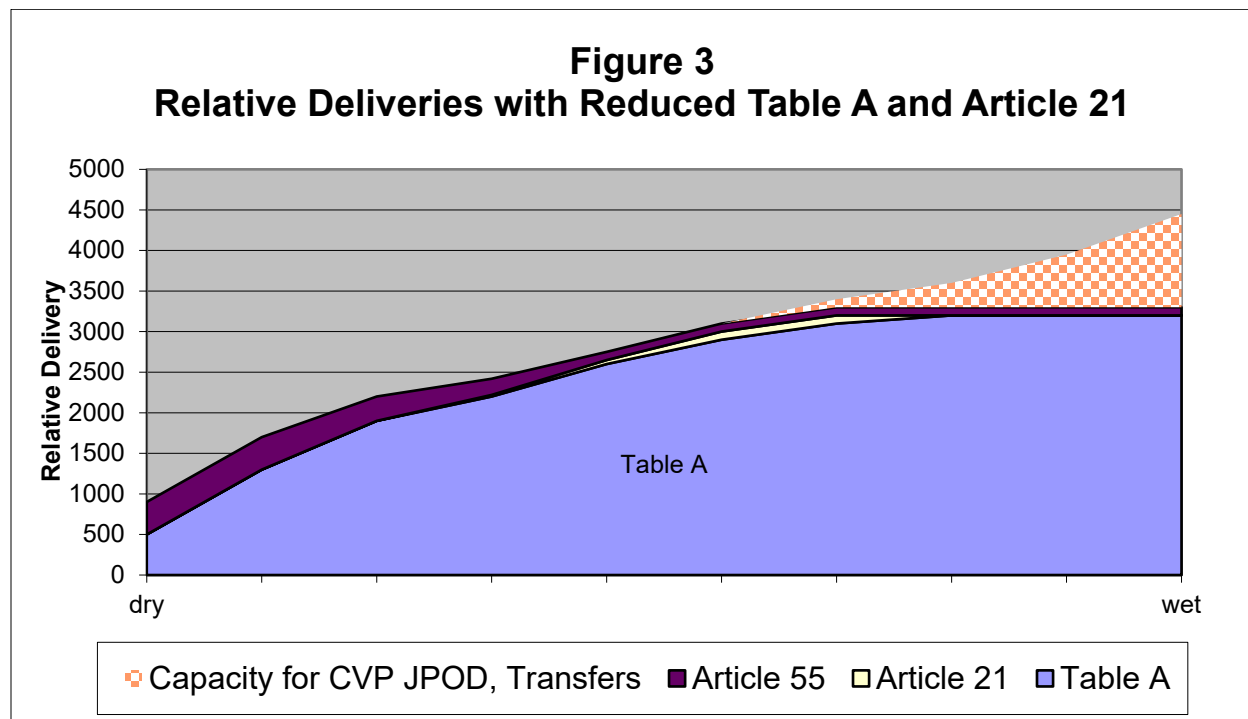
Assuming no limitations to Article 21 deliveries, reduction of Table A amounts would mean that the relative deliveries of Table A amounts and Article 21 water would be different, but would not necessarily result in a reduction in the total amount of SWP water exported from the Delta. Article 21 supplies would increase, and the SWP would use available capacity to move water to storage south of the Delta for future allocation such that reservoirs South of the Delta would be fuller more often. Such changes in Article 21 deliveries would alter the distribution of water among the Contractors to the benefit of some and detriment of others. This differential impact occurs because Article 21 water is only available under certain conditions that generally occur only in the winter and early spring. Those Contractors that do not have sufficient storage capabilities or other immediate beneficial use of the water cannot accept delivery. Those that have such capabilities then get an added share when the water is allocated.



Scenario 2: Combined Reduction of Table A and Article 21 Deliveries of 3.2 MAF per Year

Scenario 2 is a reduction in both Table A and Article 21 deliveries to 3.2 MAF per year. Figure 3 illustrates that total SWP exports from the Delta may not change due to the export of other water through Banks. Implementation of such a contractual scenario would not necessarily mean that more water would remain in the Delta to become

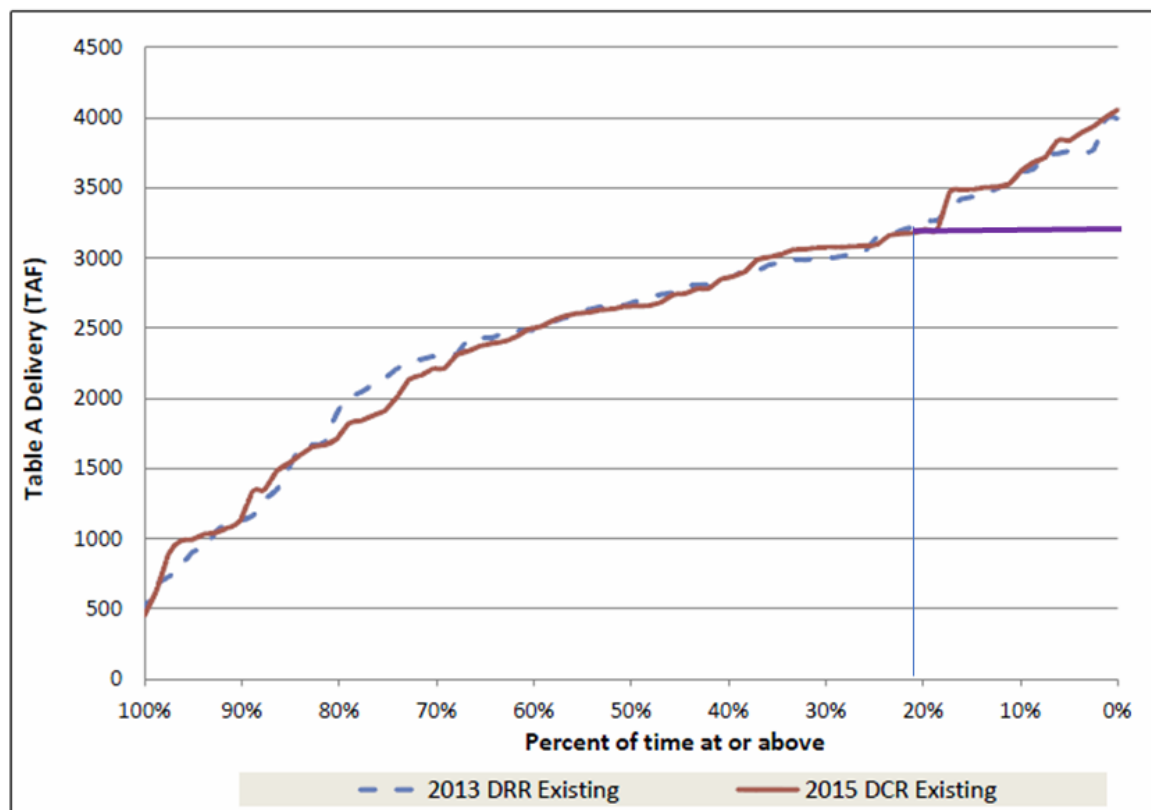
outflow because other exporters might increase their exports, and the CVP might increase its use of Banks for JPOD exports and CVP transfers, as discussed previously.



Analysis

Using DCR Appendix B, Figure B.4 (delivery probability figure; 2015 conditions), a vertical blue line was drawn to mark a reduced Table A delivery at 3.2 MAF. Figure 4 illustrates only the estimated Table A deliveries, and contains an added horizontal line drawn at 3.2 MAF, and vertical line illustrating the delivery probability of the point where the cap would take effect on Table A supplies. Figure 4 shows that 79 percent of the time Table A deliveries would be less than 3.2 MAF, and Contractors would be unaffected by this scenario. However, 21 percent of the time Contractors would be affected by imposing this permanent reduction of Table A deliveries, with a reduction of 800 taf in the wettest of years (~4,000-3,200 taf). Additionally, this scenario assumes that they could not make up the difference with Article 21 deliveries exported from the Delta.

Limiting Table A deliveries to 3.2 MAF would decrease average annual SWP Table A deliveries by about 84 TAF. Table A deliveries would average somewhat less than the about 2,077 taf shown in DCR Figure 5-1 on page 2-15 of this FEIR, probably reduced to about 1,993 TAF per year.

Figure 4: Probability of Exceedance for Table A Deliveries

Annual deliveries of Article 21 water would be reduced by a smaller annual average amount than Table A in the years when Table A is less than 3.2 MAF. The impact would be as much as 650 taf in the wettest years (based on tabular data in Appendix B of the 2015 DCR).

The reduction of Table A and Article 21 deliveries would create Banks capacity for Article 55 water for Contractors, JPOD exports, and transfer water for CVP contractors. The amount of the capacity available for CVP JPOD use and added CVP transfers is not readily estimated, as it depends on SWP operational requirements, Reclamation's water needs and export capacity, federal budgetary considerations, availability of willing sellers of transfer water, willingness of south-of-Delta CVP purchasers to agree to purchases, and other factors.

Because exports would be artificially constrained at levels less than the SWP capability to deliver water in those wetter years, additional water could be retained in Oroville Reservoir. The added water could then help supplement deliveries during subsequent dry years. During some years, Banks Pumping Plant would operate at lower average export volumes. In the driest years, export pumping would be unchanged or, if Oroville

held more water due to reduced deliveries in the prior year, increased slightly to move additional stored water from Oroville through the Delta and to Contractors.

The SWP share of San Luis Reservoir could also contain more water in the wetter years, helping increase deliveries during subsequent dry years when the full 3.2 million af could not be delivered. The normal fluctuation of the reservoir would be less due to a higher reservoir level and less deliveries in about 21 percent of the years. Low point water quality issues in San Luis Reservoir could be slightly less of a concern (when the reservoir storage falls below about 300 taf, algal growth in the water surface layers affects water quality at the level where water is extracted from the reservoir, especially impacting Santa Clara Valley Water District CVP deliveries).

The most serious effects of the scenario analyzed would result from an average 84 taf per year reduction in Table A deliveries to the 29 Contractors, affecting supplies to 23 million California residents and important agricultural uses. The reduction in water supply could trigger potentially significant adverse impacts affecting up to 23 million people, and affecting over 600,000 acres of irrigated agricultural lands. The actual percentage reduction in supply experienced by these people would vary locally according to the water supply mix used by each water agency.

Some agencies could be pressured to seek alternative supplies with consequential redirected environmental impacts to offset the reduced deliveries. The nature of those impacts is beyond the scope of this analysis, but they might involve: (1) more aggressive programs by Contractors in developing wet year transfer programs to fill the available capacity at Banks in the capped years (with added Delta export pumping, possible crop idling and associated impacts, and groundwater pumping with attendant impacts); (2) construction and use of desalting facilities (with added energy use, GHG emissions, and coastal resource impacts); (3) groundwater pumping (with impacts on other wells, more over drafted groundwater basins, and possible ground subsidence); (4) new reservoirs (with multiple potential impacts); (5) new stream diversions (with fish, recreation, and other impacts); and (6) other water supply development actions with associated impacts. Enforced conservation, rationing, shortages, forced landscape abandonment, abandonment of annual and permanent crops, and consequential economic impacts could also result. Some customers might forgo water use for landscaping with consequential effects on vegetation and wildlife. As noted in the prior section, Lake Oroville and San Luis Reservoir could contain more water at times, with beneficial impacts to recreation and visual resources.

CVP supplies in the area served by the federal CVP could benefit by pumping more water from the Delta through both Jones when SWP pumping is reduced and through

capacity at Banks that, absent the limited delivery scenario, would be used for SWP purposes. The CVP would likely use JPOD at Banks more frequently to supplement exports at Jones and increase supplies to CVP contractors. The magnitude of this impact is influenced by the Coordinated Operations Agreement and other factors, and therefore has not been estimated at this time.

With the Banks Pumping Plant diverting less water at times, salvage of fish species would likely be less than under the proposed project or any of the No Project Alternative. The timing and extent of changes in salvage would depend on the timing and rate of Banks pumping, which would be influenced by SWP operational schedules under the scenario, use of Banks Pumping Plant for transfers, JPOD use for CVP supplies, increased exports at Jones, and other factors. No estimate of net change in salvage is available absent detailed operational studies, but a reduction in salvage appears likely from preliminary analysis.

2.3 RESPONSES TO COMMENTS

This section presents the comment letters received (see Table 2-1) and responses to the comments contained in each letter. The responses to comments are numbered consistent with the comment number for each letter and the order of the comment. For example, the response to the first comment in Comment Letter 1 is Response to Comment 1-1.

From: Alvarez, Ted@DWR
To: Cohen, Steve@DWR; Sandronsky, Vera@DWR; Ely, Terri@DWR; Sandino, David@DWR
Subject: FW: State Water Contract Extension EIR
Date: Thursday, October 06, 2016 7:46:14 AM
Attachments: [Notice of Preparation - Water Supply Contract Extension Project Environm....pdf](#)

FYI, first comment letter on the Draft EIR

Ted Alvarez, P.E.
SWP Support Branch
State Water Project Analysis Office
(916) 653-6271
ted.alvarez@water.ca.gov

-----Original Message-----

From: Stewart, Bret [<mailto:Bstewart@cosbpw.net>]
Sent: Wednesday, October 05, 2016 12:00 PM
To: Alvarez, Ted@DWR
Cc: Crease, Fray@CountyofSantaBarbara; Hartley, Johannah; tfayram@cosbpw.net; Lackie, David; Paul, Mark
Subject: RE: State Water Contract Extension EIR

Greetings Mr. Alvarez,

I have attached a copy of a comment package dated October 7, 2014 which was sent to you on behalf of the County of Santa Barbara regarding the NOP for the Water Supply Extension Project EIR. Page three of the comment package is from Public Works and requested that the EIR address our liability concern that if a contractor default should occur, the County would be held responsible for covering the default without the taxation ability that exists under the current contract, because of its pre-Prop 13 legal status. In reviewing the current Draft EIR, we see that our comment has not been addressed.

We feel strongly that this is a valid liability concern for the County of Santa Barbara and potentially other similar agencies, and should be discussed and addressed in the EIR.

Please feel free to reply or phone me at (805) 568-3041 if you have any questions.

Sincerely,

Bret A. Stewart, PE
Civil Engineer Specialist
County of Santa Barbara

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Response to Comment 1-1

Although this comment does not address the environmental analysis in the DEIR, DWR is providing the following information in response. Each water supply Contract provides that if in any year a water Contractor fails or is unable to raise sufficient funds by other means, the Contractor shall levy a tax or assessment upon all property not exempt from taxation within the Contractor's jurisdiction sufficient to provide for all payments under the Contract due or to become due within that year (Article 34). The obligation expressed in this contractual provision stems directly from the statutory requirement contained in the CVP Act (Water Code Section 11652). Given the statutory requirement and the significance of this obligation to the financial integrity of the State Water Project, DWR does not intend to make changes to this provision and expects that the Proposition 13 exemption for prior voter approved indebtedness will continue to apply during the extended term of the Contracts.

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Stan Risen
Chief Executive Officer

Patricia Hill Thomas
*Chief Operations Officer/
Assistant Executive Officer*

Keith D. Boggs
Assistant Executive Officer

Jody Hayes
Assistant Executive Officer

1010 10th Street, Suite 6800, Modesto, CA 95354
Post Office Box 3404, Modesto, CA 95353-3404

Phone: 209.525.6333 Fax 209.544.6226

STANISLAUS COUNTY ENVIRONMENTAL REVIEW COMMITTEE

October 3, 2016

Ted Alvarez, Project Manager
Department of Water Resources
State Water Project Analysis Office
PO Box 942836
Sacramento, CA 94236-0001

**SUBJECT: ENVIRONMENTAL REFERRAL – DEPARTMENT OF WATER RESOURCES –
WATER SUPPLY CONTRACT EXTENSION PROJECT – DRAFT
ENVIRONMENTAL IMPACT REPORT**

Mr. Alvarez:

Thank you for the opportunity to review the above-referenced project.

The Stanislaus County Environmental Review Committee (ERC) has reviewed the subject project and has no comments at this time.

The ERC appreciates the opportunity to comment on this project.

Sincerely,

Patrick Cavanah
Management Consultant
Environmental Review Committee

PC:ss

cc: ERC Members

2-1

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Response to Comment 2-1

The comment letter conveys that the commenter has no comments on the DEIR and no response is required.

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County Of Santa Barbara

Mona Miyasato
County Executive Officer



105 East Anapamu Street, Room 406
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805-568-3400 • Fax 805-568-3414
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Executive Office

October 17, 2016

Mr. Ted Alvarez
State Water Project Analysis Office
Department of Water Resources
1416 Ninth Street, Room 1620
Sacramento, CA 95814

E-mail: ted.alvarez@water.ca.gov

Re: Draft Environmental Impact Report – Water Supply Contract Extension Project Environmental Impact Report

Dear Mr. Alvarez:

Thank you for the opportunity to comment on the draft Environmental Impact Report for the Department of Water Resources' Water Supply Contract Extension Project. At this time, the County is submitting the attached letter from the County Public Works Department.

The County has no further comments on this project at this time and looks forward to hearing more about the project's progress. If you should have any further questions, please do not hesitate to contact my office directly, or Glenn Russell, Director, Planning and Development Department, at (805) 568-2085.

Sincerely,


Mona Miyasato
County Executive Officer

cc: Glenn Russell, Ph.D., Director, Santa Barbara County Planning and Development Department
Tom Fayram, Deputy Director, Flood Control, Public Works Department

Attachments: October 12th Letter, County of Santa Barbara Public Works Department

COUNTY OF SANTA BARBARA
PUBLIC WORKS DEPARTMENT
123 E. Anapamu Street
Santa Barbara, California 93101
805\568-3000 • FAX 805\568-3019



SCOTT D. MCGOLPIN
Director

October 12, 2016

Mr. Teodoro Alvarez, Supervising Engineer
California Department of Water Resources
1416 9th Street
Sacramento, CA 95814

RE: Comments on Draft Contract Extension EIR – State Water Project (SWP)

Dear Mr. Alvarez:

The Santa Barbara County Flood Control and Water Conservation District (District) appreciates the opportunity to comment on the draft EIR for the Proposed Contract Extension. We offer the following comments:

1. As we commented at the outset on the Notice of Preparation, the fiscal impacts of how the contract extension impacts the ability of the District and other Contractors to meet its obligations under our existing SWP Contract through tax assessments in the case of a failure of payment to the State by one of our water purveyors have not been addresses in the draft EIR. Ultimately a tax assessment is the only practical way the District can assure payments. It seems a cornerstone issue in this contract extension to either assure the taxing ability is intact or provide relief from the requirement. Please address this issue in the Final EIR.
2. Alternative 7 indicates that if a Contractor fails to sign a contract amendment that their water service would only continue until the expiration of their contract. Such a statement is in conflict with the provisions of the existing executed Water Supply Contracts, including the Water Supply Contract executed with the District. In particular Article 4 of the Water Supply Contract gives the Contractor the option to extend the contract. While it is understood certain financial changes may not be implemented if the Contractors do not approve an extension before the timeframes included in Article 4, this alternative incorrectly presumes that contractors must commit to an extension of the Water Supply Contract more than 6 months in advance of the contract’s expiration.
3. Finally, the EIR provides no timeline for executing a Contract Amendment. The District recognizes that conditions are different for the various SWP Contractors and as such a contract extension would need to address specific conditions and concern applicable to that Contractor, including the Prop 13 issues.

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Thank you again for the opportunity to provide these comments and we look forward to the State’s responses to these critical issues.

Sincerely,

Bret A. Stewart, P.E.
Santa Barbara County Department of Public Works

cc: Tom Fayram, Deputy Director, Flood Control
AA/EEO Employer

Response to Comment 3-1

See Response to Comment 1-1.

Response to Comment 3-2

Alternative 7 addresses the situation where: (1) most Contractors sign the proposed amendment and in so doing extend their Contract beyond their expiration dates; and (2) a few Contractors opt not to extend their Contracts and allow their Contracts to expire without any extension. However, DWR concurs with the comment that a Contractor may choose not to sign the proposed amendment and still exercise its right in accordance with Article 4 of the Contract, to extend the expiration date of its Contract. Article 4, described on pages 7-9 and 7-10 of the DEIR, gives each Contractor a right to extend its Contract on generally the same fundamental terms as in the current Contract (including among other things, the same quantities of water to be delivered, the same quality of water to be delivered, and the same cost of service), by providing a notice to DWR at least six months in advance of the Contractor's contract expiration date. Extension of the Contract through the exercise of rights under Article 4 is addressed in the No Project Alternative. If DWR approves the proposed project, it is anticipated that most of the Contractors, after making their own independent determinations, may also elect to sign the proposed Contract amendment (25 of the Contractors have signed the AIP). If this situation occurs, it would be possible for non-signing Contractors to extend their Contracts through the exercise of Article 4, which would be the No Project Alternative as to those Contractors. Even if this situation occurred, DWR is of the opinion that this would still not result in any significant environmental impacts as discussed in the No Project Alternative for those Contractors extending through Article 4 and in the analysis of impacts arising from the proposed project for those Contractors choosing to sign an extension amendment. The DEIR provides the impact analysis for the latter in Chapter 4, Environmental Analysis. Potential impacts for the scenario where some Contractors do not sign and extend their Contracts through Article 4 was analyzed in the No Project Alternative in Chapter 6, Alternatives of the DEIR.

Response to Comment 3-3

The timeline for executing the proposed Contract amendment depends on several factors, including compliance with all CEQA requirements and completion of a draft amendment based on the AIP, and as a result no timeline has been established. With regard to the reference to Proposition 13, please refer to Response to Comment 1-1.

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PLUMAS COUNTY FLOOD CONTROL & CONSERVATION DISTRICT

1834 East Main Street, Quincy, CA 95971

Telephone: (530) 283-6268

Submitted on October 17, 2016 via e-mail to: watercontractextension@water.ca.gov

Mr. Ted Alvarez
State Water Project Analysis office
Department of Water Resources
P.O. Box 942836
Sacramento, Ca. 94236-0001

RE: Draft Environmental Impact Report for the Water Supply Extension Project

Dear Mr. Alvarez:

Plumas County Flood Control and Water Conservation District (Plumas) appreciates the opportunity to provide public comments on the Contract Extension Project – Draft Environmental Impact Report (DEIR). Having participated actively throughout the Contract Negotiation and Agreement in Principle (AIP) process, Plumas officials appreciate the amount of effort that it has taken the parties to reach this milestone.

Plumas concluded the AIP development process with the expectation that the final AIP, now the proposed project in the DEIR, would include resolution of the Objective 4 issue that was brought forth by Plumas and Butte Counties. That anticipated resolution has not occurred because the DEIR does not address the outstanding Objective 4 issue. Please see attached letters from Plumas and the Department of Water Resources (DWR) concerning Objective 4.

Objective 4 would have provided State Water Project (SWP) Contractors the option to “opt out” from the BDCP project. The DWR position in the DEIR is that the California Water Fix (the name for the revised BDCP or “Tunnels” projects) is not part of this DEIR. The Plumas concerns with having an “opt out” option for financing new projects are not resolved by the DEIR because the DEIR’s proposed project includes providing financing mechanisms for undefined new projects that appear to total over 2 billion dollars in new debt service compression by 2085 (from Figure D2).

The DEIR fails to describe the magnitude of new debt that results in over 2 billion dollars in new debt compression by 2085, despite pay as go financing. For comparison, the current compression “cliff” that is driving the need for a contract extension appears to be approximately 400 million dollars (Figure D1). The need for financing future debt and the magnitude of that future debt is fundamentally another purpose and the need for the project, in addition to paying off the existing SWP project and securing the financing for the operation and maintenance of the existing SWP project through 2085 or 2110.

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Failing to distinguish between financing existing debt and new debt in the project description leads to an inadequate range of DEIR alternatives.

The DEIR fails to identify two potentially environmentally superior alternatives because the financing of the existing SWP project, where environmental impacts are defined and mitigated, is intertwined with the financing of new SWP projects having unknown environmental impacts. Strengthening the financial integrity of the existing SWP system is, arguably, an environmentally superior alternative to alternatives where the environmental effects are unknown. Therefore, final EIR needs to analyze an environmentally superior Alternative for a SWP contract extension to 2085 that does not include new SWP debt financing and unknown environmental impacts for new SWP projects. This is partially accomplished in the DEIR Alternative 4.

However, the DEIR Alternative 4 does not include the new financing aspects of the AIP and the DEIR's proposed project that Plumas believes will provide needed financial security for the existing SWP system. It needs to be noted that Article 4 in the Original Contract fails to provide DWR with the new financing tools such as the increased GOA and the SSA that Plumas supports. Increasing reserves for SWP emergencies by increasing the GOA from 32 million to 150 million dollars, and securing bridge funding for recreation and environmental SWP project features (the SSA) are new financing provisions that will enhance the environmental and recreational performance and security of the existing SWP. Plumas contends that for the purposes of environmental analysis, new financing mechanisms for extending financial security for the existing SWP system can be "severed" from the new financing mechanisms for new SWP projects even though they were developed as integrated parts of a larger financing package during Contract Extension Negotiation process.

When new financing mechanisms are applied to the existing SWP system two potentially environmentally superior alternatives emerge.

A new Alternative 4 applies the new GOA and SSA provisions of DEIR Objective 2 to the existing SWP system. The new Alternative 4 includes authorization for revenue bond issuance for current projects with known and fully mitigated environmental effects, and simplified billing (for existing SWP projects) in DEIR Objective 3. Thus, the new Alternative 4 more fully achieves Objectives 1-3 by extending the existing Contracts to 2085 without incurring new debt compression associated with post 2016 SWP projects (Figure D2). The new Alternative 4 fully supports and secures the existing SWP system without binding Contractors to "blank check" liabilities for undefined projects with undefined environmental consequences.

The DEIR Alternative 5 commits all "affected" Contractors to financing new projects if 80% of "affected" Table A Contractors agree, but proposes a delay in implementing the proposed project until 2035. Thus, Alternative 5 becomes another potentially environmentally superior alternative to the proposed project if the almost 20 year delay in financing for new projects allows new projects to mature to the point that their environmental effects and mitigations become available to the public in advance of financing commitments for those projects. For transparency, the Alternative 5 should include "the list" of new SWP projects from 1987-2016 that are potentially fungible with DWR issues revenue bonds and their current status.



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Mr. Ted Alvarez, State Water Project Analysis Office, DWR
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In addition to failing to identify environmentally superior alternatives, the DEIR is defective because it fails to describe a transparent and consistent process for determining the affected Contractors and affected environments for new projects, and for assigning financing liabilities for new projects among Contractors in the event of defaults.

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In summary, the final EIR should include:

- A new Alternative 4 that includes the GOA, SSA and, simplified billing provisions described in the DEIR as parts of Objectives 2 and 3.
- A more defined Alternative 5 that commits the DWR during the “delay period” between 2016 and 2035, to provide sufficient detail for the public to be able assess the environmental and economic outcomes. By 2035, DWR would:
 - (1) describe the new projects requiring financing,
 - (2) disclose the anticipated environmental effects and
 - (3) identify the benefits and costs for the “affected” (as defined) Contractors and environments.
- The process that the DWR will utilize for determining the affected contractors and environments for financing new projects.
- The process that the DWR will utilize for redistributing debt for new projects where one or more of the “affected Contractors” default on their financing obligations.

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The Plumas Amendment:

Plumas offers other recommendations for the final EIR to remedy the outstanding obligations on the part of DWR to Plumas regarding the Objective 4 in Contract Extension Negotiation process through the development of the Plumas Amendment under the Monterey Settlement Agreement.

Plumas is one of two SWP Contractors that did not sign the Monterey Amendments. Instead the Plumas Amendment is provided in the Monterey Settlement Agreement, as a mechanism whereby the DWR and Plumas can negotiate contract amendments for the SWP facilities located in Plumas SWP service area.

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Given Plumas’s unique location as the sole, headwater Contractor that is entirely upstream of the SWP’s Oroville –Thermalito Complex, Plumas anticipates no benefits from any new projects that will become eligible to be financed by the proposed project. Plumas will receive no new water supplies, nor has Plumas ever used water supplies from the Oroville Reservoir and from the Thermalito forebay and afterbay, or from the rest of the SWP system downstream of the

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Oroville-Thermalito facilities. Plumas will receive no new power supplies, nor has Plumas ever used power from Oroville -Thermalito Complex or from SWP facilities downstream of the Oroville-Thermalito Complex. Plumas has received no water supply or power benefits from SWP projects constructed after 1987. And Plumas neither proposes nor anticipates any water supply or power benefits from any new SWP projects that will be financed from 2016 to 2085 or 2110.

In recognition of the different water management needs for the SWP Contractors located upstream of the Delta, DWR has developed and Initial Study and has executed contract amendments for the other “North of Delta”(NOD) or “Area of Origin” Contractors (Yuba, Butte, Napa, and Solano) <http://www.water.ca.gov/swpao/wsc.cfm> displays the SWP Original Contracts with amendments. Appendix A of the Initial Study quantifies and specifies modifications to each of the contractors’ SWP allocations, and thereby, defines the companion contract amendment for each of the four NOD Settlement Agreement Contractors.

The Plumas Amendment has yet to be negotiated. Plumas anticipates that the Plumas Amendment will not change Table A Allocations for any SWP Contractor. And because instream flows would be maintained below the SWP Antelope, Frenchman, and Davis reservoirs, downstream effects to SWP Contractors would remain unchanged. The three SWP reservoirs would continue to be operated for their original project purposes for recreational, environmental and water supply benefits.

The pre-Monterey Amendment SWP Contract provisions include Section 18b. In the spirit of Section 18b, Plumas declares that the SWP projects for the Plumas SWP service area of the Oroville-Thermalito Complex are finished and complete for the entire duration of the new contract period. The SWP developments authorized in Original SWP Contract for the Plumas SWP service area that are not already built will never be built. Therefore, the final EIR should make the determination that Plumas is not an “affected Contractor” for any new SWP projects or new project-related environmental mitigations after 1987. Nor is Plumas liable for any portion of the new compression debt “cliff” (despite “pay as go” financing) that the rest of the SWP Contractors will incur as a result of debt financing for the proposed project after 1987 or that will be built during the new Contract Extension period.

In summary, Plumas recommends that the final EIR provide the “new Alternative 4” option for all SWP contractors. Or the final EIR should provide a definition of “affected contractors” for new projects that specifically excludes Plumas. These are reasonable and feasible ways to allow Plumas to continue as a SWP Contractor during the Contract Extension period of 2016-2085 (or 2110) without being forced to finance new SWP projects under the SRA and other new debt financing provisions in the DEIR’s proposed project.

The final DEIR should disclose that the proposed project will provide the future payments to the Monterey Plaintiffs that were stipulated in the Monterey Settlement Agreement, and that the



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cont.

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DWR and Plumas will negotiate the Plumas Amendment in good faith, including the extension of the Bridge Agreement in order to address the aforementioned concerns and recommendations raised by Plumas in this comment letter.

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cont.

Thank you for the opportunity to comment.

Very truly yours,

Robert A. Perreault, Jr.
Co-Manager, for the Plumas County Flood Control
and Water Conservation District, and
Director of Public Works
County of Plumas

1834 East Main Street
Quincy, California 95971
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(530) 283-6268

Attachments (2): Correspondence letters between DWR and Plumas regarding Objective 4 in the Contract negotiation process

cc: Governing Board, Plumas County Flood Control and Water Conservation District

Randy Wilson, Co-Manager, for the Plumas County Flood Control and Water Conservation District, and Planning Director, County of Plumas

Craig Settlemyre, County Counsel for the County of Plumas

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Response to Comment 4-1

As indicated in the AIP (Section XIV), Contractor participation in California WaterFix will be addressed through a separate public negotiation and environmental review process to develop appropriate SWP water supply Contract amendments. Accordingly, it was the opinion of the DWR and several water Contractors that this issue would be more appropriately addressed in a separate Contract amendment negotiation process and not as part of the proposed Contract extension negotiations. See Master Response 3 for more information on the relationship of the proposed project and California WaterFix and the separate Contract amendment process.

Response to Comment 4-2

As noted by the commenter, Alternative 4 addresses extension of the Contracts without any new or modified financial provisions. Under this Alternative 4, without any new or modified financial provisions, DWR would still be able to continue to finance capital projects using the existing provisions of the Contracts. However, this commenter is suggesting that a modified Alternative 4 or new alternative be considered that would only allow DWR to undertake a capital project if DWR is aware of the project (or has completed the environmental review of the project) prior to the execution of a contract extension amendment or prior to 2035. In the past, SWP capital projects have included such projects as aqueduct and facilities repairs and additions, new pumping plants, new power plants, aqueduct extensions, pipeline extensions, and dam rehabilitations. The need for some of these same types of projects is certain to occur in the future, but will not in all cases be identified by the time of the execution of the proposed project or by 2035. Accordingly, to limit the capital projects to be undertaken in the future to only those identifiable (or environmentally reviewed) prior to the execution of the proposed project or 2035, does not appear feasible given the critical need to maintain the operational integrity of an already ageing SWP. And it is important to reiterate that any project or activity proposed for repair, construction, or acquisition beyond 2035, just like any project or activity undertaken before 2035, would require a review and determination in compliance with the CEQA whether or not to proceed. In addition, it is DWR's practice to inform and consult, as appropriate with the Contractors before undertaking new projects.

In addition, Appendix D of the DEIR states: "Only existing SWP facilities and associated expenses are included in this model [See Figure D2 in Appendix D, SWP Financial Model] evaluation and no expenditures for additional SWP facilities are included as part of this analysis." This information was included in the model to illustrate what could happen under the proposed project if no future action is taken to extend the Contract beyond 2085.

Response to Comment 4-3

Alternative 5 would extend the Contracts to the same extent as the proposed project, but would not otherwise implement the new and modified financial provisions and enhancements until 2035. As stated on page 7-28 in Chapter 7, Alternatives, Alternative 5 is not the environmentally superior alternative because it would meet most of the objectives but to a lesser degree than the proposed project. On the other hand, the proposed project would implement the new and modified financial provisions and enhancements upon the proposed project taking effect. As addressed in the DEIR (See Chapters 1 and 4), the sooner the proposed new and modified financial provisions and enhancements are implemented the sooner those changes will provide for a more fiscally sound SWP and for charges to the Contracts that better match revenues with costs, among other benefits. As to the modifications to Article 1(hh) taking effect as soon as the proposed project takes effect, it is significant to keep in mind that any new project considered for financing through the issuance of water system revenue bonds pursuant to Article 1(hh) would always require consultation with the affected Contractors and compliance with CEQA before revenue bond financing would be determined to be appropriate. See also the Response to Comment 6-2 concerning article 1hh and 4-5 concerning “affected Contractors.”

Response to Comment 4-4

See Response to Comment 4-2.

Response to Comment 4-5

Although this comment does not address the environmental analysis in the DEIR, DWR is providing the following information in response. The AIP includes a proposed addition to Article 1(hh) to allow water system revenue bonds to be sold to finance a project if 80 percent or more of the affected Contractors (with 80 percent or more of the Table A water among those Contractors) approve the use of revenue bonds to finance the project. Those Contractors that would be affected by a project and, therefore, responsible for sharing the costs of the project, would be identified at the time of project development using the water supply Contract principles and practices that have applied up to now. Here again, before any financing would take place, the project would have first been reviewed and a determination made in compliance with CEQA whether or not to proceed with the project. Also, in the event of a default by an affected Contractor in making its payments related to water system revenue bonds, Article 50 of the Contract provides for an additional charge to the non-defaulting Contractors to cover the deficiency (but up to no more than an additional 25 percent of each Contractor’s individual water system revenue bond repayment obligation).

Response to Comment 4-6

The commenter, Plumas County Flood Control & Conservation District, states that there is an amendment to its Contract that has been contemplated as a result of the Monterey Settlement which has not yet been completed. The commenter has also suggested that certain concepts (regarding, among other things, its cost responsibilities) should be included in such an amendment to its Contract. These suggestions specific to the commenter's Contract are more appropriately considered in separate contract amendment negotiations between DWR and the commenter, and for this reason are not within the scope of this EIR. Please see also Response to Comment 4-2 regarding commenter's proposed revisions to Alternative 4. The attachments to the comment is included in Exhibit B to this FEIR.

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October 17, 2016

**Via email watercontractextension@water.ca.gov
and First Class U.S. Mail**

Ted Alvarez
State Water Project Analysis Office
Department of Water Resources
P.O. Box 942836
Sacramento, California 94236-0001

Re: Water Supply Extension Project.
Draft Environmental Impact Report.

Dear Mr. Alvarez:

Please accept these comments on behalf of the Central Delta Water Agency and the South Delta Water Agency concerning the Draft Environmental Impact Report (“DEIR”) for the Water Supply Extension Project (“Project”), including the comments set forth in the attached Public Draft SWP Contract Renewal EIR: Additional Central and South Delta Water Agency Comments.

1. Extend the Comment Period and Delay Action.

Informed and meaningful evaluation, analysis, comment and public participation as well as the development and analysis of realistic alternatives is not possible until a complete DEIR is provided. An informed administrative decision cannot be made in the absence of a complete DEIR and knowing the outcome of several issues. Without an actual, final form contract to review, the environmental review process cannot proceed.

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It is unknown whether the Twin Tunnels project will go forward. Viability of the existing project appears in doubt given the uncertainty in the State Water Resources Control Board

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(“SWRCB”) water quality and flow proceedings, particularly given the negative impacts on the Delta of existing project operations and the requirement of the Delta Reform Act that there be reduced reliance on the Delta. In the Delta Stewardship Council Cases, Judicial Council Coordination Proceeding No. 4758, Superior Court Judge Michael P. Kinney found that the Delta Plan failed to include quantifiable or otherwise measurable targets associated with achieving reduced Delta reliance required by the Delta Reform Act. The uncertain future of the various Delta related proceedings in and of itself militates against proceeding with environmental review at this time, much less a 50 year extension of the water contract.

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The DEIR also fails to take proper account of the impacts on Salmon, Delta Smelt, ground water pumping, the Sustainable Groundwater Management Act (“SGMA”), global warming trends, and the trend in SWP service areas toward the planting of permanent crops and the associated long term demands thus made upon already insufficient water supplies. Further, the DEIR fails to consider impacts of the project on the Delta, the inadequacy and future uncertainty of supplies, the SWRCB proceedings, and the relationship of contract renewal with the San Joaquin River Restoration Plan.

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It would be premature to impatiently move forward at this time on such a long term extension of the project for another 50 years without addressing these and other public and environmental needs. These problems, as well as the possible lack of participation due to the DEIR’s fatal approach of characterizing the project as limited to financial issues rather than the project as a whole, require delay and preparation of a proper DEIR at the proper time.

5-5

2. The Incomplete And Poorly Defined Project Renders The Pending Draft Environmental Impact Report Premature.

At this time there is merely an Agreement in Principle (“AIP”) “that could provide the foundation for an agreement . . .” according to the DEIR. This is a gaping whole of uncertainty as to what the actual contract terms will be. In the absence of a final version to evaluate, adequate review and comment cannot be made. Further, any variations between the AIP and a final, execution version are likely to generate further controversy and cause the need for a further environmental review process.

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3. The DEIR Fails To Analyze And Address The Issues Raised In The Scoping Comments Of October 13, 2014.

CDWA provided detailing scoping comments, including the enclosed Attachment to Central Delta Water Agency’s Comments on the Notice of Preparation of an EIR for the “Water Supply Contract Extension Project” dated October 13, 2014. We herewith resubmit those comments and the DEIR is defective in its failure to analyze and address each of the concerns

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raised therein.

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4. The No Project Alternative Is Not Properly Formulated, And Speculatory.

The No Project alternative is characterized as taking no action and allowing the continuation of operations, until 2035, but speculating the contractors would renew under the existing contract. However, without the ability to continue long term financing at subsidized rates, and the need to pay-off overdue capital expenditures exacerbated by increased regulatory and supply constrictions, some contractors may chose not to renew. Moreover, any failure to renew could free up supplies for other purposes. Such events, as well as other potential scenarios, should have been evaluated. DWR prejudiced the DEIR by limiting its description of the No Project alternative to a view most favorable to the contractors, and abrogated its responsibilities.

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5. Statewide Impacts Were Not Evaluated.

By limiting the study area, the DEIR fails to analyze the potential environmental impacts of the 50 year extension in areas outside the areas analyzed, including impacts on listed and non-listed species outside the area of study. Most noticeably, the potential impacts in the area where the water supply is taken from, the Sacramento-San Joaquin Delta, as well as other areas of the entire state not analyzed.

5-9

It is misleading to state in the Notice of Availability that the project location itself merely consists of operations and facilities areas, and service areas, particularly where projects outside those areas may be financed and such areas may be impacted. Even more misleading is the statement that the project will not “Alter the existing authority to build new or modify existing facilities . . .” since part and parcel with authority is the ability to finance, and the thrust of the project was to pave the way for the BDCP and the Twin Tunnels.

6. Expansion of Water System Facilities to be Financed by Water System Revenue Bonds.

This proposal to revise Article I, to expand the authorized facilities, would dramatically increase the projects capable of being financed, such that it prospectively could sanction the financing of projects such as the Twin Tunnels, include financing by state revenue bonds. Attempting such an end-run around consideration and analysis on a project by project basis evidences piece-mealing of the environmental review process. This deprives the public of and avoids the proper analysis and vetting of each project on its own. The need for analysis of funding for any project beyond that already authorized, on a case by case basis, points up the overreaching of the existing the DEIR and the AIP. If this is to be permitted, the DEIR should

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have described, evaluated and reviewed each project that could be financed using this new, open-ended expansion of project funding that seeks to avoid such public review.



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The proposal lays the groundwork, and is an integral part of undescribed, unknown and unevaluated facilities.

7. Environmental Review Was Improperly Limited To Financial Aspects.

While certain segments of the extended contract that may be the subject of revision pursuant to the AIP may be financial in nature, the true project is not limited to financial aspects, but instead is an outright renewal of the entire contract for 50 years. Accordingly, review should have been made of the environmental effects of the project as a whole, and the contract as a whole. By failing to analyze the effects of the renewal of the contract as a whole, the environmental impacts were not properly analyzed and mitigated is absent.



5-11

8. Supply Reductions for Area of Origin.

Any contract extension would be subject to reductions in deliveries in order to meet the water needs within Areas of Origin pursuant to law, including without limitation the requirements of California Water Code section 11460, et seq. Greater emphasis and analysis should have been provided in the DEIR of these aspects.



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9. River Regulation Including Salinity Control.

Any contract extension should expressly be subject to the greater need to provide river regulation, including salinity control, from time to time, that may result in reductions of contractual deliveries. This should be made abundantly clear to assure that there is no undue reliance on the over-stated quantities specified in the contracts. Such issues should be analyzed within the current context.



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10. Mitigation, Public Trust, and the Endangered Species Act.

All contract deliveries under any extension should expressly be evaluated and conditioned on meeting mitigation, public trust, and Endangered Species Act (“ESA”) responsibilities, and State Water Resources Control Board (“SWRCB”) requirements and standards. These obligations are indisputable and should be expressly delineated in their current context in the contract and analyzed in the DEIR. (See also 11. below). Instead, the AIP proposes a sweetheart extension of the contracts in which DWR appears to have abandoned its public trust duties and responsibilities.



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Ted Alvarez
State Water Project Analysis Office

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October 17, 2016

11. The DEIR Should Have Analyzed The Need to Limit Supply to Capacity of Existing Facilities and Supplies.

It is egregious in the extreme to continue with the over-subscription by both state and federal contractors in relationship to the undeniable insufficiency of existing supplies. The original planned supply was to develop North Coast waters, but that never did happen. See Bulletin No. 76 Delta Water Facilities CDWR December, (1960), provided by mail only, excerpt page 11 provided by email. The water to be made available should be expressly limited to those designed historical amounts which could be legally and reliably provided without unbuilt North Coast facilities or operations, and consistent with existing trends of shortage. If new facilities or operations are built to provide water in excess of supplies currently capable of delivery, such should be clearly stated and the subject of separate long term contracts. It should also await the required environmental review and the actual permitting and completion of the facilities and operations necessary to fulfill such a contract for supplies not presently capable of being delivered. The time for the overstated Table A contract amounts and the supply of unclaimed water and vague Article 21 “interruptible water” should be ended instead of continuing to manipulate supplies in a manner conducive to creating hard demands for unavailable water. See The State Water Project Final Delivery Capability Report 2015 (DWR July, 2015), provided by mail only. Intermittent and unreliable supplies encourage and soon develop into hardened demands to supply urban grown and permanent crops such as orchards.

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The quantities of water should be reduced to a level not in excess of the greatest quantity supplied under the existing long-term supply contract. The quantities should also be reduced pro-rata by the quantities of water required to be supplied for other purposes.

12. Project Mischaracterized As “Amendment to financial provisions”.

The DEIR mischaracterizes the project as mere amendments to financial provisions, and in so doing limits and fails to analyze and address the task that should have been at hand: analysis of environmental impacts of the contract amendments themselves, including the term and the contract as a whole. While amending the contract for ease of administration, expanding the scope to allow financing of other capital expenses, and extending the term for 50 years may all have financial effects, it is the environmental impacts of the whole of the project which need to be studied, rather than the limited environmental impacts of the financial issues studied and analyzed. By describing the project as merely amending the financial provisions, DWR improperly limited the scope of the analysis in the DEIR.

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13. Premature Project

The DEIR admits it will not only amend existing articles, but would add new articles. This is further evidence of an incomplete project not yet ready for environmental review.

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14. Erroneous Assumption That Water Supply Amounts Would Not Change And Would Continue To Be Delivered.

Without any basis in fact the EIR assumes that water supply amounts would not change and would continue to be delivered. It is beyond reason that such assumption could be made during a period of extended drought, whether characterized as a weather drought or a regulatory drought. Assuming no change in past supplies which had anticipated undeveloped North Coast supplies, maintaining past deliveries which were harmful to the Delta and its species, and maintaining never provided contract quantities, is unreasonable and unsupported.

5-18

15. Impacts and Mitigation Measures Not Property Analyzed.

With the scope of the project description described as limited to financial provisions, every single segment of the DEIR concerning impacts and mitigation measures is myopic, tainted, and deficient. Indeed, the scant impacts and mitigation measures analysis is nearly identical in almost all segments of the Environmental Analysis, paying token lip-service to the EIR process. In this regard, it is concluded in nearly every Impacts and Measures provision, as follows:.

“The proposed project would amend and add financial provisions to the Contracts based on the negotiated AIP between DWR and the Contractors. The proposed project would not change or create new water management measures, alter the existing authority to build new or modify existing facilities, or change water allocation provisions of the current Contracts.

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....

Because the proposed amendments to financial provisions would not change Contractors’ water operations and no structures would be constructed as part of the proposed project, no substantial adverse effect . . . Furthermore, the proposed project would not have a substantial adverse effect. Therefore, no impacts would occur . . .”

These conclusions are unreasonable and reflect the flawed nature of the DEIR. A 50 year extension of a contract for the most scarce public resource in the state by definition will have

Ted Alvarez
State Water Project Analysis Office

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October 17, 2016


profound environmental impacts that need to be analyzed and considered.

↑ 5-19
| cont.

For all of these reasons we respectfully submit the DEIR should be rejected and a new DEIR should be prepared when the illusory AIP has matured to a true, proposed contract, and proper consideration is given to the substantial environmental concerns present.

| 5-20

Yours very truly,


DANIEL A. McDANIEL
Counsel

cc: Board of Directors
South Delta Water Agency

**Public Draft SWP Contract Renewal EIR:
Additional Central and South Delta Water Agency Comments**

The SWP contract renewal proposed project does not mitigate any on-going impacts of the SWP (e.g. fish genetic introgression from continued blockage of fish upstream passage by the continued existence of the Oroville Dam, degradation of genetic integrity from continued unnatural reproductive selection resulting from elevated water temperatures from the continued existence of and operation of Oroville Dam, on-going habitat quality and quantity degradation from continued sediment and large woody debris capture at Oroville Dam, continued salt accumulation degradation of soils and agricultural productivity in the SWP service area from on-going SWP export of salts in the delivered irrigation water, continued groundwater overdraft and subsidence in the SWP service areas from variations in SWP water delivery quantities, etc. - see Oroville Relicensing EIR Cumulative Impacts for a more comprehensive list of on-going SWP impacts.) Similarly, the BOR Remand EIS identifies similar on-going impacts of the operations of the CVP. The revised draft EIR for the SWP Contract Renewals must include identification, evaluation, quantification, mitigation and disclosure of these environmental impacts from the on-going operations of the SWP that would continue as a result of the water supply delivery contract renewal.

5-21

The EIR is not suitable to support agency decision making. The EIR finding of no significant impacts is incorrect as there are many significant impacts of continuing water supply deliveries as compared to not continuing operations (which must be the No Project definition - see related comments). DWR's EIR/S of the California Water Fix identified many significant impacts of continued operation of the SWP - see related comments. Reclamation's Remand EIS also found many significant impacts of continued operations of the CVP - see related comments. The on-going impacts of the operations of the CVP and SWP would largely be the same. CEQA requires "lead agencies" to include in their Environmental Impact Reports ("EIRs") information deemed necessary for Projects to be taken or considered by "responsible agencies." (CEQA Guidelines, § 15082, subd. (b)) Information provided in this EIR is not sufficient to support decision making for responsible agencies issuance of permits, including, but not limited to: Central Valley Regional Water Quality Control Board certification as compliant with the Water Quality Control Plan for the Delta, Delta Stewardship Council Delta Plan Consistency Certification, local Reclamation Districts, etc. Because the finding of no significant impacts in contradiction to the findings of other contemporary documents that analyze the same impacts and the incorrect definition of the No Project as the basis of comparison, the EIR is not suitable as a decision support document for the lead agencies.

5-22

Failure of Alternatives to Meet Project Objectives:

In DWR's November 2013 BDCP EIR/S, page 2-5, line 7 "As indicated by the "up to full contract amounts" phrase, alternatives need not be capable of delivering full contract amounts on average in order to meet the project purposes. Alternatives that depict design capacities or operational parameters that would result in deliveries of less than full contract amounts are consistent with this purpose." So DWR is saying that when they deliver less than the contract amounts that these lower delivery quantities still meet the SWP project purpose. The SWP Contract Renewal must consider alternative which include reduced water deliveries as DWR has already said that reduced deliveries still meet the project purpose.

5-23

All of the alternatives assume the same delivery amounts as the original water supply contracts. The quantities identified in the original contracts were predicated on the completion of the build out of the SWP as it was planned at the time of the contract origination. Many facets of the originally planned SWP were never completed so the potential to deliver the quantities identified in the original contract were never fulfilled. "The original 1957 California Water Plan included provisions for dams on the Klamath, Eel, Mad and Smith Rivers of California's North Coast. Fed by prolific rainfall in the western Coast Ranges and Klamath Mountains, these rivers discharge more than 26 million acre feet (32 km³) to the Pacific each year, more than that of the entire Sacramento River system. A series of dams in these watersheds would have shunted water through interbasin transfers into the Klamath River system. The centerpiece of the project would be a 15-million-acre-foot (19 km³) reservoir on the Klamath River – the largest man-made lake in California – from where the water would flow through the 60-mile (97 km) Trinity Tunnel into the Sacramento River, and thence to the canals and pump systems of the SWP. This would have provided between 5 and 10 million acre-feet (4.0–8.1 km³) of water each year for the SWP." (https://en.wikipedia.org/wiki/California_State_Water_Project) This large component of the SWP was never built, so a large portion of the originally anticipated water supply was never realized. Since the current actually built portions of the SWP almost never fulfills the full contract amount and the SWP is not built to reliably deliver the current contract quantities, it is only reasonable that the contract renewal alternatives consider reduced delivery quantities below those of the original contract amounts. In fact, it is unreasonable, with the definitions of CEQA alternatives development, to include aspects of a project definition that cannot be consistently be met with the current and reasonably foreseeable SWP infrastructure.

5-24

DWR has not complied with the vast majority of the current OCAP BO RPAs - see related comments. As required by Davis-Dolwig, the State Water Contractors are responsible for paying for all operations costs of the SWP. The lack of DWR compliance with the OCAP BO RPAs represents an unfulfilled cost commitment by the SWP Water Contractors. There is a very significant unstated objective for this project and that is for the SWP to become completely compliant with the current legal obligations of the project. The SWP has always claimed that compliance with the OCAP BOs would come through the implementation of the BDCP, but the new BDCP (Water Fix) alternatives do not include Projects that satisfy this project objective. The responsible agencies must not approve a project or issue permits based on an alternative that fails to result in compliance with the OCAP BO RPAs.

5-25

Beneficial uses of Delta water include: municipal, industrial, and agricultural water uses, fish and wildlife uses, environmental protection, flood management, navigation, water quality, power, and recreation. There is not a single one of these non-SWP beneficial uses of water that are not degraded by the on-going impacts the project from continued operation of the SWP. If the No Project had been correctly defined as not renewing the contract, the impact analysis would have correctly determined that all alternatives that include renewal of the contracts would have significant impacts to designated beneficial uses of water as compared to the No Project (with no contract renewal).

5-26

Ongoing impact - The water rights of the SWP and CVP are conditioned by the State Water Board to protect the beneficial uses of water within the Delta under each respective project's water rights. As Junior water rights holders, the SWP operations are not allowed to impair the water rights of senior water rights holders. Under the existing conditions the SWP routinely violate water quality standards which impair the suitability of irrigation water quality of senior water rights holders. Under the proposed project and all of the alternatives, the SWP Contract Renewal would continue the frequency, severity, duration and number of affected parties with their continued operations would perpetuate the rate of water quality violations - see related comments.

5-27

The "project objective" that is missing from this discussion is that the SWP needs to stop operationally violating water quality standards. The SWP contract renewal must add this criteria to its project objectives and the responsible agencies considering issuing permits on this project must not issue permits for a project that violates the law by exceeding water quality parameters. The analysis of all of the project alternatives and the No Project/No Project demonstrate that the project does, will under the no Project and under all alternatives continue to violate water quality standards, which literally cannot be permitted. The lead agencies must not approve a project that they know will result in the continued violation of state water quality protection laws.

5-27
cont.

Inconsistencies with Current Plans, Policies and Regulations:

The SWP Contract Renewal project is inconsistent with and is in direct conflict with existing policy and water code of the state of California. Water Code § 85021: "The policy of the State of California is to reduce reliance on the Delta in meeting California's future water supply needs through a statewide strategy of investing in improved regional supplies, conservation, and water use efficiency." The SWP Contract Renewal by not considering any alternatives in which there is a reduced reliance upon the delta as a water supply source is in conflict with the California Water Code. The project is in fact attempting to make the recipients of the water from the SWP even more reliant upon delta exported water by taking time, human resources, motivation and available funding for projects that would reduce reliance on delta water and would be consistent with this water code requirement. The contract renewal further increases dependency upon delta water supplies as it provides the water contractors with a greater certainty of water supply over a longer period of time which reduces their motivation to seek out and develop more regionally self reliant supplies as is required by law. The project must propose an alternative which is consistent with this water code requirement to reduce reliance on Delta water supplies.

5-28

The SWP Contract Renewal is not consistent with flow criteria for the delta contained in "Development of Flow Criteria for the Sacramento-San Joaquin Delta Ecosystem Prepared Pursuant to the Sacramento-San Joaquin Delta Reform Act of 2009", SWRCB, August 3, 2010. "Water Code section 85086 (See Appendix B), contained in the Delta Reform Act, was enacted as part of the comprehensive package of water legislation adopted in November 2009. Water Code section 85086 requires the State Water Resources Control Board (State Water Board) to use the best available scientific information gathered as part of a public process conducted as an informational proceeding to develop new flow criteria for the Delta ecosystem to protect public trust resources. The purpose of the flow criteria is to inform planning decisions for the Delta Plan and the BDCP."

(http://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/deltaflow/docs/final_rpt080310.pdf, page 2, paragraph 1) The SWRCB developed the flow criteria as required by the Delta Reform Act, but the SWP Contract Renewal proposed alternatives operations are not consistent with this SWRCB flow criteria. The Delta Reform Act required the SWRCB to produce "flow criteria for the delta" it did not require the update of the Bay-Delta Plan. The SWP Contract Renewal operations must conform to the flow criteria to be compliant with the Delta Reform Act. The SWRCB considered these flow criteria to be necessary for the protection of fish in the delta and any less flow regime proposed by the SWP Contract Renewal operations would be, by definition, not fully protective of fish species in the delta.

5-29

Here is a comparison of the SWRCB recommended flow criteria to be protective of fish species in the delta to the average flow conditions from the CVP/SWP that the SWP Contract Renewal proposes to perpetuate. "In order to preserve the attributes of a natural variable system to which native fish

species are adapted, many of the criteria developed by the State Water Board are crafted as percentages of natural or unimpaired flows. These criteria include:

- 75% of unimpaired Delta outflow from January through June;
- 75% of unimpaired Sacramento River inflow from November through June"

" In comparison, historic flows over the last 18 to 22 years have been:

- approximately 30% in drier years to almost 100% of unimpaired flows in wetter years for Delta outflows;
- about 50% on average from April through June for Sacramento River inflows"

(http://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/deltaflow/docs/final_rpt080310.pdf, page 5) The SWP Contract Renewal proposed perpetuation of the historical flows above Freeport in the Sacramento River result in flows being 50% lower in April through June than the flow criteria specified by the SWRCB that are defined as being protective of delta fish species. The delta outflows under the proposed project and alternatives are 50% below the flow criteria deemed by the SWRCB to be necessary for protection of delta fish species. These proposed project and alternatives flows obviously would not protective of delta fish species and should be deemed unacceptable by the fisheries agencies charged with protection of these public trust resources.

5-29
cont.

The SWP Contract Renewal project and alternatives do not comply with the flow criteria or biological objectives contained in the CDFW document, "Quantifiable Biological Objectives and Flow Criteria for Aquatic and Terrestrial Species of Concern Dependent on the Delta Prepared pursuant to the Sacramento-San Joaquin Delta Reform Act of 2009". "In November 2009 the Legislature passed several bills focused on better protecting Delta resources. Senate Bill No. 1 (SB 1) (Stats. 2009 (7th Ex. Sess.) ch 5, § 39) contains the Sacramento-San Joaquin Delta Reform Act of 2009 (Delta Reform Act) which establishes and requires the Delta Stewardship Council (DSC) to develop, adopt, and commence implementation of a comprehensive management plan for the Delta (Delta Plan) on or before January 1, 2012. To inform the planning processes of the Delta Plan, the Delta Reform Act requires that the State Water Resources Control Board (SWRCB) develop new flow criteria for the Delta ecosystem and that DFG identify quantifiable biological objectives and flow criteria for the species of concern in the Delta. " (<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=25987>, pdf page 5, paragraph 3)

5-30

Comment continued: "**Aquatic Species Biological Goals**

- Halt species population declines and increase populations of ecologically important native species, as well as species of commercial and recreational importance, by providing sufficient water flow and water quality at appropriate times to promote species life stages that use the Delta.
- Establish water flows through the Delta that will likely benefit particular species, community or ecosystem functions in a manner that is: (1) comprehensive, (2) not overly complex, and (3) encourages production. Functional flow criteria shall be established for at least:

Yolo Bypass
 Sacramento River and its basin
 San Joaquin River and its basin

Eastside streams and their basins

Interior Delta including Old and Middle rivers Delta outflow"

(<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=25987>, pdf page 6)

The current SWP Contract Renewal alternatives would perpetuate the SWP violation of these flow criteria and biological objectives. The project must develop alternatives that are consistent with these legal requirements and the lead agencies must not approve any project that is not consistent with these legal requirements.


5-30
cont.

The OCAP BO determined that without the RPAs that the SWP continued operations would result in jeopardy of listed species. The environmental analysis in the draft EIR of the continued operations of the SWP at the current contract amounts is in direct conflict with and is inconsistent with the OCAP BO impact findings. Six and seven years respectively after the FWS and NMFS BO's made their jeopardy determinations, DWR and Reclamation have yet to implement the vast majority of these mandatory Projects to avoid jeopardy. The mandatory Projects from the OCAP BOs are still part of the environmental baseline as they were required prior to the initiation of the SWP Contract Renewal project and baseline date definitions for the project. The CA Water Fix has dropped the BO RPAs from the project scope as well as the other Projects which were designed to contribute to the conservation of the proposed covered listed species, the CA Water Fix is proposing to implement a project that will continue to jeopardize these species and result in continued violation of ESA and the requirements of the OCAP BOs. The CA Water Fix is also not a finalized EIR/S and is to date still not funded so it does not qualify for this EIR as a reasonably foreseeable project to include in the No Project baseline assumptions. There are also no other projects in progress which address the implementation of the OCAP BO RPAs which meet the criteria of reasonably foreseeable. Therefore the SWP is not legally compliant with the legal obligations of the OCAP BO RPAs and has no plans or projects in motion that qualify as reasonably foreseeable for being compliant. The SWP must not be allowed to renew water supply contracts for a project that is currently out of legal compliance and has no plans to become compliant. To remedy this, the SWP Contract Renewal must add actions to its project alternatives that would result in the SWP becoming legally current and compliant.

5-31

The SWP Contract Renewal has omitted from the scope of the Proposed Project and alternatives Projects that would bring the SWP into compliance with the OCAP BO RPAs. The OCAP BO RPAs are part of the baseline and No Project condition, but are not part of the Proposed Project. By not including compliance with the OCAP BO RPAs in the project scope, the project has deflected the impacts of the implementation of their current legal requirements to comply with the OCAP BOs to another, as yet to be initiated project, California EcoRestore. When the California EcoRestore project is finally started (a date yet to be officially determined) the impacts of that project will include the SWP contract renewal project (if approved) would be part of California EcoRestore's baseline and No Project condition. What California Eco Restore will find in its impact analysis, prior to approval or implementation, is that continued operations of the SWP under the renewed contract amounts precipitates unacceptable and unviable environmental impacts and continues to jeopardize endangered and threatened special status species and result in adverse modifications to designated critical habitat. If the SWP Contract Renewal project is approved with the current delivery amounts prior to implementation of the OCAP BO RPAs, the OCAP BO RPAs will never be approved as the impacts that will occur will be adverse to the requirements of not jeopardizing the T&E species. Therefore, the SWP must comply with the pre-existing OCAP BO RPAs to avoid jeopardy of T&E species before approval of the SWP Contract Renewal can ever be considered. Otherwise, the NMFS and USFWS agencies that issued the OCAP BO RPAs will be precluding implementation of the BO conditions and therefore jeopardizing the species they are supposed to protect.

<p>The SWP does not have incidental take permits for the operations of the south delta diversions. The contract renewal must be staid until such time as DWR has the appropriate permits in place as to allow lawful and compliant operations of the SWP. The primary requirement for issuance of the incidental take permit is that the Project must minimize and fully mitigate the impacts of the proposed take. The SWP Contract Renewal project has not addressed or mitigated the ongoing impacts of the SWP operations in adverse modification of designated critical habitat for ESA listed species or jeopardy of listed species as determined by the OCAP BOs. These SWP significant impacts are not mitigated or even mitigated to less than significant levels by the SWP Contract Renewal. Since there are significant impacts to ESA listed species that the SWP Contract Renewal does not mitigate, the fisheries agencies may not issue any incidental take permits for the SWP Contract Renewal project based on this environmental document.</p>	
<p>The SWP Contract Renewal is not consistent with the Delta Plan and must not be certified as compliant with the Delta Plan. The Draft EIR failed to include the review and analysis of compliance with the delta plan. This is a material omission that must be rectified in a revised and recirculated public draft EIR. The public must be allowed to review and comment on this important disclosure on the compliance of the project (or in this case, the lack thereof) the project with this legal requirement of all projects implemented within the boundaries of the statutory delta as this project is.</p>	5-31 cont.
<p>The SWP still does not have Incidental Take Permits (ITPs) required for operations of the south delta intake pumps. The contract renewals project must not be approved until the ITP permits have been approved by the fisheries agencies and acquired by DWR. Alternatively, the Contract Renewal alternatives could include actions which would justify the issuance of ITPs for the SWP. An example project alternative which would merit issuance of ITPs is the construction of criteria compliant fish screens onto the SWP south delta intakes -see related comments.</p>	5-32
<p>Inadequacies of Alternatives:</p>	5-33
<p>Previously submitted alternatives and alternatives components that meet the Project Objectives must be included for full evaluation in the EIR. Examples of previously proposed alternatives and alternative components (and in various combinations) which better meet the Project Objectives include, but are not limited to: some amount of reduced water deliveries to address the requirement for reduced reliance upon delta water supplies, reduced contract duration to address uncertainties with climate change, and compliance with all existing laws and obligations prior to contract renewals (Incidental Take Permits and OCAP BOs, etc.)</p>	5-34
<p>The alternatives included in the EIR included versions which did not include fundamental elements from the AIP. The inclusion of alternatives that omit the financial component of the AIP provides a precedent for the project to consider other alternatives which also omit or alter some fundamental components of the AIP and would still, based on this precedent, be considered reasonable in achieving the objectives of the project. The alternative component that was never considered in the EIR is the incorporation of alternatives that include reduced water supply contract amounts. Given the precedent of the no financial component alternatives, the EIR must include alternatives which also consider different (lower) water supply contract amounts. It would be considered reasonable by any measure to consider a contract delivery amount of one gallon less than the current contract delivery amounts and still meet all tests of reasonably meeting the project objective. It may be argued that a 50% reduction in the delivery amount would not meet the project objective. The project must provide a rationale as to what level of reduction in contract delivery amount is reasonable and still does meet the objectives of the project. This is an important variable to make up defensible alternatives and DWR must disclose the rationale supporting the definition of the reasonable contract delivery amount which still meets the project objectives. Since this will result in material new information and new alternatives, the EIR will require recirculation for additional public comment.</p>	5-35

<p>The project did not provide an Alternatives Scoping Report for the EIR. The Alternatives Scoping Report is an integral component of the process and deliverable product of preparing an EIR (Title 14 California Code of Regulations section 15000 et seq.)(40 Code of Federal Register 1501.7). The SWP Contract Renewal has failed to disclose this essential and material information on how the alternatives passed each of the screening criteria used for developing project alternatives. The project must show their rationale and justification as to how these alternatives meet the project objectives which are the basis of the alternatives development screening criteria. The draft EIR must be recirculated with this require and material information.</p>	 <p>5-35 cont.</p>
<p>The public draft EIR did not identify, evaluate, minimize or mitigate all of the on-going impacts from the continued operation of the SWP resulting from the contract renewals. These on-going impacts of continued SWP operations that are not covered by the EIR impact analysis include, but are not limited to: salt accumulation in the soils and groundwater in the SWP service areas, groundwater overdraw in SWP service areas, water quality violations in the delta, degradation of designated essential fisheries habitat for T&E species, genetic introgression of fish at the Oroville dam, reservoir operations affects on reservoir and upstream fisheries and wildlife, hatchery impacts, California aqueduct leaks, greenhouse gasses, and other comments included herein - see related comments.</p>	<p>5-36</p>
<p>Title 14, section 15082, subdivision (b)(1)(B) of the California Code of Regulations, requires that responsible and trustee agencies should indicate their respective level of responsibility for the project to the Lead Agency (Cal. Code Regs., title 14, div.6, ch. 3 (CEQA Guidelines), section 15082, subdivision (b)(1) (B)). The draft EIR is deficient as it did not disclose this required and material information. The Draft EIR must be recirculated for additional public comment once this information has been added.</p>	<p>5-37</p>
<p>Title 14, section 15082, subdivision (c)(1) and section 15206, subdivision (b)(4)(E), state that projects of statewide significance should provide notice to cities/counties within which the project would be located. The project notices did not include areas and communities which are in downstream drainages of the SWP service area but are not in SWP service area, e.g. Lathrop, Manteca, French Camp, Dos Rios, Riperdan, Vernalis, etc. These communities are affected by the SWP contract renewals by ongoing flow and water quality impacts to their municipal surface and groundwater water supplies from the SWP water delivery drainage flows. This EIR process deficiency must be corrected with a noticing of these communities and a round of public scoping which would afford them the opportunity to provide input to the project alternatives development and the scope of the issues that the EIR would address.</p>	<p>5-38</p>
<p>Under CEQA, any alternatives that are put forward for consideration in the EIR for potential adoption must be feasible. CEQA defines "feasible" as "capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social, and technological factors." (CEQA Guidelines, § 15364) The SWP Contract Renewal alternatives are not "feasible" in that they result in significant and unavoidable environmental effects which adversely alters designated critical habitat for listed species - see related comments. The SWP Contract Renewal alternatives are not compliant with the Delta Reform Act, so they are not legally feasible either - see related comments. Since these alternatives are not environmentally or legally feasible, they must be dropped from further consideration in the EIR. Reduced contract deliveries would avoid and minimize at least some of the on-going impacts of SWP operations that would result from the contract renewals and therefore may potentially be determined as environmentally and legally feasible.</p>	<p>5-39</p>

As previously commented, renewal of the SWP contracts results in the continuation of operations which degrade designated critical fisheries habitat. As the project jeopardizes federally listed fish species, the FWS and NMFS must evaluate the project impacts in a Biological Opinion. Section 7 of ESA requires that a federal agency may not take any Project that would “jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification” of designated critical habitat. (16 U.S.C. § 1536(a)(2)) The SWP Contract Renewal operations adversely modifies designated critical habitat of several fisheries species by continuing to degrade the dissolved oxygen, salinity, selenium concentration, methyl mercury concentration and other habitat suitability criteria - see related comments. The alternatives do not include implementation of the OCAP BO RPAs which were required by FWS and NMFS to avoid a jeopardy call on listed species (see related comments), SWP contract renewal alternatives would result in the continued jeopardy of listed species and therefore the lead agencies must not approve this project.

5-40

DWR non-compliance with current OCAP BO RPAs: The OCAP BO RPAs are a part of the No Project definition for the project comparative analysis (see related comments) as they are current obligations of the SWP. The SWP Contract Renewal project has failed to accurately represent the vast majority of the OCAP BO RPAs in terms of their environmental affects and their impacts on water operations, storage; fish habitat quality, quantity and distribution; on water rights, water supplies, water quality and many other environmental resources. The project falsely claims that no details were available to represent these OCAP BO RPAs, but in fact most of the Projects do have available information and the project has failed to meet the CEQA test to utilize the best available information. Other comments included herein identify most of the OCAP BO RPA deliverables that are current obligations of DWR to fulfill. The comments identify the deadlines for the Projects and in some cases describe the nature of the information that should be available to the project to incorporate into their EIR. If none of this information is available to the project, then it means that DWR has not fulfilled their legal requirement to comply with the OCAP BO RPAs and the SWP is in violation of the ESA.

Clifton Court Forebay Criteria Compliant Fish Screen Alternative

The most significant on-going impact of the SWP contract renewals would be the continued take of listed fish species (without a take permit - see related comments) at the south delta pumps. The intakes do not have criteria compliant fish screens. An alternative which incorporated criteria compliant fish screens on the export pumps would reduce ESA species take associated with south delta pump operations and could be utilized as justification for issuance of Incidental Take Permits which would allow the future operations of the SWP to be ESA compliant. The SWP Contract Renewal must fully consider an alternative that includes compliant fish screens on the export pumps.

5-41

Comment continued: The ongoing impacts of operating the south delta intakes without criteria compliant fish screens must be fully mitigated for the SWP Contract Renewal. This impact can be avoided and minimized by including a project alternative or alternative component that includes criteria compliant fish screens for the south delta pumps. These south delta criteria compliant fish screens must be included as a mitigation measure for the on-going CVP/SWP impacts and for other alternatives as they are a feasible method to avoid and minimize significant impacts to listed fish species that otherwise go unmitigated by the current proposed contract renewal-related operations.

Comment continued: The core of the Coordinated Long-Term Operations (CLTO) of the CVP/SWP is a simple reoperation of the CVP/SWP south delta intakes to reduce the magnitude of reverse flows in Old and Middle River which the last few years of reoperation have proven to significantly reduced fish salvage rates that resulted in a significant reduction of the principle impact of the SWP/CVP on the fish species that the project was putting into jeopardy. Since the CLTO CVP/SWP reoperation has been so successful, it makes sense to combine project alternatives components with that reoperation to form other viable project alternatives to further reduce the rate of take from the CVP/SWP south delta intake operations. First and foremost in these considerations would be a reduced contract delivery quantity in the SWP contract renewals. This alternative should include reverse flow restricted operations with other physical modifications to the existing CVP/SWP south delta facilities such as, but not necessarily limited to: fish screens with criteria compliant approach and sweeping velocities; a reduced distance fish path through Clifton Court Forebay to reduce duration of exposure of fish to predators in the Forebay; fish behavioral modification devices to manage fish distribution away from the intakes (bubble curtains, acoustic and light deterrents); and improved fish salvage capture, storage and release facilities and operations.

Comment continued: Designs for an isolated Clifton Court Forebay have been discussed many times by DWR and through the CALFED project, so these concepts should have been evaluated as avoidance and minimization measures for the SWP Contract Renewal alternatives.

Comment continued: Isolation of Clifton Court Forebay as a fish free facility would reduce the magnitude of impacts on fisheries from SWP south delta operations. Following is a description of an fish free isolated Clifton Court Forebay facility with the option for an integrated CVP intake that have been previously discussed and proposed in the DWR California Water Fix Revised EIR/S comments.

Comment continued: Here are the basic elements to this Clifton Court criteria compliant fish screen alternative component: widen the Clifton Court operable gates, install trash racks outside the operable gates, install a course large fish exclusion screen between the trash racks and operable gates, construct a conveyance channel in Clifton Court Forebay from the operable gates to the western side of Clifton Court Forebay, install criteria compliant fish screens in the conveyance channel, reengineer the current fish salvage facilities, and (optionally) plumb the CVP intake into the fish free north side of Clifton Court via a short tunnel. Following is a more detailed description of each of these elements.

Comment continued: Widen the Clifton Court Forebay operable gates to the north from their existing location. The width of the new operable gates needs to be sufficient to create a channel cross section of about 15,000 square feet. Dredge and reinforce channels as most economical and reliable from an engineering standpoint. As an example, dredge the approach and channel at the operable gates to a tidal working channel depth of 30' for a total operable gate width of 500'. The new gates should be set back into Clifton Court sufficiently to allow installation of trash racks and course large fish exclusion screens in front of them without reducing the existing channel cross section outside of Clifton Court. The Clifton Court Forebay Gates and tidal operations/storage can continue to function as they do under the existing conditions and No Project/Project so there are no operational impacts from this alternative component on tidal operations of Clifton Court Forebay.

Comment continued: Install trash racks outside Clifton Court Forebay outside of the widened Clifton Court operable gate. The trash racks will intercept debris coming in with the diversion water and serve as a behavioral deterrent to the fish to stay in the main channel as much as possible.

5-41
cont.

Comment continued: Behind the trash racks and just in front of the operable gates would be a course fish screen designed to keep out only larger "predator" size fish that have much higher swimming performance capability from entering Clifton Court Forebay. With the new 15,000 square foot cross section of the operable gates and surface area of the course fish screens, at full capacity CVP/SWP diversions the approach velocity at the course fish screens would be one foot per second. Predator sized fish would easily out swim this approach velocity, but smelt and juvenile salmonid would be pulled through and past the course large fish exclusion screen. There would be some predation at the trash racks and course fish screens but this can be managed and reduced with predator removal Projects and fish traps. The level of predation at the trash racks and course fish screens would be the same as the predation rates that occur at the current SWP trash racks and fish louvers under the No Project. This course fish screen outside of Clifton Court Forebay is designed to pass smelt and juvenile salmonids without risk of impingement, e.g. 15 - 25mm wide screen inlets. This screen would significantly reduce the exposure of juvenile salmonids and delta smelt to predation as larger predators would be excluded from within Clifton Court Forebay where a large amount of current predation is documented to occur.

Comment continued: A conveyance channel would be created in Clifton Court Forebay by segmenting the northern and southern parts of the Forebay with a new sheet pile partition that would draw water from the Clifton Court Forebay operable gates channel directly toward the existing SWP intakes on the southwestern side of the Forebay. The conveyance channel would start at the east side of the Forebay at the north and south ends of the widened operable gates channel. The partition would then quickly (but maintaining orderly water flow vectors) narrow from 500' wide to a width of approximately 250' wide and deepen from the initial 30' channel depth at the operable gates to a conveyance channel depth of 60 feet deep. The rest of the length of the conveyance channel would be dredged to a 60 feet deep with the channel partitions reinforced as necessary for stability. The channel depth is to accommodate the large surface area of fish screens and to increase the channel cross section to reduce water velocities. The channel would speed the transit of the fish across the Forebay (as compared to the No Project) and keep them from straying out into the Forebay so that they would have a significantly reduced duration of exposure to predation. Fish predation studies of the current Forebay operations have shown that a large portion of the juvenile salmonid and delta smelt population that enter the Forebay do not make it to the salvage facilities due to predation. By excluding predator size fish from entering Clifton Court, not allowing the smelt and juvenile salmonid fish to stray into the larger part of the Forebay and by shortening the duration and distance of their transit across the Forebay prior to capture and salvage; predation rates on juvenile salmonids and delta smelt would be significantly reduced with the Clifton Court criteria compliant fish screen alternative as compared to the existing condition, No Project/No Project or in comparison to any of the other alternative which retain dual operations without south delta intake screens that are criteria compliant.

Comment continued: Install criteria compliant fish screens in the conveyance channel in Clifton Court Forebay. Orient the screens in the conveyance channel in a "deep V" (10 to 15 degree angle) across the Clifton Court Conveyance Channel with the bottom of the V in the middle of the new conveyance channel approximately 1/4 mile from the west side of Clifton Court Forebay. The fish screens would be oriented vertically on the sides of the V. The top of the V is on the east side of Clifton Court Forebay and is attached to the sides of the conveyance channel partitions where the channel comes to approximately 250 feet wide. Each side of the V fish screen would be approximately 6850 feet long with a depth of 60 feet for a total working surface area in their vertical orientation of 822,000 square feet. If greater surface area is desired, alternatives designs where the screens are sloped in towards the middle of the conveyance channel at the bottom can be evaluated for cost, operational flexibility and fish protection performance. The deep V shape of the screen orientation in the conveyance

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channel creates a shallow angle of approach of water to the screens and creates a sufficient surface area to reduce approach velocities and to have the draw of the export pumps create sweeping velocity across the screens.

Comment continued: As an example, water approaching a screen at a 15 degree oblique angle has an approach velocity that is 3.5% of the sweeping velocity. With the conveyance channel at 250 foot wide and 60 feet deep, at maximum CVP/SWP diversion volumes of 15,000cfs the water column velocity in the conveyance channel would be one foot per second. With a water column velocity of 1 foot per second, a 15 degree angled V screen would result in a sweeping velocity of 0.965 feet per second and an approach velocity of 0.035 feet per second.

Comment continued: The total surface area of vertically oriented deep V fish screen configuration is 822,000 square feet with the above assumptions. (As previously mentioned, sloped screen designs could have even larger surface areas if desired.) At the maximum combined CVP/SWP volume of 15,000 cfs the approach velocity to screens with this large surface area is just over 0.018 feet per second. 0.2 foot per second screen approach velocity is the compliance criteria for delta smelt so the fish screens as described would be only be 10% of the maximum approach velocity for smelt at the maximum CVP/SWP intake volume operations. If this screen configuration is considered over-designed with the 10% of the allowed approach velocity criteria and is excessively protective, and a more relaxed (but still compliant) approach velocity is deemed by the fisheries agencies to be adequately protective, the channel depth could be reduced along with the fish screen height and a narrower channel with a shorter length fish screen could be applied and still easily meet the fish screen criteria requirements. As an example a fish screen only 30 feet deep and half as long would still result in approach velocities that were half as fast as are delta smelt criteria compliant.

Comment continued: The fish capture/salvage facility for the Clifton Court criteria compliant fish screen starts at the very bottom end of the fish screen deep V (western side). There is a separation of the "water intake" portion of the screens on the sides of the V for a "fish intake" opening (slot) at the very bottom end of the V that is 4" to 6" wide. A shade structure should be built from the bottom of the V out to at least 50 feet to the east up the V so the intake slot is in deep shade so that fish do not attempt to evade the fish intake. The fish salvage pumps draw water into the fish intake slot at an approach velocity of 3 feet per second. The higher approach velocity of the fish intake slot is so the fish are quickly drawn in and do not swim away. The top 25 feet and the bottom 5 feet of the conveyance channel at the end of the water intake screen would have this fish intake slot. The top and bottom fish intake slots are to reflect the fish distribution in the water column. The juvenile salmonids and smelt will generally be concentrated in this top 25 feet of water column and the juvenile sturgeon at or near the bottom of the water column. With a 30 foot long total intake slot height, 6 inch width and 3 foot per second approach velocity, the fish salvage pumps would need to intake a maximum of 45 cubic feet per second to bring the fish into the fish collection facility. The current collection facility will need to be redesigned and enlarged to support fish/water separation of fish into transport tanks with this larger than current fish capture water flow. The same principles of the current fish salvage facility still apply, but will have improved handling of fish directly into holding tanks with reduced holding times prior to transport and active predator removal with nets (for the few that get through the large fish exclusion course fish screens). Other fish salvage facilities, handling, storage, transportation and release protocols can be developed and integrated with this Clifton Court criteria compliant fish screen alternative component.

Comment continued: The current fish separation, handling, storage and release operations would need to be revamped as has been previously recommended in many previous meetings, projects and communications. Under the Clifton Court criteria fish screen alternative, predation from salvage operations would be further reduced as compared to the existing conditions, No Project/Project or any

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of the other project alternatives because captured juvenile salmonids and smelt would not be stored, shipped and released with predator sized fish.

Comment continued: Since the concept of an isolated Clifton Court Facility has been discussed, described and debated publicly and by the lead agencies many times (e.g. CALFED) and the SWP Contracts should not be renewed while the project still lacks the ITPs that would make the continued operations legally compliant, there is no excuse for the SWP Contract Renewal project to not have addressed this important project alternative in their alternatives development, screening and alternatives analysis process. None of the project features described in this Isolated Clifton Court Criteria Fish Screen alternative require new technology and all features described have built out project examples to rely upon for their engineering design, construction methods and for expectations regarding as-built real world performance characteristics.

Comment continued: Without inclusion and due consideration of this fish screen alternative component, the current EIR document is deficient and should be recirculated after it has been revised to include this alternative.

Comment continued: The Fisheries Facilities Technical Team (FETT) must be convened to review, refine and more fully develop this concept into a fully formed and project-level project description that is suitable for full analysis in a revised EIR. This group is well qualified to adapt the preceding description as needed to optimize its function, performance and cost effectiveness. They can adapt the dimensions of the channels and cross sections to manipulate channel velocities under different tidal and operational scenarios. They can adapt screen size, depth, length, angles and configurations to optimize fish protection, costs, maintenance, etc. As the preceding description and analysis proves, building a criteria compliant fish screen in Clifton Court is technically feasible. This criteria compliant Clifton Court Fish Screen is a win-win alternative. Fish are protected, water supply delivery capacity is optimized, and delta water quality is protected.

CEQA compels an interactive process of assessment of environmental impacts and responsive project modification which must be genuine. It must be open to the public, premised upon a full and meaningful disclosure of the scope, purposes, and effect of a consistently described project, with flexibility to respond to unforeseen insights that emerge from the process. DWR should pursue permit terms shorter than 50 years due to the levels of uncertainty regarding the future effects of climate change on the Delta and the Sacramento River watershed. The SWP Contract Renewal Project must include a 30 year alternative. CEQA requires inclusion of alternatives that reasonably meet the project objectives and this suggestion for a shorter duration contract alternative more reasonably meets the project objectives taking into account the uncertainties of climate change in the currently proposed longer contract period.

DWR is non-compliant with current OCAP BO RPAs. The OCAP BO RPAs are a part of the No Project definition for the SWP Contract Renewal comparative analysis (see related comments) as they are current obligations of the SWP. DWR has failed to accurately represent the vast majority of the OCAP BO RPAs in terms of their environmental affects and their impacts on water operations, storage, fish habitat quality, quantity and distribution, on water rights, water supplies, water quality and many other environmental resources. The SWP Contract Renewal falsely claims that are insufficient detail available to represent these OCAP BO RPAs, but in fact most of the Projects do have available information and project has failed to meet the CEQA test to utilize the best available information. The following comments identify most of the OCAP BO RPA deliverables that are current obligations of DWR to fulfill. The comments identify the deadlines for the Projects and in some cases describe the nature of the information that should be available to the project to incorporate into their EIR baseline definitions and operations modeling. If none of this information is available to the project, then it means that DWR have not fulfilled their legal requirement to comply with the OCAP BO RPAs and they

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are in violation of the ESA.

Comment continued: • Plans, status and annual reports submitted to NMFS on the Lower Putah Creek enhancements in compliance with the 2009 NMFS OCAP BO Project I.6.3. By December 31, 2015, DWR shall develop and implement. As described in Appendix 2-C, including stream realignment and floodplain restoration for fish passage improvement and multispecies habitat development on existing public lands. By September 1 of each year, DWR shall submit to NMFS a progress report towards the successful implementation of this Project. Since this BO RPAs required implementation of this Project by 12/31/15, these plans must have either been available for inclusion in the EIR baseline definition and operations modeling or DWR has failed to comply with the OCAP BO RPA implementation schedule and failed to meet the test of even a good faith effort to develop and implement these Projects.

Comment continued: • Annual reports submitted to NMFS on the Lisbon Weir improvements in compliance with the 2009 NMFS OCAP BO Project I.6.4. By December 31, 2015, DWR shall assure that improvements to the Lisbon Weir are made that are likely to achieve the fish and wildlife benefits described in Appendix 2-C. Improvements will include modification or replacement of Lisbon Weir, if necessary to achieve the desired benefits for fish. By September 1 of each year, DWR shall submit to NMFS a report on progress toward the successful implementation of this Project. Since this BO RPAs required implementation of this Project by 12/31/15, these plans must have either been available for inclusion in the EIR analysis or DWR have failed to comply with the OCAP BO RPA implementation schedule and failed to meet the test of even a good faith effort to develop and implement these Projects. • OCAP BO note regarding rationale for I.6.2 – I.6.4, “These improvements are necessary to off-set ongoing adverse effects of project operations, primary due to flood control operations.” Since these have not been implemented, they do not offset the on-going impacts of flood control operations and therefore these species remain in jeopardy from the SWP operations which the contract renewal project proposes to perpetuate without mitigation.

Comment continued: • Plan submitted to NMFS in compliance with the 2009 NMFS OCAP BO Project I.7. By December 31, 2011, as part of the plan described in Project I.6.1, DWR shall submit a plan to NMFS to provide for high quality, reliable migratory passage for Sacramento Basin adult and juvenile anadromous fishes through the Yolo Bypass. Since this BO RPAs required implementation of this Project by 12/31/11, these plans must have either been available for inclusion in the EIR analysis or DWR has failed to comply with the OCAP BO RPA implementation schedule and failed to meet the test of even a good faith effort to develop and implement these Projects.

Comment continued: • Proposed engineering solutions submitted to NMFS in compliance with the 2009 NMFS OCAP BO Project IV.1.3. Due by March 30, 2012. DWR shall provide a final report on recommended approaches by March 30, 2015. If DWR had complied with the OCAP BO RPAs, this information would have been available for inclusion in the EIR baseline definition and impact analysis.

Comment continued: • Weekly reports from DWR to the interagency Data Assessment Team (DAT) regarding the results of monitoring and incidental take of winter-run, spring-run, CV steelhead, and Southern DPS of green sturgeon associated with operations of project facilities per the 2009 NMFS OCAP BO. This information would have informed DWR regarding relationships of operations and ESA species response to operations influenced behavioral responses. This information is for adaptive management of operations which DWR claims it does not have available to include in the EIR baselines, operational modeling and impact comparisons.

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Comment continued: • DWR annual written report to NMFS following the salvage season of approximately October to May. This report shall provide the data gathered and summarize the results of winter-run, spring-run, CV steelhead, and Southern DPS of green sturgeon monitoring and incidental take associated with the operation of the Delta pumping plants (including the Rock Slough Pumping) per the 2009 NMFS OCAP BO. This information would have informed Reclamation regarding relationships of operations and ESA species response to operations influenced behavioral responses. This information is for adaptive management of operations which DWR claims it does not have available to include in the EIR.

Comment continued: • Reports to NMFS of facility salvage efficiency of 75 percent in compliance with the 2009 NMFS OCAP BO Project IV.4. DWR shall implement the following Projects to reduce losses associated with the salvage process, including: (1) conduct studies to evaluate current operations and salvage criteria to reduce take associated with salvage, (2) develop new procedures and modifications to improve the current operations, and (3) implement changes to the physical infrastructure of the facilities where information indicates such changes need to be made. Reclamation shall continue to fund and implement the CVPIA Fish Facility Program. In addition, DWR shall fund quality control and quality assurance programs, genetic analysis, louver cleaning loss studies, release site studies and predation studies. Funding shall also include new studies to estimate green sturgeon screening efficiency at both facilities and survival through the trucking and handling process. By January 31 of each year, DWR shall submit to NMFS an annual progress report summarizing progress of the studies, recommendations made and/or implemented, and whole facility salvage efficiency. This is probably the most important missed obligation by DWR as the plans to meet these salvage efficiencies would have become an important component of a project alternative that would have had lower environmental impacts than the proposed project - see related comments for a criteria compliant fish screen for the SWP intake at Clifton Court Forebay. In order to meet these goals, it is likely that full criteria fish screens would have been designed for implementation and should have been included in the EIR. DWR cannot both claim it is compliant with the OCAP BOs and that information is not available in sufficient detail to allow analysis in the EIR. DWR must provide NMFS with the designs and operations for the SWP to become compliant with this RPA and these Projects must be included in the EIR No Project baseline definitions and included in the detailed analysis of an alternative in a revised and recirculated EIR.

Comment continued: • Documentation of the Skinner Fish Protection Facility to achieving the minimum 75 percent salvage efficiency for CV salmon, steelhead, and Southern DPS of green sturgeon after fish enter the primary channels in front of the louvers in compliance with the 2009 NMFS OCAP BO Project IV.4.2.1). Due from DWR by December 31, 2012. If DWR had complied with the OCAP BO RPAs, this information would have been available for inclusion in the EIR baseline or as a project alternative component (see fish screen alternative related comments), in the impact analysis.

Comment continued: • Report to NMFS on compliance with the 2009 NMFS OCAP BO Project IV.4.2.2)a). DWR is to immediately commence studies to develop predator control methods for Clifton Court Forebay that will reduce salmon and steelhead pre-screen loss in Clifton Court Forebay to no more than 40 percent. Studies complete on or before March 31, 2011. 40% improved predator control shall be achieved by March 31, 2014. Failure to meet this timeline shall result in the cessation of incidental take exemption at SWP facilities unless NMFS agrees to an extended timeline. This OCAP BO RPA compliance information must also be in the EIR baseline definition. DWR's lack of compliance with this project legal requirements means the contract renewal will perpetuate these fisheries impacts which NMFS has determined in their OCAP BO result in jeopardy of these listed species.

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Comment continued: • Documentation of the completion of fish collection facilities in compliance with the 2009 NMFS OCAP BO Project V, NF4.1. DWR American River Fish Facility – Collection facility shall be operational no later than March 2012. DWR should have several years of operational data on the impacts of implementing these Projects and this information must be included in the revised baseline and recirculated EIR. DWR should also have completed an EIR/S on this project prior to its permitting and construction so those materials should also be available to use in the SWP Contract Renewal EIR and as part of the No Project/No Project baseline definition.

Comment continued: • Plans submitted to NMFS specifically in compliance with the 2009 NMFS OCAP BO RPA I.7 reduction of migratory delays and loss for salmon, steelhead and sturgeon. These were due from DWR by 6/30/11 and this information must be included in the SWP Contract Renewal EIR. Given that the plans were required more than 5 years ago, the project-level description of these Projects must be available and must be included in a revised and recirculated EIR.

Comment continued: • Reports to NMFS on specific Projects implemented specifically in compliance with the 2009 NMFS OCAP BO RPA I.7 reduction of migratory delays and loss for salmon, steelhead and sturgeon. These were due to be implemented by DWR by 12/31/11 so there should be 5+ years of information on these implemented Projects available for inclusion in the EIR baseline definition and comparative analysis.

Comment continued: • Reports submitted to NMFS on the reduction of fish predation rates to less than 10% in the primary channel in response to 2009 NMFS OCAP BO RPA IV.4.1. DWR is required to implement this no later than 12/31/12 so this information should have been included in the SWP Contract Renewal EIR baseline definition and a 10% predation loss rates in the primary channel should have been assumed in the impacts assessment for the No Project. All of these DWR mandatory improvements to predation rates and fish salvage rates must be included in the No Project and, if DWR were compliant with the OCAP BO RPA implementation schedule, the existing conditions/affected environment description. The EIR must be revised with all of these past implementation deadlines as part of the No Project definition and integrated into the alternatives comparisons to these baselines. The public draft EIR must be recirculated for this material new information for public comment and disclosure.

Comment continued: • Predation reduction method reports submitted to NMFS specifically in compliance with the 2009 NMFS OCAP BO RPA IV.4.3. DWR is required to complete this no later than 6/15/11 so this information should have been in the EIR baseline definition and description.

Comment continued: • Copy of reports submitted to NMFS documenting the improvements of fish salvage monitoring and release survival rates for the south delta pumps specifically in compliance with the 2009 NMFS OCAP BO RPA IV.4.3. DWR is required to complete this by 10/1/09 and annually thereafter. This information should have been in the EIR.

Comment continued: • Correspondence and joint work products with the CVP/SWP Fish Passage Steering Committee in response to the coordination requirements from the 2009 NMFS OCAP BO RPA NF 4.5. These materials should be available from DWR to inform the EIR analysis.

Comment continued: • Reports submitted to NMFS specifically regarding DWR's Skinner Fish Collection Facility reductions in fish predation rates in response to 2009 NMFS OCAP BO RPA IV.4.2. Compliance was required to be achieved no later than 3/31/14 and should have been included in the EIR baseline description and comparative analyses for the alternatives impact analyses.

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Comment continued: • DWR reports, plans and correspondence to FWS specifically in response to FWS OCAP BO RPA "Component 4: Habitat Restoration, to implement a program to create or restore a minimum of 8,000 acres of intertidal and associated sub tidal habitat in the Delta and Suisun Marsh. The restoration efforts shall begin within 12 months of signature of this biological opinion and be completed by DWR (the applicant) within 10 years. The restoration sites and plans shall be reviewed and approved by the Service and be appropriate to improve habitat conditions for delta smelt. Management plans shall be developed for each restoration site with an endowment or other secure financial assurance and easement in place held by a third-party or DFG and approved by the Service. The endowment or other secure financial assurance shall be sufficient to fund the monitoring effort and operation and maintenance of the restoration site. An overall monitoring program shall be developed to focus on the effectiveness of the restoration Projects and provided to the Service for review within six months of signature of this biological opinion. The applicant shall finalize the establishment of the funding for the restoration plan within 120 days of final approval of the restoration program by the Service." Since there are only 2 years left for this Project to be completely implemented and contracting and construction will take at least that long, the plans and supporting detailed environmental documents and permitting must already be completed. This information should have been included in the EIR as part of the No Project and variants of this Project should have been included in some of the project alternatives. This omission makes the EIR materially incomplete and deficient. This deficiency must be remedied and a revised EIR recirculated for public comment.

Comment continued: • DWR reports or correspondence to FWS specifically in response to FWS OCAP BO RPA "Component 5: Monitoring and Reporting, Information on salvage at Banks and Jones is both an essential trigger for some of these Projects and an important performance measure of their effectiveness. In addition, information on OMR flows and concurrent measures of delta smelt distribution and salvage are essential to ensure that Projects are implemented effectively. Such information shall be included in an annual report for the Water Year (October 1 to September 30) to the Service, provided no later than October 15 of each year, starting in 2010." This information should have been included in the EIR as it would provide a basis to characterize the No Project as well as informed potential options in the development of alternatives and adaptive management measures.

Comment continued: • Notifications and reports to FWS for BO RPA Project 6. Documentation should include the location, plans, designs, evaluations, environmental documents, permit applications, and status updates and reports to FWS. "A program to create or restore a minimum of 8,000 acres of intertidal and associated sub tidal habitat in the Delta and Suisun Marsh shall be implemented. The restoration efforts shall begin within 12 months of signature of this biological opinion and be completed within a 10 year period." Since there are only 4 years left for this Project to be completely implemented and contracting and construction will take at least that long, the project-level description and land modification and water operations plans and supporting detailed environmental documents and permitting must already be completed. This information should be available if the SWP were compliant with the ESA as required in the OCAP BO RPAs. This information should have been included in the EIR. This omission makes the EIR materially incomplete and deficient. This deficiency must be remedied and a revised EIR recirculated for public comment.

Comment continued: • DWR reports to FWS regarding any information about take or suspected take of federally-listed species not authorized in the 2008 FWS OCAP BO. Notification must include the date, time, and location of the incident or of the finding of a dead or injured delta smelt. Jones Tract emergency levee repair and fish rescue are an example of notifications that should have been given. Dissolved Oxygen crashes that result in adverse modification of critical habitat caused by or contributed to by SWP operations must also be included with this other information in a revised and recirculated EIR.

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Comment continued: The NMFS BO requires addition of salt to water within the tanker trucks to haul salvaged fish to reduce stress of transport (NMFS OCAP BO pg 657, #5). The DWR 401 Certification from the water board does not cover this discharge and this impacts of adding salts to water discharged into the delta must be addressed in the EIR.

Comment continued: In conclusion to this series of comments related to information that should be available to the EIR from DWR 's compliance with the OCAP BOs, DWR has missed the vast majority of the OCAP BO RPA implementation deadlines and is grossly out of compliance with the OCAP BO RPA implementations required for the SWP to not continue to jeopardize ESA listed fish species. DWR's breach of the OCAP BO terms is a serious offense and as a result the SWP continues to jeopardize the listed species and has resulted in a significantly compromised and deficient EIR document. If DWR had complied with the OCAP BO RPA schedule of implementation, the No Project analysis would be complete and correct. Instead, due to DWR's non-compliance with the ESA requirements to implement the OCAP BO RPAs, the SWP Contract Renewal is claiming that it is not possible to include these Projects in the No Project definition and assumptions as they are not sufficiently developed to support analysis. The regulatory agencies utilizing this EIR document to support decision making should not accept this incomplete characterization of the No Project alternative as it corrupts all of the analysis that rely on this baseline for comparison. As required by CEQA, DWR must make full use of all available data to include in the No Project definition, modeling and impact analysis comparison. Since all of these OCAP BO RPAs are delinquent anyway and the agencies (DWR, CA DFW, USFWS and NMFS) in Project is resulting in continued jeopardy of ESA listed species from SWP operations, DWR must apply all of their human, technical and financial resources into becoming compliant with the OCAP BOs - to the exclusion of utilizing conflicting resources for the SWP Contract Renewals which would add further delays to compliance. Once the work to become compliant with the OCAP BOs is completed the SWP would have the benefit of avoiding jeopardy for the ESA listed species during the period of proposed contract renewal operations. Another likely benefit of completing the OCAP BO RPAs prior to the SWP Contract Renewal EIR advancing is that in the process of completing these compliance plans it is likely that new and more beneficial project alternatives would be identified and developed. An example of this would be the OCAP BO RPA required improvements to the south delta intake channels and fish screens. As the detailed designs and plans required by the OCAP BO RPAs are developed, it is likely that a more significant and comprehensive approach would be developed that not only exceeded the requirements of the OCAP BO fish salvage improvement goals, but became an important component of a new and more viable project alternative - see comments on south delta criteria fish screen alternative.

Comment continued: It is clear from the on-going failures of DWR to comply with the OCAP BiOps and the lack of sanctions on them by FWS and NMFS, that NMFS and FWS are failing to enforce their own OCAP BiOps. FWS and NMFS must immediately redress their lack of enforcement of the OCAP BiOps with DWR. FWS and NMFS should start this process by requiring that the OCAP BiOp RPAs are implemented prior to, not after, SWP Contract Renewals. Further, if DWR officers, representatives and staff continue to fail to apply even good faith efforts to implement the OCAP BO RPAs as expeditiously as possible, FWS and NMFS should begin pursuing civil and criminal penalties.

The Draft Environmental Impact Statement (EIS) for the Coordinated Long-Term Operation of the Central Valley Project (CVP) and State Water Project (SWP) (ES.3, line 17) acknowledges that many of the provisions of the RPAs identified in the biological opinions require further study and monitoring and further environmental documentation necessary before any future facilities can be constructed or modified. Therefore the assumption of RPA implementation prior to SWP Contract Renewal must take supremacy.

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<p>The EIR failed to identify significant impacts of continuing SWP operations. These ongoing significant impacts include, but are not limited to: salt accumulation in the SWP service area from salts delivered in the SWP water supply and alternative water supplies which are over-relied upon due to SWP contract amounts which are consistently not met; salmonid genetic introgression from straying from SWP operations, continuing blockage of upstream passage by the physical presence of Oroville Dam and the fish barrier dam and from Oroville hatchery operations which introgress spring- and fall-run Chinook salmon; depletion of downstream sediment and large wood debris load contribution from upstream tributaries by capture from Oroville Dam resulting in downstream degradation of fisheries and riparian habitat as well as salmonid spawning gravel; and many other impacts - see related comments.</p>	<p>5-45</p>
<p>See CEQA Guidelines, § 15126.4[a][1][D] "EIRs must discuss significant effects of mitigation measures,..." The EIR incorrectly concluded, without adequate supporting justification, that the contract renewal had no significant impacts so no mitigations were identified. The contract renewal does have significant on-going environmental impacts that must be mitigated. In this lack of detail and reliable determination of the general types and magnitudes of impacts from mitigation measures, the EIR is materially deficient and must be revised to provide this detail and recirculated for public comment.</p>	<p>5-46</p>
<p>One type of on-going impact of the contract renewal would be continued delivery of salts in the irrigation water to agricultural service areas of the SWP. Increased Electrical Conductivity (EC) from salinity in SWP irrigation water is bioaccumulative in plants and results in reduced yields and ultimately accumulation of salts in the soil results in conversion of farmland to a non-farmable condition. Some areas of the SWP service area will reach this unfarmable concentration of salts in the proposed SWP Contract Renewal project period. The degradation of soil quality from imported salts from continued irrigations from the contract renewal results in a change in land use from farmland to non-farmland. A change in land use is always determined to be a significant impact which must be mitigated. This material and significant impact is not identified, evaluated, quantified, disclosed or mitigated in the current draft EIR. The draft EIR must be revised to correct this deficiency and recirculated with this material new information.</p>	<p>5-47</p>
<p>Not all chemical components that contribute to EC are sodium salts. There are positively charged ions that contribute to EC and include sodium, calcium, potassium, and magnesium. Negatively charged ions that contribute to EC include chloride, sulfate, carbonate, and bicarbonate, nitrates, and phosphates. Several of these other non-sodium salts do bioaccumulate in humans and wildlife, e.g. Nitrates (that is why there are nitrate standards in drinking water quality). Sodium salts are bioaccumulative in plants and will cause yield loss in commercial crops and mortality and changes in native and wild plant types that will occur based on their salt tolerance. These plant community changes from salt accumulation in turn cause changes in wildlife habitat quality and quantity and species distribution for foraging habitat. These inaccuracies in the EIR must be disclosed in a revised and recirculated public draft.</p>	<p>5-48</p>
<p>The CA Water Fix EIR/S determined that the No Project condition, which the SWP contract renewal proposes to perpetuate, results in a significant degradation of water quality conditions. "At the Banks pumping plant, the frequency with which DOC concentration would exceed 3 mg/L 36 would increase from 64% under Existing Conditions to 69% under the No Project Alternative (ELT) for the 16-year period (and increase from 57% to 68% during the drought year period)..." (4.2-35 line 36) This change is over a 10% increase in the frequency of exceedance of an important drinking water quality requirement for the water supply for over 22 million Californian's. This is obviously a significant impact and this glossing over impact calls is a consistent error and deficiency in this EIR. A 10% change in conditions, flows or water quality degradation (regardless of water quality exceedance) is often a threshold utilized for water resource project impact criteria for California environmental EIRs and EISs,</p>	<p>5-49</p>

<p>e.g. Lower Yuba River Accord, Lower American River Accord, Oroville Facilities Relicensing. This impact is significant and DWR must adopt the same significance criteria for impacts analysis as they have used for other similar projects and/or provide rationale for why they have departed from their previous standards, practices and conventions - see related comments. Any degradation of water quality standards related to a beneficial use is a significant impact.</p>	
<p>The CA Water Fix EIR/S determined that the No Project condition, which the SWP contract renewal proposes to perpetuate, results in a significant degradation of water quality conditions. "Elevated ambient water temperatures in the Delta, and thus an increase in Microcystis bloom duration and magnitude, are expected under the No Project Alternative (ELT), relative to Existing Conditions." (4.2-44, line 36) The CA Water Fix analysis shows that the SWP contract renewals would result in additional and on-going significant degradation of water quality. The EIR must be revised to provide and complete analysis of impacts of the contract renewal and the analytical level of rigor and approach must be consistent with the CA Water Fix impact analysis. These significant impacts must be identified, evaluated, disclosed, and mitigated.</p>	<p>5-49 cont.</p>
<p>The 2008 FWS OCAP BiOp RPAs required implementations of habitat restorations, predation management and physical changes to the south delta intakes in addition to the changed water operations to avoid jeopardy of the species from extinction from the continued operation of the CVP/SWP facilities - see related comments. DWR has mostly complied with the altered water operations, but have failed to plan or implement the habitat restorations, predation rate management and intake modifications for increased salvage survival rates that are also required by the OCAP BiOp RPAs. DWR remains in violation of the ESA as defined by the required RPAs in the OCAP BiOp. Since the BiOp concluded that these restoration Projects were required to avoid jeopardy and these Projects have not been implemented it is logical to conclude from the BiOp analysis that the species may go extinct if the SWP contracts are renewed. In direct contradiction to these other findings, the SWP Contract Renewal EIR concluded it had no significant impacts. One of these analyses is wrong and since the OCAP BO carries the force of law, we must conclude that it is the EIR analysis that is wrong and it must be corrected to be consistent with the OCAP BO analysis and conclusions. DWR must revise their EIR so the analysis approach, methodology and conclusions are consistent with the OCAP BO analysis on this same species for this same time period and assumptions.</p>	<p>5-50</p>
<p>The SWP project currently results in frequent and significant violations of water quality standards in the delta. The affected and harmed water rights holders in the delta have senior water rights to the SWP. The SWP has no right to degrade the water quality and beneficial uses of water of these senior water rights holders and the SWP Contract Renewal project proposes to perpetuate those water quality violations and impairment of senior water rights. The SWP operations caused water quality impacts are avoidable by operating the SWP in a manner that does not violate water quality standards. This may result in less water deliveries, but that is what is required in order to avoid significantly impacting the senior water rights of the other delta water diverters. The SWP Contract Renewals must include alternatives that implement reduced contract delivery amounts and reconfigured operations so that it avoids and minimizes this impact. To the extent that these impacts are not reduced below significant levels, the EIR must develop and propose appropriate mitigation measures. Once the reduced water delivery alternatives have been developed and evaluated and the remaining significant impacts have been mitigated, the revised EIR must be recirculated to disclose this material new information.</p>	<p>5-51</p>
<p>The SWP Contract Renewal No Project definition is in error as the continuation of the current plans and policies of DWR is to not renew the contracts. If contract renewal was a continuation of an existing plan or policy, there would have been language in the contract that established a mechanism or on-going commitment to contract renewal or the contracts would have been in perpetuity. The original contract does not include any language regarding subsequent contract renewals. The lack of inclusion</p>	<p>5-52</p>

of language in the original contract regarding any expectation for the renewal makes it clear that the policy of DWR at the time of the original contract initiation was to allow DWR at the future time (now) of contract expiration to have the opportunity to re-evaluate from scratch without prejudice or pre-decision the terms under which any potential new contract might or might not be issued. Since no expectation for contract renewal was included in the contract, the renewal of these contracts cannot be considered the No-Project. Literally, "No-Project" means if one to do nothing and in the event that nobody did anything, these contracts would expire at their end of term and would not be renewed.

5-52
cont.

The Proposed Project is for new water supply contracts, not contract renewals - see above comment. The Water Supply Delivery Contracts are for goods and services to be provided by the State. As such, there must be a competitive and open bidding process for the water supply contracts. The State has failed to follow its own laws and procedures for an contract bid process. Bidders must apply and prove their qualifications, including their financial resources to fulfill their portions of the contract responsibilities. Once qualified, the bidders must put forth proposals for the State to evaluate on an unbiased ranking system. The State would then consider awards of contracts based on the proposal evaluations. The current project circumvents these legal requirements of the State contract bidding and award process.

The SWP Contract Renewal incorrectly assumes that the water supply contract renewal will be approved in the same quantities as the existing contracts. This lack of consideration of a fundamental variable in the contract as an alternative is not reasonable. The renewal of the contract at the current contract water supply delivery amounts also does not meet the criteria of reasonably foreseeable for inclusion in the No Project or Cumulative as there are no guarantees in the current contract that the contracts will be renewed or renewed at the existing delivery quantities. It is much more likely that, if the contracts are renewed at all, the contract amounts would be lower than the current amounts as the lower delivery amounts would make the contracts consistent with the requirements of the 2009 Delta Reform Act and of the 2014 California Water Project Plan to reduce reliance on Delta water supplies. If the SWP Water Supply Contact Renewal wants to include continued operations assumptions beyond 2035 when the current contracts expire, DWR must adopt a range of scenarios to analyze from contract renewals with some delivery reduction (to be consistent with current plans and policies such as the Delta Reform Act) to scenarios where they are not renewed at all.

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The EIR claims that there are no environmental impacts resulting from the contract renewals. This is an incorrect conclusion of the EIR. The contract renewal will result in the continued violation of water quality standards in the delta including Dissolved Oxygen (DO). There are a number of readily available water quality impact assessment tools. DSM2-QUAL is an existing modeling tool which has been developed and tested for use in dissolved oxygen assessments in the Delta. "The ability of the model to simulate the dissolved oxygen sag on a reach of the San Joaquin River near Stockton was recently demonstrated. DSM2-Qual was capable of capturing diurnal variations of important constituents such as dissolved oxygen, phytoplankton, temperature, and nutrients under the unsteady conditions of the estuary. Variations were realistic, although lack of a large temporal variation in observed data was somewhat of an impediment to testing the model's full capacity to predict field conditions. Tests of the model's capability to distinguish between alternatives in terms of incremental changes in water quality were encouraging (Rajbhandari 1995). The model has great potential for use as a practical tool for analysis of the impacts of water management alternatives."

(<http://baydeltaoffice.water.ca.gov/modeling/deltamodeling/delta/reports/annrpt/1998/chpt3.html>)

Take note that the quote on the utility of this model for analyzing DO in the delta is from DWR's Bay Delta Office. The conclusion that this tool was useful in distinguishing incremental changes from alternatives was documented in 1995 which was 21 years ago so the best available science must be well advanced from this fully functional level from over 20 years ago. For the EIR, the model would not be used to predict field conditions, but in a comparative mode from the baseline environmental conditions as compared to alternatives to quantify the relative change due to the alternatives. This tool, even back in 1995, was well capable of being useful for the EIR impact assessment. Modeling is an essential tool for evaluating such an important water quality constituent which is an essential criteria for suitable fish habitat in an area that many listed species share as designated critical habitat. The problem of DO is dynamic, complex and is unevenly distributed geographically which makes spatial modeling of DO an essential component of any environmental impacts analysis which must utilize the best available science as CEQA analysis requires. The EIR fails to utilize best available science and to conduct analyses of the impacts of continued SWP water deliveries resulting from the water supply contract renewal.

5-54

Another on-going impact of the SWP Contract Renewals that the EIR failed to identify or disclose is the continuation of off-gassing from Lake Oroville which contributes greenhouse gas emissions to impact Climate Change. This material omission must be addressed in a revised and recirculated public draft EIR.

5-55

The SWP Contract Renewals results in an increase in the reliance upon the delta as a water supply as it assumes that there is no improvement in regional water supply independence in the next 50 years (see related comments) which is in direct contradiction to this 23 CCR Section 5003 requirement. As such, the proposed project and other alternatives which include full contract delivery amounts from the original contract are not consistent with current plans, policies and state laws. Alternatives which include reduced delivery quantities must be included in the EIR so that the project is not in conflict with these laws and all alternatives which do not include reductions of water supply deliveries from the delta must be dropped from further consideration in the final EIR.

5-56

The SWP Contract Renewal is growth inducing (see related comments) but does not evaluate those impacts or locate urban development wisely as the growth it induces furthers dependence upon delta water supply exports which is in direct contradiction to this 23 CCR Section 5010 requirement. Not all of the current water supply contract amounts are built out, so the unbuilt increment of water supply included in the contract renewal is growth inducing. The EIR is deficient as it does not include this impact analysis, disclosure and mitigation.

5-57

<p>CEQA requires (see CEQA Guidelines Section 15125(d)) that a "...EIR shall discuss any inconsistencies between the proposed Project and applicable general plans and regional plans." Contract renewal at current contract water supply delivery amounts conflicts with regional and municipal general plans that include (as they are required to by law) a reduced dependence upon delta water supplies in the future.</p>	<p>5-58</p>
<p>The SWP Contract Renewal (incorrectly - see related comments) represents that the renewal of the contract is part of the No Project condition. Therefore, the SWP Contract Renewal should have exactly the same No Project definition as the California Water Fix EIR/S No Project. The California Water Fix EIR/S No Project analysis concluded that the No Project as compared to the existing condition resulted a number of significant (and some unavoidable significant) impacts. The SWP Contract Renewal Project therefore would have the same significant impacts. The SWP Contract Renewal EIR is inconsistent with the California Water Fix project EIR/S findings and the final EIR must be revised to be consistent with</p>	<p>5-59</p>
<p>CEQA's requires that whenever feasible, agency decision makers must adopt mitigation available to reduce a project's significant impacts to a less-than-significant level. The SWP contract renewal perpetuates significant impacts which were documented in the CA Water Fix EIR/S No Project condition. The SWP contract renewal fails to identify and evaluate these impacts or to mitigate impacts to a less than significant level when it is feasible to do so. The project could reduce significant (and unavoidable according the CA Water Fix) water quality impacts (e.g. salinity, DO, blue' green algae, Se, Pb, Hg, Chloride, Bromide, etc.) to less-than-significant if they reduce the water supply contract delivery amounts or they don't do the project at all (which must be the No Project condition for comparison of impacts - see related comments).</p>	<p>5-60</p>
<p>The SWP Contract Renewal is in direct conflict with the legal requirements of the Delta Plan for reduced reliance on delta water supplies. The SWP Contract Renewal increases reliance upon the delta water supplies by making the delta water supplies more reliable farther into the future.</p>	
<p>DWR initiated a process to extend the SWP Water Supply Contracts starting in April 16, 2014. Several public meetings were held involving initial negotiations and culminated in the submittal of public scoping comments ending October 14, 2014. Several public meetings were held in early 2015, but then negotiations continued only in private meetings that the public was excluded from. Of the 23 meetings DWR says it held on the development of the Agreement in Principle (NOP pg2) the public was only included in a hand full of those meetings. DWR shut the public out of the process for the development of the Agreement in Principle with the contracting water agencies. This water supply contract renewal process is definitely not a transparent process for the public as required by the Delta Plan and therefore, DWR, and the SWP Contract Renewal project is not compliant with the Delta Plan.</p>	<p>5-61</p>
<p>The new contract renewal and alternatives do not include any aspect of management or reduction of invasive species to comply with this important Delta Plan requirement.</p>	
<p>Summary of Delta Plan Requirement Compliance by the SWP Contract Renewals - Of the 24 or so criteria for certification of compliance with the Delta Plan, the project complies with exactly none of them. The Delta Stewardship Council must not certify the SWP Contract Renewal as being compliant with the Delta Plan.</p>	<p>5-62</p>
<p>Appendix A - Agreement in Principle</p>	
<p>The Agreement in Principle (AIP) is used in the EIR as a predecisional document in its entirety. This agreement was utilized as a basis for screening out other alternatives which would have reasonably met the purpose of the project which was to let out new water supply contracts. The process also predecisionally excluded other potential contractors from competing for the water supply contracts -</p>	<p>5-63</p>

<p>see related comments. The agreement precluded consideration of alternative reduced water supply contract delivery amounts which should have been considered as reasonable alternatives. It is appropriate for this agreement to be used to define the proposed project, but not as a basis for screening criteria to artificially limit the range of alternatives which could reasonably meet the objectives of the project, which is to renew the water supply contracts. The use of the AIP as the basis for screening other potential project alternatives is in violation of CEQA requirements for consideration of all reasonable alternatives which meet the project objectives.</p>	↑	5-63 cont.
<p>Objective 3(d) - Proposes the SWP contractors would no longer be responsible for some of the fish and wildlife costs of the SWP. This provision is in conflict with the Davis-Dolwig Act as the SWP contractors are responsible for all operating costs related to their water deliveries, including the costs of mitigation of impacts from the SWP project and operations. The Proposed Project must be modified to remove this aspect of the AIP from the definition as it is in direct conflict with existing law.</p>		5-64
<p>Appendix B - NOP</p>		
<p>Pg 2,p2 - "The SWP is also operated to improve water quality in the Sacramento-San Joaquin Delta, control floodwaters, generate electricity, provide recreation, and enhance fish and wildlife." The SWP Contract Renewal project included extending the contract period for water supplies for the benefit of the water contractors, but did not include any provisions for protecting or enhancing any of the other stated project purposes. The SWP operations frequently and routinely violate water quality standards in the delta. The SWP contract renewal EIR must include alternatives that accomplished the other stated project objectives to renew the water supply contracts but also do so in a manner that protect water quality in the delta rather than only proposing project alternatives that will result in a perpetuation of the SWP water quality violations.</p>		5-65
<p>Pg 2, last paragraph - "The AIP does not represent a commitment by DWR or the Contractors to approve a proposed project or to extend the Contracts..." This is an untrue statement as the project EIR did not include any alternatives that did not include extension of the contracts. The AIP was used as a basis to screen out alternatives that did not extend the contracts and therefore was predecisional.</p>		5-66
<p>Pg 3, Project Objectives - Of the three project objectives identified, none of them preclude the reasonable consideration of some quantity of reduced water supply delivery contract amounts. Without a reasonable objective that precludes consideration of reduced water supply delivery amounts, DWR has no supporting rationale not to include one or several project alternatives that do address reduced water supply contract amounts. There is ample reason to include a reduced contract amount alternative as this alternative would be the only one that is compliant with current legal requirements to reduce future water supply reliance upon the delta - see related comments.</p>		5-67
<p>Pg 3, Project Area - the SWP facilities and service area may be correct for the project area definition, but it is incorrect as a boundary for considering the environmental impacts of the project. The project impact analysis area must include areas that are downstream of the diversion and downstream of the service areas so flow affects and water quality impacts in these areas can be assessed, disclosed and mitigated. The current EIR is deficient for not including these affected geographic areas and impacts.</p>		5-68
<p>Pg 3, Proposed Project - "Extend the term of the 29 Water Supply Contracts to December 31 , 2085." This is nearly a 70 year contract extension from current day. This is an unreasonable duration of contract due to the uncertainty of the affects from climate change. The CA Water Fix late long term future analysis only extended 50 years and the long-term analysis was limited in scope due to climate change uncertainty. It is imprudent for the state to make delivery commitments so far in the future with such a significant amount of uncertainty in its ability to fulfill future commitments in conditions that are largely unknown and the impacts of which are currently unquantifiable and in some cases, unknowable.</p>		5-69

<p>Pg 3, Environmental Baseline - The California Water Fix just spend millions of \$s characterizing and describing the existing condition and No Project condition of the SWP. The SWP Water Contract Renewal is inconsistent with this other contemporary DWR EIR document as it did not rely upon the same definitions or utilize the same materials. The project must be brought into consistency with the California Water Fix EIR or DWR must explain in each instance the supporting rationale for the differences.</p>		5-70
<p>Pg 9 - Reviewing agencies should also have included the Sacramento Valley Regional Water Quality Control Board for review of consistency with the Delta Water Quality Control Plan and Delta Flow Standards. It should have also included the SWRCB for discharge permits and water quality.</p>		5-71
<p>Pg 16 - 26 - All of the Scoping Comments provided by Central and South Delta Water Agencies are herein incorporated by reference.</p>		5-72
<p>Pg 33, p1 - "Scare tactics are currently being used to coerce SWP contractors into supporting the... ..Bay---Delta Conservation Plan (BDCP)." It is not clear from this comment the method of delivery of this coercion, but it clearly implies that contract renewals may be withheld if water contractors do not support or endorse the BDCP project. Any coercion like this, if true, would clearly be illegal and in conflict with DWR's mission statement to deliver water and in violation of its ethical standards and code of conduct. If there is any requirement for a water contractor to support the BDCP (CA Water Fix) in order to execute a SWP Contract Renewal, then this requirement must be included as part of the proposed project description.</p>		5-73
<p>EIR Document</p>		
<p>7.2 - It is interesting that none of the project objectives include delivery of water. An alternative that delivered no water at all would still meet the stated project objectives. Given that, it is reasonable that the project alternatives should have included an alternative with reduced contract amounts.</p>		
<p>7.3.1 - An unstated, but required project objective for all project subject to CEQA is that they must be compliant and consistent with all existing laws, regulations and policies. To not include alternatives which reduce reliance upon delta water supplies is to be inconsistent with and in direct conflict with the Delta Reform Act - see related comments. None of the arguments in the EIR which were put forward to justify not including a reduced contract amount make any sense. We understand that Table A amounts are allocated by the amount of water available. That fact does not make any difference in that the maximum amount of water delivery in Table A for the contracts should be a lesser amount so that it is consistent with the Delta Reform Act. Pg 7-3, p4 "Reducing Table A amounts proportionately for all the Contractors by amendment would not change the amount of water being delivered to the Contractors..." This statement is incorrect as reduced Table A maximum amounts would result in reduced deliveries in which full water supplies were available. This infrequent outcome of reduced deliveries is desirable from two important standpoints. First, it would make the alternative with the reduced maximum contract amounts consistent with the requirement for the water contractors to reduce their dependence on delta water supplies as is currently legally required. Second, the outflows of water from the delta would be increased and the larger flushing flows have environmental benefits. This second benefit would make the reduced contract delivery amount the environmentally superior alternative as compared to the environmental impacts of the other alternatives.</p>		5-74
<p>Pg7-5, p3 " The proposed project is separate and independent from the California WaterFix project. The proposed project would need to occur regardless of the outcome of California WaterFix." There are several things wrong with these statements. First, the document is predecisional in representing only the proposed project and not considering that it may be other alternatives which would be approved. Second, the nature of the SWP and water deliveries with or without the CA Water Fix project would be very different. The CA Water Fix EIR/S shows that the amount of water delivered</p>		5-75

would change in different water year types as compared to the No Action condition. This would mean that the amount of water that was available through the SWP would be different with and without the CA Water Fix. This difference would impact Table A allocations and actual water deliveries under the SWP contracts with and without the CA Water Fix. Therefore, the SWP contract renewal and the environmental impacts from the water deliveries from the contact agreements are interdependent upon the CA Water Fix. Because the CA Water Fix would make a difference in the water deliveries and environmental impacts of the SWP Contract Renewal, the EIR must include an alternative that represents a scenario where the CA Water Fix and the associated difference in water deliveries is represented, evaluated, and disclosed.

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cont.

7.4.1 "Upon receipt of Article 4 letters from the Contractors (at least 6 months prior to the existing expiration date for each Contract) the term of the Contracts would be extended beyond their current expiration dates." It is unreasonable for the EIR No Project alternative that the contract would be extended for 50 years beyond their expiration dates. It would be much more reasonable for the EIR to assume that the function of the article 4 provision was to allow a one year period to complete negotiations on the new water supply contracts. Based on the unsupportable assumption that the contract would be extended for 50 years based on the contractor letter, it is much more appropriate to assume that the SWP would stop deliveries (or stop after a year if there is a provision for a contractor letter provision in the current water contracts) when the contracts expired under the No Project condition. The EIR must disclose the materials that support their No Project assumptions of continued water deliveries for 50 years under expired contracts or the EIR analysis must be redone based on a No Project that does not deliver water after the contracts expire (or deliver water for only one year after the contracts expire).

5-76

The EIR should have included an alternative in which the Contractors pay off the existing debt of the SWP, DWR divests itself from the SWP and the Water Contractors take over the operations of the SWP. This has been proposed previously for both the SWP and the CVP. DWR has even conducted a study of this SWP divestiture scenario. This SWP turnover to the Water Contractors would obviate the need for the SWP Water Supply Delivery Contracts. This alternative would meet or obviate the need for each of the project objectives. The project objectives as they are addressed by a DWR SWP divestiture to the Contractors: 1) DWR would not need to finance SWP expenditures, 2) DWR would not need to maintain financial reserves for the SWP, 3) would obviate the need for simplified accounting with the Contractors, and 4) it would obviate the need for better coordination between DWR and the Contractors.

5-77

7-11, p1 "... the extent and nature of such indirect impacts are speculative and not analyzed further in this EIR." True, CEQA does not require in-depth analysis of future events which are unquantifiable, but it does require the disclosure of the likely outcomes of the indirect impacts of the project, or in this case, the No Project. As an example, it would be speculative to estimate the amount of service disruption that might occur in the event of delayed maintenance, but it is not speculative to identify and discuss that delayed maintenance would logically increase the frequency, duration and potential severity of service outages. These are logical and predictable (if unquantifiable) indirect effects of the No Project. The implications of increased frequency of service outages can then be discussed non-speculatively as we know that there are economic, social, environmental and human health and safety impacts from service outages. These implications of the project must be identified, qualitatively discussed and disclosed and just because these impacts cannot be quantified, does not make them speculative to the point that it is an excuse not to discuss or disclose them. The EIR must be revised to address this deficiency and the document recirculated for public comment.

5-78

<p>7.4 - The list of alternatives does not identify the Proposed Project. Later in this section all of the alternatives except the Proposed Project are compared to the project objectives in an "Impact Analysis". It is an appropriate discussion to evaluate how well the alternatives meet the project objectives, but it is inappropriate to call this evaluation and "impact analysis". The document is inconsistent in that it does not make or disclose the evaluation of how well the Proposed Project meets the project objectives. This omission and inconsistent treatment of the alternatives must be corrected in a revised and recirculated EIR.</p>	<p>5-79</p>
<p>7.1.4.2 - This whole section makes no sense. The No Project does not have to satisfy the project objectives and the impacts of a project are not determined by how they affect the accomplishment of the project objectives. The No Project does have real and significant environmental consequences and they are not discussed at all here. In the absence of the analysis and disclosure of the environmental consequences of the alternatives, this EIR is incomplete and deficient.</p>	<p>5-80</p>
<p>7.1.4.2 " While it is uncertain how far beyond 2035 the Contracts would be extended under this alternative, the year 2085 was chosen for the Contract term (which is the same as the proposed project)." There is no supporting rationale provided for the assumption that the contracts would be extended for 50 years and the EIR seems to have chosen the expiration of the extended contract to coincide with the proposed project duration for the convenience of a more simplified EIR analysis rather than a reasoned and supported extension period. It would be much more reasonable to assume the extension would be for one year to allow for contract renewal negotiations to be completed rather than to assume that an expired contract is honored under the same terms for 50 additional years. The No Project definition must be revised to a more reasonable and supportable definition of only being extended one year and the EIR analysis must be revised.</p>	<p>5-81</p>
<p>7.1.4.2 Objective2 - The No Project is being compared to the Proposed Project. This is an inappropriate comparison as the required CEQA comparison is of all the alternatives, including the Proposed Project, to the No Project. The comparison provided in the EIR is backwards and must be revised to the required comparisons.</p>	<p>5-82</p>
<p>7.4.7.1. " Similar to the proposed project, Alternative 7 would not result in any direct physical environmental impacts because it would not would not create new water management measures or alter the existing authority to build new or modify existing facilities, or change water allocation provisions of the current Contracts." The EIR makes this assertion of no physical environmental impacts for the Proposed Project and the other alternatives many times in this document. In each instance, this assertion is wrong and fundamentally flawed as it ignores the on-going incremental impacts of continued SWP operations and water deliveries. In many comments submitted herein we have detailed many types of physical and environmental impacts of the continued water deliveries and SWP operations. Perhaps the most simple impact of continued operations to understand is that continued operations from the extended contract will continue water diversions that result in take of threatened and endangered species. This take, occurs with each increment of quantity of water that is delivered over time. It does not happen all at once, but it is incremental and is a very real physical consequence of the continued operation of the SWP that the EIR must address. The EIR must be revised to address environmental consequences of all of these on-going and incremental impacts and all of these erroneous claims of no physical impacts from continued operations must be removed from the revised and recirculated EIR.</p>	<p>5-83</p>
<p>7.4.7.2 - Although Contractors not signing the contract extension is not necessarily a desirable outcome from DWR's perspective, it is possible that none of the Contractors will agree to the contract extension. This very real possible scenario must be evaluated as an alternative outcome of the project. CEQA does not allow the dismissal of potential alternatives by the project proponent just because they are not desirable outcomes.</p>	<p>5-84</p>

<p>Table 7-2 - Again, the comparisons to the Proposed Project are incorrect. CEQA requires all alternatives, including the Proposed Project, to be compared to the No Project, not the other way around as the EIR consistently commits this error. The EIR must be revised and recirculate with the correct CEQA comparisons.</p>		5-85
<p>5.1.1 Methods of analysis - This section does not describe or disclose the analytical methods that were used in the EIR. It cites where significance criteria for CEQA come from and provides some financial background but does not give any information on the qualitative approach or quantitative tools utilized. It also fails to describe the process of analytical comparisons of the alternatives to the No Project. Perhaps this is why the EIR has gotten its comparisons backwards in so many places in the document. This section should have defined and justified the geographic area of potential project environmental impacts. This area is larger than the service area as there are upstream and downstream consequences to SWP operations - see related comments. This section must be revised as it is currently incomplete and does not fulfill the function of disclosure of the content that should reside under this section heading.</p>		5-86
<p>5.1.1.3 - "...the proposed project was determined to not cause a change in physical conditions; and therefore, no impacts would occur and no mitigation measures are proposed." There are on-going incremental impacts of continuing SWP operations and water deliveries that have real and significant physical environmental consequences - see related comments. This document is incomplete and deficient for not addressing these impacts.</p>		5-87
<p>5.1.1.3 - "The proposed project does not change hydrology, regulations, or climate change, all factors that could affect water supply delivery by the SWP." Actually it does in several ways. The irrigation in the SWP service areas changes the local air temperatures and humidity and published scientific papers have identified that these changes in air temperature and humidity from the SWP and CVP affect the amount of snowpack in the Sierras and precipitation as far as the Colorado River Basin. This was discussed in the BDCP EIS/R. The SWP additionally affect hydrology by its highly variable water supply deliveries which causes over-reliance on alternative groundwater supplies which has resulted in a severe subsidence that occurs in the SWP service area. The reduced groundwater table that is a consequence of the SWP deliveries (and inconsistency thereof) have altered the ground and surface water interactions in the service areas. In the 1960s surface flows of tributaries in and downstream of the SWP service areas were frequent and abundant due to the local water tables being close to the surface. Now with the depleted groundwater tables, any surface flows that would have occurred now are quickly absorbed by the lower groundwater tables. This impact on surface water hydrology is an indirect, but real consequence of the SWP water deliveries. The continued operations of the SWP also contribute to climate change from greenhouse gas emissions from Lake Oroville and the SWP other storage and conveyance facilities - see related comments. In a way, the project also changes regulations in that it is not compliant with the Delta Reform Act to reduce reliance upon delta water supplies. By perpetuating the reliance upon the delta water supplies at its current level and not being Delta Reform Act compliant, the project is affectively changing the regulation by ignoring it and perpetuating the non-compliant condition.</p>		5-88
<p>5.2 - The EIR discusses the impacts of the Proposed Project, but does not seem to address the other alternatives. It does not discuss the impacts as in a comparison to the No Project.</p>		5-89
<p>5.2.1.4 - The aesthetics analysis misses that there will be a visual impact from the degradation of farmland from accumulated salts from SWP water deliveries that will result in some areas during the proposed project period to result in the conversion of aesthetically pleasing farmland into ugly unfarmed and un-irrigated scrub brush. This is a significant impact and it is missing its mitigation.</p>		5-90

5.2.2.4 - "Because the proposed project would not result in construction or modification of SWP facilities, it would not affect surrounding land uses or result in development that could conflict with zoning for agricultural or forestry uses or result in the loss or conversion of these resources. Further, because water allocation would not change, there would be no change in land uses associated with SWP deliveries including, conversion of agricultural land uses to urban uses or to nonagricultural use." This analysis is incomplete and flawed in that it ignores the impacts of the on-going salt accumulation in agricultural soils in the SWP service area that are a direct result of salt in water delivered by the SWP under the Water Supply Contracts. These salts affect the quality and yield of the crops grown which have economic and social impacts. In areas where salt accumulation is already a factor in the lands productivity, salt accumulation during the proposed project period will in some cases result in soil quality that is no longer farmable at all. The environmental setting description of farmland failed to identify that some of the farmland conversion that is happening now is due to salt accumulation and the continued deliveries of water supply with salts in them will continue to accelerate this trend. Not only does this impact of land conversion from salt accumulation change the designation of prime farmland to non-farmland which is a significant impact which must be mitigated, but it also affects minority and under-privileged populations of farm workers and county tax revenues and associated social services.

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5.2.2.4 - Another consequence of the project to farmland is the overdraft of alternative groundwater supplies that result from the inconsistent water supply deliveries of the SWP. This reliance upon local groundwater when the SWP deliveries are low increases the salt accumulation of the soils as the water quality of the groundwater is almost always worse than the SWP water supplies delivered. The overdraft of the groundwater as a result of the inconsistent SWP deliveries has resulted in significant land subsidence in the SWP service areas. This subsidence has caused impacts to surface flows (another type of hydrology impact of the project that the EIR failed to identify, evaluate or mitigate), damaged infrastructure (roads and canal structures and flow capacity), groundwater pumping costs and well viability, and disrupted municipal groundwater supplies. The groundwater depletion from the inconsistent SWP deliveries also has upset the surface and groundwater hydraulic balance such that surface flows now quickly are depleted to groundwater recharge when before the SWP project was initiated, the surface and groundwater hydraulics were in balance and allowed sustained surface water flows. This causes a significant impact to surface water hydrology, water rights, water quality and habitat quality (i.e. no water equals no fish). The BOR Remand EIS agriculture section addressed the environmental consequences of the variability of the CVP water deliveries in detail and that content is incorporated by reference herein.

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5.2.4.4 - The EIR claims there are no biological impacts from continuing operations of the SWP from the contract renewals. This is a very inaccurate conclusion as there are many impacts to fish, wildlife and habitat from the SWP operations and water deliveries. The south delta intakes for the SWP do not have criteria compliant fish screens and there is take of T&E species from the intake operations. The contract renewal continues the incremental take of these listed species. This is a significant impact that the SWP does not even have a legal permit to cover. Water quality violations in the delta from the SWP operations will also continue to adversely modify designated critical habitat for a number of listed species of fish. These adverse designated critical habitat alterations from the continued SWP operations include salinity, dissolved oxygen, water temperature, turbidity, mercury, selenium, toxic algal blooms, etc. These on-going adverse environmental impacts from the continued operations of the SWP from the contract renewals also include continued habitat quality degradation below Oroville dam for sediment and large woody debris depletion from capture of upstream contributions by Lake Oroville. The contract renewal will result in the continued genetic introgression of salmonid runs from continued blockage of upstream passage and from hatchery operations of Lake Oroville. Continued

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<p>genetic introgression of salmonids between tributaries from straying of adults during immigration from altered water temperatures and flows from the operations of the SWP. The degraded groundwater table from the inconsistent SWP water deliveries affects surface water hydrology - see comments for agricultural resources. The SWP indirectly has eliminated sustained surface flows in and downstream of their service areas and the continuation of the SWP operations from the contract renewal will perpetuate this condition and continue to degrade habitat quality and convert habitat to different, lower value types, e.g. convert warm-water fisheries habitat to no fish habitat, convert riparian habitat to upland and desert habitat. There are other ongoing habitat and wildlife impacts from the contract renewal. The conversion of irrigated farmland to non-irrigated idled non-farmland from salt accumulation in SWP water deliveries - see ag impact comments - also changes terrestrial habitat quality, type and distribution.</p>	<p>5-93 cont.</p>
<p>5.2.5.4 - There would be ongoing and incremental cultural resource impacts from the contract renewals as the operations of Lake Oroville for the SWP result in water level fluctuations that erode and expose cultural sites in the fluctuation zone of the reservoir. These cultural resources are lost to erosion or theft from by the public visiting the reservoir. This is a significant impact of the contract renewal that was not identified, evaluated, disclosed or mitigated in the EIR.</p>	<p>5-94</p>
<p>5.2.6.4 - There may not be additional power requirements from the contract renewal, but the contract renewal results in the continuation of the power demand and grid load from the SWP operations.</p>	<p>5-95</p>
<p>5.2.7.4 - The Contract Renewal will result in the degradation of soil quality and erodability from salt accumulation from continued SWP water deliveries with a salt load - see ag section comments. Salt impacted soils deflocculate and lose their cohesive properties which make them very susceptible to wind erosion which would be another significant soil resource impact which the EIR failed to identify, evaluate, disclose or mitigate.</p>	<p>5-96</p>
<p>5-77, p3 "Water applied in the western part of the San Joaquin Groundwater Basin for crop irrigation and wetland management via federal, State, and local water projects causes salts in the soil to be leached out of the soil (DWR 2013). Salt is purposefully leached below the root zone to maintain salt balance in the root zone, such that most leached salt ends up in the groundwater (Reclamation et al. 2013)." This is all true and correct and will continue to occur as an environmental consequence of continued irrigations from the SWP Contract Renewals. The entire EIR has missed this impact of the project even though it identifies this SWP impact in the environmental settings.</p>	<p>5-97</p>



CENTRAL DELTA WATER AGENCY

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Letter 5

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October 13, 2014

Via Email to ted.alvarez@water.ca.gov
and U.S. First Class Mail to:

Attn: Ted Alvarez
State Water Project Analysis Office
Dept. of Water Resources
1416 Ninth Street, Room 1620
Sacramento, CA 95814

Re: Comments on the Notice of Preparation of an EIR for the "Water Supply Contract Extension Project."

Dear Mr. Alvarez:

Please see the attached comments submitted on behalf of the Central Delta Water Agency on the above-referenced matter.

Thank you for considering these comments and concerns.

Very truly yours,

Dante John Nomellini, Jr.
Attorney for the CDWA

Enclosure

Attachment to
Central Delta Water Agency’s Comments on the Notice of Preparation
of an EIR for the “Water Supply Contract Extension Project.”

10/13/14

Our public scoping comments are organized into the following categories to address issues related to: contract duration, water supply contract amounts, relationship of the SWP contract renewals to the CVP/SWP Coordinated Operating Agreement (COA), federal nexus with the contract renewal project and need for federal agency involvement in the environmental review and subsequent permitting of the project, water-rights related issues, Notice of Preparation procedural errors, impact topics for the EIR to address, and funding issues.

Contract Duration:

1. **The proposed 70 year duration is extreme and incorporates too much future uncertainty.**
 Climate change was not anticipated in 1960s original contract development, but consideration of climate change is now a requirement of CEQA and NEPA and DWR has adopted protocols and standards for consideration of climate change for all of their projects. Sea level rise was also not anticipated in 1960s original contract development, but consideration is now a requirement of CEQA and NEPA and DWR has adopted protocols and standards for consideration of sea level rise for all of their projects. Subsidence of canals was anticipated in the original engineering of the SWP, but subsidence-caused loss of conveyance capacity over time and its affect on water supply deliveries was not accounted for in the original SWP water supply contracts, see “Contract Delivery Amounts, comment 10” below. Potential loss of conveyance capacity and system reliability from invasive mussel (e.g. quaga and zebra) colonization of the SWP pumps and canals was also not anticipated or included in the original SWP water supply contracts. There have been profound changes to demographics, industry water use, water demand, ground water depletions, water transfers and water market economics, crop types grown, crop production practices, geographic distribution of crop types grown and population geographic distribution changes that were not anticipated in the original SWP water supply contracts. State Water Project Bulletin 132-06, pg 4, “Some changes have occurred since the long-term water contracts were signed in the 1960s. These changes include population growth variations, differences in local use, local water conservation programs, and conjunctive-use programs.” There are potential projects currently under consideration that would fundamentally alter the SWP infrastructure, e.g. BDCP and Sites Reservoir, which may or may not occur. Each of these above factors must be addressed in the SWP water supply contract renewal and each represent a significant amount of uncertainty in the magnitude of water supply impact. A shorter duration contract period, e.g. 30 years, must be evaluated so that the conditions under the contract period are more certain and predictable.
2. **The original contract period of 75 years was to provide a long duration of repayment on the original SWP construction cost.** The original SWP construction cost is scheduled to be repaid by the end of the original contract duration in 2035. Only smaller subsequent projects that extended the SWP after the original construction should be financed by bonds occurring later than 2035. Since the relative costs of these later SWP bond funded projects are much smaller

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than the original SWP construction cost, the extreme 75 year duration of contract period is not warranted. The smaller subsequent SWP expansion costs can be funded by bonds of shorter duration, so a 30 year contract period (or shorter) also must be evaluated.

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cont.

Contract Delivery Quantities:

1. **The SWP water supply delivery contract amounts must address how much water is spilled/leaked/evaporated in the SWP system.** The current SWP water supply delivery contract amounts do not address how much water is spilled/leaked/evaporated in the SWP system from the point of diversion to the point of water delivery in the SWP service area. "The July 1997 Journal American Water Works Association cites examples of more than 45 percent leakage." "DWR estimates that up to 700,000 acre-feet of leakage occurs in California each year from nonvisible leaks." (<http://www.water.ca.gov/wateruseefficiency/leak/>) Estimates range from 25-50% of the water diverted by the SWP is spilled, leaked and evaporated prior to delivery to service areas. This SWP rate of water loss results in unnecessary environmental impacts from increased quantities of water diversions and other impacts. This current SWP system loss also represents perhaps the largest single water conservation opportunity that exists in the state of California at this time. The structure of how the SWP water supply contracts are renewed must be changed so that the economic opportunities of reducing SWP water system losses are shared with the water contractors and service areas. The EIR must include alternatives which allocate SWP system water losses to the Service Area Contractors proportionate to the amount of water losses associated with their water delivery. As an example, service areas near the SWP water diversions would only share a small portion of the losses that occur from the point of diversion to the point of delivery while service areas at the farthest reaches of the SWP system would share proportionately more in the system losses in their water delivery contract amounts. With the current water contract structure and given the reported rates of SWP conveyance losses above, the environmental impacts from the SWP south delta water diversions for Southern California water contractors is as much as 45% higher per Acre Foot than for water contractors that take delivery near Tracy. In order to compensate for the disproportionate impacts per acre foot of water delivered between the near system and far system SWP water contractors, the water contract amounts must be for the quantity of water diverted by the SWP on behalf of the water contractor, not based on the quantity of water that is actually delivered. By making the water contract based on the amount diverted for each water contractor and on not the amount delivered, there will be motivation for the contractors and SWP to more aggressively address water losses that occur in the SWP. This is similar in concept to the project where Metropolitan Water District of Southern California (MWD) paid for system improvements to reduce water conveyances losses for Imperial Irrigation District and in return, MWD got an equivalent amount of water supply transferred to them for the water that was saved from loss in the IID conveyance system. If the water contractors pay to improve parts

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of the SWP system and reduce their proportionate losses, then their effective amount of water supply goes up. This mechanism for water conservation and for equalizing the environmental impacts per acre foot of water delivered for the various water contractors is completely missing from the current water supply contracts and must be included in the EIR alternatives.

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2. **Surplus water is not to become permanent demand.** Surplus water that has been delivered to water contractors from interrupted service or other causes must not be allowed to be incorporated into the contract renewal water supply contract delivery amount. Surplus water deliveries are growth inducing and this option must be dropped in the water supply contract renewals or the environmental impacts of this growth inducement must be evaluated, disclosed, and mitigated.

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3. **The current contract allows use of excess capacity.** The use of excess capacity is growth inducing and encourages water transfers/sales arbitrage from northern to southern California. Excess capacity usage is growth inducing and this option must be dropped in the water supply contract renewals or the environmental impacts of this growth inducement and other environmental and beneficial use-related impacts must be evaluated, disclosed, and mitigated. Water transfer requirements allow "temporary transfers" of one year of duration or less to be exempt from CEQA. (Bulletin 160-93, The California Water Plan Update, October 1994) The SWP contract renewals must address the repeated use of one year transfers to side-step the CEQA requirements which circumvent the environmental review of impacts that occur from these repeated water transfers. The SWP contract renewal EIR must stipulate that any water transfer that is repeated for more than one year must undergo CEQA review, otherwise the SWP is precipitating impacts which have not been analyzed or disclosed and is in violation of CEQA.

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4. **The original water supply contract provides no guarantee of water amounts in subsequent water supply contract renewals.** The DWR Proposed Project sets forth deliveries at the same as the existing contract amounts. Delivery amounts in the original and amended contracts were not guaranteed to be renewed in succeeding contracts. Because water supply amounts were not guaranteed in subsequent SWP contract renewals, the EIR must include alternatives that do not have the same water supply delivery amounts in the water supply contract renewals.

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5. **DWR has failed to construct a SWP that ever was capable of meeting the current water supply contract amounts.** MWD Contract Amendment 1/1/2005, Article 1n "This recognition that full Annual Table A amounts will not be deliverable under all conditions does not change the obligations of the State under this contract, including but not limited to, the obligations to make all reasonable efforts to complete the project facilities, to perfect and protect water rights, and to allocate among contractors the supply available in any year, as set forth in Articles 6(b), 6(c), 16(b) and 18, in the manner and subject to the terms and conditions of those articles and this contract." MWD Contract Amendment 1/1/2005, Article 6c "State shall make all reasonable efforts consistent with sound fiscal policies, reasonable construction schedules, and proper operating procedures to complete the project facilities necessary for delivery of project water to the District in such manner and at such times that said delivery can commence in or before the

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year specified in subdivision (a) of this article, and continue in the amounts designated in Table A.” MWD Contract Amendment Article 16b – “The State shall make all reasonable efforts to perfect and protect water rights necessary for the System and for the satisfaction of water supply commitments under this contract.” The reasonable efforts of the State have not resulted in the satisfaction of water supply as the SWP chronically under-delivers the current contract amounts. It is therefore “reasonable” that the delivery amounts committed to in the contract renewal should be an amount that the project can reasonably and consistently deliver. The SWP water supply contract renewal Table A amounts must revised down to levels that the currently constructed SWP system is capable of delivering so DWR is not consistently in violation of the terms of the agreement as it is under the current contracts as it is identified above.

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cont.

6. **The SWP was never built out as originally authorized, so the original contract water supply delivery amounts cannot be supported.** The SWP plan was by the year 2000 to have developed projects in the North Coast sufficient to supplement flows into the Delta by 5 million acre feet annually. These projects were not constructed. As a result, SWP capacity falls short by an annual amount of at least 5 million acre feet thereby providing no firm yield and less than an adequate supply to meet water supply and water quality obligations in the Delta and other areas of origin. The future system capacity conditions under which the original water supply delivery contract entitlements were set were never fulfilled and this is why the SWP chronically under-delivers on its current water supply deliveries under the current contracts. The EIR must include alternatives that consider water supply delivery amounts less than the current contracts and be based on amounts the current and reasonably foreseeable future system can actually deliver.

7. **SWP Water Supply Contract “over-promising and under-delivering” causes groundwater over-drafting and subsidence.** “...drought conditions during 1976–77 and 1987–92, and drought conditions and regulatory reductions in surface-water deliveries during 2007–10, decreased surface-water availability, causing pumping to increase, water levels to decline, and renewed compaction. Land subsidence from this compaction has reduced freeboard and flow capacity of the Delta-Mendota Canal, the California Aqueduct, and other canals that deliver irrigation water and transport floodwater.” (Pg 1, “Land Subsidence along the Delta-Mendota Canal in the Northern Part of the San Joaquin Valley, California, 2003–10”, Michelle Sneed, Justin Brandt, and Mike Solt; Scientific Investigations Report 2013–5142.) Agricultural water users develop their water use demand based on more or less average annual water deliveries. In some years the level of water demand and the level of water delivery are not seriously divergent and in conflict and therefore reliance upon groundwater as an alternative water supply is not substantial. In drought years with significantly curtailed SWP water deliveries (like 2014 as an example), farmers are forced to make up SWP water delivery shortfalls with groundwater resources. This all too frequent practice has resulted in an increase in the rate of groundwater resource depletion and subsidence rather than a reduction in groundwater depletion and subsidence which the SWP implementation was supposed to accomplish. The only way the SWP

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can avoid this impact from building up a water supply demand (over-promising) that it rarely fulfills (under-delivering) and the resulting groundwater over-draft-related impacts is for DWR to renew the SWP water supply delivery contracts for a substantially reduced amount of water such that the amount of water delivered in a drought year does not result in a groundwater withdrawal that exceeds the effective and sustainable groundwater recharge rate. Any greater water supply delivery promises by the SWP than what would exceed this balanced groundwater alternative water supply demand are inherently unsustainable and will result in significant groundwater and irreversible subsidence-related impacts. This balanced sustainable groundwater alternative water supply SWP delivery quantity must be included as an alternative in the EIR. This “sustainable groundwater alternative” SWP water delivery amount can be calculated for each SWP service area groundwater basin using the following generalized methodology. First, determine the current size (TAF) and annual groundwater recharge for each groundwater basin for the 82 year period of hydrologic record. Second, determine the safe and sustainable annual quantity of groundwater yield (including maximum rate of groundwater withdrawal without collapsing water bearing strata) in each basin. Now add the groundwater basin (with size, recharge rates and maximum sustainable rates of withdrawals) as a “reservoir” for each groundwater basin and SWP service area to CALSIM (or in a post processing module for analyzing CALSIM results). Next, using the 82 year period of record and the CALSIM model, optimize the amount of SWP water deliveries for each groundwater basin/SWP service area. Determine the amount of SWP water delivery that does not accrue into an over-draft of the groundwater basin at any time during the 82 year period of record. The maximum SWP delivery amount that does not result in over-drafting the groundwater in any year in the 82 year hydrologic period of record will be the maximum contract delivery amount for that groundwater basin and SWP service area for use in the “sustainable groundwater” EIR alternative.

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8. **Water contract renewal supply amount alternatives must address the over-subscription of surface water supplies.** The EIR alternatives must include an amount of water delivery that reflects the current 5 time oversubscription of mean annual runoff and oversubscription of surface water supplies by 1000% of California’s major river basins (“100 years of California’s water rights system: patterns, trends and uncertainty”, Theodore E Grantham and Joshua H Viers 2014 *Environ. Res. Lett.* 9 084012). DWR is a junior water rights holder and should not perpetuate the oversubscription of surface water rights. Based on this level of surface water right over-subscription and DWR’s junior water rights, the EIR alternative must consider a contract amount that cuts back water supply deliveries to 10% or less of the current DWR water right to reflect the proportional amount of surface water supply that actually exist.
9. **The Water contract renewal supply amounts must not exceed what the SWP can “dependably” deliver.** MWD Contract Amendment 1/1/2005, Article 58 – “Determination of Dependable Annual Supply of Project Water to be Made Available by Existing Project Facilities” “This report will set forth, under a range of hydrologic conditions, estimates of overall delivery capability of the existing project facilities and of supply availability to each contractor in

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accordance with other provisions of the contractors' contracts. The range of hydrologic conditions shall include the delivery capability in the driest year of record, the average over the historic extended dry cycle and the average over the long-term. The biennial report will also include, for each of the ten years immediately preceding the report, the total amount of project water delivered to all contractors and the amount of project water delivered to each contractor." Dictionary.com defines "dependable" as, "capable of being depended on; worthy of trust; reliable" and defines "reliable" as "able to be trusted; predictable or dependable" SWP water supply delivery quantities have not been predictable or reliable, are not depended or relied upon because the amount of SWP water deliveries chronically fall far short of the current contract amounts and therefore alternative water supplies must be regularly relied upon to compensate for the SWP delivery shortfalls. DWR must include alternatives in the EIR based on these reports for water delivery quantities that were determined to be "dependable". Methods to calculate the water delivery amounts that are dependable should include the bottom quartile of last 10 years of deliveries or 75% probability of exceedance whichever is less (which would be more conservative from a standpoint of water supply dependability). Another method to identify this "dependable" water supply delivery amount is to look at the operational record of the SWP and identify the lowest water delivery which occurred since the start of SWP operations. This SWP historical water delivery operational record for dependable water supply delivery amount must be adjusted to reflect the current OCAP BO, D1641 and Wanger Remand operating criteria. The SWP has not demonstrated that it can dependably deliver even that lowest amount of water, so lower amounts and even no deliveries except in above normal and wet years must also be included as project contract delivery alternatives.

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10. The SWP conveyance capacity has changed since the original water supply contract.

Subsidence from groundwater overdraft (caused by SWP under-deliveries, see Contract Delivery Quantities, comment 1) has reduced the conveyance capacity of large portions of the SWP canal system. "The overall length of the Central Valley portion of the canal is 280 miles (450 km) with 200 miles (320 km) in areas of significant subsidence." "LAND SUBSIDENCE AND THE CALIFORNIA STATE WATER PROJECT" Clifford V. Lucas and Laurence B. James, California Department of Water Resources, Sacramento, California, Publication n°121 of the International Association of Hydrological Sciences Proceedings of the Anaheim Symposium, December 1976. If subsidence continues at its current pace (it is reasonable to assume it will as a continuation of current policies and practices), large sections of the aqueduct will no longer be viable (based on engineering, maintenance, and economics) to be raised to compensate for subsidence. The proposed contract duration and proposed water delivery quantities must take into account the current reduced capacities as compared to the original capacities and contracted water delivery quantities as well as incorporate reductions in future water delivery quantities that match with future reductions in water delivery capacity from further future subsidence impairment of the conveyance capacities.

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11. The Bay Delta Conservation Plan would alter SWP operations and water contract delivery capacities. The SWP water supply contract renewal EIR must include alternatives for each of the water supply delivery amounts that would result from the implementation of any of the current BDCP alternatives. If this EIR does not include those alternative delivery amounts that would result from the implementation of the BDCP, the environmental impacts of the contract renewals will not be disclosed and would be piece-mealed which is in violation of both NEPA and CEQA legal requirements.

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12. Restoration of Original Standard Contract Provisions. Restoration of the standard provisions and recovery of the Kern Water Bank should be considered as a separate alternative. Contractors should not be allowed to take Article 21 water unless they have first utilized (not transferred) Table A entitlements. Article 21 water should not be allowed to support permanent demand. Water contractors should not be allowed to profit from sale, transfer, lease or in any other manner from project water.

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SWP/CVP Coordinated Operating Agreement (COA):

Coordinated CVP/SWP operations, funding and water deliveries are based on the COA. The COA is grossly out of date and has not been updated since 1986. Since funding and water supply deliveries are dependent upon the COA and water supply and funding are part of the SWP water supply contract renewals, the COA must be updated as part of the scope of the SWP water supply contract renewals project. If the COA is updated independently of this project, then the SWP Contracts would have to be amended and an environmental impact of those changes in water deliveries and operations evaluated. If this EIR does not include the COA update and the resulting adjustments made to SWP delivery amounts the contract renewal impacts will not be fully disclosed and this would result in piece-mealing the environmental impacts of the contract renewals which is in violation of both NEPA and CEQA legal requirements.

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Federal Nexus of the SWP Contract Renewals:

There are several federal nexus' for the SWP contract renewal including coordinated SWP water delivery operations with the CVP, joint facilities with the CVP, operational interties and water supply exchanges, and funding through bonds issued under the Central Valley Project Act (CVPA). These federal nexus with the SWP water contract renewal all provide sufficient cause for the environmental review to comply with federal Environmental Impact Statement requirements. The project environmental document must therefore also include an EIS and appropriate federal lead agencies.

1. The COA provides a federal nexus for the SWP water supply contract renewal as any SWP changes in water deliveries will affect CVP operations and water deliveries and visa versa. Because the SWP contract renewal impacts the CVP operations and water deliveries and visa versa, Reclamation must be a lead federal agency on the EIS component of the SWP contract renewal environmental review. The proposed changes to the SWP contracts will likely require a change in the COA necessitating federal action.
2. Changes in SWP water supply deliveries and on-going impacts of continuing current water deliveries have impacts on federal listed species, so USFWS and NMFS should also be federal lead agencies for the EIS.

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- 3. San Luis Reservoir is a joint SWP/CVP facility and is an integral facility of the SWP water contract deliveries. Any changes in SWP operations or deliveries would affect San Luis Reservoir operations, costs, available storage capacity and environmental impacts. Reciprocally, any changes in CVP operations relative to San Luis Reservoir also affect the SWP water deliveries and costs.
- 4. SWP and CVP current and planned reasonably foreseeable interties and their affects on operations and water supplies also establish a federal nexus for the SWP contract renewal.
- 5. Some of the water bonds for facilities used in SWP water deliveries were issued under the CVPA. See MWD Contract Amendment 1/1/2005, Article 28e. This SWP funding through a federal project also creates a federal nexus that triggers the requirement for an EIS component to the SWP contract renewal environmental review.
- 6. The Agreement In Principle (AIP) Concerning Extension of SWP Water Supply Contracts, is DWR’s Proposed Project for the SWP water contract renewal. AIP article XIV, dated June 18, 2014 says that, “...Contractor participation in the BDCP and DHCCP will be addressed through a separate public negotiation and environmental review process to develop appropriate SWP water supply contract amendments.” (Emphasis added) The BDCP is a joint federal and state project, so this joint federal and state negotiation with SWP water contractors for the SWP water contract renewals is a clear federal nexus for the SWP contract renewal project. The AIP proposed method of addressing these negotiations as an amendment to the SWP water contracts is clearly an attempt to piece-meal the environmental impacts of the water contract renewal. Piece-mealing of environmental impacts by proposing to do a contract amendment concurrently with the contract renewal is against CEQA and NEPA regulations.

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SWP Water Rights:

DWR water rights are subordinate to senior rights and conditioned on compliance with statutory requirements as well as permit conditions. The SWP, as a junior water rights holder is not allowed to impair the water quality or quantity of the senior water rights holders from the operational impacts of their diversions.

“Area of Origin Statutes during the years when California's two largest water projects, the Central Valley Project and State Water Project, were being developed, area of origin legislation was enacted to protect local Northern California supplies from being depleted as a result of the projects. County of origin statutes provide for the reservation of water supplies for counties in which the water originates when, in the judgment of the State Water Resources Control Board, an application for the assignment or release from priority of State water right filings will deprive the county of water necessary for its present and future development. Watershed protection statutes are provisions which require that the construction and operation of elements of the Federal Central Valley Project and the State Water Project not deprive the watershed, or area where water originates, or immediately adjacent areas which can be conveniently supplied with water, of the prior right to water reasonably required to supply the present or future beneficial needs of the watershed area or any of its inhabitants or property owners.

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The Delta Protection Act of 1959 declares that the maintenance of an adequate water supply in the Delta--to maintain and expand agriculture, industry, urban, and recreational development in the Delta area and provide a common source of fresh water for export to areas of water deficiency--is necessary

for the peace, health, safety, and welfare of the people of the State, subject to the County of Origin and Watershed Protection laws. The act requires the State Water Project and the federal CVP to provide an adequate water supply for water users in the Delta through salinity control or through substitute supplies in lieu of salinity control.

In 1984, additional area of origin protections were enacted covering the Sacramento, Mokelumne, Calaveras, and San Joaquin rivers; the combined Truckee, Carson, and Walker rivers; and Mono Lake. The protections prohibit the export of ground water from the combined Sacramento River and Sacramento-San Joaquin Delta basins, unless the export is in compliance with local ground water plans. Also, Water Code Section 1245 holds municipalities liable for economic damages resulting from their diversion of water from a watershed." (<http://www.waterplan.water.ca.gov/previous/b160-93/b160-93v1/ifrmwk.cfm>)

DWR is not compliant with their junior water rights requirements as the SWP operations frequently impair Delta water quality and take non-surplus water from the Delta in violation of the Delta Protection Act of 1959 (among other laws and regulations). Transfers of water supplies through the SWP from conjunctive use of groundwater substitution for surface water supplies are not consistent with local groundwater plans. Water contractors supplied through the SWP are liable for any direct or indirect damages from diverting water from a watershed. These damages may include injury, damage, destruction or decrease in value of any such property, business, trade, profession or occupation resulting from or caused by the taking of any such lands or waters, or by the taking, diverting or transporting of water from such watershed. (Water Code 1245)

The SWP Water Supply Contract Renewal EIR must consider the water supply, water rights, water quality impairments and other water beneficial use impacts associated with the continuation of SWP diversions of south delta water. The conditions of waters in the delta including direction of flows, water quality and impacts to agriculture, drinking water supplies and fisheries resources are a direct consequence of the SWP south delta facilities water diversions.

Notice of Preparation (NOP) Procedural Errors:

There are several procedural, noticing, timing and availability issues with the NOP.

1. The original NOP link to the proposed project description was broken and unavailable in the original publication. DWR e-mailed out a revised NOP to a few selected recipients, but did not republish the corrected NOP in the newspapers. This means that general public was never given the opportunity to review the proposed project description and only the few members of the public that DWR selected were given the corrected link to the proposed project.
2. By not putting the proposed project description in the NOP and instead relying upon a (broken) link to a website, DWR denied access to review the proposed project description to any member of the public that does not have ready access to a computer. This biases the public participation process against the more disadvantaged public. This is a public participation and environmental justice issue that DWR must address by reissuing a complete NOP that includes the proposed project description.
3. DWR only provided two business days between the revised NOP e-mail and the public scoping meeting. This is an inadequate amount of time for the public (those few who received the corrected NOP e-mail) to review the proposed project prior to the public scoping meeting. Two business days is not adequate public notice to review a project and another more reasonably scheduled public scoping meeting must be held, e.g. one month from the date of revised

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newspaper publishing of the NOP would be a reasonable amount of notice to the public to attend the scoping meeting.

- 4. Thirteen business days (excluding Columbus Day holiday) is an insufficient amount of time from the public scoping meeting to the close of public scoping comment period to complete the review of the proposed project and all the relevant related materials, e.g. current SWP contracts (27 + a hundred or so amendments), climate change and sea-level rise documents related to the SWP water contract deliveries, CVP/SWP Coordinated Operating Agreement, groundwater overdraft and subsidence, original SWP authorizations, SWP phase II plans that were never completed and their system capacity implications, and other projects which could affect the SWP contracts such as the BDCP and intertie projects, etc. The pertinent documents to review to provide informed public scoping comments total in the thousands of pages. The proposed project is for a 75 year duration, so surely the public should be given more than thirteen business days to make scoping comments. After DWR issues the revised NOP (per the preceding comments) and holds a new Public Scoping Meeting(s), DWR should allow at least one full month after the meetings for the development of public scoping comments.

5-114 cont.

Impact Analysis Topics:

The SWP contract renewal EIR must address the entire scope of impacts from on-going water deliveries, including, but not limited to: salt accumulation, soils productivity, groundwater quality degradation, groundwater saltwater intrusion, groundwater overdraft, groundwater recharge rates, changes in groundwater pumping costs and economic impacts, changes in direction or magnitude of groundwater hydraulic gradient, subsidence, subsidence impacts to infrastructure, discharge water quality, additional raw and discharge water treatment and economic impacts, surface and groundwater beneficial uses of water, surface water quality degradation, growth inducement from use of SWP excess capacity, terrestrial and aquatic species, creation of wetland habitat at locations of canal leaks and loss of this habitat when leaks are fixed, contribution to groundwater recharge from canal leaks, reservoir fisheries and fish populations upstream of terminal dams, reservoir drawdown impacts on warmwater fish reproductive success rates and population sustainability, impacts of carryover water storage drawdown on warmwater fisheries, and on-going degradation of fish population genetic integrity.

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Significance Criteria:

The EIR must use a full range of significance criteria which are consistent with DWR’s use in other similar environmental documents. These similar environmental documents which DWR should use the superset of significance criteria from include: South Delta Improvement Program, Monterey Accord, Oroville Relicensing, CALFED, and BDCP. To use anything less than the synthesis of the significance criteria from these recent and similar projects would be an inconsistent application of policy, procedure and science.

5-116

On-Going Impacts of the SWP Operations and Environmental Compliance:

The SWP contract renewal will result in the continuation of the water delivery operations of the SWP. SWP water delivery operations have current and on-going environmental impacts which must be identified, characterized, evaluated, quantified, mitigated and disclosed in the EIR, see “Impact Analysis Topics” comments above. Current and on-going impacts of the operations of the CVP/SWP are covered by the current FWS and NMFS OCAP Biological Opinions (BO) compliance for on-going impacts of the SWP. As part of the Environmental Setting of the EIR, the document must include an accounting of the SWP and DWR compliance with the Reasonable and Prudent Actions (RPAs) that are legal requirements of the current OCAP BOs. The BO RPAs have many deadlines for submittal of letters of intent and

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communications, studies, reports, plans, pilot projects, facilities and operational implementations for and to FWS and NMFS. Most of these deadlines have already past and it is relevant to the renewal of SWP contracts to disclose the status of OCAP BO RPA compliance as this compliance is the basis for DWR being able to continue to operate the SWP without causing jeopardy for several ESA species. If DWR and the SWP are not compliant with the current OCAP BO RPAs, then the contracts must not be renewed for their current contract amounts until compliance has been achieved, because the current level of water operations requires the implementation of the BO RPAs in order to avoid a jeopardy impact call on endangered species from the SWP operations. Alternatively, substantially reduced contract delivery amounts in the SWP contract renewal could contribute considerably to compliance with the BO RPA intent as water operations impacts on endangered species would be significantly reduced. This reduced water delivery contract amount approach to BO compliance would require a new OCAP BO to be issued.

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cont.

The SWP Over-Estimates Net Delta Outflows:

SWP operations and resulting water delivery amounts are often constrained by net delta outflow requirements. The Net Delta Outflow Index (NDOI) that the SWP and CVP are currently using is grossly over-reporting net delta outflow so water supply deliveries are currently higher than the current operating requirements of the SWP should result in. The EIR must include an evaluation of the accuracy of the Delta Net Outflow Index accuracy and an adjustment for the water supply delivery quantities that would result from correctly adhering to the operational constraints of the SWP from Delta Net Outflow Index requirements. "While the NDOI is, at best, an estimate of Delta outflow, there are stations that accurately measure actual Delta outflow. The United States Geological Survey (USGS) has established a series of stations in the Delta to measure flow and water quality parameters." "Four of the USGS gaging stations... accurately measure Net Delta Outflow (NDO)." (*The Case of the Missing Delta Outflow*, California Sportfishing Protection Alliance) DWR's own analysis of NDOI ("Dayflow") estimates vs. the new more accurate USGS gage measurements concludes that the "Dayflow under estimates flow during wet periods and over estimates flow during dry periods."

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http://www.water.ca.gov/dayflow/docs/2013_Comments.pdf) This DWR report means that during the majority of the SWP diversion season (spring through fall), DWR systematically over estimates NDOI and systematically diverts more water than regulatory operational constraints would allow if NDO was correctly accounted for. This regular exceedance of regulatory constraints on the SWP operations must be evaluated in the SWP contract renewal EIR and contract water supply delivery amount alternatives must include amounts that would not result in the SWP violation of these operational requirements.

The Bay Delta Conservation Plan (BDCP) is not "reasonably foreseeable":

The BDCP has not even completed the public draft and is not approved or funded, so the BDCP does not meet the test of being reasonably foreseeable and cannot be included in the Existing Condition, the No Project or cumulative alternatives in the EIR.

5-119

Project Funding:

In addition to the proposed project, "pay as you go" after 2035, the SWP Contract Renewal EIR must also evaluate continuation of the existing funding methodology. None of the funding from this project or bonds issued related to it should be used to fund any water system improvements or conservation efforts in any way related to the BDCP project and efforts.

5-120

Response to Comment 5-1

The comment suggests that the DEIR for the proposed project is incomplete until the outcome of several issues is known. See the responses to comments in Letter 5.

Response to Comment 5-2

The comment pertains to other projects and legal matters and does not address the environmental analysis contained in the DEIR. The uncertainty regarding these other projects and legal proceedings would not affect the proposed financial amendments to the Contracts. See Response to Comment 5-11 for discussion of the definition of the proposed project. See also Master Responses 3 and 4 for more information on relationship of the proposed project to the California WaterFix project and DWR's compliance with environmental regulations and permits, respectively.

Response to Comment 5-3

See Response to Comment 5-11 for discussion of the definition of the proposed project.

Response to Comment 5-4

As stated in the DEIR on page 4-2, the proposed project would not create new water management measures, alter the existing authority to build new or modified existing facilities, or change water allocation provisions in the Contract. As further stated on page 5-7 of the DEIR, DWR would continue its practice of providing separate CEQA compliance at the time that a project to modify or construct new SWP facilities is proposed. See also Responses to Comments 5-2 and 5-11.

Response to Comment 5-5

See Responses to Comments 5-1 through 5-4 and 5-11.

Response to Comment 5-6

The proposed project is based on the negotiated AIP between DWR and the Contractors. The Contract Amendment reflects the principles in the AIP that are the subject of the DEIR analysis. The proposed contract extension amendment was posted on the contract extension website in June 2018 and is included as Exhibit A to this FEIR. Please see Response to Comment 5-11 for discussion of the definition of the proposed project.

Response to Comment 5-7

See Responses to Comments 5-98 through 5-112 addressing the attachment referred to in this comment. The attachment to the comment is included in Exhibit B to this FEIR.

Response to Comment 5-8

See Master Response 1 for a discussion of the No Project Alternative.

Response to Comment 5-9

The project area includes those facilities and service areas as indicated in Chapter 2, State Water Project on Figures 2-1 and 2-2. The environmental analysis in the DEIR is not limited to the areas shown in these figures dependent on the topical area and environmental setting as explained in the subsections of Chapter 5. For example, the environmental setting for air quality is based on the jurisdictions of each air quality management agency and is not based on the boundaries of service areas. Please see Response to Comment 5-11 for discussion of the definition of the proposed project and Response to Comment 5-4 for discussion of environmental review of future SWP facilities. See Response to Comment 5-21 for more information on baseline and environmental setting. As described in Response to Comment 4-1, Contractor participation in California WaterFix will be addressed through a separate public negotiation and environmental review process to develop appropriate SWP Contract amendments. See also Master Response 3 for further discussion of the relationship between the proposed project and California WaterFix and the separate Contract amendment process.

Response to Comment 5-10

See Responses to Comments 4-5 and 5-9.

Response to Comment 5-11

Under CEQA Guidelines Section 15378, "project" means the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment..." Under Guideline Section 15124(b), the project description is required to include a statement of objectives sought by the proposed project. The statement of objectives "will help the lead agency develop a reasonable range of alternatives to evaluate in the EIR and will aid the decision makers in preparing findings or a statement of overriding considerations, if necessary. The statement of objectives should include the underlying purpose of the project."

During the public negotiation sessions, DWR and the Contractors identified the financial management problems facing the SWP due to, among other things, the difficulties of selling revenue bonds with maturity dates beyond 2035, making more difficult to affordably finance SWP construction projects such as capital repairs or improvements. These problems are discussed on pages 1-1 to 1-2, 3-1 to 3-3 and 4-1 of the DEIR. To

address these problems, DWR and the Contractors negotiated the proposed project objectives during that early public negotiation sessions. These objectives are found on pages ES-3 and 4-2 of the EIR:

1. Ensure DWR can finance SWP expenditures beyond 2035 for a sufficiently extended period to provide for a reliable stream of revenue from the Contractors and to facilitate ongoing financial planning for the SWP.
2. Maintain an appropriate level of reserves and funds to meet ongoing financial SWP needs and purposes.
3. Simplify the SWP billing process.
4. Increase coordination between DWR and the Contractors regarding SWP financial matters.

DWR and the Contractors used the objectives to develop the proposed project through public negotiations. DWR and 25 Contractors have agreed to the AIP. DWR and the Contractors have the discretion to select the project objectives consistent with the problems they are trying to address, especially the difficulty in financing capital repairs and improvements. (In re Bay-Delta Programmatic Environmental Impact Report Coordinated Proceedings, 43 Cal. 4th 1143 (2008).) The DEIR did not limit the analysis of the environmental impacts as suggested by the comment. Chapter 5 of the DEIR identified and analyzed potential direct and indirect environmental impacts associated with the proposed changes to the term length and financing terms of the Contract reflected in the negotiated AIP.

Response to Comment 5-12

Under state water rights laws, DWR is required to respect senior water rights when operating the SWP, including water rights established under Water Code section 11460 et seq. (the Watershed Protection Statutes). The proposed project does not modify the SWP's water rights and does not change the requirement that DWR respect senior water rights. In addition, the Contract recognizes in Article 18 (c) that if a party establishes a water right under the Watershed Protection Statutes and DWR enters into a water supply Contract with that party affecting DWR's ability to make SWP deliveries to the Contractors, DWR is required in certain circumstances to make adjustments to the Transportation Charges and Annual Table A amounts reflecting the water deliveries to the party. The proposed project does not change Article 18 (c), which remains in effect during the extended term of the Contract. Please see pages 5-126 to 5-128 of the DEIR for discussion of the water rights and water quality systems.

Response to Comment 5-13

Water quality impacts were addressed in Section 5.2.12 of the DEIR. Further DWR's water rights obligations stipulate salinity control and DWR's water rights are unchanged by the proposed project.

Response to Comment 5-14

Please see Response to Comment 5-11 for discussion of the definition of the proposed project. Existing SWP regulatory requirements are also covered in Chapter 5 of the DEIR under each resource topic, including biological resources (see Section 5.2.4). DWR's operation of the SWP complies with all relevant regulations, including California and federal ESA, and State Water Board flow standards. This compliance will be ongoing with or without the proposed project.

Response to Comment 5-15

Please see Response to Comment 5-11 for discussion of the definition of the proposed project. Impacts to water supply were evaluated in Section 5.2.18 of the DEIR.

Water service provisions and SWP operations, including water management practices, are described on pages 2-10 through 2-18 of the DEIR. The comment suggests that water supplied under the Contracts should be reduced pro-rata by the quantities of water required to be supplied for other purposes. As explained on page 2-12 in Chapter 2, State Water Project of the DEIR, the Contracts already provide for proportionate reductions of deliveries of each Contractor's annual Table A amount in the event water is not available to meet all Contractors requests, so reducing the permanent Table A amounts is not necessary. See also Master Response 6 for more information on reducing Table A amounts.

Response to Comment 5-16

See Response to Comment 5-11 for discussion of the definition of the proposed project.

Response to Comment 5-17

See Response to Comment 5-11 for discussion of the definition of the proposed project. As noted in Response to Comment 5-11, during the public negotiation sessions, DWR and the Contractors identified the financial management problems facing the SWP due to, among other things, the difficulties of selling revenue bonds with maturity dates beyond 2035, making more difficult to affordably finance SWP construction projects such as capital repairs or improvements. To address these problems, DWR and the Contractors negotiated the proposed project objectives and used the objectives to

develop the proposed project through public negotiations. DWR and 25 Contractors have agreed to the AIP that provides the proposed project evaluated in the DEIR.

Response to Comment 5-18

See Response to Comment 5-15.

Response to Comment 5-19

See Response to Comment 5-11 for discussion of the definition of the proposed project.

Response to Comment 5-20

See Response to Comment 5-11 for discussion of definition of the proposed project. See also responses to comments in Letter 5. The attachments to the comment is included in Exhibit B to this FEIR.

Response to Comment 5-21

The comment seeks CEQA review of all ongoing SWP impacts to the environment. The proposed project would amend certain provisions of the Contract to meet the stated project objectives. (See page ES-3 for the project objectives.) The EIR addresses the environmental impacts of the proposed project, and it is not required to address the impacts identified in the comment. The proposed project does not modify or expand ongoing SWP operations or authorize new facilities.

The construction and operations of the SWP were authorized by the California Legislature, and construction work started in the Oroville area in 1957. By 1973, construction of the SWP facilities required to initiate water service to all local public agencies that contracted for water deliveries was essentially completed by 1973. SWP operations and water deliveries first commenced in 1962 and have continued to the present. CEQA Guideline section 15261, subdivision (a) recognizes a statutory exemption for projects carried out before CEQA became effective, November 23, 1970. SWP operations are part of an ongoing project approved before CEQA took effect. With regards to the additions DWR has made to the SWP since the enactment of CEQA, DWR has evaluated the environmental impacts of those additions on the environment in accordance with CEQA. Any proposed changes to the SWP in the future would require separate CEQA compliance for that project.

Response to Comment 5-22

As described on page 4-7 of the DEIR, the proposed project would not change SWP operations, therefore, no permits or approvals are required for the proposed project, except for approvals by the Contractors and DWR to execute the Contract

amendments. Also, as described on page 4-7 of the DEIR, operation of the SWP is subject to ongoing environmental regulations including for water rights, water quality and endangered species protection, among other State and federal laws. Continuing operations of the SWP is reasonably foreseeable as deliveries of SWP waters supplies are important to meet existing water demands for all of the Contractors and Article 4 of the Contracts provides for continued service, upon notice from Contractors. See Response to Comment 5-21. Therefore, not continuing operations would be speculative and was not analyzed in the DEIR. See Master Response 1 for a discussion of the No Project Alternative.

Response to Comment 5-23

See Master Response 1 for a discussion of the No Project Alternative and Master Response 2 for discussion of the range of alternatives evaluated in the DEIR. Page 2-12 of the DEIR describes the annual Table A amounts. As described on page 4-2 of the DEIR, the proposed project would not create new water management measures, alter existing authority of DWR to build new or modify existing facilities, or change water allocation provisions of the Contract. Pages 7-3 and 7-4 discusses why an alternative that reduces Table A amounts was rejected because it does not address the project objectives.

Response to Comment 5-24

See Response to Comment 5-23.

Response to Comment 5-25

See Master Response 2 for a discussion of the range of alternatives evaluated in the DEIR. DWR believes it is in compliance with all existing regulatory requirements, including those pertaining to operation of the SWP under the BiOps. See also Master Response 4 for more information on regulatory compliance and Master Response 3 discussion of relationship to California WaterFix. As described on page 4-1 of the DEIR, the proposed project would not create new water management measures, alter existing authority of DWR to build new or modify existing facilities, or change water allocation provisions of the Contract. Page 5-29 of the DEIR discusses the long-term coordinated operation of the SWP and CVP BiOps as part of the regulatory setting. Any reasonable and prudent measures undertaken as part of the BiOps prior to the proposed project NOP would be part of the existing conditions.

Response to Comment 5-26

See Master Response 1 for a discussion of the No Project Alternative.

Response to Comment 5-27

The CEQA baseline for assessing significance of impacts of any proposed project is normally the environmental setting, or existing conditions, at the time a NOP is issued. Therefore, because the proposed project would not result in amendments that would change existing operation and maintenance of the SWP, or result in changes to DWR's existing or future regulatory permits or permitting requirements, the proposed amendments to the Contracts would have no impacts on water quality (see Section 5.2.15, Surface Water Hydrology and Water Quality of the DEIR). See also Response to Comment 5-11 and Master Response 4 for more information on the definition of the project and regulatory compliance, respectively. See Response to Comment 5-21 for more information on the baseline.

Response to Comment 5-28

As stated in the DEIR on page 4-2, the proposed project would not create new water management measures, alter the existing authority to build new or modified existing facilities, or change water allocation provisions in the Contract. Because the proposed project would not make changes to SWP water allocations, it would not make the Contractors even more reliant on Delta water supplies provided by the SWP; and therefore, reduced water allocations are not analyzed as part of the proposed project or as one of the alternatives. Please see Response to Comment 5-11 for discussion of the definition of the proposed project. See Master Response 2 for discussion of the range of alternatives evaluated in the DEIR. See also Master Response 6 for a discussion of reduced Table A amounts.

Response to Comment 5-29

The State Water Board is responsible for updating the Bay-Delta Plan, including the flow criteria in the Plan. DWR complies with the current flow criteria and will comply with any modifications to the flow criteria implemented through DWR's water rights. As stated in the DEIR on page 4-2, the proposed project would not create new water management measures, alter the existing authority to build new or modified existing facilities, or change water allocation provisions in the Contract. Please see Response to Comment 5-11 for discussion of the definition of the proposed project.

Response to Comment 5-30

See Responses to Comments 5-28 and 5-29. As noted in Response to Comment 5-28, because the proposed project would not make changes to SWP water allocations, reduced water allocations are not analyzed as part of the proposed project or as one of the alternatives. As stated in Response to Comment 5-29, the State Water Board is

responsible for updating the flow criteria contained in the Bay-Delta Plan. DWR's operation of the SWP complies with all relevant regulations, including California and federal ESA, and State Water Board flow standards. This compliance will be on-going with or without the proposed project.

Response to Comment 5-31

See Master Response 4 for more information on regulatory compliance and Master Response 3 discussion of relationship to California WaterFix.

Response to Comment 5-32

Although DWR is of the opinion that the proposed project would be consistent with the Delta Plan if it were a covered action, the proposed project is not a covered action. That is because the proposed project would amend and add financial provisions to the current contract, but would not create new water management measures, alter the existing authority to build new or modify existing facilities, change water allocation provision, or alter current or future SWP operations.

Response to Comment 5-33

See Master Response 4 for more information on regulatory compliance. As described on page 4-7 of the DEIR, the proposed project would not change SWP operations, therefore, no permits (including an Incidental Take Permit by California Department of Fish and Wildlife [CDFW]) or approvals are required for the proposed project, except for approvals by the Contractors and DWR to execute the Contract amendments. Also, operation of the SWP is subject to ongoing environmental regulations including for water rights, water quality and endangered species protection, among other State and federal laws. This compliance will be on-going with or without the proposed project.

Response to Comment 5-34

See Master Response 2 for a discussion of the range of alternatives evaluated in the DEIR. See also Master Response 4 for more information on regulatory compliance.

Response to Comment 5-35

Please see Response to Comment 5-11 for discussion of the definition of the proposed project. The proposed project would amend certain financial provisions of the Contracts and extend the term of the Contracts to 2085 based on the AIP. Alternatives to the proposed project, as described in Chapter 7 of the DEIR, include versions which do not include fundamental elements of the AIP. For example, the DEIR included alternatives with different contract terms than the proposed project and with and without financial provisions (Alternative 3 and 4, respectfully). See Master Response 1 on the No Project

Alternative and Master Response 2 for a discussion of the range of alternatives evaluated in the DEIR. Page 2-12 of the DEIR describes the annual Table A amounts. As described on page 4-2 of the DEIR, the proposed project would not create new water management measures, alter existing authority of DWR to build new or modify existing facilities, or change water allocation provisions of the Contract. Pages 7-3 and 7-4 discusses why an alternative that reduces Table A amounts was rejected because it does address the project objectives. See Master Response 5 on recirculation of DEIR.

Response to Comment 5-36

As noted in Response to Comment 5-27, the proposed project would not result in amendments that would change existing operation and maintenance of the SWP, or result in changes to DWR's existing or future regulatory permits or permitting requirements.

As stated in the DEIR on page 4-2, the proposed project would not create new water management measures, alter the existing authority to build new or modified existing facilities, or change water allocation provisions in the Contract. Please see Response to Comment 5-11 for discussion of the definition of the proposed project. See also Response to Comment 5-21 for more information on the baseline.

Response to Comment 5-37

The DEIR, on page 1-3, identified the SWP Contractors as the responsible agencies under CEQA. The DEIR further notes that the Contractors could use the EIR as part of their discretionary approval process of the Contract amendments. The CEQA Guidelines Section 15082(b)(1)(B) requires responsible and trustee agencies to inform the lead agency of their statutory responsibility in response to the NOP for the proposed project. Beyond the Contractors, there are no agencies with statutory jurisdiction over the proposed project. Therefore, there is no requirement for recirculation based on this fact. The list of agencies that provided comments on the NOP is listed on page ES-3 and the letters are included in Appendix B of the DEIR.

Response to Comment 5-38

As described on page 4-1 of the DEIR, the proposed project study area was defined as areas encompassing SWP operations and facilities, as well as Contractor Service areas to address whether implementation of the proposed project would affect areas in the State connected with operation and management of the SWP. Pursuant to the CEQA Guidelines Sections 15082 and 15206, DWR provided copies of the NOP to the county clerks' offices and libraries located within the study area (see Appendix B of the DEIR).

In addition, the NOP and the Notice of Availability of the DEIR was published in the newspapers of general circulation in the project area.

Response to Comment 5-39

Please see Response to Comment 5-11 for discussion of the definition of the proposed project. The proposed project would amend certain financial provisions of the Contracts and extend the term of the Contracts to 2085 based on the AIP. Alternatives to the proposed project, as described in Chapter 7 of the DEIR, include versions which do not include fundamental elements of the AIP. For example, the DEIR included alternatives with different contract terms than the proposed project and with and without financial provisions (Alternative 3 and 4, respectfully). An alternative that considers reduced Table A deliveries was included in the DEIR but, as described on pages 7-3 and 7-4, reducing Table A amounts proportionality for all the Contractors by amendment would not change the amount of water being delivered to the Contractors nor would it change the financial health of the SWP as it would not affect any of the other Contract financial provisions that address SWP billing provisions and reimbursements. Therefore, reducing Table A deliveries was rejected because it does not address project objectives. See Master Response 2 for a discussion of the range of alternatives evaluated in the DEIR. See also Response to Comment 5-28 which notes that because the proposed project would not make changes to SWP water allocations, reduced water allocations are not analyzed as part of the proposed project or as one of the alternatives. See Response to Comment 5-32 for discussion of proposed project consistency with the Delta Reform Act.

Response to Comment 5-40

As noted in Response to Comment 5-27, the proposed project would not result in amendments that would change existing operation and maintenance of the SWP, or result in changes to DWR's existing or future regulatory permits or permitting requirements. Therefore, the proposed amendments to the Contracts would not affect terrestrial or aquatic biological resources (see DEIR Section 5.2.4 Biological Resources). Please see also Response to Comment 5-11 for discussion of the definition of the proposed project and development of project objectives. See Response to Comment 5-21 for more information on the baseline.

See Master Response 4 for more information on regulatory compliance. Operation of the SWP is subject to ongoing environmental regulations including for water rights, water quality and endangered species protection, among other State and federal laws. This compliance will be on-going with or without the proposed project.

Response to Comment 5-41

Please see Response to Comment 5-11 for discussion of the definition of the proposed project. Impacts to biological species were evaluated in Section 5.2.4 of the DEIR. Furthermore, DWR's operation of the SWP complies with all relevant regulations, including California and federal and State ESA. This compliance will be on-going with or without the proposed project. See also Responses to Comments 5-21 and 5-27 for more information on the baseline for the analysis.

As it relates to alternatives, please see Master Response 2 for discussion of the range of alternatives evaluated in the DEIR. As previously stated, the proposed project would not change the operation of the SWP. Therefore, the suggested alternative of a fish screen and other facilities at Clifton Court Forebay to minimize predation and protect listed species would not meet CEQA Guidelines Section 1526.6 on the selection of a reasonable range of alternatives.

Response to Comment 5-42

The public and agency review and comment process for preparation of the EIR is described in detail on pages 1-3 through 1-4 of the DEIR and it is consistent with requirements contained in the CEQA Guidelines. For clarification, under the proposed project, DWR is not pursuing any permits because as stated in the DEIR on page 4-2, the proposed project would not create new water management measures, alter the existing authority to build new or modified existing facilities, or change water allocation provisions in the Contract. Please see Response to Comment 5-11 for discussion of the definition of the proposed project. Furthermore, operation of the SWP would be subject to ongoing environmental regulations with or without the proposed project.

The DEIR did include an analysis of an alternative that contemplated a shorter Contract term – 2065 instead of 2085 (see pages 7-13 through 7-15). As stated on page 7-13 of the DEIR, similar to the proposed project, through 2065, Alternative 2 would not result in any direct physical environmental impacts because it would not create new water management measures, alter the existing authority to build new or modified facilities or change water allocation provisions of the current Contract.

Response to Comment 5-43

See Responses to Comments 5-25 and 5-31. See also See Master Response 4 for more information on regulatory compliance. Operation of the SWP is subject to ongoing environmental regulations including for water rights, water quality and endangered species protection, among other State and federal laws. This compliance will be on-going with or without the proposed project.

The commenter provides a list of projects associated with the Operations Criteria and Plan (OCAP) BiOps Reasonable and Prudent Alternatives (RPA) requirements, including Lower Putah Creek, Lisbon Weir Improvements and other projects associated with the Yolo Bypass, fish salvage efficiencies studies, fish predation studies, creation or restoration of 8,000 acres for Delta smelt habitat, and other activities associated with BiOp requirements. As noted in the comment, planning and implementation of actions to comply with the BiOps are ongoing. The proposed project would not have any effect on the progress made to implement provisions of the OCAP BiOps requirements.

Response to Comment 5-44

See Master Response 4 for more information on regulatory compliance. DWR has worked, and will continue to work, in coordination with Reclamation, on complying with the current or any future OCAP BiOps DEIR, the proposed project would not create new water management measures, alter existing authority of DWR to build new or modify existing facilities, or change water allocation provisions of the Contract. Extending the Contracts or changing the financial provisions does not obligate the SWP to deliver any more water to the Contractors than is allowable under all State and federal regulations.

Response to Comment 5-45

Please see Response to Comment 5-11 for discussion of the definition of the proposed project. Please see Responses to Comments 5-21 and 5-27 for more information on the baseline for the analysis. See also responses to comments in Letter 5.

Response to Comment 5-46

Please see Response to Comment 5-11 for discussion of the definition of the proposed project. Chapter 5 of the DEIR identified and analyzed potential direct and indirect environmental impacts associated with the proposed changes to the term length and financing terms of the Contract reflected in the negotiated AIP. As stated on page ES-4 the results of the analysis in Chapter 5 found that the proposed project would result in no impact on any of the resource topics because it would amend and add financial provisions to the Contracts and would not create new water management measures, alter the existing authority to build new or modify existing SWP facilities, or change water allocation provisions of the Contracts. As a result, no mitigation measures were required or recommended and there is no need to discuss potential significant effects of mitigation measures or recirculate the DEIR. See also Responses to Comments 5-21 and 5-27 for more information on the baseline for the analysis.

Response to Comment 5-47

See Responses to Comments 5-11 and 5-46 for discussion of the definition of the proposed project and the impact analysis and conclusions in the DEIR. See also Master Response 5 addressing how recirculation of the DEIR is not required.

Response to Comment 5-48

See Responses to Comments 5-11 and 5-46 for discussion of the definition of the proposed project and the impact analysis and conclusions in the DEIR. See also Master Response 5 addressing how recirculation of the DEIR is not required.

Response to Comment 5-49

See Responses to Comments 5-11 and 5-46 for discussion of the definition of the proposed project and the impact analysis and conclusions in the DEIR. See Master Response 1 for a discussion of the No Project Alternative and Master Response 3 for discussion of the relationship of the proposed project to California WaterFix.

Response to Comment 5-50

See Responses to Comments 5-25, 5-40 and 5-44 and Master Response 4 for more information on regulatory compliance.

Response to Comment 5-51

The proposed project would not amend the Contract articles related to Table A water deliveries or otherwise change the operation and management of the SWP. Therefore, the alternative suggested in the comment would not meet CEQA Guidelines Section 15126.6(c) on the selection of a reasonable range of alternatives. See Responses to Comments 5-11, 5-27 and 5-46 for discussion of the definition of the proposed project and the impact analysis and conclusions in the DEIR. As it relates to alternatives, please see Master Response 2 for discussion of the range of alternatives evaluated in the DEIR. See also Master Response 5 addressing how recirculation of the DEIR is not required.

Response to Comment 5-52

Article 4 of the existing Contracts, described in footnote 1 on page 1-1of the DEIR, gives each Contractor a right to extend its Contract on generally the same fundamental terms as in the current Contract (including among other things, the same quantities of water to be delivered, the same quality of water to be delivered, and the same cost of service), by providing a notice to DWR at least 6 months in advance of the Contractor's contract expiration date. Extension of the Contract through the exercise of rights under Article 4

is addressed in the No Project Alternative. See Master Response 1 on the No Project Alternative and Master Response 2 for a discussion of the range of alternatives evaluated in the DEIR.

Response to Comment 5-53

As described in response 5-52, Article 4 of the existing Contracts, described in footnote 1 on page 1-1 of the DEIR, gives each Contractor a right to extend its Contract on generally the same fundamental terms as in the current Contract (including among other things, the same quantities of water to be delivered, the same quality of water to be delivered, and the same cost of service), by providing a notice to DWR at least 6 months in advance of the Contractor's contract expiration date. See Response to Comment 5-52. An alternative that considers reduced Table A deliveries was included in the DEIR but, as described on pages 7-3 and 7-4, reducing Table A amounts proportionality for all the Contractors by amendment would not change the amount of water being delivered to the Contractors nor would it change the financial health of the SWP as it would not affect any of the other Contract financial provisions that address SWP billing provisions and reimbursements. Therefore, reducing Table A deliveries was rejected because it does not address project objectives. Please see Response to Comment 5-11 for discussion of the definition of the proposed project and Master Response 2 for discussion of the range of alternatives evaluated in the DEIR and Response to Comment 5-28. As noted in Response to Comment 5-28, because the proposed project would not make changes to SWP water allocations, reduced water allocations are not analyzed as part of the proposed project or as one of the alternatives. See also Master Response 6 for a discussion of reducing Table A deliveries.

As it relates to consistency with the Delta Reform Act, see Response to Comment 5-32.

Response to Comment 5-54

See Responses to Comments 5-11 and 5-46 for discussion of the definition of the proposed project and the impact analysis and conclusions in the DEIR. See also Responses to Comments 5-13, 5-22, and 5-27 for information related to water quality.

Response to Comment 5-55

As described on page 4-1 of the DEIR, the proposed project would not create new water management measures, alter existing authority of DWR to build new or modify existing facilities, or change water allocation provisions of the Contract. Analysis of the proposed project in the DEIR included analysis of GHG emissions in Section 5.2.8 of the DEIR. See Responses to Comments 5-11 and 5-46 for discussion of the definition of the

proposed project and the impact analysis and conclusions in the DEIR. See also Master Response 5 addressing how recirculation of the DEIR is not required.

Response to Comment 5-56

As described on page 4-1 of the DEIR, the proposed project would not create new water management measures, alter existing authority of DWR to build new or modify existing facilities, or change water allocation provisions of the Contract. See page 6-7 of the DEIR, which describes how the proposed project would not result in direct or indirect growth inducement. See Response to Comment 5-28 which notes that because the proposed project would not make changes to SWP water allocations, reduced water allocations are not analyzed as part of the proposed project or as one of the alternatives. See Response to Comment 5-32 for discussion of consistency with the Delta Reform Act.

Response to Comment 5-57

As stated in Chapter 6, Other CEQA Considerations page 6-7, the proposed project would not result in Contract amendments for new water management measures; alter the existing authority to build new or modify existing facilities; or change water allocation provisions of the Contracts. The proposed project would not construct new or modified SWP facilities or result in DWR having jurisdiction over water supply management by the in Contractors. No housing is proposed as part of the proposed project or required as a result of it, nor would the project provide substantial new permanent employment opportunities. Furthermore, because the proposed project would not develop new water conveyance or storage facilities or change water supply allocations, it would not remove obstacles to growth and the proposed project would not result in direct or indirect growth inducement. As further stated on page 5-7 of the DEIR, DWR would continue its practice of providing separate CEQA compliance at the time that a project to modify or construct new SWP facilities is proposed.

Response to Comment 5-58

Please see Response to Comment 5-11 for discussion of the definition of the proposed project. As described on page 5-152, local General Plans include goals, policies, and actions to ensure sustainable growth and development across diverse environments, communities, and jurisdictions within California. The proposed project would not change any goals or policies relating to the provision of water supply in any of the jurisdictions where the SWP is located, as no physical changes would occur as a result of the proposed project. Furthermore, because the proposed project would not amend water supply provisions of the Contracts, the Contractors would provide water supply in their respective services areas in the same manner as they do today, providing local

jurisdictions with projected water supplies for planning purposes. Because the proposed project would not make changes to SWP water allocations, it would not make the Contractors more reliant on Delta water supplies. See Response to Comment 5-32 for discussion of consistency with the Delta Reform Act.

Response to Comment 5-59

As described in Response to Comment 5-52, Article 4 of the existing Contracts, described in footnote 1 on page 1-1 of the DEIR, gives each Contractor a right to extend its Contract on generally the same fundamental terms as in the current Contract (including among other things, the same quantities of water to be delivered, the same quality of water to be delivered, and the same cost of service), by providing a notice to DWR at least 6 months in advance of the Contractor's Contract expiration date.

Extension of the Contract through the exercise of rights under Article 4 is addressed in the No Project Alternative. See Master Response 1 for a discussion of the No Project Alternative and Master Response 3 for discussion of the relationship of the proposed project to California WaterFix.

Response to Comment 5-60

See Responses to Comments 5-11 and 5-46 for discussion of the definition of the proposed project and the impact analysis and conclusions in the DEIR. See Master Response 1 for a discussion of the No Project Alternative and Master Response 3 for discussion of the relationship of the proposed project to California WaterFix. See responses to related comments in Letter 5.

As it relates to consistency with the Delta Reform Act, see Response to Comment 5-32.

Response to Comment 5-61

In compliance with the Monterey Settlement Agreement, DWR notified and invited the public to each of the 23 public negotiation meetings held. Included in the meeting notices was the location of the meetings, mailing address for written comment, and access to a conference line for attending meetings remotely. In addition, DWR held two public scoping meetings on the NOP with information on the meeting date and location published in newspapers and county clerks' offices across the majority of the state (see Response to Comment 5-38). The CEQA Guidelines Section 15082(c)(1) requires only one public scoping meeting for projects of statewide significance. The public and agency review and comment process for preparation of the EIR is described in detail on pages 1-3 through 1-4 of the DEIR. All documents, including the public negotiation notices, are accessible on the project website at <https://water.ca.gov/Programs/State->

Water-Project/Management/Water-Supply-Contract-Extension. Please see also Response to Comment 5-11 for further discussion of the public negotiation process.

Response to Comment 5-62

The proposed project only involves changes to the Contract financial provisions and extending the contract term. It would not create new water management measures, alter the existing authority to build new or modify existing SWP facilities, or change water allocation provisions of the Contracts. Therefore, there is no need to include management or reduction of invasive species to comply with the Delta Plan. See Response to Comment 5-32 for discussion of consistency with the Delta Reform Act.

Response to Comment 5-63

See Response to Comment 5-11 for discussion of the definition of the proposed project. As noted in Response to Comment 5-11, during the public negotiation sessions DWR and the Contractors identified the financial management problems facing the SWP due to, among other things, the difficulties of selling revenue bonds with maturity dates beyond 2035, making more difficult to affordably finance SWP construction projects such as capital repairs or improvements. To address these problems, DWR and the Contractors negotiated the proposed project objectives during the early public negotiation sessions. DWR and the Contractors used the objectives to develop the proposed project through public negotiations. DWR and 25 Contractors have agreed to the AIP which defined the proposed project evaluated in the DEIR (see pages ES-2 and 1-2). DWR and the Contractors have the discretion to select the project objectives consistent with the problems they are trying to address, especially the difficulty in financing capital repairs and improvements.

As discussed in Response to Comment 5-53, an alternative that considers reduced Table A deliveries was included in the DEIR; however; as described on pages 7-3 and 7-4, reducing Table A amounts proportionality for all the Contractors by amendment would not change the amount of water being delivered to the Contractors nor would it change the financial health of the SWP as it would not affect any of the other Contract financial provisions that address SWP billing provisions and reimbursements. Therefore, reducing Table A deliveries was rejected because it does not address project objectives. Please see Master Response 2 for discussion of the range of alternatives evaluated in the DEIR and Master Response 6 for a further discussion of reducing Table A amounts. See responses to related comments in Letter 5.

Response to Comment 5-64

AIP Section XIII (Objective 3D) would not alter the Contractor responsibility for fish and wildlife preservation costs. In this regard, language regarding Contractor responsibility for fish and wildlife preservation costs from the Davis-Dolwig Act would be set out in the Contract extension amendment. In addition, as described on page 4-6 in subsection 4.4.4 Enhanced Funding Mechanisms and New Accounts, the proposed project would continue DWR's Contract administration regarding the development of public recreation as including both capital and operation and maintenance costs in compliance with the Davis-Dolwig Act (Water Code Section 11910 et seq.) requirement that the costs of the development of public recreation not be included in the prices, rates, and charges for water and power.

Response to Comment 5-65

Please see Response to Comment 5-11 for discussion of the definition of the proposed project and development of project objectives. Water quality impacts were addressed in Section 5.2.12 of the DEIR. See Master Response 2 for discussion of the range of alternatives evaluated in the DEIR. DWR's operation of the SWP complies with all relevant regulations including water quality standards in the Delta when operating the SWP. This compliance will be on-going with or without the proposed project.

Response to Comment 5-66

See Response to Comment 5-11 for discussion of the definition of the proposed project. As noted in Response to Comment 5-11, during the public negotiation sessions DWR and the Contractors identified the financial management problems facing the SWP due to, among other things, the difficulties of selling revenue bonds with maturity dates beyond 2035, making more difficult to affordably finance SWP construction projects such as capital repairs or improvements. To address these problems, DWR and the Contractors negotiated the proposed project objectives during that early public negotiation sessions. DWR and the Contractors used the objectives to develop the proposed project through public negotiations. DWR and 25 Contractors have agreed to the AIP which defined the proposed project evaluated in the DEIR (see pages ES-2 and 1-2). DWR and the Contractors have the discretion to select the project objectives consistent with the problems they are trying to address, especially the difficulty in financing capital repairs and improvements.

Response to Comment 5-67

As discussed in Response to Comment 5-53, an alternative that considers reduced Table A deliveries was included in the DEIR; however; as described on pages 7-3 and

7-4, reducing Table A amounts proportionality for all the Contractors by amendment would not change the amount of water being delivered to the Contractors nor would it change the financial health of the SWP as it would not affect any of the other Contract financial provisions that address SWP billing provisions and reimbursements. Therefore, reducing Table A deliveries was rejected because it does not address project objectives. Please see Response to Comment 5-11 for discussion of the definition of the proposed project and Master Response 2 for discussion of the range of alternatives evaluated in the DEIR. See also responses to Comments 5-63 and 5-64.

Response to Comment 5-68

As noted in Response to Comment 5-9, the project area includes those facilities and service areas as indicated in Chapter 2, State Water Project on Figures 2-1 and 2-2. The environmental analysis in the DEIR is not limited to the areas shown in these figures dependent on the topical area and environmental setting as explained in the subsections of Chapter 5. For example, the environmental setting for air quality is based on the jurisdictions of each air quality management agency and is not based on the boundaries of service areas. Please see also Response to Comment 5-11 for discussion of the definition of the proposed project.

Response to Comment 5-69

Please see Response to Comment 5-11 for discussion of the definition of the proposed project and development of project objectives. Please see also Master Response 2 for discussion of the range of alternatives evaluated in the DEIR. An alternative was evaluated that considered a shorter term with the Contracts ending in 2065. The analysis is included in the DEIR on pages 7-13 through 7-15. As noted on page 7-15, this alternative (Alternative 2) would meet the objectives of the proposed project but to a lesser degree because it represents a shorter contract term than desired by DWR and the Contractors.

Response to Comment 5-70

DWR is not aware of any inconsistencies between this DEIR and EIRs on other DWR projects that would affect the analysis in this DEIR. It should be noted that the DEIR cites other DWR EIRs, including the California WaterFix EIR, as sources of information. See Master Response 3 for discussion of the relationship of the proposed project to California WaterFix.

Response to Comment 5-71

See Response to Comment 5-37, beyond the Contractors, there are no agencies with statutory jurisdiction over the proposed project. Please see also Response to Comment

5-65. As noted in Response to Comment 5-65, water quality impacts were addressed in Section 5.2.12 of the DEIR. DWR's operation of the SWP complies with all relevant regulations, including water quality standards in the Delta. This compliance will be ongoing with or without the proposed project.

Response to Comment 5-72

The comment refers to a comment letter provided during the public scoping period in response to the NOP. As described on page ES-3, DWR reviewed all scoping comments received on the NOP in preparing the DEIR. Issues raised were addressed, as appropriate, in compliance with CEQA. NOP comment letters are included in Appendix B. In addition, each section in Chapter 5 summarizes the types of comments received on the NOP that were taken into consideration in preparing the technical analysis.

Response to Comment 5-73

The proposed project does not require Contractors to support BDCP (now California WaterFix) in order to execute the renewal of the Contract. As described in Response to Comment 4-1, Contractor participation in California WaterFix will be addressed through a separate public negotiation and environmental review process to develop appropriate Contract amendments. Please see also Response to Comment 5-11 for discussion of the definition of the proposed project, development of project objectives, and discussion of the public negotiation process for the AIP. See also Master Response 3 for discussion of the relationship of the proposed project to California WaterFix.

Response to Comment 5-74

As discussed in Response to Comment 5-53, an alternative that considers reduced Table A deliveries was included in the DEIR; however, as described on pages 7-3 and 7-4, reducing Table A amounts proportionality for all the Contractors by amendment would not change the amount of water being delivered to the Contractors nor would it change the financial health of the SWP as it would not affect any of the other Contract financial provisions that address SWP billing provisions and reimbursements. Therefore, reducing Table A deliveries was rejected because it does not address project objectives. Please see Response to Comment 5-11 for discussion of the definition of the proposed project and Master Response 2 for discussion of the range of alternatives evaluated in the DEIR. Please see also Response to Comment 5-32 for discussion of consistency of the proposed project with the Delta Reform Act. See Master Response 6 for further discussion of reducing Table A amounts.

Response to Comment 5-75

As discussed on pages 5-7, 5-8, and 7-5, a separate EIR/EIS was prepared to address the impacts of California WaterFix. The proposed project is an independent project that would occur with or without California WaterFix. See also Response to Comment 5-11 for discussion of the definition of the proposed project. Furthermore, as described in Response to Comment 4-1, Contractor participation in California WaterFix will be addressed through a separate public negotiation and environmental review process to develop appropriate Contract amendments. See Master Response 2 for discussion of the range of alternatives evaluated in the DEIR and Master Response 3 for discussion of the relationship of the proposed project to California WaterFix.

Response to Comment 5-76

See Response to Comment 5-69. As described on pages 7-9 and 7-10 of the DEIR, Article 4 gives each Contractor a right to extend its Contract on generally the same fundamental terms as in the current Contract, including the same quantities of water delivered, by providing notice to DWR at least 6 months in advance of the Contract expiration date. Extension of the Contract through the exercise of rights under Article 4 is addressed in the No Project Alternative which does not include an assumption as to the length of an extended term. However, DWR chose to evaluate a no project alternative that extends through 2085 for purposes of comparison with the proposed project. See Master Response 1 for a discussion of the No Project Alternative. The option to continue service under Article 4 of the Contracts is also described on page 1-1 of the DEIR and is shown in full in the example Water Supply Contract presented in Appendix A of the DEIR.

Response to Comment 5-77

The divestiture of the SWP would be an activity that would be enormously more complicated than extending the term of the existing Contracts, not to mention the political, environmental and legal issues that such a proposal would encounter. Accordingly, it is not reasonably foreseeable or feasible to expect that such an activity could be accomplished in the period of time required to address the current issues prompting the proposed project, even assuming there would be an interest in doing so. Further, the alternative suggested in the comment would not meet CEQA Guidelines Section 15126.6(c) on the selection of a reasonable range of alternatives. See Master Response 2 for more on the reasonable range of alternatives.

Response to Comment 5-78

See Master Response 1 for discussion of the No Project Alternative and Master Response 5 for discussion of recirculation. As discussed on page 7-10 and 7-11 of the DEIR, it is reasonable to assume that the indirect impacts of the No Project Alternative would likely be greater than the impacts of the proposed project, including the potential indirect effects of increased frequency of service outages. However, the extent and nature of such indirect impacts are speculative and not analyzed further in the DEIR.

Response to Comment 5-79

See Master Response 1 for discussion of the No Project Alternative and Master Response 5 for discussion of recirculation. DEIR Chapter 4, Project Description, provides information on the project objectives and how the proposed project meets those objectives. See also Response to Comment 5-11. Table 7-1 "Summary of Alternatives Considered," on page 7-7 of the DEIR provides a summary of all alternatives considered, including the proposed project. Table 7-2 "Comparison of Alternatives to Proposed Project," on page 7-27 provides information on how the proposed project and the alternatives meet the project objectives. The impacts of the proposed project are discussed in Chapter 5 Environmental Analysis. The impacts of each alternative are discussed in Chapter 7 Alternatives. This impact analysis is separate from the discussion on each alternative's ability to meet the project objectives.

Response to Comment 5-80

See Master Response 1 for discussion of the No Project Alternative and Master Response 2 for the range of alternatives evaluated in the DEIR. Six alternatives to the proposed project (including the No Project Alternative) were developed and analyzed in the DEIR for their ability to meet project objectives; and the proposed project received a full analysis in the DEIR. Each alternative (including the No Project Alternative) to the project was "screened" or evaluated to see if the alternative would feasibly attain most of the basic project objectives and avoid or substantially lessen significant environmental impacts. Table 7-2 "Comparison of Alternatives to Proposed Project", provides a summary of how each alternative compares to the proposed project. Page 7-9 of the DEIR describes the potential environmental impacts of the No Project Alternative.

Response to Comment 5-81

See Response to Comment 5-76.

Response to Comment 5-82

The impacts of the proposed project are discussed in Chapter 5 "Environmental Analysis." The potential impacts of each alternative are discussed in Chapter 7 "Alternatives." Section 7.5 "Environmentally Superior Alternative" provides a summary of how each alternative compares to the proposed project with respect to the impacts and the ability to meet project objectives. As stated on page 7-10 and 7-11 of the DEIR, the No Project Alternative (Alternative 1) could result in indirect impacts. See Master Response 1 for discussion of the No Project Alternative and Master Response 2 for the range of alternatives evaluated in the DEIR.

Response to Comment 5-83

Please see Response to Comment 5-11 for discussion of the definition of the proposed project and development of project objectives. Please also see Response to Comment 3-2 for a discussion of Alternative 7.

Response to Comment 5-84

Twenty-five of the Contractors signed the AIP, so the likelihood of not a single Contractor signing the extension amendment seems remote. See Master Response 1 for discussion of the No Project Alternative and Master Response 2 for the range of alternatives evaluated in the DEIR.

Response to Comment 5-85

The EIR must evaluate the comparative merits of the alternatives, including the "no project" alternative. Section 15126.6(d) of the CEQA Guidelines states:

"The EIR shall include sufficient information about each alternative to allow meaningful evaluation, analysis, and comparison with the proposed project. A matrix displaying the major characteristics and significant environmental effects of each alternative may be used to summarize the comparison. If an alternative would cause one or more significant effects in addition to those that would be caused by the project as proposed, the significant effects of the alternative shall be discussed, but in less detail than the significant effects of the project as proposed."

The impacts of the proposed project are discussed in Chapter 5 Environmental Analysis. As discussed on page 5-3 of the DEIR, the physical and regulatory setting provides a point of reference for assessing the environmental impacts of the proposed project. The potential impacts of each alternative are discussed in Chapter 7 Alternatives. Chapter 7 of the DEIR also presents the Environmentally Superior Alternative and provides a summary of how each alternative compares to the proposed

project with respect to the impacts and the ability to meet project objectives. Table 7-2 on page 7-27 of the DEIR is a comparison to the proposed project to determine the Environmentally Superior Alternative.

Response to Comment 5-86

In addition to noting the use of CEQA standards of significance as the criteria used to determine the level of significance of an impact, the Method of Analysis section describes the financial implications to the Contractors with implementation of the proposed project and the assumptions for the analysis (pages 5-3 through 5-8 of the DEIR). Furthermore, the DEIR describes how the project area includes those facilities and service areas as indicated in Chapter 2, State Water Project on Figures 2-1 and 2-2. The environmental analysis in the DEIR is not limited to the areas shown in these figures dependent on the topical area and environmental setting as explained in the subsections of Chapter 5. For example, the environmental setting for air quality is based on the jurisdictions of each air quality management agency and is not based on the boundaries of service areas. See also Response to Comment 5-21 for more information on baseline and environmental setting and Response to Comment 5-11 for discussion of the definition of the proposed project and development of project objectives.

Response to Comment 5-87

Please see Response to Comment 5-11 for discussion of the definition of the proposed project and development of project objectives.

Response to Comment 5-88

Please see Response to Comment 5-11 for discussion of the definition of the proposed project and development of project objectives. Please see also Responses to Comments 5-21 and 5-27 for further information on the baseline.

Specifically, as it relates to climate change and its effects on SWP deliveries, as described on page 5-6 of the DEIR, because SWP water supply would not change under the proposed project and would continue to be delivered to the Contractors consistent with current Contracts, the proposed project does not change hydrology, regulations, or climate change, all factors that could affect water supply delivery by the SWP. DWR would continue to maintain and operate the SWP and deliver available supplies to the Contractors consistent with the Contract terms, including Table A deliveries, Article 21 deliveries, and all regulatory requirements. Therefore, no changes in the conditions of resources associated with the SWP would be expected.

Response to Comment 5-89

Alternatives to the proposed project are evaluated in Chapter 7 of the DEIR. See Master Response 2 for further discussion of the range of alternatives evaluated in the DEIR. Under CEQA, as defined in Section 15126.6 (d), the EIR is to include sufficient information about each alternative to allow meaningful evaluation, analysis and comparison with the proposed project. The comparison of impacts is not of the alternatives to the No Project Alternative as asserted in the comment.

Response to Comment 5-90

As noted in Response to Comment 5-27, because the proposed project would not result in amendments that would change existing operation and maintenance of the SWP, or result in changes to DWR's existing or future regulatory permits or permitting requirements, the proposed amendments to the Contracts would have no impacts on visual resources (see DEIR Section 5.2.1 Aesthetics). Please see also Response to Comment 5-11 for discussion of the definition of the proposed project and development of project objectives. See Response to Comment 5-21 for more information on the baseline.

Response to Comment 5-91

As noted in Response to Comment 5-27, the proposed project would not result in amendments that would change existing operation and maintenance of the SWP, or result in changes to DWR's existing or future regulatory permits or permitting requirements. Therefore, the proposed amendments to the Contracts would have no impacts on agricultural resources (see DEIR Section 5.2.2 Agricultural and Forest Resources). Please see also Response to Comment 5-11 for discussion of the definition of the proposed project and development of project objectives. See Response to Comment 5-21 for more information on the baseline.

Response to Comment 5-92

As noted in Response to Comment 5-27, the proposed project would not result in amendments that would change existing operation and maintenance of the SWP, or result in changes to DWR's existing or future regulatory permits or permitting requirements. Therefore, the proposed amendments to the Contracts would not result in a change to the rate and amount of groundwater pumping and associated land subsidence (see DEIR Section 5.2.9 Groundwater Hydrology and Water Quality and 5.2.7 Geology, Soils and Mineral Resources). Please see also Response to Comment 5-11 for discussion of the definition of the proposed project and development of project objectives. See Response to Comment 5-21 for more information on the baseline.

Response to Comment 5-93

As noted in Response to Comment 5-27, the proposed project would not result in amendments that would change existing operation and maintenance of the SWP, or result in changes to DWR's existing or future regulatory permits or permitting requirements. Therefore, the proposed amendments to the Contracts would not affect terrestrial or aquatic biological resources (see DEIR Section 5.2.4 Biological Resources). Please see also Response to Comment 5-11 for discussion of the definition of the proposed project and development of project objectives. See Response to Comment 5-21 for more information on the baseline.

Response to Comment 5-94

As noted in Response to Comment 5-27, the proposed project would not result in amendments that would change existing operation (including reservoir operations) and maintenance of the SWP, or result in changes to DWR's existing or future regulatory permits or permitting requirements. Therefore, there would be no change in the fluctuation of reservoir levels and resulting exposure of cultural resources (see DEIR Section 5.2.5 Cultural Resources). Please see also Response to Comment 5-11 for discussion of the definition of the proposed project and development of project objectives. See Response to Comment 5-21 for more information on the baseline.

Response to Comment 5-95

As noted in Response to Comment 5-27, the proposed project would not result in amendments that would change existing operation and maintenance of the SWP, or result in changes to DWR's existing or future regulatory permits or permitting requirements. Therefore, there would be no change in energy use (see DEIR Section 5.2.6 Energy). Please see also Response to Comment 5-11 for discussion of the definition of the proposed project and development of project objectives. See Response to Comment 5-21 for more information on the baseline.

Response to Comment 5-96

As noted in Response to Comment 5-27, the proposed project would not result in amendments that would change existing operation and maintenance of the SWP, or result in changes to DWR's existing or future regulatory permits or permitting requirements. Therefore, the proposed amendments to the Contracts would not result in a change to salt loading and soil erodibility (see DEIR Section 5.2.7 Geology, Soils and Mineral Resources). Please see also Response to Comment 5-11 for discussion of the definition of the proposed project and development of project objectives. See Response to Comment 5-21 for more information on the baseline.

Response to Comment 5-97

See Responses to Comments 5-91 and 5-96.

Response to Comment 5-98

As described in Response to Comment 5-88, specifically as it relates to climate change and its effects on SWP deliveries, as described on page 5-6 of the DEIR, because SWP water supply would not change under the proposed project and would continue to be delivered to the Contractors consistent with current Contracts, the proposed project does not change hydrology, regulations, or climate change, all factors that could affect water supply delivery by the SWP. DWR would continue to maintain and operate the SWP and deliver available supplies to the Contractors consistent with the Contract terms, including Table A deliveries, Article 21 deliveries, and all regulatory requirements. Therefore, no changes in the conditions of resources associated with the SWP would be expected.

Please see also Response to Comment 5-11 for discussion of the definition of the proposed project and development of project objectives. See Response to Comment 5-21 for more information on the baseline. See also Master Response 2 for more information on DWR's ability to define the project.

Response to Comment 5-99

Please see Master Response 2 for discussion of the range of alternatives evaluated in the DEIR. An alternative was evaluated that considered a shorter term with the Contracts ending in 2065. The analysis is included in the DEIR on pages 7-13 through 7-15. As noted on page 7-15, this alternative (Alternative 2) would meet the objectives of the proposed project but to a lesser degree because it represents a shorter contract term than desired by DWR and the Contractors.

Response to Comment 5-100

As noted in Response to Comment 5-27, the proposed project would neither result in amendments to the Contracts that would change existing operation and maintenance of the SWP nor alter articles of the Contracts relative to water supply management. Please see Response to Comment 5-11 for discussion of the definition of the proposed project and development of project objectives and Response to Comment 5-21 for more information on the baseline.

Response to Comment 5-101

The proposed project would neither result in amendments to the Contracts that would change existing operation and maintenance of the SWP nor alter articles of the

Contracts relative to water supply management. Please see Response to Comment 5-11 for discussion of the definition of the proposed project and development of project objectives. See also Master Response 2 for more information on DWR's ability to define the project.

Response to Comment 5-102

The proposed project would neither result in amendments to the Contracts that would change existing operation and maintenance of the SWP nor alter articles of the Contracts relative to water supply management. Please see Response to Comment 5-11 for discussion of the definition of the proposed project and development of project objectives. See also pages 6-6 and 6-7 in Chapter 6, Other CEQA Considerations in the DEIR for the analysis on growth inducement.

Response to Comment 5-103

Amendments to the Contracts have occurred in the past to a variety of articles, including those relative to water supply management. The proposed project would neither result in amendments to the Contracts that would change existing operation and maintenance of the SWP nor alter articles of the Contracts relative to water supply management. Please see Response to Comment 5-11 for discussion of the definition of the proposed project and development of project objectives. See also Master Response 2 for more information on DWR's ability to define the project. See also Master Response 6 for more information on reduced Table A amounts.

Response to Comment 5-104

Amendments to the Contracts have occurred in the past to a variety of articles, including those relative to water supply management. The proposed project would neither result in amendments to the Contracts that would change existing operation and maintenance of the SWP nor alter articles of the Contracts relative to water supply management. See Chapter 7, Alternatives page 7-3 and 7-4 for an explanation of why an alternative to reduce Table A amounts was rejected from analysis in the DEIR. Please see Response to Comment 5-11 for discussion of the definition of the proposed project and development of project objectives. See also Master Response 6 for more information on reduced Table A amounts.

Response to Comment 5-105

The proposed project would neither result in amendments to the Contracts that would change existing operation and maintenance of the SWP nor alter articles of the Contracts relative to water supply management. See Chapter 7, Alternatives page 7-3 and 7-4 for an explanation of why an alternative to reduce Table A amounts was

rejected from analysis in the DEIR. Please see Response to Comment 5-11 for discussion of the definition of the proposed project and development of project objectives. See also Response to Comment 5-92 (subsidence).

Response to Comment 5-106

The proposed project would neither result in amendments to the Contracts that would change existing operation and maintenance of the SWP nor alter articles of the Contracts relative to water supply management. See Chapter 7, Alternatives page 7-3 and 7-4 for an explanation of why an alternative to reduce Table A amounts was rejected from analysis in the DEIR. Please see Response to Comment 5-11 for discussion of the definition of the proposed project and development of project objectives. See also Master Response 6 for more information on reduced Table A amounts.

Response to Comment 5-107

The proposed project would neither result in amendments to the Contracts that would change existing operation and maintenance of the SWP nor alter articles of the Contracts relative to water supply management. See Chapter 7, Alternatives page 7-3 and 7-4 for an explanation of why an alternative to reduce Table A amounts was rejected from analysis in the DEIR. Please see Response to Comment 5-11 for discussion of the definition of the proposed project and development of project objectives. See also Master Response 6 for more information on reduced Table A amounts.

Response to Comment 5-108

The proposed project would neither result in amendments to the Contracts that would change existing operation and maintenance of the SWP nor alter articles of the Contracts relative to water supply management. See Chapter 7, Alternatives page 7-3 and 7-4 for an explanation of why an alternative to reduce Table A amounts was rejected from analysis in the DEIR. Please see Response to Comment 5-11 for discussion of the definition of the proposed project and development of project objectives. See also Response to Comment 5-92 (subsidence).

Response to Comment 5-109

See Response to Comment 5-75. A separate EIR/EIS was prepared to address the impacts of California WaterFix. The proposed project is an independent project that would occur with or without California WaterFix. See also Response to Comment 5-11 for discussion of the definition of the proposed project. Furthermore, as described in Response to Comment 4-1, Contractor participation in California WaterFix will be

addressed through a separate public negotiation and environmental review process to develop appropriate Contract amendments. See Master Response 2 for discussion of the range of alternatives evaluated in the DEIR and Master Response 3 for discussion of the relationship of the proposed project to California WaterFix and the separate Contract amendment process.

Response to Comment 5-110

As noted in Response to Comment 5-27, the proposed project would not result in amendments that would change existing operation and maintenance of the SWP, or result in changes to DWR's existing or future regulatory permits or permitting requirements. Please see Response to Comment 5-11 for discussion of the definition of the proposed project and development of project objectives and Master Response 2 for discussion of the range of alternatives evaluated in the DEIR.

Response to Comment 5-111

As noted in Response to Comment 5-27, the proposed project would not result in amendments that would change existing operation and maintenance of the SWP, or result in changes to DWR's existing or future regulatory permits or permitting requirements. Please see Response to Comment 5-11 for discussion of the definition of the proposed project and development of project objectives. See also See Master Response 4 for more information on regulatory compliance. Operation of the SWP is subject to ongoing environmental regulations including for water rights, water quality and endangered species protection, among other State and federal laws. This compliance will be on-going with or without the proposed project.

Response to Comment 5-112

See Response to Comment 5-11 for discussion of the definition of the proposed project. As noted in Response to Comment 5-11, during the public negotiation sessions DWR and the Contractors identified the financial management problems facing the SWP due to, among other things, the difficulties of selling revenue bonds with maturity dates beyond 2035, making more difficult to affordably finance SWP construction projects such as capital repairs or improvements. To address these problems, DWR and the Contractors negotiated the proposed project objectives during that early public negotiation sessions. DWR and the Contractors used the objectives to develop the proposed project through public negotiations. DWR and 25 Contractors have agreed to the AIP which defined the proposed project evaluated in the DEIR (see pages ES-2 and 1-2). DWR and the Contractors have the discretion to select the project objectives consistent with the problems they are trying to address, especially the difficulty in financing capital repairs and improvements.

As noted in Response to Comment 5-27, the proposed project would not result in amendments that would change existing operation and maintenance of the SWP, or result in changes to DWR's existing or future regulatory permits or permitting requirements. Therefore, there would be no change in the coordinated SWP water delivery operations with the CVP and no federal nexus that would require the preparation of a National Environmental Policy Act (NEPA) document.

As described in Response to Comment 5-75 a separate EIR/EIS was prepared to address the impacts of California WaterFix. The proposed project is an independent project that would occur with or without California WaterFix. Furthermore, as described in Response to Comment 4-1, Contractor participation in California WaterFix will be addressed through a separate public negotiation and environmental review process to develop appropriate Contract amendments.

Response to Comment 5-113

DWR's operation of the SWP complies with all relevant regulations. This compliance will be on-going with or without the proposed project. As stated in the DEIR on page 4-2, the proposed project would not create new water management measures, alter the existing authority to build new or modified existing facilities, or change water allocation provisions in the Contract. Please see Response to Comment 5-11 for discussion of the definition of the proposed project and Response to Comment 5-12 on Area of Origin. See Response to Comment 5-32 for discussion of the Delta Reform Act.

Response to Comment 5-114

See Response to Comment 5-38 for information on the noticing and posting of the NOP for the DEIR. There is no requirement under CEQA to provide an internet link to an electronic copy of the NOP as part of notification procedures. Further, there is no requirement under CEQA to extend the scoping period beyond 30 days as per CEQA Guidelines Section 15082. The NOP was prepared and noticed consistent with CEQA and was included, along with all comments received on the NOP in Appendix B of the DEIR.

Response to Comment 5-115

As noted in Response to Comment 5-27, the proposed project would not result in amendments that would change existing operation and maintenance of the SWP, or result in changes to DWR's existing or future regulatory permits or permitting requirements. Please see Response to Comment 5-11 for discussion of the definition of the proposed project and development of project objectives. Please see also Responses to Comments 5-21 and 5-27 for further information on the baseline.

Response to Comment 5-116

See Response to Comment 5-86 for discussion of methods used in the analysis, including standards of significance. The comment does not provide specifics as to how the proposed project DEIR is inconsistent with other DWR EIR documents. As noted in Response to Comment 5-70, the DEIR cites other DWR EIRs, as appropriate including the California WaterFix EIR, as sources of information.

Response to Comment 5-117

As noted in Response to Comment 5-27, the proposed project would not result in amendments that would change existing operation and maintenance of the SWP, or result in changes to DWR's existing or future regulatory permits or permitting requirements. DWR's operation of the SWP complies with all relevant regulations. This compliance will be on-going with or without the proposed project. Please see Response to Comment 5-11 for discussion of the definition of the proposed project and development of project objectives. See also Response to Comment 5-43. See also Master Response 2 for more information on DWR's ability to define the project.

Response to Comment 5-118

As noted in Response to Comment 5-27, the proposed project would not result in amendments that would change existing operation and maintenance of the SWP, or result in changes to DWR's existing or future regulatory permits or permitting requirements. Please see Response to Comment 5-11 for discussion of the definition of the proposed project and development of project objectives. Please see also Responses to Comments 5-21 and 5-27 for further information on the baseline. See also Master Response 2 for more information on DWR's ability to define the project.

Response to Comment 5-119

As described in Response to Comment 5-75 and on page 6-3 of the DEIR, a separate EIR/EIS was prepared to address the impacts of California WaterFix. Therefore, it is appropriate to include in the cumulative impact analysis. However, as further discussed, the proposed project is an independent project that would occur with or without California WaterFix. Therefore, it was rejected as an alternative to the proposed project (see pages 7-5 and 7-6 of the DEIR). See Master Response 3 for discussion of the relationship of the proposed project to California WaterFix.

Response to Comment 5-120

The No Project Alternative assumes that DWR would take no action and DWR and the Contractors would continue to operate and finance the SWP under the Contracts to

December 312, 2035 (see pages 7-6 and 7-9 of the DEIR. See also Master Response 2 for discussion of the range of alternatives evaluated in the DEIR.

As described in Response to Comment 5-75 a separate EIR/EIS was prepared to address the impacts of California WaterFix. The proposed project is an independent project that would occur with or without California WaterFix. Furthermore, as described in Response to Comment 4-1, Contractor participation in California WaterFix will be addressed through a separate public negotiation and environmental review process to develop appropriate Contract amendments. See Master Response 3 for discussion of the relationship of the proposed project to California WaterFix and the separate Contract amendment process.

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October 15, 2016

Ted Alvarez
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Subject: Comments on DEIR for Water Supply Extension Contract Project

Dear Mr. Alvarez;

We appreciate the opportunity to comment on the proposed SWP contract extension project that includes amending certain provisions of the State Water Resources Development System (SWRDS) Water Supply Contracts (SWP Contracts) to among other things, extend the term of the contracts.

1. CEQA and the Definition of the Project: We believe the entire SWP contract must be included in CEQA analysis.

The Project as defined by DWR is to extend the full SWP contracts for 50 years while conducting an environmental review on only the financial sections of the contract. This is a blatant violation of CEQA as it leaves the bulk of the contract intact but without analysis of the potential consequences to the environment of extending the existing contractual obligations. Thus the proposed Project is not properly defined. This piece-meal approach is a direct violation of CEQA. *The potential consequences can only be evaluated in the context of some proposed project. The urgency for extending the contracts now is not well justified in the DEIR. The only project that would require the extensions at this early date is the Twin Tunnels (BDCP_DHCCP_CWF). That is because the construction is estimated to begin in 2020 and the period of construction is estimated to take at least 15 years; hence, the extended contracts must be in place by 2020 well before the 2035 expiration of the existing contracts. No other project on the horizon requires such early action.*

6-1

While implying that the only contract change of consequence is financial, DWR proceeds to propose one significant change to the content of the contract. That is the elimination of Article 1, (hh). This is the section of the original contracts that names the projects authorized for construction. There is no mention of Tunnels in this list. The Contract Extension Project proposes to delete the one clause that limits the extent of Delta Transfer Facilities that could be pursued after 1987. We believe Article 1 (hh) was deleted to allow the Tunnels, and anything else DWR might want to build.

6-2

The original contracts were signed beginning in 1965 before the California Environmental

6-3

Quality Act became law in 1972. A lot has changed since then. The original contracts begin to expire in 2035. The proposed extension will push the date for the contract’s expiration to 2085. *The existing contracts include a take-or-pay requirement that presumably would remain if they were simply extended now. “Take-or-Pay” means that the contractor must pay all the fixed costs whether any water is delivered or not. Without the take-or-pay provision large capital investments in the SWP would be difficult to finance in the bond market. It seems that the necessity of extending the contracts now is to keep intact the take-or-pay provisions.* Examining only the financial sections of the existing contracts cannot possibly responsibly determine what the environmental consequences might be, *especially without any idea of proposed projects.* This runs afoul of CEQA’s requirements that the project should encompass the whole of the action.

6-3
cont.

Change of Circumstance--Changes the Definition of the Project:

The SWP as envisioned some 54 years ago has changed. Any environmental review of the contracts for this project must recognize these changes. For example, there is no justification for including the original contract amounts for the full Table A. The water for these allocations can never be delivered because they simply do not exist. Climate changes, legal changes including the protection of the North Coast Rivers, under both Federal and State law, and the voters’ rejection of the Peripheral Canal all have redefined the SWP and the alleged contract amounts. The Contract Table A Allocations must be refigured to reflect this.

For a major contract extension such as is being proposed, a full analysis of actual water supply available to the SWP must be completed. Prudence requires that the amounts of water assigned reflect what is really available if the SWP were operated on a “safe yield” basis. (Please refer to The Santa Barbara Report Appendix B included as Attachment 1)

6-4

This must entail a thorough analysis of how much water is actually in the Delta watershed and is legally available to the SWP taking into consideration both the Public Trust Doctrine and Senior Water Rights law. (See Attached C-WIN Quantification Analysis included as Attachment 2) The SWP was originally premised on promises to protect Areas of Origin and Senior Water Rights holders and to take only “surplus” water that would not affect the rights of those from where the water originated.

Water allocated under existing contracts has already had significant environmental repercussions as we have seen with the Pelagic Organism Decline (POD), the continued decline of the three runs of salmon and the Delta smelt as well as other listed species. Extending the contracts and continuing the full Table A Allocations without any environmental review for 50 years beyond 2035 will have considerable impacts. This is a clear violation of CEQA and the Endangered Species Act.

6-5

On its face, this attempt to extend only the financial obligations of the SWP contracts to 2085 appears to be solely for the purpose of being able to finance the proposed Twin Tunnel Project that is now winding its way, with much controversy, through the various permit processes. Ratepayers ought to be allowed to vote on such a major change in their land based charges, property taxes and water rates and to have transparency regarding what projects are included in this 50 year extension and obligation of payments. Full disclosure demands a complete listing of all the projects proposed to be financed by this extension.

6-6

6-7

2. Extension of the Contracts allows for any large project, including the Twin Tunnels that DWR

6-8

wishes to pursue.

Although the DEIR claims that the WaterFix is “separate and independent” from the proposed project, it is clear that the WaterFix could not move forward without the completion of this contract extension. *It is doubtful that the Twin Tunnels with its extremely large capital cost and with little quantified benefit would pass muster in the bond market without the take-or-pay provision.* There is no language in the DEIR that promises a vote to opt out for/by each Contractor on large projects like the Twin Tunnels or to allow each Contractor to decide on the merits of each project as proposed in the future.

6-8 cont.

6-9

The DEIR discusses the Monterey Amendments and at 6.1.2, the Cumulative Impacts Analysis, says, “The proposed project would not affect the provisions of the Monterey Amendments specific to water allocations and water management measures or amendments that may be added to allocate costs for the California WaterFix should it be approved.” What does this mean exactly? On its face, it seems to mean that if the proposed Contract Extension Project was approved, there would be no way for any existing Contractor to get out of paying

6-10

The current SWP Contracts are not uniform as both Plumas County FC&WCD and the Empire West Side ID did not sign the Monterey Amendments and DWR honored the original contracts that they signed without a problem.

6-11

3. DWR claims that contractors would forfeit their Table A allocation if they refuse to acquiesce to the contract extensions: On what basis is this threat made? SWP Contractors and ratepayers originally anticipated their financial obligations would be met by 2035. Now DWR is suggesting these contractors must encumber their ratepayers and property taxpayers for another 50 years for some "hidden" non disclosed list of projects? How can decision makers possibly know if this is the least environmentally damaging alternative without full disclosure of what they are buying with this 50 year financial obligation?

6-12

The Executive Summary and DEIR Alternative 7 looks at what would happen if not all the Contractors sign the Project Extension and goes on to suggest veiled threats that if a Contractor chooses not to sign, they may have their water deliveries cut off at the expiration of their current contract. There is no mention in the Executive Summary or DEIR Alternative 7 about Article 4 of the current contracts, very germane to this issue. So long as a Contractor submits an Article 4 letter 6 months before his contract is to expire, DWR **must honor** the request to extend the Contract. Why is DWR threatening to cut off a Contractor’s water service? The DEIR analysis in Alternative 7 is dishonest and threatening.

6-13

Article 4 of the existing contracts states that by written notice to DWR at least 6 months prior to the expiration date of the Contract, **the Contractor can elect to receive continued service after the expiration of the term under the following conditions unless otherwise agreed to:**

6-14

- (1) service of water in annual amounts up to and including the Contractor’s maximum annual Table A amount;
- (2) service of water at no greater cost to the Contractor than would have been the case had the Contract continued in effect;
- (3) service of water under the same physical conditions of service, including time, place, amount and rate of delivery;

- (4) retention of the same chemical quality objective provision;
- (5) retention of the same options to use the SWP transportation facilities as provided in Articles 18© and 55, as applicable.



6-14
cont.

The Monterey Amendments to the SWP contracts set an important precedent for non-conformity in the Contracts. According to the DEIR, Plumas County FC&WCD and the Empire West Side ID did not sign the Monterey Amendments yet these two SWP Contractors “continue to receive, without threat, SWP water from DWR in accordance with the Contracts in effect before the Monterey Amendments.

4. The financial consequences and environmental impacts to local agencies from the Contract Extension Project have not been disclosed:

Language in the existing Contracts gives DWR the authority to build new facilities or modify existing facilities as stipulated without a financial constraint imposed by the current 2035 term of the contract. *Without the contract extensions any proposed project would face the constraint of the viability of floating a revenue bond without a take-or-pay provision.* According to the DEIR, Article 51 of the current contracts stipulates that, “DWR may submit supplemental bills to the Contractors if necessary to meet unanticipated costs for revenue bond debt service and coverage, which are chargeable to the Contractors.” This has already impacted individual contractors, especially the 27 smaller ones. These 27 contractors hold only 25% of the total voting power of the SWP, with the Metropolitan Water District having a 50% share and Kern County Water Agency, 25%. Since the SWP contractors are obligated to pay even if they receive little or no water under Table A, the possibility of financial peril for all smaller contractors is very evident if the Twin Tunnels’ price tag, \$20 billion to \$38 billion is financed. (See the Exhibit 1, the SB Report Appendix A attached). With a large percentage of local budgets earmarked to pay SWP costs, the smaller contractors already have deferred needed maintenance, and abandoned some conservation efforts such wastewater recycling for lack of funds.

6-15

Without the Contract Extension proposed here, it is unlikely that the tunnels would be able to obtain the financing needed to move forward. So to extend the existing contracts for 50 years beyond their current term opens up considerably more potential debt risk that could be thrust on the contractors even if they didn’t want or need the project being proposed.

Sincerely,

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Response to Comment 6-1

Please see Response to Comment 5-11 for discussion of the definition of the proposed project and development of project objectives. As noted in Response to Comment 5-11, during the public negotiation sessions DWR and the Contractors identified the financial management problems facing the SWP due to, among other things, the difficulties of selling revenue bonds with maturity dates beyond 2035, making more difficult to affordably finance SWP construction projects such as capital repairs or improvements. To address these problems, DWR and the Contractors negotiated the proposed project objectives during that early public negotiation sessions. DWR and the Contractors used the objectives to develop the proposed project through public negotiations. DWR and 25 Contractors have agreed to the AIP which defined the proposed project evaluated in the DEIR (see pages ES-2 and 1-2). DWR and the Contractors have the discretion to select the project objectives consistent with the problems they are trying to address, especially the difficulty in financing capital repairs and improvements. Chapter 5 of the DEIR identified and analyzed potential direct and indirect environmental impacts associated with the proposed changes to the term length and financing terms of the Contract reflected in the negotiated AIP.

Please see also Responses to Comments 5-21 and 5-27 for further information on the baseline. As noted in Response to Comment 5-27, the proposed project would not result in amendments that would change existing operation and maintenance of the SWP, or result in changes to DWR's existing or future regulatory permits or permitting requirements.

As it relates to California WaterFix, a separate EIR/EIS was prepared to address the impacts of California WaterFix. The proposed project is an independent project that would occur with or without California WaterFix (see Response to Comment 5-75). Furthermore, as described in Response to Comment 4-1, Contractor participation in California WaterFix will be addressed through a separate public negotiation and environmental review process to develop appropriate Contract amendments. See Master Response 3 for discussion of the relationship of the proposed project to California WaterFix and the separate Contract amendment process.

Response to Comment 6-2

Article 1(hh) lists certain types of projects which, if DWR determines to undertake a project covered in such list, may be financed through the sale of water system revenue bonds. However, even if a proposed project is listed in 1(hh), DWR would not undertake such a project or finance the project through the sale of revenue bonds unless the proposed project was first reviewed and authorized in compliance with CEQA and has

been the subject of consultation with the Contractors in accordance with the water supply Contracts (Article 50(g)). Article 1(hh) is not proposed for elimination under the proposed amendment. Rather, the proposed amendment would modify one item and add another item. It would modify item 8 in Article 1(hh) by eliminating the limitation that a facility must have been in existence prior to January 1, 1987 to be eligible for water system revenue bond financing for repairs, additions, or betterments to the facility. The proposed amendment would allow water system revenue bond financing for repairs, additions, and betterments to any existing facility, regardless of its date of construction, but once again only after the CEQA process and Contractor consultation process are completed. The proposed amendment would also add an item to Article 1(hh) that would allow a proposed project to be added to the list if approved by 80 percent or more of the affected Contractors, with 80 percent or more of the Table A water among those affected Contractors. However, such a project would not be undertaken or funded by water system revenue bonds unless the project was thoroughly analyzed and authorized in compliance with CEQA and the Contractor consultation process has taken place. See also Master Response 3 for a discussion on the relationship of the proposed project to California WaterFix.

Response to Comment 6-3

See Response to Comment 6-1.

Response to Comment 6-4

See Response to Comment 6-1. As discussed in Response to Comment 5-53, an alternative that considers reduced Table A deliveries was included in the DEIR; however, as described on pages 7-3 and 7-4, reducing Table A amounts proportionality for all the Contractors by amendment would not change the amount of water being delivered to the Contractors nor would it change the financial health of the SWP as it would not affect any of the other Contract financial provisions that address SWP billing provisions and reimbursements. Therefore, reducing Table A deliveries was rejected because it does not address project objectives. Please see Master Response 2 for discussion of the range of alternatives evaluated in the DEIR.

See Response to Comment 8-1 for discussion of Area of Origin. See Response to Comment 5-105 on DWR water rights. As noted, DWR's operation of the SWP complies with all relevant regulations. This compliance will be on-going with or without the proposed project.

Response to Comment 6-5

See Response to Comment 6-1. See also Responses to Comments 5-40 and 5-41. As noted, DWR's operation of the SWP complies with all relevant regulations, including California and federal ESA. This compliance will be on-going with or without the proposed project.

Response to Comment 6-6

See Responses to Comments 6-1 and 6-2. As described in Response to Comment 4-1, Contractor participation in California WaterFix will be addressed through a separate public negotiation and environmental review process to develop appropriate Contract amendments. See Master Response 3 for discussion of the relationship of the proposed project to California WaterFix and the separate Contract amendment process.

Response to Comment 6-7

See Responses to Comments 6-1 and 6-2. As described in Response to Comment 4-1, Contractor participation in California WaterFix will be addressed through a separate public negotiation and environmental review process to develop appropriate Contract amendments. See Master Response 3 for discussion of the relationship of the proposed project to California WaterFix and the separate Contract amendment process. See also Response to Comment 4-2.

See also Response to Comment 5-4. DWR will continue its practice of providing separate CEQA compliance at the time that a project to modify or construct new SWP facilities is proposed.

Response to Comment 6-8

See Responses to Comments 6-1, 6-2 and 6-7.

Response to Comment 6-9

See Response to Comment 3-2 for discussion of Alternative 7 in DEIR which evaluates an alternative of not all Contractors sign the amendment. The analysis is contained on pages 7-24 through 7-26 of the DEIR. See Responses to Comments 4-1 and 4-2. As to projects other than California WaterFix, the responsibility for determining whether to undertake any other project continues to vest in DWR as under the current contract provisions. DWR's practice is to inform and consult, as appropriate, with the Contractors before undertaking new projects.

Response to Comment 6-10

Please see Response to Comment 5-11 for discussion of the definition of the proposed project and development of project objectives. As stated on page 6-4 of the DEIR (under subsection 6.1.2) because the proposed project would not change water allocation provisions in the Contract, it would not alter the provisions amended by the Monterey Amendment specific to water allocations and water management measures. As it relates to California WaterFix, as described in Response to Comment 4-1, Contractor participation in California WaterFix will be addressed through a separate public negotiation and environmental review process to develop appropriate Contract amendments. See Master Response 3 for discussion of the relationship of the proposed project to California WaterFix and the separate Contract amendment process.

Response to Comment 6-11

Although the Monterey Amendment is not part of the Plumas and Empire Contracts, the Plumas and Empire Contracts are substantially uniform with respect to the basic terms and conditions of the other Contracts.

Response to Comment 6-12

DWR has not claimed that Contractors would forfeit their Table A allocation if they do not sign the proposed project. Please see Response to Comment 5-11 for discussion of the definition of the proposed project and development of project objectives. See also Response to Comment 3-2 for discussion of Alternative 7 in DEIR which evaluates an alternative of not all Contractors signing the amendment. See also Responses to Comment 6-1 and 6-2.

Response to Comment 6-13

DWR has not claimed that Contractors would forfeit their Table A allocation if they do not sign the proposed project. See Response to Comment 3-2 for discussion of Alternative 7 in DEIR which evaluates an alternative of not all Contractors signing the amendment.

Response to Comment 6-14

See Response to Comment 3-2 for discussion of Alternative 7 in DEIR which evaluates an alternative of not all Contractors signing the amendment.

Response to Comment 6-15

Please see Response to Comment 5-11 for discussion of the definition of the proposed project and development of project objectives.

As described in Response to Comment 4-1, Contractor participation in California WaterFix will be addressed through a separate public negotiation and environmental review process to develop appropriate Contract amendments. See Master Response 3 for discussion of the relationship of the proposed project to California WaterFix and the separate Contract amendment process. See also Response to Comment 4-2. As to projects other than California WaterFix, the responsibility for determining whether to undertake any other project continues to vest in DWR as under the current contract provisions. DWR's practice is to inform and consult, as appropriate, with the Contractors before undertaking new projects. The attachments to the comment is included in Exhibit B to this FEIR.

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AQUALLIANCE
DEFENDING NORTHERN CALIFORNIA WATERS



October 15, 2016

Ted Alvarez
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Subject: Comments on DEIR for Water Supply Extension Contract Project

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The Project as defined by DWR is to extend the full SWP contracts for 50 years while conducting an environmental review on only the financial sections of the contract. This is a blatant violation of CEQA as it leaves the bulk of the contract intact but without analysis of the potential consequences to the environment of extending the existing contractual obligations. Thus the proposed Project is not properly defined. This piece-meal approach is a direct violation of CEQA. *The potential consequences can only be evaluated in the context of some proposed project. The urgency for extending the contracts now is not well justified in the DEIR. The only project that would require the extensions at this early date is the Twin Tunnels (BDCP_DHCCP_CWF). That is because the construction is estimated to begin in 2020 and the period of construction is estimated to take at least 15 years; hence, the extended contracts must be in place by 2020 well before the 2035 expiration of the existing contracts. No other project on the horizon requires such early action.*

7-1

While implying that the only contract change of consequence is financial, DWR proceeds to propose one significant change to the content of the contract. That is the elimination of Article 1, (hh). This is the section of the original contracts that names the projects authorized for construction. There is no mention of Tunnels in this list. The Contract Extension Project proposes to delete the one clause that limits the extent of Delta Transfer Facilities that could be pursued after 1987. We believe Article 1 (hh) was deleted to allow the Tunnels, and anything else DWR might want to build.

7-2

The original contracts were signed beginning in 1965 before the California Environmental

7-3

Quality Act became law in 1972. A lot has changed since then. The original contracts begin to expire in 2035. The proposed extension will push the date for the contract’s expiration to 2085. *The existing contracts include a take-or-pay requirement that presumably would remain if they were simply extended now. “Take-or-Pay” means that the contractor must pay all the fixed costs whether any water is delivered or not. Without the take-or-pay provision large capital investments in the SWP would be difficult to finance in the bond market. It seems that the necessity of extending the contracts now is to keep intact the take-or-pay provisions.* Examining only the financial sections of the existing contracts cannot possibly responsibly determine what the environmental consequences might be, *especially without any idea of proposed projects.* This runs afoul of CEQA’s requirements that the project should encompass the whole of the action.

7-3
cont.

Change of Circumstance--Changes the Definition of the Project:

The SWP as envisioned some 54 years ago has changed. Any environmental review of the contracts for this project must recognize these changes. For example, there is no justification for including the original contract amounts for the full Table A. The water for these allocations can never be delivered because they simply do not exist. Climate changes, legal changes including the protection of the North Coast Rivers, under both Federal and State law, and the voters’ rejection of the Peripheral Canal all have redefined the SWP and the alleged contract amounts. The Contract Table A Allocations must be refigured to reflect this.

For a major contract extension such as is being proposed, a full analysis of actual water supply available to the SWP must be completed. Prudence requires that the amounts of water assigned reflect what is really available if the SWP were operated on a “safe yield” basis. (Please refer to The Santa Barbara Report Appendix B included as Attachment 1)

7-4

This must entail a thorough analysis of how much water is actually in the Delta watershed and is legally available to the SWP taking into consideration both the Public Trust Doctrine and Senior Water Rights law. (See Attached C-WIN Quantification Analysis included as Attachment 2) The SWP was originally premised on promises to protect Areas of Origin and Senior Water Rights holders and to take only “surplus” water that would not affect the rights of those from where the water originated.

Water allocated under existing contracts has already had significant environmental repercussions as we have seen with the Pelagic Organism Decline (POD), the continued decline of the three runs of salmon and the Delta smelt as well as other listed species. Extending the contracts and continuing the full Table A Allocations without any environmental review for 50 years beyond 2035 will have considerable impacts. This is a clear violation of CEQA and the Endangered Species Act.

7-5

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7-6

7-7

2. Extension of the Contracts allows for any large project, including the Twin Tunnels that DWR

7-8

wishes to pursue.

Although the DEIR claims that the WaterFix is “separate and independent” from the proposed project, it is clear that the WaterFix could not move forward without the completion of this contract extension. *It is doubtful that the Twin Tunnels with its extremely large capital cost and with little quantified benefit would pass muster in the bond market without the take-or-pay provision.* There is no language in the DEIR that promises a vote to opt out for/by each Contractor on large projects like the Twin Tunnels or to allow each Contractor to decide on the merits of each project as proposed in the future.

7-8
cont.

7-9

The DEIR discusses the Monterey Amendments and at 6.1.2, the Cumulative Impacts Analysis, says, “The proposed project would not affect the provisions of the Monterey Amendments specific to water allocations and water management measures or amendments that may be added to allocate costs for the California WaterFix should it be approved.” What does this mean exactly? On its face, it seems to mean that if the proposed Contract Extension Project was approved, there would be no way for any existing Contractor to get out of paying

7-10

The current SWP Contracts are not uniform as both Plumas County FC&WCD and the Empire West Side ID did not sign the Monterey Amendments and DWR honored the original contracts that they signed without a problem.

7-11

3. DWR claims that contractors would forfeit their Table A allocation if they refuse to acquiesce to the contract extensions: On what basis is this threat made? SWP Contractors and ratepayers originally anticipated their financial obligations would be met by 2035. Now DWR is suggesting these contractors must encumber their ratepayers and property taxpayers for another 50 years for some "hidden" non disclosed list of projects? How can decision makers possibly know if this is the least environmentally damaging alternative without full disclosure of what they are buying with this 50 year financial obligation?

7-12

The Executive Summary and DEIR Alternative 7 looks at what would happen if not all the Contractors sign the Project Extension and goes on to suggest veiled threats that if a Contractor chooses not to sign, they may have their water deliveries cut off at the expiration of their current contract. There is no mention in the Executive Summary or DEIR Alternative 7 about Article 4 of the current contracts, very germane to this issue. So long as a Contractor submits an Article 4 letter 6 months before his contract is to expire, DWR **must honor** the request to extend the Contract. Why is DWR threatening to cut off a Contractor’s water service? The DEIR analysis in Alternative 7 is dishonest and threatening.

7-13

Article 4 of the existing contracts states that by written notice to DWR at least 6 months prior to the expiration date of the Contract, **the Contractor can elect to receive continued service after the expiration of the term under the following conditions unless otherwise agreed to:**

7-14

- (1) service of water in annual amounts up to and including the Contractor’s maximum annual Table A amount;
- (2) service of water at no greater cost to the Contractor than would have been the case had the Contract continued in effect;
- (3) service of water under the same physical conditions of service, including time, place, amount and rate of delivery;

- (4) retention of the same chemical quality objective provision;
- (5) retention of the same options to use the SWP transportation facilities as provided in Articles 18© and 55, as applicable.



7-14
cont.

The Monterey Amendments to the SWP contracts set an important precedent for non-conformity in the Contracts. According to the DEIR, Plumas County FC&WCD and the Empire West Side ID did not sign the Monterey Amendments yet these two SWP Contractors “continue to receive, without threat, SWP water from DWR in accordance with the Contracts in effect before the Monterey Amendments.

4. The financial consequences and environmental impacts to local agencies from the Contract Extension Project have not been disclosed:

Language in the existing Contracts gives DWR the authority to build new facilities or modify existing facilities as stipulated without a financial constraint imposed by the current 2035 term of the contract. *Without the contract extensions any proposed project would face the constraint of the viability of floating a revenue bond without a take-or-pay provision.* According to the DEIR, Article 51 of the current contracts stipulates that, “DWR may submit supplemental bills to the Contractors if necessary to meet unanticipated costs for revenue bond debt service and coverage, which are chargeable to the Contractors.” This has already impacted individual contractors, especially the 27 smaller ones. These 27 contractors hold only 25% of the total voting power of the SWP, with the Metropolitan Water District having a 50% share and Kern County Water Agency, 25%. Since the SWP contractors are obligated to pay even if they receive little or no water under Table A, the possibility of financial peril for all smaller contractors is very evident if the Twin Tunnels’ price tag, \$20 billion to \$38 billion is financed. (See the Exhibit 1, the SB Report Appendix A attached). With a large percentage of local budgets earmarked to pay SWP costs, the smaller contractors already have deferred needed maintenance, and abandoned some conservation efforts such wastewater recycling for lack of funds.

7-15

Without the Contract Extension proposed here, it is unlikely that the tunnels would be able to obtain the financing needed to move forward. So to extend the existing contracts for 50 years beyond their current term opens up considerably more potential debt risk that could be thrust on the contractors even if they didn’t want or need the project being proposed.

Sincerely,

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Responses to Comments 7-1 through 7-15

See Responses to Comments 6-1 through 6-15.

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October 17, 2016

Ted Alvarez
State Water Project Analysis Office
Department of Water Resources
P.O. Box 942836
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Email: watercontractextension@water.ca.gov

VIA EMAIL AND U.S. MAIL

Subject: Comments on Draft EIR for the Water Supply Contract Extension Project

Dear Mr. Alvarez:

On behalf of the Natural Resources Defense Council (“NRDC”), Defenders of Wildlife (“DOW”), and The Bay Institute (“TBI”), which collectively have hundreds of thousands of members and activists in California, we are writing to provide input on the Draft Environmental Impact Report (“DEIR”) for the Department of Water Resources’ (“DWR”) Water Supply Contract Extension Project (“proposed project”). The proposed project and DEIR fail to satisfy the requirements of CEQA and DWR’s obligations under state law. As we explained in our scoping comments submitted on October 13, 2014, DWR’s proposal to extend the term of existing State Water Project (“SWP”) contracts for an additional 50 years necessarily implicates the urgent need to modernize other contract terms to reflect the current realities of climate change, restricted surface water supplies, declining water quality and environmental health of the Bay-Delta estuary, existing statutory requirements, and other current and anticipated changes that have occurred since these contracts were originally executed. DWR’s failure to address these important issues while proposing to extend the contracts to 2085 is irreconcilable with Governor Brown’s recognition in the 2016 California Water Action Plan of the “broad agreement that the state’s water management system is currently unable to satisfactorily meet both ecological and human needs, too exposed to wet and dry climate cycles and natural disasters, and inadequate to handle the additional pressures of future population growth and climate change.”¹

8-1

DWR’s proposal and the analysis on which it is based are legally flawed. First, DWR concludes that extending SWP contracts and water deliveries for another 50 years would result in no impact on the environment. But this conclusion is based on at least two faulty assertions that fatally

8-2

¹ http://resources.ca.gov/docs/california_water_action_plan/Final_California_Water_Action_Plan.pdf, at 1. All cited documents are incorporated herein by reference.

taint the entire analysis. The first faulty assumption is that the SWP contracts would be extended to 2085 in any case, with or without this proposed project, “upon receipt of Article 4 letters from the Contractors,” without any other changes to the contracts. DEIR at ES-6. The second faulty assumption is that SWP operations and facilities will not change based on the more affordable financing and broader construction authority that the 50-year extension would provide. Second, DWR incorrectly asserts that the “proposed project is separate and independent from the California WaterFix project,” DEIR at 6-3, which causes DWR to impermissibly piecemeal the impacts of extending the contracts from the impacts of California WaterFix (“WaterFix”). Third, DWR and the SWP Contractors have recognized that multiple additional modifications to the SWP contracts will be necessary in order to implement WaterFix, but the project and DEIR also impermissibly exclude those modifications from analysis.

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8-4

8-5

DWR should reject the proposed project and prepare a new project and California Environmental Quality Act (“CEQA”) analysis that considers the full suite of contract modifications and related impacts that are necessary to modernize the State Water Project and keep it functional beyond 2035.

8-6

I. The DEIR’s Conclusion that the Proposed Project Would Cause No Environmental Impacts Is Flawed

A. DWR Improperly Conflates the “No Project” Alternative with the Proposed Project

8-7

The premise of the DEIR’s no impacts conclusion is that the SWP contracts would be extended to 2085 with or without the proposed project because of Article 4 of the contracts. Thus, DWR defines the “no project” alternative as extension of the contracts from 2035 to 2085 with no changes to any existing contract terms or operations. DEIR at 7-6. But DWR inexplicably selects a 2085 contract extension date under this alternative, thus rendering it essentially identical to the proposed project. This selection, which is not supported by any analysis or reasoning, undermines the impact analysis.

Article 4 allows for extension of the contracts on terms that are mutually agreed to. See, e.g., DEIR at 7-9. The Contractors may not simply demand that the contracts be extended indefinitely, or for 50 years as DWR assumes in the DEIR, nor does DWR have to acquiesce to such demands under Article 4. Indeed, the DEIR recognizes that “it is uncertain how far beyond 2035 the Contracts would be extended under this alternative.” DEIR at 7-11.² But the DEIR randomly selects 2085 as the expiration date, noting that this “is the same as the proposed project.” This unjustified assumption impermissibly skews the impact analysis. If a shorter date were selected, then DWR would continue to face constraints on its ability to finance and

8-8

² The DEIR also recognizes that “DWR and the Contractors have made many amendments to the Contracts to address matters that have arisen over the past 55 years.” DEIR at 2-12. Implementation and extension of the contracts over the next 69 years – to 2085 – should be no different, but the “no project” alternative unreasonably assumes it will be.

construct additions and improvements to the SWP, leading to impacts very different from those anticipated under the proposed project, which would facilitate such construction. The DEIR acknowledges that DWR would continue to face constraints on its ability to sell bonds under this scenario, thus limiting the ability to finance significant upgrades to SWP facilities, but fails to recognize that reality in its impact analysis. *Id.* at 7-4 to 7-6.

8-8
cont.

The Ninth Circuit Court of Appeals recently held that even where a statute mandates renewal, which is not the case here, the federal equivalent of CEQA, the National Environmental Policy Act (“NEPA”), “imposes obligations on agencies considering major federal actions that may affect the environment ... [and] [a]n Agency may not evade these obligations by contracting around them.” *Pac. Coast Fed’n of Fishermen’s Ass’ns v. U.S. Dep’t of the Interior*, 2016 WL 3974183, at *2 (9th Cir. July 25, 2016). As the Ninth Circuit noted, “a ‘no action’ alternative is ‘meaningless’ if it assumes the existence of the very plan being proposed.” *Id.* at *1. The court held that the United States Bureau of Reclamation (“Reclamation”) violated NEPA by failing to consider an alternative that would reduce water deliveries in a renewed contract. *Id.* at *3.³

8-9

A reduced delivery scenario under the “no action” alternative is more likely than the one that DWR has put forward. In fact, DWR itself has recently published and commissioned documents that assert that SWP deliveries will be far less in a “no action” future, under which new facilities are not constructed and upgraded. For example, the draft Bay Delta Conservation Plan (“BDCP”) prepared by DWR in 2013 projects that by 2025, Delta exports will fall to a range of 3.4-3.9 million acre-feet (“MAF”) per year on average, a reduction of about 1 MAF or more on average from today’s levels. *See, e.g.*, DWR, public draft BDCP, at Table 9.A-2 (Nov. 2013), http://baydeltaconservationplan.com/Libraries/Dynamic_Document_Library/Public_Draft_BDCP_Appendix_9A_-_Economic_Benefits_of_the_BDCP_and_Take_Alternatives.sflb.ashx.

8-10

DWR’s economic consultant for the WaterFix project recently reiterated this reduction in level of exports under a “no action” alternative, finding that Delta exports from existing SWP and Central Valley Project (“CVP”) facilities are likely to decline to 3.9 MAF by 2020, “a reduction of 0.8 maf from current levels.” The Brattle Group, Draft California WaterFix Economic Analysis, at 6 (Nov. 15, 2015), <http://www.restorethedelta.org/wp-content/uploads/2016/09/CA-WaterFix-Economic-Analysis-Sunding.pdf>. DWR has presented similar reduced SWP delivery scenarios as likely in its most recent SWP delivery capability report. DWR, 2015 SWP Delivery Capability Report, at App., <https://msb.water.ca.gov/documents/86800/c97c3baa-0189-4154-bf19-aa88392026ac>. Indeed, DWR’s largest contractor, the Metropolitan Water District of Southern California, relied on the reduced “ECLO” SWP delivery projections from the 2015 SWP Delivery Capability Report in its 2015 Urban Water Management Plan. MWD, 2015 Urban Water Management Plan, at 2-13, http://www.mwdh2o.com/PDF_About_Your_Water/2.4.2_Regional_Urban_Water_Management

³ As discussed *infra* at note 5, DWR incorrectly rejected the “reduced deliveries” alternative here.

Plan.pdf (“Under the 2015 SWP Delivery Capability Report with existing conveyance and low outflow requirements scenario, the delivery estimates for the SWP for 2020 conditions ... [are] equivalent to 976 TAF for Metropolitan, under long-term average condition.”); *compare with id.* (MWD estimates that this SWP delivery amount will increase to 1.2 MAF on average starting in 2030 when WaterFix is in place).

Because DWR anticipates that, without the addition of significant new SWP facilities, SWP deliveries are likely to decline significantly in the near future, the “no action” alternative should be revised to reflect a shorter contract extension and reduced delivery estimates over the life of this project. That assumption, which better matches DWR’s, and its contractors’ projections elsewhere, would lead to a different impact analysis than the one presented in the DEIR, with a greater disparity of future deliveries between the “no action” and “proposed project” alternatives. The DEIR should be revised to reflect those differences.

B. The DEIR Admits that the Proposed Project Will Allow DWR to Implement Projects with Potentially Significant Environmental Impacts

The DEIR states that a core purpose of the project is to “[e]nsure DWR can finance SWP expenditures beyond 2035.” DEIR at ES-3. As DWR explains: “In order for DWR to sell bonds for 30 years or more, which would provide more affordable financing to the Contractors for the SWP costs associated with constructing and repairing the SWP facilities allocated to water supply, it is necessary to extend the expiration dates of the Contracts.” DEIR at 1-2; *see also id.* at 4-1 (recognizing that DWR could not “as a practical matter” issue bonds with a maturity date beyond 2035 without extending the contract terms as proposed); *id.* at 5-4 (“the current Contracts require existing capital obligations to be repaid by 2035, causing a sharp increase in capital charges to contractors toward the end of the 2035 repayment period”). While the DEIR admits that this more affordable financing will increase the likelihood of modifications to the SWP that will have significant environmental impacts, it fails to analyze the impact of those reasonably foreseeable modifications. Further, the proposed project would explicitly authorize DWR to extend the physical components of the SWP beyond current facilities, and thereby increase the likelihood of projects with significant environmental impacts.

CEQA requires that an EIR identify and describe the significant indirect environmental impacts that will result from the project, including actions that are a foreseeable consequence of the project, such as the construction and modification of SWP facilities here that the contract extension would make possible. 14 Cal. Code of Regs. § 15126.2(a); *City of Hayward v. Board of Trustees of Cal. State Univ.*, 242 Cal. App. 4th 833, 859 (2015) (EIR on plan to expand campus deficient for not analyzing increased student use of parks). For example, the DEIR notes that “[c]apital projects that could be financed in whole or in part by the sale of longer term bonds (if available as the result of contract extension) include: (1) reinforcing Perris Dam at Lake Perris

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8-11

against seismic failure ... ; (2) reconstructing the Ronald B. Robie Thermalito pump-generating plant ... ; (3) implementing the Oroville hydroelectric license project; and (4) obtaining a renewed Federal Energy Regulatory Commission (FERC) license for the SWP’s southern hydroelectric plants.” DEIR at 5-7. Each of these anticipated projects would likely have significant environmental impacts. Similarly, the DEIR notes that:

8-11
cont.

Because of physical and water quality limitations, the diversion at Barker Slough cannot deliver the maximum Table A water requested. In order to address these facility limitations and meet projected future water delivery needs of the North Bay Contractors, DWR is considering constructing a new intake and pumping plant facility in the Sacramento River and a new segment of [North Bay Aqueduct (NBA)] Conveyance pipeline that would be operated in conjunction with the existing Barker Slough Pumping Plant...[T]he NBA Alternate Intake Project (NBA AIP) would enable the NBA to deliver the total water supply allocation (Table A amounts) to the North Bay Contractors.

DEIR at 2-5 to 2-6; *see also* DWR, North Bay Aqueduct Alternative Intake Project, <http://www.water.ca.gov/engineering/Projects/Current/NBA/>. Given the current stresses on and over-allocation of the Delta ecosystem, there can be no question that increasing SWP diversions from the Delta would cause potentially significant environmental impacts.⁴ Yet, that is what DWR proposes to do with the NBA AIP, a project which would be more likely to occur with the more affordable financing available under the proposed extended contract term. *See, e.g.*, Solano Cty. Water Agency, NBA AIP, <http://www.scwa2.com/home/showdocument?id=918>, at 5 (Solano County Water Agency discussing the challenges of funding the project, which “capital costs are estimated at about \$550 million” and “is expected to be financed by the State Water Project with revenue bonds,” and explaining that “[f]ull payment by SCWA and Napa County would be a significant financial burden to our rate payers”).

8-12

The DEIR anticipates that other SWP modifications will be made more likely with the contract extension, which modifications are also likely to have potentially significant environmental impacts. In fact, the DEIR notes that the contracts themselves “require DWR to make all reasonable efforts to complete the water supply facilities necessary to deliver the Table A amounts in the Contracts.” DEIR at 2-12.⁵ DWR’s pursuit of such facilities “necessary to

8-13

⁴ *See, e.g.*, DWR’s 2015 SWP Capability Report at 1-2 (available at <https://msb.water.ca.gov/documents/86800/144575dd-0be1-4d2d-aeff-8d7a2a7b21e4>).

⁵ The proposed project’s extension of this contract provision for another 50 years also undermines DWR’s asserted basis for rejecting an alternative that would reduce Table A deliveries. The DEIR states that “Reducing Table A amounts proportionately for all the Contractors by amendment would not change the amount of water being delivered to the Contractors...” DEIR at 7-3. This assertion is not true if DWR is simultaneously obligating itself through 2085, as the proposed project would do, “to make all reasonable efforts to complete the water supply facilities necessary to deliver the Table A amounts in the Contracts.” Nor is it true if the proposed project increases the ability of DWR to expand SWP facilities to increase deliveries, as it would do. Thus, the DEIR also suffers from

deliver the Table A amounts in the Contracts,” including WaterFix with its stated purpose of enabling full contract deliveries, would significantly increase diversions and exports within and upstream of the Delta, causing significant environmental impacts. *See, e.g.*, DWR Application to USACE to Implement WaterFix, at 8 (Aug. 24, 2015), https://s3.amazonaws.com/californiawater/pdfs/5n2mg_Complete_Final_CA_Water_Fix_USAC_E_404_Permit_Application.pdf (the “purposes of the proposed actions are to ... restore and protect the ability of the SWP and CVP to deliver up to full contract amounts ... consistent with the terms and conditions of water delivery contracts held by SWP contractors.”). As DWR’s most recent SWP Capability Report admits, “[u]nder existing conditions, the average annual delivery of Table A water ... is 2,550 taf/year,” far less than the nearly 4.2 MAF of annual Table A amounts in the contracts,⁶ and the “future inability of the SWP to deliver water to meet demands of certain [south-of-delta] contractors is a very real concern.” *Id.* at 10.

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Finally, the proposed project includes new authorization for “SWP revenue bonds to be issued to: (1) finance repairs, additions, and betterments to most facilities of the SWP without regard to whether the facilities were in existence prior to January 1, 1987, which is the current Contract requirement in Article 1(hh)(8); and (2) finance other capital projects (not already in the list in Article 1(hh) for which revenue bonds could be sold) when mutually agreed to by DWR and at least 80 percent of the affected Contractors.” DEIR at 4-5 (emphasis added). This new authorization to finance and build new SWP facilities that were not in existence prior to January 1, 1987, is likely to cause significant impacts beyond those contained in the current contracts, including, but not limited to, increasing the likelihood of the new SWP diversion and conveyance facilities envisioned by WaterFix, which DWR has already acknowledged will cause significant environmental impacts. *See, e.g.*, Letter from Jake Campos, STIFEL, to Mary Lou Cotton, SWPCA at 4 (March 19, 2014) (Exhibit A) (without contract amendments, “DWR’s legal counsel has concluded that BDCP is not on the list of approved projects that are eligible for funding, including through bond financing”). The DEIR’s failure to identify and analyze those impacts fails to comply with CEQA.

8-14

Thus, DWR’s conclusions in the DEIR that the proposed project would not “alter the existing authority to build new or modify existing facilities” or “result in construction or modification of SWP facilities,” DEIR at 5-96, and that “SWP water supply would not change under the proposed project” are contradicted by the facts. *See* DEIR at 5-6. The proposed project makes increased SWP water supply more likely by explicitly authorizing new facilities that are not authorized under the current contract, extending DWR’s obligation to build out the SWP to achieve full Table A amounts, and making SWP expansion and extension projects more

8-15

failing to analyze a reasonable range of alternatives, including a reduced contract amount alternative, as well as modifications to other contract terms.

⁶ *Id.* at 2.

affordable. DWR’s failure to analyze the impacts of these and related SWP modifications is impermissible piecemealing under CEQA. A far better solution would be to adjust Table A amounts to reflect more realistic delivery terms, now and in the future, and to omit the SWP contract term that “require[s] DWR to make all reasonable efforts to complete the water supply facilities necessary to deliver the Table A amounts.”

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cont.

II. The DEIR Improperly Piecemeals Reasonably Foreseeable SWP Changes and Contract Modifications with Potentially Significant Environmental Impacts

The DEIR asserts that the “proposed project is separate and independent from the WaterFix project,” DEIR at 6-3, and excludes numerous other SWP contract modifications that are reasonably foreseeable.

CEQA defines a “project” as the whole of an action that has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment. The entire project being proposed must be described in the EIR, and the project description must not be artificially truncated so as to minimize project impacts. *City of Santee v. Cty. of San Diego*, 214 Cal. App. 3d 1438, 1450 (1989). A project description must include all relevant aspects of a project, including reasonably foreseeable future activities that are part of the project. *Laurel Heights Improvement Ass’n v. Regents of the University of Cal.*, 47 Cal.3d 376 (1988). Responsibility for a project cannot be avoided by limiting the title or description of the project. *Rural Land Owners Ass’n v. Lodi City Council*, 143 Cal. App.3d 1013, 1025 (1983).

8-16

The DEIR fails to meet these requirements of CEQA because, among other things, it fails to analyze the impacts of the proposed WaterFix project, even though several Contractors have admitted that the proposed SWP contract extension is a necessary condition for financing WaterFix. In addition, the DEIR excludes consideration of other contract changes that are being anticipated to enable implementation of the proposed California WaterFix project.

The SWP Contractors have recognized that the proposed project is necessary to enable financing and implementation of WaterFix. For example, in September, 2014, staff at the Metropolitan Water District of Southern California acknowledged that the proposed SWP contract amendments are a necessary step in financing what was then called the Bay Delta Conservation Plan (“BDCP”), now known as WaterFix. *See* MWD, Special Committee on Bay-Delta Presentation Re. Review Status of BDCP Cost Allocation Discussions (Sept. 23, 2014), <http://edmsidm.mwdh2o.com/idmweb/cache/MWD%20EDMS/003735248-1.pdf> (Exhibit B). Similarly, Kern County Water Agency staff explained in September 2013 that “DWR and SWP Contractors need to come to agreement on a contract extension that matches the term of the BDCP and provides the SWP Contractors with a more appropriate role in managing SWP expenses.” Kern County Water Agency, “Resolution of Issues Necessary to Inform a

8-17

Development of a Business Case to Support a Decision on Continued Funding for the Bay Delta Conservation Plan and the Delta Habitat Conservation and Conveyance Program,” at 1 (Sept. 23, 2013) (Exhibit C).

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cont.

Several financing agencies similarly reiterated the need to extend the contracts to enable WaterFix. In response to a State Water Project Contractors Authority’s request for proposal regarding financing the BDCP in March 2014, Morgan Stanley stated,

“Water Supply Contracts. We understand that DWR’s water supply contracts are in the process of being extended, likely to 2085, or 50 years from 2035 when most expire. Clearly, in order to finance the substantial costs associated with CM1 in the BDCP, the extension of these contracts is essential to allow for the amortization of financing payments over a long period of time.”⁷

8-18

Raymond James echoed that the “current contracts between DWR and the water contractors ... will have to be renegotiated in order to fund the tunnels.... Investors will be concerned about the extension of those terms through the life of the bonds.” Raymond James and Assocs., Inc., Response to Request for Qualifications and Proposals for Underwriting Services, at 9 (March 19, 2014) (Exhibit E).

In addition, the Contractors have identified a number of other contract amendments that are likely when and if the proposed WaterFix is approved, but which are excluded from the proposed project and DEIR. For example, in a November 2013 presentation, the State Water Contractors identified a number of recommended alternatives for financing WaterFix, all of which require SWP contract amendments. State Water Contractors Management Briefing to DHCCP SWP Cost Allocation Working Group, at 9 (November 8, 2013) (Exhibit F) (“Contract Amendment Likely Needed to Reflect Different Cost Allocations and Different Water Supply Deliveries, and Allowance for Annual Sales”); *see also id.* at 13 (“SWP Contract Amendment Needed” for Alternative 2C); *id.* at 17 (Alternative 4A “Would Require Contract Amendment”). On April 1, 2014, the State Water Contractors considered another set of financing options for WaterFix, all of which, again, would require amendments to existing SWP contracts. State Water Contractors Presentation to SWP Cost Allocation Workgroup, April 1, 2014 (Exhibit G).

8-19

DWR and the Contractors have indicated that they will make financing decisions on WaterFix by the end of this year. Those pending, near-term decisions are likely to have a significant impact on the scope of amendments needed to SWP contracts, but also the range of impacts associated with those impacts. *See, e.g.,* Email from Stephen Arakawa Re. Kern County Proposal on BDCO [*sic*] Cost Allocation, January 30, 2014 (Exhibit H) (Kern County Water Agency propose financing strategies for a smaller, “urban-only” 6,000 cubic feet per second (“cfs”) WaterFix

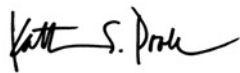
⁷ Morgan Stanley, “State Water Project Contractors Authority: Response to Request for Qualifications and Proposals for Underwriting Services,” at 8 (March 19, 2014) (Exhibit D).

facility because Kern is not supportive of the current 9,000 cfs approach). DWR should suspend the current SWP contract amendment proposal until these discussions are final and the full suite of amendments and impacts can be considered in a comprehensive fashion, as CEQA requires.

The attempt by the DEIR to separate the WaterFix financing and related issues to some future analysis runs afoul of CEQA's requirements to define the project to encompass the whole of the action. It must be revised in a recirculated CEQA analysis.

We appreciate the opportunity to provide our input and urge DWR to address these issues in a revised project and EIR.

Sincerely,



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Senior Attorney
Natural Resources Defense Council



Rachel Zwillinger
Water Policy Advisor
Defenders of Wildlife



Gary Bobker
Rivers & Delta Program Director
The Bay Institute



8-19
cont.

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Response to Comment 8-1

The comment suggests that DWR should modernize other Contract terms to reflect changes in circumstances since the Contracts were originally executed. The comment does not specify which other terms DWR should modernize or how they should be modernized.

As discussed on page 2.3, DWR has entered into Contracts with each of the twenty-nine Contractors. Although not identical, the Contracts are substantially uniform. During the public negotiation sessions, DWR and the Contractors identified the problems facing the SWP financial management due to the difficulties of selling revenue bonds with maturity dates beyond 2035, including that it has become more difficult to affordably finance SWP construction projects such as capital repairs or improvements. These problems are discussed on pages 1-1 to 1-2, 3-1 to 3-3 and 4-1 of the DEIR. To address these problems, DWR and the Contractors negotiated the proposed project objectives during that early public negotiation sessions. These objectives are found on pages ES-3 and 4-2 of the DEIR.

DWR and the Contractors have the discretion to select the project objectives consistent with the problem they are trying to address, especially the difficulty in financing capital repairs and improvements and the need to address other financial issues. (In re Bay-Delta Programmatic Environmental Impact Report Coordinated Proceedings, 43 Cal. 4th 1143 (2008).) DWR and the Contractors identified the problems facing the financing of SWP capital repairs and improvement due to the difficulties in selling revenue bonds with maturity dates beyond 2035, and the problem could be addressed by amending the financial provisions of the Contract and the term of the Contract. The problem is discussed on pages 3-1 to 3-3 and 4-1 of the DEIR. The objectives reflect the desire of DWR and the Contractors to address these specific problems. See also Master Response 2 for more on DWR's ability to define the project.

DWR and the Contractors did not agree in the objectives to amend the non-financial provisions of the Contracts. However, DWR and the Contractors have already made several significant amendments to the Contracts since the original Contracts have been executed reflecting changes in circumstances, including the Monterey Amendment discussed on page 3-7 of the DEIR. Executed in 1995, the Monterey Amendment made significant changes to Contract's water supply and water transfer provisions in addition to making changes to its financial terms. In addition, in 2013 DWR and certain Contractors amended the water supply provisions of the Contracts to reflect changes in circumstances for SWP Contractors located in Northern California and the area of origin. DWR and the Contractors are not precluded by the proposed project from negotiating

additional amendments to the Contracts that may reflect changes in circumstances in the future.

Response to Comment 8-2

As described in Response to Comment 3-2 and on pages 7-9 and 7-10 of the DEIR, Article 4 gives each Contractor a right to extend its Contract on generally the same fundamental terms as in the current Contract, including the same Table A amounts of water, by providing notice to DWR at least 6 months in advance of the Contract expiration date. Extension of the Contract through the exercise of rights under Article 4 is addressed in the No Project Alternative which does not include an assumption of extending the Contracts for any specific number of years beyond the expiration date. Under the No Project Alternative, as described on page 7-6 of the DEIR, once Contractors submit their Article 4 letters to extend their Contract expiration dates the extended Contract expiration date is determined and this option is available before the end of each subsequent expiration date. The option to continue service under Article 4 of the Contracts is also described on page 1-1 of the DEIR and is shown in full in the example Water Supply Contract presented in Appendix C of the DEIR.

Response to Comment 8-3

See Responses to Comments 4-1 and 4-2. The responsibility for determining whether to undertake any other project continues to vest in DWR as under the current contract provisions. DWR's practice is to inform and consult, as appropriate, with the Contractors before undertaking new projects. See also Response to Comment 5-11 for discussion of the definition of the proposed project and development of project objectives. See also Master Response 2 for more on DWR's ability to define the project.

Response to Comment 8-4

The proposed project is an independent project that would occur with or without California WaterFix (see Response to Comment 5-75). A separate EIR/EIS was prepared to address the impacts of California WaterFix. Furthermore, as described in Response to Comment 4-1, Contractor participation in California WaterFix will be addressed through a separate public negotiation and environmental review process to develop appropriate Contract amendments. See Master Response 3 for discussion of the relationship of the proposed project to California WaterFix and the separate Contract amendment process.

Response to Comment 8-5

See Response to Comment 8-4.

Response to Comment 8-6

See Response to Comment 8-1. In addition, see Response to Comment 5-11 for discussion of the definition of the proposed project and development of project objectives. See also Master Response 2 for more on DWR's ability to define the project.

Response to Comment 8-7

As described in Response to Comment 3-2 and on pages 7-9 and 7-10 of the DEIR, Article 4 gives each Contractor a right to extend its Contract on generally the same fundamental terms as in the current Contract, including the same quantities of water delivered, by providing notice to DWR at least 6 months in advance of the Contract expiration date. Extension of the Contract through the exercise of rights under Article 4 is addressed in the No Project Alternative. Under the No Project Alternative, as described on page 7-6 of the DEIR, once Contractors submit their Article 4 letters to extend their Contract expiration dates the extended Contract expiration date is determined. The option to continue service under Article 4 of the Contracts is also described on page 1-1 of the DEIR and is shown in full in the example Water Supply Contract presented in Appendix A. See Master Response 1 for a discussion of the No Project Alternative. The No Project Alternative is not "essentially identical" to the proposed project as it does not meet all the project objectives and will have greater environmental impacts as described in Section 7.4.1 of the DEIR.

See also Response to Comment 5-11 for discussion of the definition of the proposed project and development of project objectives.

Response to Comment 8-8

The DEIR analyzed a shorter contract extension term date on pages 7-13 to 7-15 in Chapter 7, Alternatives. See Response to Comment 8-7 regarding a Contractor's ability to exercise its right in accordance with Article 4 of the Contract to extend the expiration date of its Contract and why water service is likely to continue to at least 2085. As described on page 7-10 of the DEIR, impacts associated with deferred operation and maintenance and repair are speculative at this time as it is unknown how deferred maintenance and repair would affect SWP facilities and, in turn, affect SWP water service.

Response to Comment 8-9

An alternative that considers reduced Table A deliveries was included in the DEIR but, as described on pages 7-3 and 7-4, reducing Table A amounts proportionality for all the Contractors by amendment would not change the amount of water being delivered to the Contractors nor would it change the financial health of the SWP as it would not

affect any of the other Contract financial provisions that address SWP billing provisions and reimbursements. Therefore, reducing Table A deliveries was rejected because it does not address project objectives. Please see Response to Comment 5-11 for discussion of the definition of the proposed project and Master Response 2 for discussion of the range of alternatives evaluated in the DEIR. See Master Response 6 for more on reducing Table A amounts. See Master Response 1 for a discussion of the No Project Alternative. See also Response to Comment 5-53.

Response to Comment 8-10

See Master Response 1 for a discussion of the No Project Alternative and Master Response 2 for discussion of the range of alternatives evaluated in the DEIR. As described on page 7-9 of the DEIR, the No Project Alternative would not create new water management measures or change water allocation provisions of the Contracts. Also, pages 7-3 and 7-4 of the DEIR address why an alternative that reduces Table A amounts was rejected because it does not address the project objectives. See also Response to Comment 8-9. See Master Response 6 for more on reducing Table A amounts. As noted in Response to Comment 5-42, the DEIR did include an analysis of an alternative that contemplated a shorter Contract term – 2065 instead of 2085 (see pages 7-13 through 7-15). As stated on page 7-13 of the DEIR, similar to the proposed project, through 2065, Alternative 2 would not result in any direct physical environmental impacts because it would not create new water management measures, alter the existing authority to build new or modified facilities or change water allocation provisions of the current Contract.

See Master Response 3 for discussion of the relationship of the proposed project to California WaterFix.

Response to Comment 8-11

As described in Response to Comment 4-1, Contractor participation in California WaterFix will be addressed through a separate public negotiation and environmental review process to develop appropriate Contract amendments. See Master Response 3 for discussion of the relationship of the proposed project to California WaterFix and the separate Contract amendment process. See also Response to Comment 4-2. As to projects other than California WaterFix, the responsibility for determining whether to undertake any other project continues to vest in DWR as under the current contract provisions. And it is important to reiterate that any project or activity proposed for repair, construction, or acquisition beyond 2035, just like any project or activity undertaken before 2035, would require a review and determination in compliance with the CEQA

whether or not to proceed. DWR's practice is to inform and consult, as appropriate, with the Contractors before undertaking new projects.

Response to Comment 8-12

The comment discusses a separate project, the North Bay Aqueduct Alternate Intake Project (NBA AIP), which has not yet completed the CEQA review process and does not address the environmental analysis of the proposed project in the DEIR. The comment discusses potential financing of the NBA AIP that was quoted from the Solano County Water Agency's website.

See also Response to Comment 4-2. As to projects other than California WaterFix, the responsibility for determining whether to undertake any other project continues to vest in DWR as under the current contract provisions. DWR's practice is to inform and consult, as appropriate, with the Contractors before undertaking new projects.

Response to Comment 8-13

As stated in the DEIR on page 4-2, the proposed project consists of amendments to the financial provisions of the Contracts. The proposed project would not create new water management measures, alter the existing authority of DWR to build new or modify existing facilities, or change water allocation provisions of the contract. Furthermore, the biological opinions govern exports from the SWP, not the contracts. Please see Response to Comment 5-11 for discussion of the definition of the proposed project and development of project objectives.

As described in Response to Comment 4-1, Contractor participation in California WaterFix will be addressed through a separate public negotiation and environmental review process to develop appropriate Contract amendments. See Master Response 3 for discussion of the relationship of the proposed project to California WaterFix and the Contract amendment process. See also Response to Comment 4-2. As to projects other than California WaterFix, the responsibility for determining whether to undertake any other project continues to vest in DWR as under the current contract provisions. And it is important to reiterate that any project or activity proposed for repair, construction, or acquisition beyond 2035, just like any project or activity undertaken before 2035, would require a review and determination in compliance with the CEQA whether or not to proceed. DWR's practice is to inform and consult, as appropriate, with the Contractors before undertaking new projects.

Response to Comment 8-14

See Responses to Comments 8-13 and 6-2.

Response to Comment 8-15

See Responses to Comments 8-13 and 6-2. An alternative that considers reduced Table A amounts was included in the DEIR but, as described on pages 7-3 and 7-4, reducing Table A amounts proportionality for all the Contractors by amendment would not change the amount of water being delivered to the Contractors nor would it change the financial health of the SWP as it would not affect any of the other Contract financial provisions that address SWP billing provisions and reimbursements. Therefore, reducing Table A deliveries was rejected because it does not address project objectives. Further, the development of SWP facilities was enacted as part of statutory authority under the Burns-Porter Act (Water Code Section 12930 et seq.), and is not authorized directly by the Contracts. See Master Response 6 for more on reducing Table A amounts.

Response to Comment 8-16

See Response to Comment 5-11 for discussion of the definition of the proposed project and development of project objectives. See also Response to Comment 5-53. The goal of reliable water supply is likely the goal of any water planning project in the state. The proposed project is not the sole project in California tasked with solving this present and the ongoing dilemma of ensuring reliable water supplies in California. Instead, the proposed project is focused on the future financial stability necessary for operation and maintenance of the SWP. Although the proposed project, if approved, would be a critically important tool for managing California's water resources, it is not a statewide solution to California's water supply reliability problems. Therefore, the DEIR does not include other projects like California WaterFix, and the DEIR does not result in the piecemealing of the proposed project. See Responses to Comments 8-1 and 8-4. See also Master Response 2 for more on DWR's ability to define the project.

Response to Comment 8-17

As discussed in Response to Comment 8-4, the proposed project is an independent project that would occur with or without California WaterFix (see Response to Comment 5-75). A separate EIR/EIS was prepared to address the impacts of California WaterFix. Furthermore, as described in Response to Comment 4-1, Contractor participation in California WaterFix will be addressed through a separate public negotiation and environmental review process to develop appropriate Contract amendments. See Master Response 3 for discussion of the relationship of the proposed project to California WaterFix and the separate Contract amendment process. The attachments to the comment is included in Exhibit B to this FEIR.

Response to Comment 8-18

As discussed in Response to Comment 8-4, the proposed project is an independent project that would occur with or without California WaterFix (see Response to Comment 5-75). As described in Response to Comment 4-1, Contractor participation in California WaterFix will be addressed through a separate public negotiation and environmental review process to develop appropriate Contract amendments. See Master Response 3 for discussion of the relationship of the proposed project to California WaterFix and the separate Contract amendment process. The attachment to the comment is included in Exhibit B to this FEIR.

Response to Comment 8-19

See Responses to Comments 8-1 and 8-4. See also Response to Comment 5-11 for discussion of the definition of the proposed project and development of project objectives. The attachments to the comment is included in Exhibit B to this FEIR.

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October 17, 2016

VIA ELECTRONIC MAIL

California Department of Water Resources
 Attn: Ted Alvarez
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Comments on the Department of Water Resources Draft Environmental Impact Report for the Water Supply Contract Extension Project

To Department of Water Resources (“DWR”):

The Center for Food Safety (“CFS”) appreciates the opportunity to comment on the Draft Environmental Impact Report (“DEIR”) for the Water Supply Contract Extension Project (“Project”). CFS and its members depend on the sustainable and equitable operation of the State Water Project (“SWP”) and take great interest in the Project for the opportunity—and obligation—that the Project presents to mitigate the SWP’s environmental impacts. These comments are submitted on behalf of CFS, as well as its members, volunteers, and employees.

CFS is a nonprofit, public interest advocacy organization dedicated to protecting human health and the environment by curbing the proliferation of harmful food production technologies and promoting sustainable agriculture, including impacts to water resources. In furtherance of this mission, CFS uses legal actions, groundbreaking scientific and policy reports, books and other educational materials, and grassroots campaigns on behalf of its 750,000 farmer and consumer members across the country.

I. INTRODUCTION

The Project seeks to finance capital expenditures to the SWP beyond the 2035 expiration date set in the current contracts by signing long-term extensions for each contract. (DEIR at ES-1.) The SWP is the largest state-owned, multi-purpose, user-financed water storage and delivery system in the United States. (*Id.* at 2-2.) DWR constructed and currently operates and

9-1

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maintains the SWP, which conveys water to twenty-nine water contractors. (*Id.* at ES-1.) The contractors receive water service from the SWP in exchange for paying the costs that are associated with constructing, operating, and maintaining the SWP facilities. (*Ibid.*) DWR finances capital expenditures on the SWP by selling revenue bonds with terms of up to thirty years or more. However, according to DWR, it has become more challenging to finance expenditures because it is getting difficult to sell long-term revenue bonds beyond 2035, the date the contracts begin to expire. (*Ibid.*) Thus, the Project seeks to amend the financial sections of the contracts to ensure that DWR can finance SWP expenditures beyond 2035. (*Id.* at ES-3.)

9-1
cont.

Notwithstanding the importance of conveying water to a large portion of California’s population, the SWP has contributed to a substantial decline in the Sacramento-San Joaquin Delta watershed (“Bay-Delta”) ecosystem for the past fifty years. Water delivery is estimated in each of the contracts and included in a schedule for each contractor that sets forth the maximum annual amount of water that may be requested, which is known as the annual Table A amounts. (*Id.* at 2-12.) The contracts require DWR to make all reasonable efforts to deliver the full Table A amounts; however, the Table A amounts are much higher than those the SWP is capable of providing. This is one of the leading causes of the precipitous decline in the health of the Bay-Delta.

9-2

Realizing the crisis facing the Bay-Delta, the California State Legislature passed the Sacramento-San Joaquin Delta Reform Act of 2009 (“Delta Reform Act”) to ensure that all projects involving the Bay-Delta will meet the coequal goals of providing a more reliable water supply for California and protecting, restoring, and enhancing the Bay-Delta ecosystem. Despite the fact that the SWP unequivocally is subject to these requirements, the Project fails to align the contract extensions with the Delta Reform Act.

The DEIR is also deficient in its description of the future expenditures that will be enabled by the Project, failing to mention a single expenditure for which the money will be used. Most significantly, the DEIR fails to include an analysis of California WaterFix, which is an enormous expenditure that will likely be funded, at least in part, by the funds generated as a result of the Project. Without an analysis of proposed future expenditures to the SWP—and in particular California WaterFix—it is impossible to evaluate the environmental impacts of the Project, and the DEIR fails in its role as an informational document.

9-3

9-4

II. THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (“CEQA”)

Under CEQA, a public agency must prepare an environmental impact report (“EIR”) on any project the agency proposes to “carry out or approve” if the project may have significant environmental effects. (*Save Tara v. City of Hollywood* (2008) 45 Cal.4th 116, 121 [citing Pub. Resources Code, §§ 21100, subd. (a), 21151, subd. (a)].) An EIR is a “detailed statement ... describing and analyzing the significant effects of a project and discussing ways to mitigate or avoid the effects.” (Cal. Code Regs., tit. 14, § 15362 (“CEQA Guidelines”).) The EIR is intended “to demonstrate to an apprehensive citizenry that the agency has, in fact, analyzed and considered the ecological implications of its action. (*County of Amador v. El Dorado Water Agency* (1999) 76 Cal.App.4th 931, 944.) Because the EIR must be certified or rejected by public officials, it is a document of accountability. (*Ibid.*)

9-5

A crucial component of the EIR “is to ensure that all reasonable alternatives to Projects are thoroughly assessed by the responsible official.” (*Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 400 [citing *Wildlife v. Chickering* (1976) 18 Cal.3d 190, 197].) An EIR must describe a reasonable range of alternatives to the project, or to the location of the project, that could feasibly attain most of the basic objectives of the project while avoiding or substantially lessening any of the significant effects of the project. (CEQA Guidelines, § 15126.6, subds. (a), (f).)

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cont.

Another chief purpose of an EIR is the cumulative impact analysis. (*San Franciscans for Reasonable Growth v. City and County of San Francisco* (1984) 151 Cal.App.3d 61, 72-73.) The cumulative impacts from several projects is the change in the environment which results from the incremental impact of the project when added to other closely related past, present, and reasonably foreseeable probable future projects. (*Id.* at 73 [citing CEQA Guidelines, § 15355, subd. (b) (formerly § 15023.5, subd. (b).)].) Lead agencies therefore must prepare a list of projects producing related or cumulative impacts. (*Ibid.*)

III. THE SACRAMENTO-SAN JOAQUIN DELTA REFORM ACT OF 2009 (“DELTA REFORM ACT”)

In 2009, the California State Legislature determined that the Bay-Delta and California’s water infrastructure were “in crisis and the existing Delta policies were not sustainable.” (California Water Code, § 85001, subd. (a).) Accordingly, the State found that resolving the crisis required fundamental reorganization of the State’s management of Bay-Delta watershed resources. (*Ibid.*) In an effort to resolve the crisis, a new policy was enacted to guide management decisions of the Bay-Delta, known as the Delta Policy.

Under the Delta Policy, the California Legislature declared that the basic goals for the Bay-Delta are the following:

- (a) Achieve the two coequal goals of providing a more reliable water supply for California and protecting, restoring, and enhancing the Bay-Delta ecosystem. The coequal goals shall be achieved in a manner that protects and enhances the unique cultural, recreational, natural resource, and agricultural values of the Bay-Delta as an evolving place;
- (b) Protect, maintain, and, where possible, enhance and restore the overall quality of the Bay-Delta environment, including, but not limited to, agriculture, wildlife habitat, and recreational activities;
- (c) Ensure orderly, balanced conservation and development of Bay-Delta land resources; and
- (d) Improve flood protection by structural and nonstructural means to ensure an increased level of public health and safety.

9-6

(Pub. Resources Code, § 29702.) The California Water Code further elaborates that the State of California must reduce reliance on the Bay-Delta in meeting California’s future water supply

needs through a statewide strategy of investing in improved regional supplies, conservation, and water use efficiency. (California Water Code, § 85021.)

Under the Delta Reform Act, a state or local public agency that proposes to undertake a covered action shall prepare a written certification of consistency with detailed findings as to whether the covered action is consistent with the Delta Policy and shall submit that certification to the Delta Stewardship Council. (California Water Code, § 85225.) An action is covered if it is a plan, program, or project that occurs within the boundaries of the Bay-Delta, funded by a state or local public agency, is covered by at least one provision of the Delta Plan, and will have a significant impact on the coequal goals of the Delta Policy. (California Water Code, § 85057.5, subd. (a).) Regarding the SWP, an action is not covered only if it involves routine maintenance. (*Id.*, subd. (b)(2).)

9-6
cont.

Since a proposal to implement the Water Supply Contract Extension Project is likely a covered action, and is more than just routine maintenance, DWR must draft a written certification of consistency with detailed findings indicating that it is consistent with the Delta Plan and will meet the coequal goals of the Delta Policy.

a. DWR Must Align the SWP Long-Term Contracts with the Delta Policy.

In proposing to implement the Water Supply Contract Extension Project, DWR has an opportunity and requirement to ensure that the SWP long-term contracts meet the coequal policy requirements of the Delta Reform Act. That is, in extending the SWP long-term contracts, DWR must provide a more reliable water supply for California as well as protect, restore, and enhance the Bay-Delta ecosystem. By amending only the financial terms of the contracts, yet extending the terms of the contracts to 2085, DWR is failing to meet the coequal goals of the Delta Policy, and failing to meet its obligations under the Delta Reform Act.

The SWP was enacted into law in the Burns-Porter Act (California Water Code, § 12930 et seq.), which was passed by the California Legislature in 1959 and approved by the voters in 1960. (DEIR at 2-1.) The SWP delivers water pursuant to contracts between DWR and twenty-nine contractors, including water agencies, throughout California. (*Ibid.*) The Burns-Porter Act authorized the State of California to issue bonds for construction of the SWP and enter into contracts for the sale, delivery, or use of water or power made available by the SWP. (*Id.* at 2-1 to 2-2.) In return for state financing, public water agencies contractually agreed to repay all SWP capital and operating costs allocable to water supply. (*Id.* at 2-2.)

9-7

The SWP diverts large volumes of water from the Bay-Delta, which flows down the California Aqueduct and is eventually delivered to the contractors. (*Id.* at 2-16.) Each year, by the first of October, the contractors submit monthly water requests to DWR for the subsequent calendar year to receive the water diverted from the Bay-Delta. (*Ibid.*) The amounts requested are the Table A amounts, which set the maximum annual amount of water that may be requested to be delivered. (*Id.* at 2-12.) The contracts require DWR to make all reasonable efforts to complete the water supply facilities necessary to deliver the full Table A amounts in the contracts, but when the supply of Table A water is less than the total of all contractors' requests, the available supply of Table A water is allocated among all contractors in proportions to each

contractors’ annual Table A amount. (*Ibid.*) Thus, the current contracts focus on supplying the maximum amount of water for human consumption, including agriculture and industry, with little to no regards to the ecology of the region.

Due to the long-term contracts’ focus on DWR supplying the maximum amount of water to the contractors, and the SWP’s reliance on the Bay-Delta, the SWP has played a large role in devastating the Bay-Delta ecosystem. According to DWR’s 2011 SWP Delivery Reliability Report, SWP pumping is “not sustainable over the long term under current management practices and regulatory requirements.” (Cal. Dept. of Water Resources, Final Delivery Reliability Report (2011) (“2011 DRR”) p. 32 (Attached as Exhibit A).) That is partially why, in 2009, the California Legislature determined that the Bay-Delta was in crisis and passed the Delta Reform Act to restore the ecosystem and reduce the State’s reliance on the Bay-Delta as a water supply. Thus, in extending the contracts that supply Bay-Delta water through the SWP for an additional fifty years, DWR cannot and should not maintain the same wasteful practices that led to the deterioration of the Bay-Delta’s ecosystem in the first place.

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cont.

b. Alternatives that Align the SWP Long-Term Contracts with the Delta Policy.

There are multiple ways DWR can align the Project with the Delta Policy, which DWR included but rejected in its alternatives analysis. As mentioned above, one of an EIR’s major functions “is to ensure that all reasonable alternatives to proposed projects are thoroughly assessed by the responsible agency.” (*Laurel Heights Improvement Assn. v. Regents of University of California, supra*, 47 Cal.3d at p. 400.) Public agencies “should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental effects of such projects.” (*Id.* [citing Pub. Resources Code, § 21002].) When an alternative is found to be infeasible on the ground that it is inconsistent with the project objectives, the finding must be supported by substantial evidence in the record. (*California Native Plant Soc. v. City of Santa Cruz* (2009) 177 Cal.App.4th 957, 604.)

DWR need only evaluate alternatives that meet the project objectives. DWR and the contractors agreed to the following project objectives:

- (1) Ensure DWR can finance SWP expenditures beyond 2035 for a sufficiently extended period to provide for a reliable stream of revenue from the contractors and to facilitate ongoing financial planning for the SWP;
- (2) Maintain an appropriate level of reserves and funds to meet ongoing financial SWP needs and purposes;
- (3) Simplify the SWP billing process; and
- (4) Increase coordination of financial matters between DWR and the contractors.

(DEIR at ES-3.) The alternatives that DWR considered meet the project objectives, but DWR erroneously rejected them.

9-8

i. Reduce Table A Deliveries.

During the scoping process, comments recommended that the DEIR should include an alternative with a reduction of the maximum Table A deliveries to contractors based on DWR reliability reports, climate change reports, and the Delta Reform Act, as well as associated reports on future water supplies. (DEIR at 7-3.) As the DEIR mentions, annual Table A amounts set forth the maximum annual amount of water that may be requested by contractors, and under the terms of the contracts DWR must make all reasonable efforts to perfect and protect those water rights. (*Ibid.*) A history of Table A deliveries indicates that DWR frequently attempts to give the maximum amount of Table A deliveries, which is not sustainable and degrades the Bay-Delta ecosystem. (DEIR at 2-14.) Thus, if Table A amounts were to be reduced to amounts that aligned with the amount of water the SWP can reliably and sustainably deliver each year, DWR would not be pressured to pump more water than the Bay-Delta is capable of providing.

9-9

In fact, there is no justification for including the original full Table A amounts in the new contracts. DWR cannot deliver these allocations because they simply do not exist. According to the 2011 DRR, there is a zero percent chance of delivering more than 3,365 acre feet in a given year, even though the maximum Table A amount is 4,133 acre feet. (2011 DRR at 46-49.) The Bay-Delta faces numerous challenges to its long-term sustainability, including continued subsidence of Bay-Delta Islands, many of which are below sea level, climate change, the threat of increased variability in floods and droughts, and potential levee failure. (*Id.* at S-1.) The Table A amounts must be changed in the new contracts to reflect these challenges. DWR should conduct a full analysis of actual water supply availability, taking into account climate change, impacts to threatened and endangered species, public trust doctrine issues, and other environmental regulations and statutes, to determine realistic Table A amounts that can actually be delivered.

9-10

Despite this information, DWR excuses the use of the inflated Table A amounts as merely representing the maximum annual water delivery a contractor can request, and thus not guaranteed amounts. (DEIR at 7-3.) DWR therefore concludes that reducing Table A amounts proportionately for all the contractors by amendment would not change the amount of water being delivered to the contractors. (*Ibid.*) However, that conclusion is logically inaccurate and not supported by substantial evidence: reducing the Table A amounts would lower the maximum amount of water contractors could request each year, which in turn would lower the total amount of water DWR was contractually obligated to attempt to deliver. Setting Table A amounts at sustainable levels would also reduce the political and economic pressure on DWR to continually deliver water in excess of what the SWP system and the Bay-Delta ecosystem can handle.

9-11

The DEIR reasons that reducing Table A amounts would not change the financial health of the SWP because it would not affect any of the contract financial provisions that address SWP billing provisions and reimbursements. (*Id.* at 7-3 to 7-4.) DWR then rejected a reduction in Table A deliveries because it does not address the Project’s financial objectives. (*Id.* at 7-4.) However, as the DEIR admits, proportionally reducing the Table A amounts can be accomplished without reducing the annual amounts paid by each contractor, or the total amount

9-12

paid by all the contractors together (these figures are calculated proportionally, as a percentage of the total, not as fixed amounts per contractor). Thus, a reduction in Table A amounts is a clearly feasible and environmentally superior alternative. Not only can DWR meet all the objectives set forth above, it can also align the Project with the Delta Reform Act by ensuring a reliable and sustainable water supply to contractors and protecting, restoring, and enhancing the Bay-Delta ecosystem.

↑ 9-12
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ii. Implement New Water Conservation Provisions in the Contracts.

Comments during the scoping also recommended that the EIR include an alternative that requires new agriculture and urban water conservation measures in the contract amendments, but DWR again rejected the alternative. (DEIR at 7-4.)

DWR reasoned that it does not have to evaluate the alternative because existing regulatory and legal requirements independent from the Project require agriculture and urban water efficiency, conservation, and management measures. (DEIR at 7-4.) According to the DEIR, federal, state, and local regulatory requirements are in place, and the contractors’ water uses are governed by the Reasonable and Beneficial Use Doctrine. (*Ibid.*) The DEIR also states that Governor Brown issued Executive Order B-29-15, which requires stated mandatory water reductions from urban use. (*Ibid.*) Taking this into account, DWR concluded that additional water conservation measures would not address the financial challenges, nor would they make needed improvement to the current contract financial provisions, and therefore contract amendments with agriculture and urban water conservations measures were rejected for not meeting the basic project objectives. (*Ibid.*)

9-14

However, DWR fails to understand that the current federal, state, and local regulatory requirements are insufficient to protect and restore the Bay-Delta, which is exactly why the State Legislature determined that the Bay-Delta was in crisis and passed the Delta Reform Act. In fact, the Delta Plan promulgated pursuant to the Delta Reform Act specifically recommends DWR to include provisions “in all State Water Project contracts, contract amendments, contract renewals, and water transfer agreements that requires the implementation of all State water efficiency and water management laws, goals, and regulations, including compliance with Water Code § 85021,” which requires California to reduce reliance on the Bay-Delta as a water supply. (Delta Stewardship Council, *The Delta Plan* (2013) (“Delta Plan”) pp. ES-19, 103 (Attached as Exhibit B).) The impacts of water diversion and exports have environmental consequences beyond the Delta, impacting other hydrologically connected waters including the San Francisco Bay watershed. (See *The Bay Institute, San Francisco Bay: the Freshwater-Starved Estuary* (September 2016) p. 7 (Attached as Exhibit C).) The SWP’s Banks Pumping Plant is one of the single largest extractors of the San Francisco Bay watershed’s freshwater. (*Id.* at 9.) As a result of intensive water diversion and exports, on top of permanent drought conditions, the estuary and its unique and valuable fish and wildlife species have experienced extremely dry conditions throughout the past four decades. (*Id.* at 12.) The massive transformation of the Bay’s watershed, including SWP pumping, has changed the patterns of flow resulting in a sharp decline of native fish. (*Id.* at 37.) Six native fish species—Delta smelt, longfin smelt, steelhead, green sturgeon, and the winter and spring runs of chinook salmon—used to be among the most common in the estuary but are now listed as in danger of extinction. (*Ibid.*)

9-15

By failing to include urban and agriculture conservation measures into the contracts, DWR is failing to comply with the Delta Plan and maintaining the same wasteful practices that caused the deterioration of the Bay-Delta. The conservation measures would not impact the financial provisions of the contract, meaning that DWR can meet all the projective objectives while also complying with the Delta Plan.

9-15
cont.

IV. CUMULATIVE IMPACTS

a. Failure to Disclose Reasonably Foreseeable Probable Future Projects.

A chief purpose of CEQA is providing public agencies and the general public with detailed information about the effects of a project on the environment. (*Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 227.) Part of this vital informational function is performed by a cumulative impact analysis, which refers to when two or more individual effects which, when considered together, are considerable. (*Ibid.*) The cumulative impact is “the change in the environment which results from the incremental impact of the project when added to other closely related past, present, and reasonably foreseeable probable future projects.” (*Ibid.*) An EIR must analyze all probable future projects, which includes any projects that are undergoing environmental review. (*Gray v. County of Madera* (2008) 167 Cal.App.4th 1099, 1127.) Moreover, agencies have a duty to “use its best efforts to find out and disclose all that it reasonably can.” (*San Franciscans for Reasonable Growth v. City of County of San Francisco, supra*, 151 Cal.App.3d at p. 74 [citing CEQA Guidelines, § 15140, subd. (g).])

9-16

The DEIR concludes that the Water Supply Contract Extension Project will not result in physical environmental impacts, and therefore would not contribute to any cumulative effect, but DWR failed to analyze any reasonably foreseeable probable future projects. (DEIR at 6-4.) DWR proposed the Water Supply Contract Extension Project to affordably finance capital expenditures for the SWP because it is apparently difficult for DWR to sell revenue bonds used to finance the expenditures with maturity dates that extend beyond the year 2035. (DEIR at 4-1.) However, DWR has not described a single expenditure on the SWP that requires funding. Because DWR believes it needs more reliable funds to finance capital expenditures to the SWP, DWR must be aware of probable future expenditures, but has not disclosed what those expenditures are. DWR has a duty to disclose all that it reasonably can, and it is impossible to properly evaluate the environmental impacts of the Project without information regarding probable future projects that will use the funding enabled by this Project. DWR has therefore failed to conduct a proper cumulative impact analysis.

b. California WaterFix is a Reasonably Foreseeable Probable Future Project.

Despite its likely-insurmountable political and economic obstacles, and its dubious legality, California WaterFix qualifies as a reasonably foreseeable probable future project that will use SWP funding, and thus must be included in the DEIR’s cumulative impacts analysis. (*Gray v. County of Madera, supra*, 167 Cal.App.4th at pp. 1127-1128 [“[A]ny future project where the applicant has devoted significant time and resources to prepare for any regulatory

9-17

review should be considered a probable future project for the purposes of the cumulative impact[.]) DWR has prepared a Recirculated Draft Environmental Impact Report/Supplemental Draft Environmental Impact Statement (“RDEIR/SDEIS”) that purports to address the impacts of California WaterFix, making it a probable future project, yet information about this project is not sufficiently included in the DEIR. (DEIR at 7-5.) The DEIR concludes that since California WaterFix is separate and independent, and the contract extension would need to occur regardless of California WaterFix, it need not be included in the EIR. (*Ibid.*) Yet CEQA requires that the DEIR analyze all future probable projects.



9-17
cont.

Moreover, since the purpose of the Project is to enable DWR to finance SWP expenditures beyond 2035, and California WaterFix is an SWP expenditure, the funds will likely be used to pay for California WaterFix. (DEIR at 7-5.) Even in the unlikely event that California WaterFix obtains final approval, the Water Supply Contract Extension Project appears to exist for the purpose of funding California Waterfix, and DWR must therefore include California WaterFix in its cumulative impact analysis. In fact, California WaterFix, due to its extremely large capital cost, likely could not move forward without the completion of this contract extension. This is even more apparent when considering the removal of Article hh, which required that SWP revenue bonds be used to finance repairs to facilities that existed prior to January 1, 1987 and only be used to repair listed capital projects. (DEIR at 4-5.) The Water Supply Contract Extension Project proposes to delete the only clause that limits the extent of Delta Transfer Facilities that DWR could pursue after 1987. By removing Article hh, DWR would pave the way to finance California WaterFix with revenue bonds, which is prohibited in the current contracts.

V. CONCLUSION

DWR should not certify the DEIR or approve the Water Supply Contract Extension Project without conforming the Project to the Delta Policy, properly analyzing environmentally superior alternatives, and evaluating reasonably foreseeable probable future projects, including California WaterFix.



9-18

Thank you for the opportunity to comment on this matter. We look forward to your consideration and response to these comments.

Sincerely,

Ryan Berghoff
Center for Food Safety

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Response to Comment 9-1

The comment summarizes information about the SWP and the project as presented in the DEIR Executive Summary. See Chapter 2, State Water Project and Chapter 3, State Water Project Financing and Water Supply Contract Financial Provisions for descriptions of the physical and financial aspects of the SWP. See also Response to Comment 5-11 for discussion of the definition of the proposed project and development of project objectives.

Response to Comment 9-2

As described on page 4-1 of the DEIR, the proposed project would not change water allocation provisions of the Contract. See Response to Comment 5-32 for discussion of consistency with the Delta Reform Act.

Response to Comment 9-3

See Chapter 3, State Water Project Financing and Water Supply Contract Financial Provisions for detailed descriptions of the current financial provisions for operation and maintenance of the SWP. See Response to Comment 5-11 for discussion of the definition of the proposed project and development of project objectives. See also Master Response 2 for more on DWR's ability to define the project.

See also Response to Comment 4-2. As to projects other than California WaterFix, the responsibility for determining whether to undertake any other project continues to vest in DWR. It is important to reiterate that any project or activity proposed for repair, construction, or acquisition beyond 2035, just like any project or activity undertaken before 2035, would require a review and determination in compliance with the CEQA whether or not to proceed.

DWR's practice is to inform and consult, as appropriate, with the Contractors before undertaking new projects.

Response to Comment 9-4

The proposed project is an independent project that would occur with or without California WaterFix (see Response to Comment 5-75). A separate EIR/EIS was prepared to address the impacts of California WaterFix. Chapter 5 of the DEIR identified and analyzed potential direct and indirect environmental impacts associated with the proposed changes to the term length and financing terms of the Contract reflected in the negotiated AIP (the proposed project). See Response to Comment 5-11 for additional discussion of the definition of the proposed project and development of project objectives.

Furthermore, as described in Response to Comment 4-1, Contractor participation in California WaterFix will be addressed through a separate public negotiation and environmental review process to develop appropriate Contract amendments. See Master Response 3 for discussion of the relationship of the proposed project to California WaterFix and the separate Contract amendment process.

Response to Comment 9-5

See Response to Comment 5-11 for discussion of the definition of the proposed project and development of project objectives. A total of 7 alternatives were evaluated in the DEIR. See Master Response 2 for discussion of the range of alternatives evaluated in the DEIR. Cumulative impacts were evaluated in the DEIR and the rationale for including the cumulative projects presented. See Chapter 6 pages 6-1 through 6-4.

Response to Comment 9-6

See Response to Comment 5-32 for discussion of consistency with the Delta Reform Act.

Response to Comment 9-7

As described on page 4-1 of the DEIR, the proposed project would not change water allocation provisions of the Contract. See Response to Comment 5-32 for discussion of consistency with the Delta Reform Act.

See Response to Comment 5-11 for discussion of the definition of the proposed project and development of project objectives. As stated in the DEIR on page 4-2, the proposed project consists of amendments to the financial provisions of the Contracts. The proposed project would not create new water management measures, alter the existing authority of DWR to build new or modify existing facilities, or change water allocation provisions of the contract. As noted in Response to Comment 5-27, the proposed project would not result in amendments that would change existing operation and maintenance of the SWP, or result in changes to DWR's existing or future regulatory permits or permitting requirements. The attachments to the comment is included in Exhibit B to this FEIR.

Response to Comment 9-8

See Response to Comment 5-11 for discussion of the definition of the proposed project and development of project objectives. See Response to Comment 5-28 which notes that because the proposed project would not make changes to SWP water allocations, reduced water allocations are not analyzed as part of the proposed project or as one of

the alternatives. See Response to Comment 5-32 for discussion of proposed project consistency with the Delta Reform Act.

Response to Comment 9-9

See Response to Comment 5-11 for discussion of the definition of the proposed project and development of project objectives. See also Response to Comment 5-53. An alternative that considers reduced Table A deliveries was included in the DEIR but, as described on pages 7-3 and 7-4, reducing Table A amounts proportionality for all the Contractors by amendment would not change the amount of water being delivered to the Contractors nor would it change the financial health of the SWP as it would not affect any of the other Contract financial provisions that address SWP billing provisions and reimbursements. Therefore, reducing Table A deliveries was rejected because it does not address project objectives. See also Responses to Comment 5-21 and 5-7 for more information on the baseline use in the DEIR analysis. See Master Response 6 for more information on reducing Table A amounts.

Response to Comment 9-10

See Master Response 2 for discussion of the range of alternatives evaluated in the DEIR. See Master Response 6 for a discussion on reducing Table A deliveries. See also Responses to Comment 5-21 and 5-7 for more information on the baseline use in the DEIR analysis.

Specifically, as it relates to climate change and its effects on SWP deliveries, as described on page 5-6 of the DEIR and discussed in Response to Comment 5-88, because SWP water supply would not change under the proposed project and would continue to be delivered to the Contractors consistent with current Contracts, the proposed project does not change hydrology, regulations, or climate change, all factors that could affect water supply delivery by the SWP. DWR would continue to maintain and operate the SWP and deliver available supplies to the Contractors consistent with the Contract terms, including Table A deliveries, Article 21 deliveries, and all regulatory requirements. Therefore, no changes in the conditions of resources associated with the SWP would be expected.

Response to Comment 9-11

See Response to Comment 9-9 for discussion of the alternative to reduce Table A deliveries that was included in the DEIR. See also Master Response 6 for more information on reducing Table A amounts.

Response to Comment 9-12

See Response to Comment 9-9 for discussion of the alternative to reduce Table A deliveries that was included in the DEIR. As noted, an alternative reducing Table A deliveries was rejected because it does not address project objectives. Therefore, this alternative was not included in the environmentally superior alternative analysis. See Response to Comment 5-11 for discussion of the definition of the proposed project and development of project objectives. See also Master Response 2 for more on DWR's ability to define the project and Master Response 6 for more information on reducing Table A amounts.

Response to Comment 9-13

See Responses to Comments 9-9 and 9-12. See also Response to Comment 5-32 for discussion of consistency with the Delta Reform Act

Response to Comment 9-14

Section 5.2.18, Water Supply in the DEIR on pages 5-140 through 5-147 describes water planning efforts at the state and local level, including information on the Contractors' planning efforts through urban water management plans and integrated regional water management plans, regulatory requirements, and impact analysis. By law, these plans must include conservation and demand management measures. See Response to Comment 5-11 for discussion of the definition of the proposed project and development of project objectives. See Master Response 2 for discussion of the range of alternatives evaluated in the DEIR.

Response to Comment 9-15

As stated in the DEIR on page 4-2, the proposed project consists of amendments to the financial provisions of the Contracts. The proposed project would not create new water management measures, alter the existing authority of DWR to build new or modify existing facilities, or change water allocation provisions of the contract. See Response to Comment 5-11 for discussion of the definition of the proposed project and development of project objectives.

See also Responses to Comment 5-21 and 5-7 for more information on the baseline use in the DEIR analysis. As noted in Response to Comment 5-27, the proposed project would not result in amendments that would change existing operation and maintenance of the SWP, or result in changes to DWR's existing or future regulatory permits or permitting requirements. DWR's operation of the SWP complies with all relevant regulations. This compliance will be on-going with or without the proposed project.

See Response to Comment 5-32 for discussion of consistency with the Delta Reform Act and Master Response 2 for discussion of the range of alternatives evaluated in the DEIR. The attachments to the comment is included in Exhibit B to this FEIR.

Response to Comment 9-16

As described on page 5-7 of the DEIR several capital project could be financed in part or whole by the sale of longer term bonds should the proposed project be approved. However, the projects listed on page 5-7 would still be funded by other means should the proposed project not occur (e.g., Oroville hydroelectric license project). Further, an EIR or other environmental documentation for each of these projects has been or will be prepared. For future projects, DWR will continue its practice of providing separate CEQA compliance at the time that each such project is proposed. See Chapter 6, Other CEQA Considerations pages 6-2 through 6-4 for a description of the two projects identified for the cumulative analysis and the reasons why these two were the only projects that met the criteria for consideration as cumulative projects.

Response to Comment 9-17

Cumulative impacts were considered in Chapter 6, Other CEQA Consideration. As stated in that chapter on page 6-2, California WaterFix was considered in the cumulative impact analysis. See Chapter 6, Other CEQA Considerations pages 6-2 through 6-4 for a description of the two projects identified for the cumulative analysis and the reasons why these two were the only projects that met the criteria for consideration as cumulative projects.

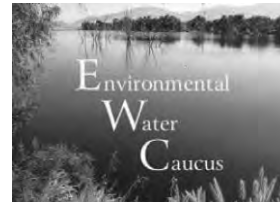
As discussed in Response to Comment 8-4, the proposed project is an independent project that would occur with or without California WaterFix (see Response to Comment 5-75). A separate EIR/EIS was prepared to address the impacts of California WaterFix. Furthermore, as described in Response to Comment 4-1, Contractor participation in California WaterFix will be addressed through a separate public negotiation and environmental review process to develop appropriate Contract amendments. See Master Response 3 for discussion of the relationship of the proposed project to California WaterFix and separate Contract amendment process.

In addition, Article 1(hh) is not proposed for removal although there are proposed modifications see response to comment 6-2.

Response to Comment 9-18

The comment is a conclusion to the letter referencing the main points of the letter. Please see Responses to Comments 9-2 through 9-17.

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October 17, 2016

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VIA EMAIL AND U.S. MAIL

Subject: Comments on Draft EIR for the Water Supply Contract Extension Project

Dear Mr. Alvarez:

On behalf of the Planning and Conservation League, Pacific Coast Federation of Fishermen's Associations and the Environmental Water Caucus representing hundreds of thousands of members and groups in California, we are writing to provide input on the Draft Environmental Impact Report for the Department of Water Resources' ("DWR") Water Supply Contract Extension Project ("DEIR"). The proposed project and DEIR fail to satisfy the requirements of CEQA and DWR's obligations under state law. As we explained in our scoping comments submitted on October 10, 2014, DWR's proposal to extend the term of existing State Water Project ("SWP") contracts for an additional 50 years necessarily implicates the urgent need to modernize other contract terms to reflect the current realities of climate change, restricted surface water supplies, declining water quality and environmental health of the Bay-Delta estuary, existing statutory requirements, and other current and anticipated changes that have occurred since these contracts were originally executed. DWR's failure to address these important issues while proposing to extend the contracts to 2085 is inexcusable and irreconcilable with Governor Brown's recognition in the 2016 California Water Action Plan of the "broad agreement that the state's water management system is currently unable to satisfactorily meet both ecological and human needs, too exposed to wet and dry climate cycles and natural disasters, and inadequate to handle the additional pressures of future population growth and climate change."¹

10-1

Moreover, DWR's proposal and the analysis on which it is based are legally flawed. First, DWR

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¹ http://resources.ca.gov/docs/california_water_action_plan/Final_California_Water_Action_Plan.pdf, at 1. All cited documents are incorporated herein by reference.

concludes that extending SWP contracts and water deliveries for another 50 years would result in no impact on the environment. But this conclusion is based on at least two faulty assertions that fatally taint the entire analysis. The first faulty assumption is that the SWP contracts would be extended to 2085 in any case, with or without this proposed project, “upon receipt of Article 4 letters from the Contractors,” without any other changes to the contracts. DEIR at ES-6. The second faulty assumption is that SWP operations and facilities will not change based on the more affordable financing and broader construction authority that the 50-year extension would provide. Second, DWR incorrectly asserts that the “proposed project is separate and independent from the California WaterFix project,” DEIR at 6-3, which causes DWR to impermissibly piecemeal the impacts of extending the contracts from the impacts of California WaterFix (“WaterFix”). Third, DWR and the SWP Contractors have recognized that multiple additional modifications to the SWP contracts will be necessary in order to implement WaterFix, whose modifications have been impermissibly excluded from this project and its impact analysis.

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DWR should reject the proposed project and prepare a new project and California Environmental Quality Act (“CEQA”) analysis that considers the full suite of contract modifications and related impacts that are necessary to modernize the State Water Project and keep it functional beyond 2035.

10-6

I. The DEIR’s Conclusion that the Proposed Project Would Cause No Environmental Impacts Is Flawed

A. DWR Improperly Conflates the “No Project” Alternative with the Proposed Project

10-7

The premise of the DEIR’s no impacts conclusion is that the SWP contracts would be extended to 2085 with or without the proposed project because of Article 4 of the contracts. Thus, DWR defines the “no project” alternative as extension of the contracts from 2035 to 2085 with no changes to any existing contract terms or operations. DEIR at 7-6. But DWR inexplicably selects a 2085 contract extension date under this alternative, thus rendering it essentially identical to the proposed project. This selection, which is not supported by any analysis or reasoning, undermines the impact analysis.

Article 4 allows for extension of the contracts on terms that are mutually agreed to. See, e.g., DEIR at 7-9. The Contractors may not simply demand that the contracts be extended indefinitely, or for 50 years as DWR assumes in the DEIR, nor does DWR have to acquiesce to such demands under Article 4. Indeed, the DEIR recognizes that “it is uncertain how far beyond 2035 the Contracts would be extended under this alternative.” DEIR at 7-11.² But the DEIR randomly selects 2085 as the expiration date, noting that this “is the same as the proposed

10-8

² The DEIR also recognizes that “DWR and the Contractors have made many amendments to the Contracts to address matters that have arisen over the past 55 years.” DEIR at 2-12. Implementation and extension of the contracts over the next 69 years – to 2085 – should be no different, but the “no project” alternative unreasonably assumes it will be.

project.” This unjustified assumption impermissibly skews the impact analysis. If a shorter date were selected, then DWR would continue to face constraints on its ability to finance and construct additions and improvements to the SWP, leading to impacts very different from those anticipated under the proposed project, which would facilitate such construction. The DEIR acknowledges that DWR would continue to face constraints on its ability to sell bonds under this scenario, thus limiting the ability to finance significant upgrades to SWP facilities, but fails to recognize that reality in its impact analysis. *Id.* at 7-4 to 7-6.

10-8
cont.

The Ninth Circuit Court of Appeals recently held that even where a statute mandates renewal, which is not the case here, the federal equivalent of CEQA, the National Environmental Policy Act (“NEPA”), “imposes obligations on agencies considering major federal actions that may affect the environment ... [and] [a]n Agency may not evade these obligations by contracting around them.” *Pac. Coast Fed’n of Fishermen’s Ass’ns v. U.S. Dep’t of the Interior*, 2016 WL 3974183 at *2 (9th Cir. July 25, 2016). As the Ninth Circuit noted, “a ‘no action’ alternative is ‘meaningless’ if it assumes the existence of the very plan being proposed.” *Id.* at *1. The court held that the United States Bureau of Reclamation (“Reclamation”) violated NEPA by failing to consider an alternative that would reduce water deliveries in a renewed contract. *Id.* at *3.³

10-9

A reduced delivery scenario under the “no action” alternative is more likely than the one that DWR has put forward. In fact, DWR itself has recently published and commissioned documents that assert that SWP deliveries will be far less in a “no action” future, under which new facilities are not constructed and upgraded. For example, the draft Bay Delta Conservation Plan prepared by DWR in 2013 projects that by 2025, Delta exports will fall to a range of 3.4-3.9 million acre-feet (“MAF”) per year on average, a reduction of about 1 MAF or more on average from today’s levels. *See, e.g.*, DWR, public draft Bay Delta Conservation Plan, at Table 9.A-2 (Nov. 2013) (available at

http://baydeltaconservationplan.com/Libraries/Dynamic_Document_Library/Public_Draft_BDCP_Appendix_9A_-_Economic_Benefits_of_the_BDCP_and_Take_Alternatives.sflb.ashx).

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DWR’s economic consultant for the WaterFix project recently reiterated this level of exports under a “no action” alternative, finding that Delta exports from existing SWP and Central Valley Project (“CVP”) facilities are likely to decline to 3.9 MAF by 2020, “a reduction of 0.8 maf from current levels.” The Brattle Group, Draft California WaterFix Economic Analysis, at 6 (Nov. 15, 2015) (available at <http://www.restorethedelta.org/wp-content/uploads/2016/09/CA-WaterFix-Economic-Analysis-Sunding.pdf>). DWR has presented similar reduced SWP delivery scenarios as likely in its most recent SWP delivery capability report. DWR, 2015 SWP Delivery Capability Report, at Appendices (<https://msb.water.ca.gov/documents/86800/c97c3baa-0189-4154-bf19-aa88392026ac>). Indeed, DWR’s largest contractor, the Metropolitan Water District of Southern California, relied on the reduced “ECLO” SWP delivery projections in its 2015

³ As discussed *infra* at note 5, DWR incorrectly rejected the “reduced deliveries” alternative here.

Urban Water Management Plan. MWD, 2015 Urban Water Management Plan, at 2-13 (“Under the 2015 SWP Delivery Capability Report with existing conveyance and low outflow requirements scenario, the delivery estimates for the SWP for 2020 conditions ... [are] equivalent to 976 TAF for Metropolitan, under long-term average condition.”) (available at http://www.mwdh2o.com/PDF_About_Your_Water/2.4.2_Regional_Urban_Water_Management_Plan.pdf).

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cont.

Because DWR anticipates that, without the addition of significant new SWP facilities, SWP deliveries are likely to decline significantly in the near future, the “no action” alternative should be revised to reflect a shorter contract extension and reduced delivery estimates over the life of this project. That assumption, which better matches DWR’s, and its contractors’ projections elsewhere, would lead to a different impact analysis than the one presented in the DEIR, with a greater disparity of future deliveries between the “no action” and “proposed project” alternatives. The DEIR should be revised to reflect those differences.

B. The DEIR Admits that the Proposed Project Will Allow DWR to Implement Projects with Potentially Significant Environmental Impacts

The DEIR states that a core purpose of the project is to “[e]nsure DWR can finance SWP expenditures beyond 2035.” DEIR at ES-3. As DWR explains: “In order for DWR to sell bonds for 30 years or more, which would provide more affordable financing to the Contractors for the SWP costs associated with constructing and repairing the SWP facilities allocated to water supply, it is necessary to extend the expiration dates of the Contracts.” DEIR at 1-2; *see also id.* at 4-1 (recognizing that DWR could not “as a practical matter” issue bonds with a maturity date beyond 2035 without extending the contract terms as proposed); *id.* at 5-4 (“the current Contracts require existing capital obligations to be repaid by 2035, causing a sharp increase in capital charges to contractors toward the end of the 2035 repayment period”). While the DEIR admits that this more affordable financing will increase the likelihood of modifications to the SWP that will have significant environmental impacts, it fails to analyze the impact of those reasonably foreseeable projects. Further, the proposed project would explicitly authorize DWR to extend the physical components of the SWP beyond current facilities, and thereby increase the likelihood of projects with significant environmental impacts. We adopt by reference previous comments submitted by PCL et. al. during the contract extension public comments on the SWP contract extension negotiation sessions and referenced in our scoping comments.

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CEQA requires that an EIR identify and describe the significant indirect environmental impacts that will result from the project, including actions that are a foreseeable consequence of the project, such as the construction and modification of SWP facilities here that the contract extension would make possible. 14 Cal. Code of Regs. § 15126.2(a); *City of Hayward v. Board*

10-13

of Trustees of Cal. State Univ., 242 Cal. App. 4th 833, 859 (2015) (EIR on plan to expand campus deficient for not analyzing increased student use of parks). For example, the DEIR notes that “[c]apital projects that could be financed in whole or in part by the sale of longer term bonds (if available as the result of contract extension) include: (1) reinforcing Perris Dam at Lake Perris against seismic failure ... ; (2) reconstructing the Ronald B. Robie Thermalito pump-generating plant ... ; (3) implementing the Oroville hydroelectric license project; and (4) obtaining a renewed Federal Energy Regulatory Commission (FERC) license for the SWP’s southern hydroelectric plants.” DEIR at 5-7. Each of these anticipated projects would likely have significant environmental impacts. Similarly, the DEIR notes that:

Because of physical and water quality limitations, the diversion at Barker Slough cannot deliver the maximum Table A water requested. In order to address these facility limitations and meet projected future water delivery needs of the North Bay Contractors, DWR is considering constructing a new intake and pumping plant facility in the Sacramento River and a new segment of NBA Conveyance pipeline that would be operated in conjunction with the existing Barker Slough Pumping Plant...[T]he NBA Alternate Intake Project (NBA AIP) would enable the NBA to deliver the total water supply allocation (Table A amounts) to the North Bay Contractors.

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cont.

DEIR at 2-5 to 2-6; *see also* <http://www.water.ca.gov/engineering/Projects/Current/NBA/>. Given the current stresses on and over-allocation of the Delta ecosystem, there can be no question that increasing SWP diversions from the Delta would cause potentially significant environmental impacts.⁴ Yet, that is what DWR proposes to do with the NBA AIP, which project would be more likely to occur with the more affordable financing available under the proposed extended contract term. *See, e.g.*, <http://www.scwa2.com/home/showdocument?id=918> at 5 (Solano County Water Agency discussing the challenges of funding the project, which “capital costs are estimated at about \$550 million” and “is expected to be financed by the State Water Project with revenue bonds,” and explaining that “[f]ull payment by SCWA and Napa County would be a significant financial burden to our rate payers”).

The DEIR anticipates that other SWP modifications will be made more likely with the contract extension and which are also likely to have potentially significant environmental impacts. In fact, the DEIR notes that the contracts themselves “require DWR to make all reasonable efforts to complete the water supply facilities necessary to deliver the Table A amounts in the Contracts.” DEIR at 2-12.⁵ DWR’s pursuit of such facilities “necessary to deliver the Table A

10-14

⁴ *See, e.g.*, DWR’s 2015 SWP Capability Report at 1-2 (available at <https://msb.water.ca.gov/documents/86800/144575dd-0be1-4d2d-aeff-8d7a2a7b21e4>).

⁵ The proposed project’s extension of this contract provision for another 50 years also undermines DWR’s asserted basis for rejecting an alternative that would reduce Table A deliveries. The DEIR states that “Reducing Table A amounts proportionately for all the Contractors by amendment would not change the amount of water being

amounts in the Contracts,” including WaterFix with its stated purpose of enabling full contract deliveries, would significantly increase diversions and exports within and upstream of the Delta, causing significant environmental impacts. *See, e.g.*, DWR Application to USACE to Implement WaterFix, at 8 (Aug. 24, 2015) (available at https://s3.amazonaws.com/californiawater/pdfs/5n2mg_Complete_Final_CA_Water_Fix_USAC_E_404_Permit_Application.pdf) (the “purposes of the proposed actions are to ... restore and protect the ability of the SWP and CVP to deliver up to full contract amounts ... consistent with the terms and conditions of water delivery contracts held by SWP contractors.”). As DWR’s most recent SWP Capability Report admits, “[u]nder existing conditions, the average annual delivery of Table A water ... is 2,550 taf/year,” far less than the nearly 4.2 MAF of annual Table A amounts in the contracts,⁶ and the “future inability of the SWP to deliver water to meet demands of certain [south-of-delta] contractors is a very real concern.” *Id.* at 10.

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cont.

Finally, the proposed project includes new authorization for “SWP revenue bonds to be issued to: (1) finance repairs, additions, and betterments to most facilities of the SWP without regard to whether the facilities were in existence prior to January 1, 1987, which is the current Contract requirement in Article 1(hh)(8); and (2) finance other capital projects (not already in the list in Article 1(hh) for which revenue bonds could be sold) when mutually agreed to by DWR and at least 80 percent of the affected Contractors.” DEIR at 4-5 (emphasis added). This new authorization to finance and build new SWP facilities that were not in existence prior to January 1, 1987, is likely to cause significant impacts beyond those contained in the current contracts, including, but not limited to, increasing the likelihood of the new SWP diversion and conveyance facilities envisioned by WaterFix, which DWR has already acknowledged will cause significant environmental impacts. *See, e.g.*, Letter from Jake Campos, STIFEL, to Mary Lou Cotton, SWPCA at 4 (March 19, 2014) (Exhibit A) (without contract amendments, “DWR’s legal counsel has concluded that BDCP is not on the list of approved projects that are eligible for funding, including through bond financing”). The DEIR’s failure to identify and analyze those impacts fails to comply with CEQA.

10-15

Thus, DWR’s conclusions in the DEIR that the proposed project would not “alter the existing authority to build new or modify existing facilities” or “result in construction or modification of SWP facilities,” DEIR at 5-96, and that “SWP water supply would not change under the proposed project” are contradicted by the facts. *See* DEIR at 5-6. The proposed project makes increased SWP water supply more likely by explicitly authorizing new facilities that are not

10-16

delivered to the Contractors....” DEIR at 7-3. This assertion is not true if DWR is simultaneously obligating itself through 2085, as the proposed project would do, “to make all reasonable efforts to complete the water supply facilities necessary to deliver the Table A amounts in the Contracts.” Nor is it true if the proposed project increases the ability of DWR to expand SWP facilities to increase deliveries, as it would do. Thus, the DEIR also suffers from failing to analyze a reasonable range of alternatives, including a reduced contract amount alternative, as well as modifications to other contract terms.

⁶ *Id.* at 2.

authorized under the current contract, extending DWR’s obligation to build out the SWP to achieve full Table A amounts, and making SWP expansion and extension projects more affordable. DWR’s failure to analyze the impacts of these and related SWP modifications is impermissible piecemealing under CEQA. A far better solution would be to adjust Table A amounts to reflect more realistic delivery terms, now and in the future, and to omit the SWP contract term that “require[s] DWR to make all reasonable efforts to complete the water supply facilities necessary to deliver the Table A amounts.”

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cont.

II. The DEIR Improperly Piecemeals Reasonably Foreseeable SWP Changes and Contract Modifications with Potentially Significant Environmental Impacts

The DEIR asserts that the “proposed project is separate and independent from the WaterFix project,” DEIR at 6-3, and excludes numerous other SWP contract modifications that are reasonably foreseeable.

CEQA defines a “project” as the whole of an action that has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment. The entire project being proposed must be described in the EIR, and the project description must not be artificially truncated so as to minimize project impacts. *City of Santee v. County of San Diego* (1989) 214 Cal. App. 3d 1438, 1450. A project description must include all relevant aspects of a project, including reasonably foreseeable future activities that are part of the project. *Laurel Heights Improvement Assn. v. Regents of the University of California* (1988) 47 Cal.3d 376. Responsibility for a project cannot be avoided by limiting the title or description of the project. *Rural Land Owners Association v. Lodi City Council* (3d Dist. 1983) 143 Cal. App.3d 1013, 1025.

10-17

The DEIR fails to meet these requirements of CEQA because, among other things, it fails to analyze the impacts of the proposed WaterFix project, even though several Contractors have admitted that the proposed SWP contract extension is a necessary condition for financing WaterFix. In addition, the DEIR excludes consideration of other contract changes that are being anticipated to enable implementation of the proposed California WaterFix project.

The SWP Contractors have recognized that the proposed project is necessary to enable financing and implementation of WaterFix. For example, in September, 2014, staff at the Metropolitan Water District of Southern California acknowledged that the proposed SWP contract amendments are a necessary step in financing what was then called the Bay Delta Conservation Plan, now known as WaterFix. *See* MWD, Special Committee on Bay-Delta Presentation Re. Review Status of BDCP Cost Allocation Discussions (September 23, 2014) (available at <http://edmsidm.mwdh2o.com/idmweb/cache/MWD%20EDMS/003735248-1.pdf>) (Exhibit B). Similarly, Kern County Water Agency staff explained in September 2013 that “DWR and SWP Contractors need to come to agreement on a contract extension that matches the term of the

10-18

BDCP and provides the SWP Contractors with a more appropriate role in managing SWP expenses.” Kern County Water Agency, “Resolution of Issues Necessary to Inform a Development of a Business Case to Support a Decision on Continued Funding for the Bay Delta Conservation Plan and the Delta Habitat Conservation and Conveyance Program,” at 1 (Sept. 23, 2013) (Exhibit C).

10-18
cont.

Several financing agencies similarly reiterated the need to extend the contracts to enable WaterFix. In response to a State Water Project Contractors Authority’s request for proposal regarding financing the BDCP in March 2014, Morgan Stanley stated,

“**Water Supply Contracts.** We understand that DWR’s water supply contracts are in the process of being extended, likely to 2085, or 50 years from 2035 when most expire. Clearly, in order to finance the substantial costs associated with CM1 in the BDCP, the extension of these contracts is essential to allow for the amortization of financing payments over a long period of time.”⁷

10-19

Raymond James echoed that the “current contracts between DWR and the water contractors ... will have to be renegotiated in order to fund the tunnels.... Investors will be concerned about the extension of those terms through the life of the bonds.” Raymond James and Associates, Inc., Response to Request for Qualifications and Proposals for Underwriting Services, at 9 (March 19, 2014) (Exhibit E).

In addition, the Contractors have identified a number of other contract amendments that are likely when and if the proposed WaterFix is approved, but which are excluded from the proposed project and DEIR. For example, in a November 2013 presentation, the State Water Contractors identified a number of recommended alternatives for financing WaterFix, all of which require SWP contract amendments. State Water Contractors Management Briefing to DHCCP SWP Cost Allocation Working Group, at 9 (November 8, 2013) (Exhibit F) (“Contract Amendment Likely Needed to Reflect Different Cost Allocations and Different Water Supply Deliveries, and Allowance for Annual Sales”); *see also id.* at 13 (“SWP Contract Amendment Needed” for Alternative 2C); *id.* at 17 (Alternative 4A “Would Require Contract Amendment”). On April 1, 2014, the State Water Contractors considered another set of financing options for WaterFix, all of which, again, would require amendments to existing SWP contracts. State Water Contractors Presentation to SWP Cost Allocation Workgroup, April 1, 2014 (Exhibit G).

10-20

DWR and the Contractors have indicated that they will make financing decisions on WaterFix by the end of this year. Those pending, near-term decisions are likely to have a significant impact on the scope of amendments needed to SWP contracts, but also the range of impacts associated with those impacts. *See, e.g.,* Email from Stephen Arakawa Re. Kern County Proposal on

⁷ Morgan Stanley, “State Water Project Contractors Authority: Response to Request for Qualifications and Proposals for Underwriting Services,” at 8 (March 19, 2014).

BDCO [*sic*] Cost Allocation, January 30, 2014 (Exhibit H) (Kern County Water Agency propose financing strategies for a smaller, “urban-only” 6,000 cubic feet per second (“cfs”) WaterFix facility because Kern is not supportive of the current 9,000 cfs approach). DWR should suspend the current SWP contract amendment proposal until these discussions are final and the full suite of amendments and impacts can be considered in a comprehensive fashion, as CEQA requires.

The attempt by the DEIR to separate the WaterFix financing and related issues to some future analysis runs afoul of CEQA’s requirements to define the project to encompass the whole of the action. It must be revised in a recirculated CEQA analysis.

We appreciate the opportunity to provide our input and urge DWR to address these issues in a revised project and EIR.

Sincerely,



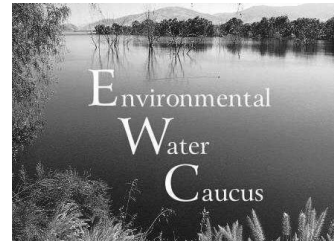
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10-20
cont.



AQUALLIANCE

DEFENDING NORTHERN CALIFORNIA WATERS

CA Save Our Streams Council

March 4, 2013

Carl Torgersen
Deputy Director of the State Water Project
California Department of Water Resources Contract Extension
1416 9th Street, Room 1640-H4
Sacramento, CA 95814

Via email: watercontractextension@water.ca.gov

Below is our letter to DWR Director Mark Cowin. Please accept this letter as a public comment for the water contract extension process.

March 3, 2014

Mark Cowin, Director
Department of Water Resources
1416 9th Street
Sacramento, CA 95814

Re: The Proposed 3D-Billing Authorization Amendment to the Existing State Water Project [SWP] Water Supply Contracts would likely shift Fish and Wildlife Costs Incurred by the SWP to the General Fund for 40-75 Years, Limiting Legislative Authority, Changes and Oversight

10-21



Dear Director Cowin:

At the last Water Supply Contractor Extension negotiation session, the SWP contractors urged the adoption of the existing Davis-Dolwig Act language¹ into 40 to 75 year water supply contracts. Furthermore, SWP contractors requested no water supply contract charges for required regulatory permit costs along with operation and maintenance charges for these required fish and wildlife facilities and recreation facilities be charged to the contractors.

State Negotiators should be Directed to Deny the SWP Contractor Request that would Thwart Legislative Power and Shift Unknown Costs to the General Fund—These are Project Costs not General Fund Costs.

We urge you to direct your negotiators to deny the proposed changes in the Objective 3D: Billing Authorization. The goal of such a contract change is likely to thwart Legislative oversight. Absent Legislative appropriations, this action would lock up in 40 to 75 year contracts this language, thereby shifting costs for fish and wildlife and recreation to the General Fund. Locking this language into such long term contracts would likely protect the SWP contractors at the expense of other General Fund appropriations. Given limited budgets, it is not clear how these required fish, wildlife and recreation measures would be paid. There has been discussion of interest bearing accounts generating the revenue, but these costs are likely to be substantial and are a required permit for the SWP facilities. If adopted by DWR, the only remedy for the Legislature, if there is one, would be fraught with legal challenges under contract law.

State Negotiators should be directed to deny the Adoption of existing Davis-Dolwig Act language into these 40 to 75 Year Contracts.

The California State Legislative Analyst Office (LAO) has issued a series of reports indicating the approximately 10% costs of the SWP are allocated to fish, wildlife and recreation.² Many times, there are no such benefits. These costs are substantial. In addition, under the Governor’s proposed peripheral water tunnels, such fish and wildlife costs along with operation and maintenance are likely to cost billions. Adopting contract language that would shift these types of costs from the water supply contract charges to the taxpayers or General Fund would have serious consequences. The LAO has indicated, “This allocation of costs without Legislative approval conflicts with the Legislature's exclusive constitutional authority to set its expenditure priorities by making appropriations.”³ Originally only “enhancements” to

10-21
cont.

¹ California Water Code § 11900-11925

² **LAO Policy Concerns and Recommendations Made in Past Years.** We have raised concerns in the past (again, see “[Funding Recreation at the State Water Project](#),” as well as our [analyses of the 2009-10](#) and [2010-2011](#) Governor’s budgets) over DWR’s practice of using SCRIB to calculate the state’s share of SWP costs. Most importantly, the practical implication of the use of this methodology (as implemented by DWR) is that DWR assigns cost responsibility to the state for aspects of SWP that lack any direct recreational component. See <http://www.lao.ca.gov/laoapp/budgetlist/PublicSearch.aspx?Yr=2011&KeyCol=401>

³ See <http://www.lao.ca.gov/laoapp/budgetlist/PublicSearch.aspx?Yr=2011&KeyCol=401>

fish and wildlife were to be funded by the taxpayer and the General Fund.⁴ Governor Ronald Reagan’s DWR Director Gianelli explained the cost allocation this way, “*The mitigation of damages to fish and wildlife resources should be mentioned because it differs greatly from recreation and fish and wildlife enhancement. Requirements for preserving existing, or pre-project fish and wildlife resources, or for mitigation of damages to them, produce no new benefits. Water project funds are used for fish and wildlife mitigation facilities and operations. These costs are project costs and are reimbursable*” [emphasis added]⁵

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cont.

Deny Contract Amendment Objective 3D: Billing Authorization.

The proposed SWP Contractor language is broad and, under questioning, includes both capital costs and operation and maintenance costs. Specifically the Contractors want, “*Costs incurred to develop, construct, support or maintain fish and wildlife enhancement or public recreation...including Costs incurred to secure or comply with a permit, license or other approval issued by any federal, state, or local agency, shall not be included in the prices, rates and charges imposed for water and power and **shall not be reimbursable by the contractors pursuant to the Contract.***” (emphasis added)

The General Fund has already been tapped for excessive unjustified costs that are necessary mitigation costs of the SWP and its beneficiaries. The Legislative Analyst has brought this to the Legislature’s attention on numerous occasions: “*Given the "off-budget" nature of SWP (the Legislature only approves SWP positions, not expenditures), the DWR has been able to pursue development of SWP projects without expressed legislative consent, later retroactively billing the Legislature and the state's purse for its estimate of the state's share of the costs of those projects. This runs up against, and potentially conflicts with, the Legislature's exclusive constitutional authority to set its expenditure priorities by making appropriations.*”⁶ Such a contract amendment would tie the hands of the Legislature and its constitutional power. Existing and future permit costs such as those envisioned by the proposed peripheral water tunnels conveyance and BDCP permits would be a necessary project cost and should be borne by the water supply contractor beneficiaries. Compliance with Water Code Section 85089(a)

10-22

⁴ http://www.c-win.org/webfm_send/13. Originally, the General Fund paid the costs assigned to recreation, and fish and wildlife purposes. Since 1989, those costs not reimbursed by the General Fund offset an equal amount the SWP owes the California Water Fund. Recreation and fish and wildlife enhancement costs are non-reimbursable by SWP contractors. (However, contractors are responsible for reimbursing mitigation costs related to recreation, fish and wildlife.)

⁵ DWR Bulletin 117 pg 8

⁶ http://www.lao.ca.gov/analysis_2009/resources/res_anl09004003.aspx Points include: Over-Allocation of Total SWP Costs to Recreation; Operational Costs at Recreation Incurred Without Legislative Review; Regulatory Compliance Costs Are Being Allocated by DWR to Davis-Dolwig: The DWR has allocated a portion of the added costs of these facilities to Davis-Dolwig and the state, rather than including them in charges to SWP contractors, even though these costs are the result of regulatory requirements that must be met to operate the hydroelectric plant. Currently, these regulatory-related costs for providing recreation at Lake Oroville amount to approximately \$1.5 million annually. However, DWR has estimated that these regulatory-related costs could increase to \$11.5 million per year, for a period of 50 years.

requires such mitigation along with operation and maintenance costs for this mitigation to be borne by the state and federal water project contractors.

↑ 10-22 cont.

The Contract Amendment Objective 4: Affording the Opt Out Provision of the Exorbitant BDCP-DHCCP Costs Should Be Allowed.

Finally, it is unclear why after 21 months of negotiations, Objective 4, the opt-out of payment for the BDCP-DHCCP peripheral tunnels project was dropped. As Deputy DWR Director Laura King-Moon testified at the BDCP Oversight hearings⁷ when Mr. Frazier, Chair of the Assembly Committee on Accountability and Administrative Review, asked about the ability for contractors to opt out of the BDCP, and what would the effect of that be, she stated:

“If some contractors did not want to participate, other contractor’s costs potentially would go up and their water supplies associated with the project would go up, so it would balance itself out in that regard.” replied Ms. King Moon.

“So opting out undermines the ability to finance the project. Has the administration made it clear to the contractors that opting-out is not an option for them?” asked Mr. Frazier.

“We have not made anything like that clear,” replied Ms. King Moon.

It is clear meetings are taking place and decisions have been proffered, however, the public and the Legislature have not been privy to these meetings and decisions. The SWP Contractors wrote to you on January 28, *“...there is general agreement on an assumption that North of the Delta SWP contractors will be largely excluded from repayment obligations for the costs of BDCP CM1, although they would continue to be responsible for past obligation for existing facilities and Endangered Species Act compliance that are existing obligation of SWP contractors....providing enhanced management tools, individual SWP contractors would be able to sell or exchange their supply as needed to other SWP contractors on a willing partner basis.”* We have requested a copy of the “December 2013 Deal Points”, however, as yet we have not received them.

10-23

Also SWP Contractors and DWR representatives have conducted ‘secret’ Executive DHCCP Committee meetings to develop the Delta Habitat Conservation and Conveyance Program (DHCCP), which provides the engineering and environmental analysis used by DWR and state and federal contractors to promote the BDCP and obtain the necessary federal and state permits to export more water supplies. Again, required minutes of these meetings of public agencies have been requested, but not been made available.

We remain concerned that these proposed contract amendments will in fact socialize more of the costs while privatizing the benefits of a project that has already received substantial taxpayer funds. Such a lack of transparency in the corporate world might be referred to as collusion. Relying on access to the debt market through DWR with the implied back stop of the General Fund, more disclosure of reduced debt reserves and sources of revenue—water sales and property taxes—need the public spotlight. Hopefully, both the public and the Legislature will be fully informed before billions of dollars of “permit”

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⁷ <http://mavensnotebook.com/2014/02/19/assembly-oversight-hearing-on-the-funding-structure-and-economic-impacts-of-the-bay-delta-conservation-plan-part-1/>

costs associated with water supply projects are transferred for decades—40 to 75years--to the taxpayers and General Fund. Again we urge you to direct DWR negotiators to deny Objective 3D: Billing Authorization.

↑
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cont.

We look forward to your response. Thank you for consideration of these views from groups representing hundreds of thousands of ratepayers and taxpayers throughout the State of California.

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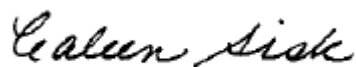
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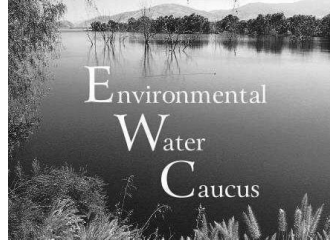


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July 3, 2013

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Via email: watercontractextension@water.ca.gov

Re: Comments on State Water Project (SWP) WATER SUPPLY CONTRACT EXTENSION Negotiation Project

The undersigned respectfully submit the following comments regarding the SWP water supply contract extension negotiation project, which proposes to extend existing water supply contracts for 40 to 75 years. These extended contracts would rely on water sales to meet as yet undisclosed costs, while extending ratepayer debt to repay the increased interest and unknown costs for two to three future generations of Californians.

As noted in background documents, the original contract with the people of the State of California assumed a cost of \$1.75 billion in general obligation bonds to fund the construction of the State Water Project. Additional debt to fund full construction, maintenance and operation costs has been required, however. Revenue bonds of \$7 billion have been sold, with \$2.3 billion still outstanding.¹ All of this debt is backed by ratepayers and water sales, if water is available.

10-24

¹ <http://www.water.ca.gov/swpao/watercontractextension/>

For decades urban ratepayers invested millions of dollars to ensure an urban preference during times of shortages. This preference was an insurance policy whereby these municipal water users would receive water on a priority basis during times of water shortages. In closed door SWP contractor sessions, without ratepayer or public participation, this preference was removed. Given droughts, climate extremes, and uncertainty of State Water Project water supplies, any contract extension must include an objective to reinstate this preference and these contract provisions that were removed without ratepayer notice or participation. This urban preference requirement would ensure that decades of promises, contract obligations, and ratepayer investments by these users, who pay the bulk of the project costs, would not be abrogated.

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cont.

Under the terms of the Monterey Settlement Agreement and good business practices, any extension or refinancing of SWP project debt needs to clearly disclose total costs, total interest payments, amounts of water projected to be available for delivery, and needed capital reserves for replacement of this aging infrastructure. Additionally, public disclosure of all costs associated with these contract extensions must be honestly and completely displayed in intelligible language. For example, if this contract extension project proposes to “indirectly” or “directly” finance any “new” as yet unapproved capital expenditures, such as the Governor’s proposed approximately \$25 billion twin tunnels construction costs with estimated debt, operations, and other costs totaling \$51.4 billion²—these costs also need to be disclosed to the public and ratepayers before obligating them to this multi-generational contract extension.

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The proposed contract extensions and repayment period will saddle generations with debt and massive interest payments. Prior to any adoption of these proposals, contracting agencies must, under current law, seek approvals from ratepayers disclosing the full costs (including interest and debt payments) and need prior to adopting these obligations that use their property taxes or rate dollars as collateral.

As announced, DWR proposes to disclose at the next negotiating session the costs of the SWP contract extension to state taxpayers under the Davis-Dolwig Act. Hopefully this disclosure will address legislative criticism of how these allocations have over allocated costs to the public for recreation and fish and wildlife enhancements that should be paid by SWP contractors.

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By over-allocating SWP project costs to recreation, DWR and the SWP contractors over charge the public for SWP costs and exaggerate recreation benefits or fish and wildlife enhancements of the SWP project. For example the public is charged for “recreation” at the Edmonston Pumping Plant—a facility closed to the public, and yet 3.1 percent of the annual SWP operational costs are allocated to the general fund and thus, the taxpayers.³ These inflated recreation costs, along with regulatory permit condition costs under

² See Chapter 8 Administrative Draft BDCP documents (p. 8-86 & p. 8-88) & <http://mavensnotebook.com/the-bdcp-road-map/project-costs-and-financing/> & http://www.mercurynews.com/science/ci_22791436/next-big-step-jerry-browns-23-billion-delta & <http://www.latimes.com/news/local/la-me-delta-cost-20130530.0.3249093.story>

³ http://www.lao.ca.gov/analysis/2009/resources/res_anl09004003.aspx Also see Legislative Analyst Report that raised concerns about DWR’s methodology for calculating Davis-Dolwig costs documented in the 2009 report, *Funding Recreation at the State Water Project*.

FERC relicensing, must be paid by the State Water Project Contractors and should not be allocated to the general taxpayer.⁴ As documented by the Legislature, allocating regulatory compliance costs of SWP operations to Davis–Dolwig and thus, the general fund, rather than including them in charges to SWP contractors (users of the water system), shifts these costs that should be considered costs of doing business by the SWP as typically public utilities are required to do.⁵ DWR does not have the power to continue to obligate the general fund for these inflated SWP costs without Legislative approval.

In summary, the State Water Supply Project contract extension project should accurately reflect all costs, including interest, anticipated under any “refinancing” or debt reauthorization. We do not believe that past court rulings meant to provide DWR with a blank check of debt authorization in *Warne v. Harkness*, 60 Cal.2d 579. Critical to this accurate reflection of the costs should be an honest appraisal of replacement costs and emergency provisions for pump failures or repair costs. Just one example is the miles of the California Aqueduct impacted by subsidence. Further, this debt refinancing also must include accurate data regarding the amount of water that may or may not be available for sale over any given repayment period, especially given climate change. Finally this debt refinancing necessarily needs to include “op out” provisions for those contractors who either will not benefit or do not want to participate, or whose ratepayers do not want the added expense of proposed “new conveyance tunnels” that are likely to be exorbitantly expensive and will not provide benefits sufficient to warrant the additional construction, operating and debt costs.

Any changes to current debt loads and contract costs demand DWR and the SWP Contractors understand ratepayers and taxpayers are at a breaking point. Water rates are projected to more than double over the next ten years under existing operating costs, replacement and power costs. Full disclosure of debt costs and new construction proposals need to seriously consider the ability to rely on ratepayers to foot the bill and whether water supply projections are accurate to support such increased debt loads.

10-26
cont.

⁴ http://www.lao.ca.gov/2009/rsrc/reforming_davis-dolwig/davis-dolwig_030909.pdf “There a number of facilities in the SWP that are regulated under FERC, including Lake Oroville—a site in the final stages of renewing a license for a further 50 years of operation. As part of the relicensing process, DWR has agreed to provide recreation facilities that will cost an estimated \$500 million over the 50 years of the license. The Department of Water Resources (DWR) plans to allocate these costs to Davis-Dolwig and hence to the state..... Currently, these regulatory-related costs for providing recreation at Lake Oroville amount to approximately \$1.5 million annually. However, DWR has estimated that these regulatory-related costs could increase to \$11.5 million per year, for a period of 50 years.”

⁵ http://www.lao.ca.gov/2009/rsrc/reforming_davis-dolwig/davis-dolwig_030909.pdf pg 9

Thank you for consideration of these views from groups representing hundreds of thousands of ratepayers and taxpayers throughout the State of California.



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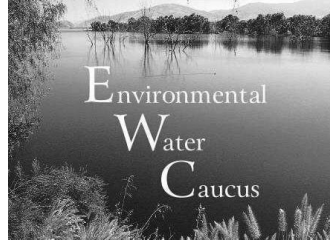


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July 10, 2013

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Re: Comments on State Water Project (SWP) WATER SUPPLY CONTRACT EXTENSION Negotiation Project

The undersigned respectfully submit the following comments regarding the SWP water supply contract extension negotiation project, which proposes to extend existing water supply contracts for 40 to 75 years. These extended contracts, if adopted, would rely on water sales to meet as yet undisclosed costs and the resulting long-term debt will saddle ratepayers with increased interest and unknown costs for two to three future generations of Californians.

We agree with both agency groups—SWP contractors and the Department of Water Resources representatives—that each is accountable to elected officials, ratepayers and taxpayers. As such the electorate deserves greater transparency and full disclosure of the costs of this SWP water diversion system including emergencies, maintenance, replacement and reserve projects, and the full cost of any new capital projects, such as the peripheral tunnels project or BDCP—and the total revenues needed to cover these costs.

10-27

Central to the water supply contract extension negotiations is a determination of the safe yield of the State Water Project. Federal scientists estimate the snowpack of the Sierra Nevada range could lose 80% of its winter snowpack by the end of the century [87 years].¹ Relying on paper water as collateral for revenue bonds is an unwise folly.²

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It is understandable DWR would desire an “emergency” fund to assist with variable costs associated with running such a large state water supply system. But “emergency” by definition means unexpected or unforeseen. The SWP replacement costs, along with the seismic retrofit of the California Aqueduct, dams and bridges are known and expected costs. It is expected that the SWP will coexist with water shortages and droughts. Climate change is not unexpected and will bring variable hydrology, and increased need for flows and cold water to ensure survival of salmon runs and other beneficial uses.³ Power costs due to aging infrastructure and expiring power contracts are increasing costs. As a result, any contract extension must provide for an equitable process to govern the distribution of shortages and address reduced revenues due to the lack of water sales and increased power costs.

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As noted in the latest negotiation session [July 10, 2013], the SWP water rights and supply system are owned by the taxpayers of the State of California with attendant public trust and legal duties to ensure operation of the system does not harm these beneficial uses and run afoul of federal and state water quality laws.

10-30

The water supply contract extension amendments and refinancing relies on revenue from the sale of water as collateral for repayment of the debt. Thus any water contract extension beyond the existing term of 2035 needs to disclose:

10-31

1. The baseline capital debt and interest remaining on the existing SWP project;
2. The capital replacement costs for the SWP water supply system that is more than 50 years old;
3. The seismic retrofit costs of existing dams, bridges and aqueducts at the existing SWP system;

¹ USGS scientist Tom Suchanek <http://www.usgs.gov/newsroom/article.asp?ID=3148> & http://www.almanacnews.com/news/show_story.php?id=10886

² <http://www.moody.com/research/Moodys-assigns-Aa1-rating-to-California-DWRs-Central-Valley-Project--PR-273014> “The rating primarily reflects the strong take-or-pay nature of the water supply contracts from which debt service payments are derived, and the critical, long run importance of the Department’s water supply to its contractors. Also key to the rating are the largest contractors’ strong credit standings, and the Department’s ability to withstand a large amount of delinquencies by contractors with the help of the 1.25x rate covenant and step-up provisions. These considerations largely offset the risk that would otherwise be posed by the tightening legal and regulatory environment for water exports from the Sacramento-San Joaquin Bay Delta, and the volatile annual precipitation levels.”

³ Sacramento River Chinook salmon spawning this year [2013] are threatened by the relaxation of water temperature standards on the upper Sacramento River combined with the violations of water quality standards in the Delta that are the result of the over-allocation of scarce water supplies and diverting too much water in a dry year. http://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/decision_1641/conservate/docs/05292013swrcb.pdf http://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/decision_1641/conservate/docs/05242013swrcb.pdf

- 4. Increased power costs from expiring contracts and lower output.⁴
- 5. Total capital costs for any “new” projects;
- 6. Clear provisions to allocate water shortages; and
- 7. Clear provisions as to how cost over runs will be allocated to the contractors and ratepayers.

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cont.

Prior to extending the existing water supply contracts and debt obligation, DWR should complete a financial disclosure analysis with independent review to ensure taxpayers are not being asked to subsidize costs that should be paid for by the SWP contractors. And further, such independent analysis needs to ensure that the water supply contracts do not put undue risks or commitments on the state's general fund and the taxpayer.

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10-32

Thank you for consideration of these views from groups representing hundreds of thousands of ratepayers and taxpayers throughout the State of California.



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⁴ Hoover and SCE supplemental power contracts expire in 2017. Damage to existing project power plants has increased operating costs. “Recently, maintenance issues at the Hyatt Power Plant interrupted hydropower generation, and a fire last November destroyed the Thermalito Power Plant. This has not resulted in loss of water supplies, but does increase the costs of running the project as hydropower not generated by the project must be purchased from elsewhere.”
<http://mavensnotebook.com/2013/04/17/dwr-announces-state-water-project-negotiations-to-start-in-may/>

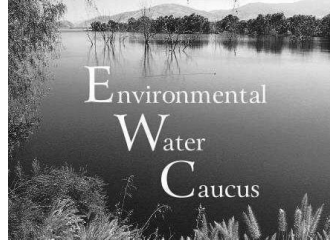


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January 29, 2014

Carl Torgersen
Deputy Director of the State Water Project
California Department of Water Resources Contract Extension
1416 9th Street, Room 1640-H4
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Via email: watercontractextension@water.ca.gov

Subject: State Water Project Water Supply Contract Extension Project—Project scope & financial risk to retail ratepayers and taxpayers needs to be disclosed, expansion of scope needs to be clearly prohibited, contracts in default should return water to the public and the urban preference reinstated.

Dear Mr. Torgersen:

The undersigned respectfully submit the following comments regarding the SWP water supply contract extension negotiation project.

As you reported at the last negotiation session, failure to be transparent “makes the hair on the back of State DWR Director Cowin’s neck stand up.” This alarm expressed by Director Cowin is shared by ratepayers and taxpayers who will be the ones on the hook for the unspecified scope of allowable costs, unspecified legislative changes, and the increased risk to bondholders and the public from excessive debt needed to fund this blank check of unspecified costs. We have carefully monitored the negotiations and herein argue for both improved transparency AND improved protection of public interests.



A. Ratepayer and Taxpayers Threatened by Unspecified SWP Capital Costs.

The retail SWP customer—ratepayers and taxpayers—are on the hook to pay sufficient revenues to the Contractors to fund the operations, maintenance, replacement reserve, and emergency costs of the State Water Project. If one contractor cannot pay under contract provisions, the remaining contractors must pick up that financial burden, even if it means increasing both property taxes and water rates. As mentioned in previous comments, the original cost promise of \$1.75 Billion has more than quadrupled under the present 75—year contracts, which are set to expire around 2035 for most contractors.

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cont.

B. Scope of Allowable Capital Costs must be clearly defined: If the Peripheral Tunnels (BDCP-DHCCP) are excluded, as has been claimed during negotiations, then the contract should clearly prohibit such financing under the Water Supply Contract Extension.

It remains unclear what will be financed under the water supply contract renewals for another 40 to 75 years. Mr. Torgersen and Metropolitan Water District chief negotiator, Deven Upadhyay, have said the financing of the peripheral tunnels—the Bay Delta Conservation Plan (BDCP) and Delta Habitat Conservation and Conveyance Program (DHCCP)—are “not part of this negotiation.”¹ To back up these public statements, any extension of the water supply contracts should clearly state that any new Delta conveyance or Peripheral Tunnels planning, construction, and associated mitigation costs are not allowable charges under the contract extension. This water supply contract extension needs to be transparent on this and other potential expansions of scope—and should not hide financing of the Peripheral Tunnels or any other new conveyance project in the Delta Estuary. A clear cut statement is needed that the various new funding pots, supplemental billings, emergencies, expenditures, and the “new” chartered financing committee (led by DWR and Contractors) is not intended to fund, without public review, expensive new capital projects or any planning for such projects. As we have stated before, the public has a right to know what their ratepayer charges and property taxes will fund.² They took on debt and paid increased property taxes believing the project would be paid for by 2035. Now, some 65 years later, we are told more debt must be issued that they need to spread out payments for another 75 years.

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C. As a “Package” Deal, all Elements of the Package Needs to be disclosed for Public Comment and Review Pursuant the Monterey Settlement Agreement.

At the last negotiation session, final touches on the charter for the Finance Policy Committee were set for review by department and water contractor lawyers. Ratepayers and California State Legislative representatives are absent from this high level “finance policy” committee, which has uniquely influential “direct” access to the DWR Director to ‘assist’ in financial decision making with regard to funding for the SWP.

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Negotiations have clearly stated that the term of the contract extension, the formation of various funding pots—supplemental billings, cash reserves and ‘emergency’ funding—and this new Finance

Committee are a “package deal.” The claim is that this “Finance Policy Committee” can be formed by charter and implemented outside of the contract extension approval process.³ By definition, however, it is part of the State and inseparable from the contractors’ actions and the water supply contract extension. Thus, there is a need for full environmental and fiscal review by the public through disclosure in CEQA documents prior to implementation and approvals of such a major State and water contractor action.

MWD’s chief negotiator, at the last negotiation session, referenced the need for some legislative changes that would be outside of the contract extension negotiations. Any such contemplated changes need to be disclosed for public review and comment. The State Water Project, pursuant to the Burns Porter Act, authorized \$1.75 billion in general obligation bonds to fund capital costs of the State Water Project.⁴ *“An additional \$510 million for Project construction came from the California Water Fund which was created using Tidelands Oil revenues. Since the Tidelands funds were an interest free loan, taxpayers have had to make up for the money that the state declined to charge in interest.”*⁵ Pursuant to the State of California Central Valley Project Act, additional capital costs of some \$7 billion have been funded with the issuance of revenue bonds.⁶ One of the main rationales given for this contract extension beyond the existing repayment term is that the Department of Water Resources cannot sell revenue bonds whose maturity dates extend past the contract end date of 2035—and that all project costs have a revenue source including recreation costs and mitigation costs. Thus, the proposed strategy contends that issuing more debt to finance the necessary capital expenditures would be more affordable if bonds with longer terms could be sold. But, there is no specific plan provided of the amounts of money needed and “necessary” capital expenditures. Ratepayers, taxpayers and the public at large, all of whom thought the debt already issued would fund the capital expenditures and be paid off in 2035, have a right to know why more debt is needed, how much is needed, when it will be needed, and for what it will be spent.

Federal and state water contractors are also seeking additional SWP financing authority to fund the \$51 to \$67 billion peripheral tunnels delta conveyance that proposes to divert water directly from the Sacramento River by passing the Delta Estuary.⁷ Water Code §85089 requires the beneficiaries to enter contracts to pay these costs.⁸ Under current law authorizing the State Water Project, there is no clear DWR authority to accept and spend state and federal contractor moneys for pre-construction activities and, in the case of state water contractors, collect revenues and repay debt service on the statement of charges.⁹ Perhaps this is the change referenced in the negotiations. The public has no way of knowing because, thus far, there has been only passing reference without disclosure. Any such “package deal” of anticipated legislative or contract changes to allow such activities should be publicly disclosed.

D. Increased Risks to Ratepayers, Taxpayers and Bondholders Need Greater Transparency.

1. Debt Reserves Reduced By 50% & Riskier Investments Authorized.

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The lower reserve requirement and reliance on reserve investments outside of cash can be viewed as risky or a *negative* credit event for the bond holders. The counterclaim contends that relying on MWD’s property taxpayers and ratepayers is sufficient to avoid this risk and provides an opportunity to return more cash to the contractors and to ‘reimburse’ costs needed to fund the planning and engineering costs of the new water tunnels under the delta conveyance strategy.¹⁰ These would be exceptional and unreasonable burdens on MWD ratepayers, and is highly unlikely to be simple to implement. The reduced reserve cash is substantial and most likely being used to pay off contractors and other expenses, but the amounts are not disclosed in one location. This concentrated reliance on MWD ratepayers and taxpayers is also a risk to other smaller or less ‘wealthy’ SWP contractors, who may lose their water in the process. Contractors who have paid into the project for years may not be able to afford these massive increased costs. Requests for an “opt out” option have thus far been ignored.¹¹

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cont.

2. Any Payment Defaults Require the Rest of the SWP Contractors to Step Up and Pay More, Therefore Increasing Costs to Retail Customers.

In 2000, DWR and the SWC started a process to reduce the maximum annual debt service (MADS) level by 50% and authorize riskier investments for reserve funds.¹² This below average reserve is brushed aside by those who proposed it and benefit, but over the next 75 years, given climate changes, droughts and increased energy pumping costs, ratepayers and taxpayers in Southern California (who now provide the bulk of the SWP revenue that services the debt), could balk at ever increasing water rate and property tax rates.¹³ Some MWD customers, such as San Diego Water Authority, have filed suit over the rate increases and property tax charges.¹⁴ Additionally, default provisions in the existing water contracts require the other SWP contractors to pick up these defaulting contractors and to pay regardless of whether they receive water.¹⁵ And, in the event of a contractor’s operating revenues being less than required to make its fixed contract payment, the contractor has an obligation to levy a property tax assessment in an amount to make up the shortfall (this supplemental levy falls outside of the Proposition 13’s 1% property tax limit).

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3. The Risk of Partnering with Federal Contractors Needs to Be Disclosed.

Westlands Water District (WWD) is likely to issue debt to pay up to 90% of the federal half-share of the DHCCP-BDCP additional planning costs of \$1.2 billion due this year. State Water Project contractors need to raise the other \$600 million.¹⁶ Retail irrigators, like Mark Borba of WWD, recently rang the alarm bell because of rising costs of water and the fear of losing his land. Mark Borba stated, “*With regard to the \$1.2 billion, and I guess our share is just about half—that’s roughly \$1,100 an acre debt on every acre in the Westlands Water District just to prepare the documents, get the engineering done, and we haven’t turned a teaspoon of dirt... If the District goes broke, will the bondholders not come back [and go after the Westlands landowners]?*”¹⁷ In reply, Westlands’ General Manager Tom

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Birmingham reassured Borba that Westlands landowners are not at risk. Birmingham, reported WWD would just declare bankruptcy in the event of the inability to meet its debt obligations:

“The security on the bonds is the [Westlands] District’s revenue, not the landowner’s land. In a worst case, we file for bankruptcy. That’s what the District could do. The landowners’ land is not security.”¹⁸

In 2009, at the time WWD became the obligator for the federal share of debt for the Delta Conveyance facility planning and engineering costs, bond rating agencies, based on WWD documents, assured bondholders that it could sell water to Southern California or the Bay Area, even though the water rights are held by the federal taxpayers and WWD does not have long term contracts for the water.¹⁹ Note that the United States holds the water right, that this water is supplemental and available only when there is water that is surplus to other higher priority water right holders. This raises a fundamental question for state contractors and their retail customers—will the new contract being negotiated require them to pay the costs of any as yet undisclosed additional SWP capital facilities if a federal contracting partner defaults? Again, if the SWP contract extension does not anticipate how the costs of new capital facilities will be charged under the proposed contract extension, then a strict prohibition against such charges needs to be included. A clear-cut statement is needed to protect retail customers, ratepayers and taxpayers from potential “liar loans” based on paper water.

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cont.

4. Water from Any Defaulting Contractor Should Be Used to Reduce “Paper Water” Promises.

As stated under existing state water supply contracts, any default requires the other contractors who have not defaulted to pay the bills; the allocation of water supplies is then adjusted among the remaining contractors. It is likely that only the large irrigators under federal water contracts or mammoth urban contractors under the state contracts are favored under such a reallocation. It is likely that small retailers will be priced out of the market. Most important, however, nothing is done to reduce the unrealistically large quantity of “Paper Water”—it’s just reallocated! Instead, since the public has paid a substantial portion of the State Water Project (about \$2 billion), any failure to pay should be viewed as an opportunity to reduce the paper water promises and dedicate this “freed-up” water to public trust values. Rather than allow a contractor to remarket and sell these precious, over-allocated water supplies, the inflated yield of the project needs to be reduced.

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E. In Times of Drought and Shortages the Urban Preference—Drinking Water Over Irrigation—Needs to be Reinstated.

The present drought reminds us that the urban ratepayer who has paid a disproportionate amount of the costs for the SWP needs the reliability that, during times of shortage, drinking water will

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receive priority over irrigation of crops. Many have criticized the export of so much water for supplemental irrigators. University of California Professor Emeritus, Dr. Richard Walker recently remarked, "I have a better solution. Instead of building the Delta Drains, use the money to buy out Westlands, about \$9 billion at current land prices. This would be cheaper and have the added benefit of saving 1 million acre-feet a year (average) now going to Westlands, leaving that water for other farmers and urban users."²⁰ It bears repeating for decades, urban ratepayers invested millions of dollars to ensure an urban preference during times of shortages.²¹ Others note that drinking water, domestic supplies and irreplaceable public trust values threatened with extinction should have priority over irrigators. "I understand that almonds garner high prices worldwide and are profitable for Californian farmers. But maybe in an extreme drought, the governor could decide that he wants to spend our limited water on preserving our native species, and not providing Chinese people with pleasant snacks."²²

The urban preference was an insurance policy whereby these municipal water users would receive water on a priority basis during times of water shortages. In closed door SWP contractor sessions, without ratepayer or public participation, this preference was removed in 1995. Given droughts, climate extremes, and uncertainty of State Water Project water supplies, any contract extension must include this preference and reinstate these contract provisions that were removed without ratepayer notice or participation. This urban preference requirement would ensure that decades of promises, contract obligations, and ratepayer investments by these users, who pay the bulk of the project costs, would not be abrogated. "It is one of the many ironies of the SWP that those who get the most water pay the least, while those who get the least pay the bulk of the costs."²³

Thank you for consideration of these views from groups representing hundreds of thousands of ratepayers and taxpayers throughout the State of California.



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cont.





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Attachments:

A: Gary Lasky, Transcription of Westlands Water District Board Meeting 1-15-2014, Harris Ranch, Ca.

B: 26th Supplemental May 1, 2002 No DWR-WS-49 Amending 1986 DWR Bond Resolution Central Valley Project Water System Revenue Bonds General Bond Resolution No DWR-WS-1

C: 25th Supplemental May 1, 2002 No DWR-WS-48 Amending 1986 DWR Bond Resolution Central Valley Project Water System Revenue Bonds General Bond Resolution No DWR-WS-1

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ENDNOTES

¹ See http://www.water.ca.gov/swpao/watercontractextension/2013_contract_negotiations.cfm & [Department of Water Resources Objectives](#) also see <http://mavensnotebook.com/2013/09/04/contract-length-cash-reserves-and-more-input-from-contractors-at-issue-in-state-water-project-negotiations/>

² This includes seismic retrofit costs of existing facilities, FERC relicensing costs and required mitigation measures, along with changes to debt financing resolutions that would use debt to amortize and fund operations and maintenance, and the added debt costs of “capitalizing” interest costs if included in the financing proposals.

³ [SWRDS Finance Committee Charter - Draft 01.08.14 v.3](#)
http://www.water.ca.gov/swpao/watercontractextension/contract_negotiations.cfm

⁴ Under State statute issuance of Revenue Bonds by the Department of Water Resources [DWR] to fund the SWP automatically requires or places a lien on property taxes from the contracting water districts to repay for the revenue bond debt obligations. To date water districts have utilized a combination of water rate increases and property tax assessments to cover the costs of the SWP. In adopting a bond funding resolution DWR typically relies on the Central Valley Project Act (Water Code, § 11100 et seq.), enacted in 1933 as amended. Under the act the department is empowered to construct and operate various water facilities, among which are those authorized by section 11260 of the Water Code. The act further empowers the department to issue revenue bonds to carry out the objects of the act and provides that the bonds shall not be obligations of the state but shall constitute a first lien on revenues. (Water Code, §§ 11700, 11705, 11720-11722.)

Some mistakenly believe that DWRs authority to issue the revenue bonds was superseded by the California Water Resources Development Bond Act [the Burns-Porter Act Water. Code, § 12930 et seq.]. This was passed by the Legislature in 1959 & approved by the voters in 1960. The Burns-Porter Act authorizes the department to construct and operate the State Water Resources Development System, and provides for the issuance, in an aggregate amount not to exceed \$1,750,000,000 of general obligation bonds. (Water Code, §§ 12931, 12935, 12938.)

The courts have ruled otherwise. see <http://scocal.stanford.edu/opinion/warne-v-harkness-32852>

There is wide discretion for DWR to issue revenue bonds for the construction, operation and maintenance of the Central Valley Project and State Water Project as defined under state law. Once issued water districts have the authority, without a vote of property taxpayers, to raise property taxes to pay for the principal and interest. In a general provision the Burns-Porter Act declares that the facilities authorized as part of the Central Valley Project "or facilities which are acquired or constructed ... with funds made available hereunder" shall be "acquired, constructed, operated, and maintained pursuant to the provisions of the code governing the Central Valley Project." (Water Code, § 12931.)

⁵ <http://www.citizen.org/documents/SWPreport05.pdf> Mismanaging the California State Water Project 2005 @ pg 2

⁶ **Ibid.** pg 2

⁷ See [Bay Delta Westlands BDCP DWR Workshop 11-20-13 Powerpoint](#) Also See the 2011 LAO Report: http://www.lao.ca.gov/handouts/resources/2011/BDCP_Planning_process_10_19_11.pdf @ pg 5 *Implications for BDCP Implementation Funding. The voluntary aspect of planning phase funding also has implications for future funding of BDCP implementation, namely the construction and operation of an alternative system of conveyance that is being evaluated under the planning process. Costs of such conveyance have been estimated at \$12 billion or*

higher. Funding BDCP implementation therefore cannot rely on voluntary contributions and will require amendment of long-term water supply contracts between DWR, the Bureau of Reclamation, and the contractors in order to provide the funding mechanism.

⁸ Water Code §85089. Construction of a new Delta conveyance facility shall not be initiated until the persons or entities that contract to receive water from the State Water Project and the federal Central Valley Project or a joint powers authority representing those entities have made arrangements or entered into contracts to pay for both of the following: (a) The costs of the environmental review, planning, design, construction, and mitigation, including mitigation required pursuant to Division 13 (commencing with Section 21000 of the Public Resources Code), required for the construction, operation, and maintenance of any new Delta water conveyance facility. (b) Full mitigation of property tax or assessments levied by local governments or special districts for land used in the construction, location, mitigation, or operation of new Delta conveyance facilities.

⁹ **Ibid.** @ Footnote 4 See LAO report

http://www.lao.ca.gov/handouts/resources/2011/BDCP_Planning_process_10_19_11.pdf

¹⁰ <http://www.water.ca.gov/publications/financials/docs/dwr12fn.pdf> State Water Resources Development System Management's Discussion and Analysis (Unaudited) For the years ended June 30, 2012 and 2011. Pgs 16, 18 & 28.

Also See State Water Project Contractors Authority letter Subject: BDCP Environmental Analysis and Preliminary Engineering Funding, October 30, 2008. "Funding of the DHCCP will be by advance payments by Participating Contractors. SWP contractors may become Participating Contractors by signing a DHCCP Funding Agreement with DWR. Funding for 2008 will be accomplished through a DWR rebill and a credit equal to the DHCCP funding amount on the rebill from the bond funds released by the Springing Amendment. Funding for 2009 and 2010 will be on the DWR bills and collected in the same manner as the Transportation Minimum Component. Attached is a draft DHCCP Funding Agreement. Also attached is a breakdown of SWP Participating contractors cost share assuming three different participation levels."

http://cf.valleywater.org/About_Us/Board_of_directors/Board_meetings/2009_Published_Meetings/MG37438/AS37448/AI37602/DO37898/DO_37898.pdf Santa Clara Water District 10-13-09 Workshop: "The District along with other CVP contractors provided ... amount on the rebill from the bond funds released by the Springing. Amendment Funding for 2009 and 2010 will be on the DWR bills and ... the Delta Habitat Conservation and Conveyance Program (DHCCP). See also- San Geronio Pass Water Agency Nov 10, 2008 - become Participating Contractors by signing a DHCCP Funding ... rebill from the bond funds released by the Springing Amendment. <http://sgpwa.com/pdfs/Agenda-2008-Nov-10-900.pdf>

¹¹ http://www.water.ca.gov/swpao/watercontractextension/2013_contract_negotiations.cfm & [Plumas County Objective](#)

¹² The reserve account provides for the purchase of riskier investments including purchase letters of credit, surety bonds, or other higher rated (AA) or better credit facilities - these are cheaper for the issuer to fund the reserve account. The 1986 Bond Resolution and Attachments B&C: Amendments 25 & 26 to the 1986 Resolution dated May 1, 2002 and April 1, 2002. Common debt service reserve fund levels are 1x MADS. Moody's made the following comment in their review of the 50% reduction under the amendment, "The debt service reserve requirement is also weaker than for the typical municipal water enterprise at only 50% of maximum annual debt service. Given the Department's other credit strengths, however, this below average reserve is not heavily weighted in our analysis."

¹³ On June 11, 2013 a majority of the MWD Board of Directors voted to suspend these limits on property tax rate increases despite protests from the Southeast Water Coalition representing various cities, San Diego Water Authority and some 20 different community leaders and groups. [<http://www.citywatchla.com/lead-stories-hidden/5221-will-angelinos-be-submerged-in-a-new-water-tunnel-tax> “Despite efforts by business groups, community activists, mayors and several Southern California water agencies to stop unnecessary rate hikes and increased property tax collection by the Los Angeles-based Metropolitan Water District of Southern California, the board voted to increase spending by \$75 million instead of returning the money or rolling back rate increases.”[http://www.mwdfacts.com/momentum-builds-to-halt-mwds-over-collection/Proposition 218](http://www.mwdfacts.com/momentum-builds-to-halt-mwds-over-collection/Proposition%2018), known as the Right to Vote on Taxes Act, added Article XIII D. Metropolitan Water District and other wholesalers of water argue that Article XIII C and XIII D do not apply to MWD’s rates because they are not “imposed”; they are voluntary charges for property owned by MWD; and in any event the rates and property tax increases are approved by a 2/3s vote of the “electorate”—in this case the “electorate” is the MWD Board.

¹⁴ <http://www.sdcwa.org/mwdrate-challenge> Limits on tax rate increases for the reasonable cost of service and debt are routinely suspended by the MWD Board. Section 124.5 of the MWD Act places limits on property tax rate increases. Section 124.5 permits Metropolitan to suspend the restriction if, following a public hearing, the Board finds that such revenue is essential to the fiscal integrity of the District. <http://ronkayela.com/wordpress/wp-content/uploads/2013/06/06112013-BOD-8-2-B-L-1.pdf>

¹⁵ Metropolitan Water District of Southern CA (who makes up 46% of water entitlements) and more than three quarters of the combined contract revenue pledged to the water revenue bonds are rated Aa3 or better. Under existing contracts with DWR the contracts are take or pay contracts, this means certain payments are due regardless of the actual water delivery levels. The Department has a rate covenant of “1.25x” that they charge the contractors and there is a step up provision in the contracts (non-defaulting contractors are generally required to make an additional step up payment of up to 25% of their own contract payment if needed to cure defaults by other contractors). In the event of contractors operating revenues being less than required to make its fixed contract payment, the contractor has an obligation to levy a property tax assessment in an amount to make up the shortfall (this levy falls outside of the state's 1% property tax limit).

¹⁶ <http://www.sacbee.com/2013/12/07/5978184/delta-water-tunnel-project-needs.html> **Delta water tunnel project needs \$1.2 billion more for planning** By Matt Weiser Dec. 7, 2013, “The giant Delta water-diversion tunnels proposed by Gov. Jerry Brown need \$1.2 billion more spent on planning and design before construction starts or is even assured.”

¹⁷ See Attachment A: Transcript and Notes from WWD November 2013 Board Meeting @ pg 7.

¹⁸ See Attachment A: Transcript and Notes from WWD November 2013 Board Meeting @ pg 7.

¹⁹ See Fitch Bond Rating 2009, San Luis and Delta-Mendota Water Authority, California Delta Habitat Conservation and Conveyance Program Development Project. “There is concentration amongst WWD water purchasers. But offsetting this risk somewhat is the value of the cash crops farmed in the district (about \$1.3 billion in fiscal 2008) and the absence of alternative/equivalent supplies or infrastructure to deliver water. In addition, WWD potentially has the ability to sell and transfer water rights outside the district should agriculture cease to be economic, as the

demand for water in southern California and the San Francisco Bay area by users with connectivity to the CVP is very high.”

²⁰ <http://www.sfgate.com/opinion/article/Away-go-our-dollars-down-the-delta-drains-5132228.php>
 “Away go our dollars down the delta drains” Richard Walker, SF Chronicle Friday, January 10, 2014.

In all this, Westlands is the tail wagging the water dog. The district has the lowest priority water rights and can't get enough water in dry years. The district wants more water diverted from the Sacramento and the North Coast, not less. They don't give a fig for the fish, having sued to stop water releases for salmon in the San Joaquin and Trinity rivers. I have a better solution. Instead of building the Delta Drains, use the money to buy out Westlands, about \$9 billion at current land prices. This would be cheaper and have the added benefit of saving 1 million acre-feet a year (average) now going to Westlands, leaving that water for other farmers and urban users.”

²¹ <http://www.citizen.org/documents/SWPreport05.pdf> “To date, the North of Delta and Delta regions have born the near entirety of the direct negative environmental and economic impacts of the project and reaped scant amounts of the economic benefits. Kern County agribusiness, other the other hand, has secured the lion’s share of the economic benefits, and has distributed those benefits in a highly inequitable manner. Since the State Water Project began pumping subsidized water to Kern County agribusinesses, the concentration of landownership has steadily increased, numbers of farms have decreased and rural poverty indicators have increased..... The Kern water agency contracts for 24 percent of the State Water Project’s water. The Agency has actually received, however, 42 percent of the water and paid for only 13 percent of the costs of the project The Metropolitan Water District of Southern California contracts for 48 percent of the water, but has received only 31 percent while paying for 62 percent.” Pg 4

²² Also see <http://onthepublicrecord.org/2014/01/16/manage-what-exactly/>
<http://onthepublicrecord.org/2014/01/page/2/> “Nut crop growers put a whole lot of capital into their orchards, then point to their orchards as hostages in drought time. “But we must get water, or our trees will die!” I’ve never understood why the public at large should be the backstop for the bad choice to plant crops with a constant water demand in a variable climate. If there is a state interest in growing nuts and grapes in particular, it hasn’t been explained... I understand the grower’s interest in growing a valuable crop, but since the profits from that aren’t returned to the state, I don’t see why the risk should be.”

²³ <https://www.callawyer.com/clstory.cfm?eid=919370> A Run on the Water Bank --A determined investigator pursues a Los Angeles billionaire for allegedly seizing control of the state's water supply. It's Chinatown again, Jake. by Bill Blum | December 2011

Also see: http://www.citizen.org/documents/Water_Heist_lo-res.pdf “Don Villarejo writes that from the first SWP water deliveries in 1968 through to 1980, San Joaquin Valley contractors received 63% of the water delivered—almost entirely for agricultural irrigation—while mostly residential Southern California water users paid 70% of the costs of the project. “It is one of the many ironies of the SWP that those who get the most water pay the least, while those who get the least pay the bulk of the costs.” Pg 28

Response to Comment 10-1

See Response to Comment 8-1.

Response to Comment 10-2

See Response to Comment 8-2.

Response to Comment 10-3

See Response to Comment 8-3.

Response to Comment 10-4

See Response to Comment 8-4.

Response to Comment 10-5

See Response to Comment 8-5.

Response to Comment 10-6

See Response to Comment 8-6.

Response to Comment 10-7

See Response to Comment 8-7.

Response to Comment 10-8

See Response to Comment 8-8.

Response to Comment 10-9

See Response to Comment 8-9.

Response to Comment 10-10

See Response to Comment 8-10.

Response to Comment 10-11

See Response to Comment 8-11.

Response to Comment 10-12

Comments submitted to DWR during the public negotiations provided suggestions for consideration in forming the AIP and, ultimately, the proposed amendments to the Contracts. Those comments were not made on the environmental analysis contained within the DEIR. Comments made during the scoping period for the DEIR were

reviewed and considered by DWR prior to preparing and publishing the DEIR. Responses to those comments are provided separately to Comment Letter 13.

Response to Comment 10-13

See Responses to 8-11 and 8-12.

Response to Comment 10-14

See Response to Comment 8-13.

Response to Comment 10-15

See Response to Comment 8-14.

Response to Comment 10-16

See Response to Comment 8-15.

Response to Comment 10-17

See Response to Comment 8-16.

Response to Comment 10-18

See Response to Comment 8-17.

Response to Comment 10-19

See Response to Comment 8-18.

Response to Comment 10-20

See Response to Comment 8-19.

Response to Comment 10-21

The comment was made on the negotiation sessions that were held from May 2013 through June 2014 and does not address the environmental analysis in the DEIR. See Response to Comment 5-64 for more information on the Davis-Dolwig Act.

Response to Comment 10-22

The comment was made on the negotiation sessions that were held from May 2013 through June 2014 and does not address the environmental analysis in the DEIR. However, see Response to Comment 5-64 for more information on the Davis-Dolwig Act and see Master Response 3 for discussion of the relationship of the proposed project to California WaterFix.

Response to Comment 10-23

The comment was made on the negotiation sessions that were held from May 2013 through June 2014 and does not address the environmental analysis in the DEIR. However, see Responses to Comments 5-11 and 10-22. See Response to Comment 3-2 for discussion of Alternative 7 in DEIR which evaluates an alternative of not all Contractors sign the amendment. See also Response to Comment 4-1. DWR notified and invited the public to participate in each of the 23 public negotiation meetings held. Included in the meeting notices was the location of the meetings, mailing address for written comment, and access to a conference line for attending meetings remotely.

Response to Comment 10-24

The comment was made on the negotiation sessions that were held from May 2013 through June 2014 and does not address the environmental analysis in the DEIR. However, see Response to Comment 5-11 for discussion of the definition of the proposed project and development of project objectives.

Response to Comment 10-25

The comment was made on the negotiation sessions that were held from May 2013 through June 2014 and does not address the environmental analysis in the DEIR. However, please see Chapter 3 of the DEIR for a description of the financial status of bonds under the Burns-Porter Act and the CVP Act. Chapter 4, Project Description of the DEIR outlines the various financial provisions in the proposed Contract amendments, including amounts set aside for reserves (see page 4-3) and rate reductions (see page 4-5 and 4-6).

Response to Comment 10-26

The comment was made on the negotiation sessions that were held from May 2013 through June 2014 and does not address the environmental analysis in the DEIR. However, see Response to Comment 5-64 regarding the Davis-Dolwig Act and Response to Comment 10-25 regarding financial costs of the proposed project.

Response to Comment 10-27

The comment was made on the negotiation sessions that were held from May 2013 through June 2014 and does not address the environmental analysis in the DEIR. However, see Response to Comment 5-64 regarding the Davis-Dolwig Act and Response to Comment 10-25 regarding financial costs of the proposed project. See Master Response 3 for information on relationship to California WaterFix.

Response to Comment 10-28

The comment was made on the negotiation sessions that were held from May 2013 through June 2014 and does not address the environmental analysis in the DEIR. However, see Master Response 2 for more information on the definition of the proposed project and Response to Comment 9-14 for more information on water supply planning.

Response to Comment 10-29

The comment was made on the negotiation sessions that were held from May 2013 through June 2014 and does not address the environmental analysis in the DEIR. However, see Chapter 3, State Water Project Financing and Water Supply Contract Financial Provisions pages 3-3 through 3-6 for an explanation of the water supply Contract cost recovery from the Contractors. This explanation includes details on the charges for the construction, operation, maintenance and water supply delivered to the Contractors. The Contracts provide for changes to water supply allocations and costs in the event of water shortages.

Response to Comment 10-30

The comment was made on the negotiation sessions that were held from May 2013 through June 2014 and does not address the environmental analysis in the DEIR. However, see Response to Comment 10-25.

Response to Comment 10-31

The comment was made on the negotiation sessions that were held from May 2013 through June 2014 and does not address the environmental analysis in the DEIR. However, see Response to Comment 10-25 regarding the proposed Contract revisions and financial information. Further, the issue raised by the commenter addresses the financial effects of the proposed project and does not raise issues with the environmental analysis provided in the DEIR. The commenter does not offer any evidence on how this financial effect would result in a significant impact. Therefore, no further response can be provided.

Response to Comment 10-32

The comment was made on the negotiation sessions that were held from May 2013 through June 2014 and does not address the environmental analysis in the DEIR. However, see Response to Comment 10-31 regarding the proposed Contract revisions and financial information. A financial disclosure analysis is not required for the analysis of environmental impacts of the proposed project.

Response to Comment 10-33

The comment was made on the negotiation sessions that were held from May 2013 through June 2014 and does not address the environmental analysis in the DEIR. However, see Responses to Comments 10-23 and 10-24. See Response to Comment 10-31 regarding the proposed Contract revisions and financial information.

Response to Comment 10-34

The comment was made on the negotiation sessions that were held from May 2013 through June 2014 and does not address the environmental analysis in the DEIR. However, see Master Response 3 for information on relationship to California WaterFix and the separate Contract amendment process.

Response to Comment 10-35

The comment was made on the negotiation sessions that were held from May 2013 through June 2014 and does not address the environmental analysis in the DEIR. However, see Response to Comment 10-31.

Response to Comment 10-36

The comment was made on the negotiation sessions that were held from May 2013 through June 2014 and does not address the environmental analysis in the DEIR. However, see Response to Comment 10-29 regarding the proposed Contract revisions and financial information. See Master Response 3 for information on relationship to California WaterFix and the separate Contract amendment process.

Response to Comment 10-37

The comment was made on the negotiation sessions that were held from May 2013 through June 2014 and does not address the environmental analysis in the DEIR. However, see Response to Comment 10-31 regarding the proposed Contract revisions and financial information.

Response to Comment 10-38

The comment was made on the negotiation sessions that were held from May 2013 through June 2014 and does not address the environmental analysis in the DEIR. However, see Response to Comment 10-31 regarding the proposed Contract revisions and financial information. See Master Response 3 for information on relationship to California WaterFix and the separate Contract amendment process.

Response to Comment 10-39

The comment was made on the negotiation sessions that were held from May 2013 through June 2014 and does not address the environmental analysis in the DEIR. However, see Response to Comment 5-11 for discussion of the definition of the proposed project and development of project objectives.

Response to Comment 10-40

The comment was made on the negotiation sessions that were held from May 2013 through June 2014 and does not address the environmental analysis in the DEIR. However, see Response to Comment 5-11 for discussion of the definition of the proposed project and development of project objectives.

Response to Comment 10-41

The comment was made on the negotiation sessions that were held from May 2013 through June 2014 and does not address the environmental analysis in the DEIR. The attachments noted are cited in Comments 10-33 through 10-40. Please see the responses to those comments. The attachments to the comment is included in Exhibit B to this FEIR.

AQUALLIANCE

DEFENDING NORTHERN CALIFORNIA WATERS



October 17, 2016

Ted Alvarez
State Water Department Analysis Office
Department of Water Resources
PO Box 942836
Sacramento, CA 94236-0001
watercontractextension@water.ca.gov

Subject: Comments on the Draft Environmental Impact Report for the *Water Supply Contract Extension Project*

Dear Mr. Alvarez:

AquAlliance, the California Sportfishing Protection Alliance, and the California Water Impact Network submit additional comments and questions for the Draft Environmental Impact Report (DEIR) for the *Water Supply Contract Extension Project* (Project).

I. Items of Omission That Must be Corrected

The percent of use by sector must be added to the regions discussed in Section 5.2.18.2 that do not have it, such as: “Water use in the Sacramento River and San Joaquin River hydrologic regions is mostly for agricultural production, including a variety of crops as well as livestock management, followed by environmental and urban use. Irrigation using both groundwater and surface water dominates water use volume, but municipal water use has grown along with the rising population.” (pp. 5-140 - 5-141) Without this information the public is unable to adequately understand the existing conditions.

11-1

The percent of water used by state contractors for all sectors and water transfer sales must also be quantified. Just one of the many examples that need additional disclosure is found in the paragraph on Castaic Lake WA that provided no numeric data at all.¹ There are also omissions of

11-2

¹ DWR 2016. Draft Environmental Impact Report for the Water Supply Contract Extension Project. “In addition to SWP supplies, Castaic Lake WA receives supplies from two other water districts in Kern County, and has access to groundwater and recycled water. The agency is a wholesaler to four retail purveyors, who deliver supplies to primarily M&I users (Castaic Lake Water Agency 2011).” p. 5-143

water transfers purchases altogether, let alone quantification of how much transferred water is part of a portfolio for districts such as Palmdale WD.² All contractors that participate in water transfer sales or purchases must be identified, the range of water amounts sold or purchased must be quantified, and the portfolio percentage by district must be disclosed. Without this information the public is unable to adequately understand the existing conditions therefore the DEIR must be revised and recirculated for public comment.

11-2
cont.

II. Cumulative Impact Analysis is Inadequate

CEQA states that assessment of the project’s incremental effects must be “viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.” (CEQA Guidelines § 15065(a)(3).) “[A] cumulative impact consists of an impact which is created as a result of the combination of the project evaluated in the EIR together with other projects causing related impacts.” (CEQA Guidelines § 15065(a)(3).)

An EIR must discuss significant cumulative impacts. CEQA Guidelines §15130(a). Cumulative impacts are defined as two or more individual effects which, when considered together, are considerable or which compound or increase other environmental impacts. CEQA Guidelines § 15355(a). “[I]ndividual effects may be changes resulting from a single project or a number of separate projects. CEQA Guidelines § 15355(a). A legally adequate cumulative impacts analysis views a particular project over time and in conjunction with other related past, present, and reasonably foreseeable future projects whose impacts might compound or interrelate with those of the project at hand. Cumulative impacts can result from individually minor but collectively significant projects taking place over a period of time. CEQA Guidelines § 15355(b). The cumulative impacts concept recognizes that “[t]he full environmental impact of a proposed . . . action cannot be gauged in a vacuum.” *Whitman v. Board of Supervisors* (1979) 88 Cal. App. 3d 397, 408 (internal quotation omitted).

11-3

A. The DEIR failed to include significant projects

The DEIR’s failure to include significant projects includes, but is not limited to:

- The Delta Stewardship Council’s Plan
- The Long-Term Water Transfer Program (aka 10-Year Water Transfer Program)

The failure to consider and analyze major projects in preparing the DEIR signifies that it must be revised and recirculated for public comment.

B. The DEIR Fails to Demonstrate the Project Will not Create Physical Environmental Impacts

Among many statements in the DEIR, one makes it quite obvious that the Project has the extremely high potential for serious environmental impacts: “Extending the Contracts’ expiration dates to 2085 will enable DWR to finance SWP expenditures beyond 2035 and continue to receive a reliable stream of revenues from Contractors for the **construction, operation, and maintenance of the SWP.**” (p. 6-3) (emphasis added) This is followed by the lead agency’s conclusory statements that fall flat without any supporting disclosure or analysis:

² *Id.* p. 5-144.

“[i]mplementation of the proposed project would not result in physical environmental impacts; therefore, it would not contribute to any cumulative effect and would not compound or increase an environmental impact of these other projects. As a result, the proposed project would have no cumulative impacts.” (p. 6-4) How is it remotely possible that over the next 69 years (from the present to 2085) the “[c]onstruction, operation, and maintenance of the SWP” will not result in an impact to the environment? The DEIR’s failure to disclose, consider, and analyze what construction, operations, and maintenance will occur in conjunction with cumulative projects in the DEIR signifies that it must be revised and recirculated for public comment.

11-3
cont.

C. The DEIR Obfuscates the Projects Timing with the WaterFix

The DEIR seeks to isolate the Project from the WaterFix. “The proposed project is separate and independent from the California WaterFix project. The proposed project would need to occur regardless of the outcome of California WaterFix.” (p. 6-4) While SWP contracts would inevitably need to be renewed starting in 2035, the timing of the Project’s contract renewals is directly tied to the WaterFix and the DEIR reveals it later in the same paragraph: “It has become more challenging in recent years to affordably finance capital expenditures for the SWP since revenue bonds used to finance these expenditures are not sold with maturity dates that extend beyond the year 2035, the year the first Contract would expire. Not extending the Contracts would continue to exacerbate the revenue bond compression problem that DWR and the Contractors are currently facing.” Revenue bonds are the primary way for the State to fund the WaterFix, therefore marrying the Contract Renewal Project with the WaterFix. The DEIR must be revised with a candid discussion of the symbiotic connection between the Project and the WaterFix and recirculated for public comment.

11-4

Our groups respectfully request notification of any meetings or actions that address this Project.

11-5

Sincerely,

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Response to Comment 11-1

The information provided in the environmental setting for Section 5.2.18 Water Supply is sufficient to provide the context for the impact analysis included in the DEIR. The level of specificity requested in the comment is not necessary because it would not change the results or conclusions of the impact analysis. As stated in the DEIR on page 4-2, the proposed project consists of amendments to the financial provisions of the Contracts. The proposed project would not create new water management measures, alter the existing authority of DWR to build new or modify existing facilities, or change water allocation provisions of the contract. More information is available in the California Water Plan at <http://www.water.ca.gov/waterplan/> and Bulletin 132 - Management of the California State Water Project available at http://www.water.ca.gov/swpao/bulletin_home.cfm.

Response to Comment 11-2

See Response to Comment 11-1.

Response to Comment 11-3

As explained in DEIR Chapter 6, Other CEQA Considerations on pages 6-1 and 6-2, section 15355 of the CEQA Guidelines defines cumulative effects as “two or more individual effects that, when considered together, are considerable or which compound or increase other environmental impacts.” According to CEQA Guidelines Section 15130(b), the cumulative impacts discussion shall reflect “the severity of the impacts and their likelihood of occurrence” and shall “be guided by the standards of practicality and reasonableness.” The CEQA Guidelines further indicate that the discussion of cumulative impacts should include a discussion of the geographic scope of the affected area by the cumulative effect, and a summary of expected environmental effects to be produced by the list of past, present, and probable future projects producing related cumulative impacts. Further, the DEIR goes on to explain the criteria to identify those similar projects that could combine with effects of the proposed Contract amendment for the analysis of cumulative impacts. The DEIR identified only two projects (California WaterFix and the Monterey Agreement/Amendment) that would or did result in amendments to the Contracts. The projects mentioned in the comment do not meet the criteria used to identify and analyze cumulative impacts.

Therefore, because the proposed amendments to the Contracts do not alter baseline operations and maintenance and do not authorize future construction projects, there are no physical impacts. Because there are no physical impacts, no other projects including the Delta Stewardship Council’s Plan and the Bureau of Reclamation’s Long-Term Water Transfer Program, were identified for the cumulative impact analysis, and the proposed project would not contribute to the cumulative impacts of the two projects.

See also Response to Comment 5-32 for discussion of the Delta Reform Act.

Response to Comment 11-4

See Responses to Comments 4-1 and 4-2. The responsibility for determining whether to undertake any other project continues to vest in DWR as under the current contract provisions. DWR's practice is to inform and consult, as appropriate, with the Contractors before undertaking new projects. As it relates specifically to California WaterFix, a separate EIR/EIS was prepared to address the impacts of California WaterFix. The proposed project is an independent project that would occur with or without California WaterFix (see Response to Comment 5-75). Furthermore, as described in Response to Comment 4-1, Contractor participation in California WaterFix will be addressed through a separate public negotiation and environmental review process to develop appropriate Contract amendments. See Master Response 3 for discussion of the relationship of the proposed project to California WaterFix and the separate Contract amendment process.

Response to Comment 11-5

The request for notification of any meetings or actions on the proposed project has been noted and all email addresses have been added to the project notification database managed by DWR.



FRIENDS OF THE RIVER

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October 17, 2016

Ted Alvarez
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Email: watercontractextension@water.ca.gov

Via Email

Re: Comments on Draft EIR for the Water Supply Contract Extension Project

Dear Mr. Alvarez:

Friends of the River objects to approval of the above proposed project to extend the term of existing State Water Project (SWP) contracts for an additional 50 years. The Draft Environmental Impact Report (DEIR) and proposed project fail to comply with the California Environmental Quality Act (CEQA) and other provisions of state law including the Delta Reform Act. If the Department of Water Resources (DWR) wishes to continue considering the contract extension, in order to proceed in the manner required by law including CEQA it will be necessary for DWR to prepare and circulate for public review and comment a new, revised DEIR.

12-1

To avoid unnecessary repetition and to conserve resources Friends of the River hereby adopts and incorporates herein by reference as though fully set forth herein all of the comments made this same date, October 17, 2016, in the joint comment letter to you from the Natural Resources Defense Council (NRDC), Defenders of Wildlife, and The Bay Institute. Because of the importance of the issues and magnitude of the CEQA violations we do add the following comments to amplify or add to as the case may be, the joint comments made by NRDC et al.

12-2

FAILURE TO PROPERLY DEVELOP AND ANALYZE ALTERNATIVES REDUCING EXPORTS

Development of alternatives increasing flows through the Delta by reducing exports has always been a direct and obvious first step to complying with NEPA and CEQA in the course of accomplishing the co-equal goals established by the Delta Reform Act, California Water Code § 85054:

12-3

‘Coequal goals’ means the two goals of providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem. The coequal goals shall be achieved in a manner that protects and enhances the unique cultural, recreational, natural resource, and agricultural values of the Delta as an evolving place.

The alternative of increasing flows through the imperiled Delta by reducing exports is so obvious that the Ninth Circuit recently reversed in part a district court decision denying environmental plaintiffs summary judgment because the challenged environmental document issued by Reclamation under NEPA “did not give full and meaningful consideration to the alternative of a reduction in maximum water quantities.” *Pacific Coast Federation of Fishermen’s Assn’s v. U.S. Dept. of the Interior*, ___ Fed.Appx. ___, 2016 WL 3974183 *3 (9th Cir., No. 14-15514, July 25, 2016)(Not selected for publication). “Reclamation’s decision not to give full and meaningful consideration to the alternative of a reduction in maximum interim contract water quantities was an abuse of discretion, and the agency did not adequately explain why it eliminated this alternative from detailed study.” *Id.* at *2. Reclamation’s “reasoning in large part reflects a policy decision to promote the economic security of agricultural users, rather than an explanation of why reducing maximum contract quantities was so infeasible as to preclude study of its environmental impacts.” *Id.* at *3.

12-3
cont.

The requirement under NEPA for Reclamation to consider the obvious alternative of reducing exports to increase flows through the Delta is so obvious that the Ninth Circuit’s decision was not selected for publication because no new legal analysis was required to reach the decision.¹ The decision pertained to *interim two-year contract renewals*. If the alternative of reducing exports must be considered during renewal of two-year interim contracts it most assuredly must be considered during the course of deciding whether to *extend contracts 50 years*.

We presented *A Sustainable Water Plan for California* (Environmental Water Caucus, May 2015) as a reasonable alternative to the California Water Fix Delta Water Tunnels over a year ago. The plan is at: <http://ewccalifornia.org/reports/ewcwaterplan9-1-2015.pdf>. The actions called for by this alternative include: reducing exports to no more than 3,000,000 acre-feet in all years in keeping with State Water Board Delta flow criteria (for inflow as well as outflow); water

12-4

¹ In *California v. Block*, 690 F.2 753, 765-769 (9th Cir. 1982), the project at issue involved allocating to wilderness, non-wilderness or future planning, remaining roadless areas in national forests throughout the United States. The court held that the EIS failed to pass muster under NEPA because of failure to consider the alternative of increasing timber production on federally owned lands currently open to development; and also because of failure to allocate to wilderness a share of the subject acreage "at an intermediate percentage between 34% and 100%." 690 F.2d at 766. Like the situation here where the Water Fix agencies claim a trade-off involved between water exports and Delta restoration (RDEIR/SDEIS ES 4-6), the Forest Service program involved "a trade-off between wilderness use and development. This trade-off however, cannot be intelligently made without examining whether it can be softened or eliminated by increasing resource extraction and use from already developed areas." 690 F.2d at 767. Here, likewise, trade-offs cannot be intelligently analyzed without examining whether the impacts of alternatives reducing exports can be softened or eliminated by increasing water conservation, recycling, and eventually retiring drainage-impaired agricultural lands in the areas of the exporters from production. *Accord, Oregon Natural Desert Assn. v. Bureau of Land Management*, 625 F.3d 1092, 1122-1124 (9th Cir. 2010) (EIS uncritical alternatives analysis privileging of one form of use over another violated NEPA). Here, the BDCP alternatives analysis has unlawfully privileged water exports over protection of Delta water quality, water quantity, public trust values, and ESA values.

efficiency and demand reduction programs including urban and agricultural water conservation, recycling, storm water recapture and reuse; reinforced levees above PL 84-99 standards; installation of improved fish screens at existing Delta pumps; elimination of irrigation water applied on up to 1.3 million acres of drainage-impaired farmlands south of the Bay-Delta; return the Kern Water Bank to State control; restore Article 18 urban preference; restore the original intent of Article 21 surplus water in SWP contracts; conduct feasibility study for Tulare Basin water storage; provide fish passage above and below Central Valley rim dams for species of concern; and retain cold water for fish in reservoirs. We also requested that the range of reasonable alternatives include reducing exports both more and less than the 3,000,000 acre feet limit called for by this alternative.

12-4
cont.

A Sustainable Water Plan for California is a carefully conceived modern, 21st-century Plan alternative. It is an example of the kinds of alternatives to extending the contracts 50 years that DWR must consider in order to proceed in the manner required by law.

There is more. On August 1, 2016, the Council on Environmental Quality (CEQ) issued a Memorandum for Heads of Federal Departments and Agencies: *Final Guidance for Federal Departments and Agencies on Consideration of Greenhouse Gas Emissions and the Effects of Climate Change in National Environmental Policy Act Reviews*. The *Final Guidance* fits this situation perfectly:

The analysis of climate change impacts should focus on those aspects of the human environment that are impacted by both the proposed action and climate change. Climate change can make a resource, ecosystem, human community, or structure more susceptible to many types of impacts and lessen its resilience to other environmental impacts apart from climate change. This increase in vulnerability can exacerbate the effects of the proposed action. *For example, a proposed action may require water from a stream that has diminishing quantities of available water because of decreased snow pack in the mountains, or add heat to a water body that is already warming due to increasing atmospheric temperatures.* Such considerations are squarely within the scope of NEPA and can inform decisions on whether to proceed with, and how to design, the proposed action to eliminate or mitigate impacts exacerbated by climate change. (*Final Guidance*, p. 21)(Emphasis added).

12-5

Logically, the Final Guidance issued by CEQ is as pertinent to CEQA review as it is to NEPA review of proposed projects.

Here, climate change will be reducing, in the long-term, mountain snowpack and mountain stream runoff thereby reducing freshwater flows in the San Francisco Bay-Delta watershed and in the Delta itself. Among other things, reduction in flows will add heat to the water exacerbating impacts to fish, fish habitat, and human health. At the same time, climate change induced rising sea levels will exacerbate the salinity intrusion in the Delta.

The *Final Guidance* states that:

Agencies should consider applying this guidance to projects in the EIS or EA preparation stage *if this would inform the consideration of differences between alternatives* or address comments raised through the public comment process with sufficient scientific basis that *suggest the environmental analysis would be incomplete* without application of the guidance, and the additional time and resources needed would be proportionate to the value of the information included. (*Final Guidance*, p. 34)(Emphasis added).

12-5
cont.

The projections of long-term reduced San Francisco Bay Delta watershed runoff and rising sea levels inducing greater salinity intrusion continue to worsen. This will be reducing available water supply making existing delivery levels all the more infeasible as well as exacerbating the adverse environmental impacts if nevertheless contracts are extended. This makes the absence of proper development and consideration of alternatives increasing freshwater flows through the Delta by reducing exports all the more prejudicial to any kind of meaningful, informed public review. The failure to properly assess climate change impacts here is extremely serious.

12-6

The failure to properly evaluate a range of reasonable alternatives violates CEQA. An EIR must “describe a range of reasonable alternatives to the project . . . which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives.” 14 Code Cal. Regs (CEQA Guidelines) § 15126.6(a). “[T]he discussion of alternatives shall focus on alternatives to the project or its location which are capable of avoiding or substantially lessening any significant effects of the project, even if these alternatives would impede to some degree the attainment of the project objectives, or would be more costly.” § 15126.6(b).

12-7

Recirculation of a new Draft EIR/EIS will be required by CEQA Guidelines section 15088.5(a) for several reasons including the failure to properly develop and evaluate the required range of reasonable alternatives increasing Delta flows by reducing exports.

In short, the fundamental flaws in the treatment of alternatives and other deficiencies as set forth here and by the NRDC have led to a DEIR “so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded.” These deficiencies are so serious that we include the text of CEQA guideline section 15088.5(a).² Again, recirculation of a new, revised DEIR is required by CEQA.

12-8

² § 15088(a) provides:

A lead agency is required to recirculate an EIR when significant new information is added to the EIR after public notice is given of the availability of the draft EIR for public review under Section 15087 but before certification. As used in this section, the term “information” can include changes in the project or environmental setting as well as additional data or other information. New information added to an EIR is not “significant” unless the EIR is changed

DWR IS ALSO VIOLATING THE DELTA REFORM ACT

On May 18, 2016, the Superior Court, County of Sacramento, issued its 73 page ruling in the *Delta Stewardship Council Cases* (Judicial Council Coordination Proceeding No. 4758) that invalidated the Delta Plan adopted by the Delta Stewardship Council pursuant to the Delta Reform Act. The court found the adopted Plan violated the Delta Reform Act because it failed to include quantified or otherwise measurable targets associated with achieving reduced Delta reliance (Ruling p. 12), failed to include quantified or otherwise measurable targets associated with restoring more natural flows (Ruling p. 36), and failed to promote options for water conveyance and storage systems. (Ruling pp. 38, 72).³

The Delta Reform Act declared in Water Code § 85086(b):

It is the intent of the Legislature to establish an accelerated process to determine instream flow needs of the Delta for the purposes of facilitating the planning decisions that are required to achieve the objectives of the Delta Plan.

The Water Quality Control Plan for the San Francisco Bay/San Joaquin -Sacramento Delta Estuary (WQCP) (Water Rights Decision 1641, D-1641) was adopted in 1995, and amended without substantive changes in 2006. The State Water Board is in the process of a periodic update of the WQCP, which is occurring in phases

The Bay-Delta Plan was 15 years out of date when the Delta Reform Act was enacted. The Plan is now 20 years out of date. The Act is being ignored by DWR in its refusal to await updating the Bay-Delta Plan and compliance with the Delta Reform Act before deciding whether to extend the contracts. For DWR, it as if the Delta Reform Act of 2009 was not enacted into law.

The Delta Reform Act (Water Code § 85021) provides that:

in a way that deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect (including a feasible project alternative) that the project's proponents have declined to implement. "Significant new information" requiring recirculation include, for example, a disclosure showing that:

- (1) A new significant environmental impact would result from the project or from a new mitigation measure proposed to be implemented.
- (2) A substantial increase in the severity of an environmental impact would result unless mitigation measures are adopted that reduce the impact to a level of insignificance.
- (3) A feasible project alternative or mitigation measure considerably different from others previously analyzed would clearly lessen the significant environmental impacts of the project, but the project's proponents decline to adopt it.
- (4) The draft EIR was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded.

³ On June 24, 2016 the court issued its Ruling clarifying its earlier Ruling, by determining: "To be clear, the Delta Plan is invalid and must be set aside until proper revisions are completed."

The policy of the State of California is to reduce reliance on the Delta in meeting California's future water supply needs through a statewide strategy of investing in improved regional supplies, conservation, and water use efficiency. . . .



12-9
cont.

Delta Reform Act policies also include (Water Code § 85020 (c):

Restore the Delta ecosystem, including its fisheries and wildlife, as the heart of a healthy estuary and wetland ecosystem.

CONCLUSION

A new, revised DEIR must be prepared and recirculated for public review and comment correcting the deficiencies identified by the NRDC. Among the necessary revisions is the proper development and consideration of the CEQA required range of reasonable alternatives reducing exports and evaluation of the reduced freshwater runoff and exacerbated adverse impacts of exporting water from the Delta as a result of worsening climate change.

12-10

12-11

A new, revised DEIR must be prepared and recirculated for public review and comment requiring compliance with the Delta Reform Act and measuring extension of the contracts and those impacts against the requirements of the Delta Reform Act. Instead, DWR is proceeding as if the Delta Reform Act has not become a key part of the law of the State of California applicable to Delta flows and exports from the Delta. This failure also constitutes failure to proceed in the manner required by law.

12-12

Sincerely,

E. Robert Wright
Senior Counsel, Friends of the River

Response to Comment 12-1

The comment does not provide specific reference to deficiencies within the DEIR. See Responses to Comments 12-3 through 12-12.

Response to Comment 12-2

The comment references and incorporates all the comments made in comment Letter 8 (NRDC, Defenders of Wildlife, and Bay Institute). Please see the responses to Letter 8.

Response to Comment 12-3

As discussed in Response to Comment 5-53, an alternative that considers reduced Table A deliveries was included in the DEIR but, as described on pages 7-3 and 7-4, reducing Table A amounts proportionality for all the Contractors by amendment would not change the amount of water being delivered to the Contractors nor would it change the financial health of the SWP as it would not affect any of the other Contract financial provisions that address SWP billing provisions and reimbursements. Therefore, reducing Table A deliveries was rejected because it does not address project objectives. See Master Response 6 for more information on reducing Table A amounts. Please also see Response to Comment 5-11 for discussion of the definition of the proposed project and Master Response 2 for discussion of the range of alternatives evaluated in the DEIR.

See Response to Comment 5-32 for discussion of consistency with the Delta Reform Act.

Response to Comment 12-4

Please see Response to Comment 5-11 for discussion of the definition of the proposed project and Master Response 2 for discussion of the range of alternatives evaluated in the DEIR. See Response to Comment 8-1 for discussion of why, as part of this proposed project, DWR is not proposing terms to reflect changes in circumstances since the Contracts were originally executed.

Response to Comment 12-5

Only the CEQA Guidelines, and not the NEPA Council on Environmental Quality (CEQ) Guidelines, are applicable to the project analysis because there is no federal nexus and no federal lead agency. Further, greenhouse gas emissions were analyzed in Chapter 5, Environmental Analysis on pages 5-62 through 5-72.

Specifically, as it relates to climate change and its effects on SWP deliveries, as described on page 5-6 of the DEIR and discussed in Response to Comment 5-88,

because SWP water supply would not change under the proposed project and would continue to be delivered to the Contractors consistent with current Contracts, the proposed project does not change hydrology, regulations, or climate change, all factors that could affect water supply delivery by the SWP. DWR would continue to maintain and operate the SWP and deliver available supplies to the Contractors consistent with the Contract terms, including Table A deliveries, Article 21 deliveries, and all regulatory requirements. Therefore, no changes in the conditions of resources associated with the SWP would be expected.

Response to Comment 12-6

See Response to Comment 5-11 for discussion of the definition of the proposed project and Master Response 2 for discussion of the range of alternatives evaluated in the DEIR. See Response to Comment 12-5 for discussion of climate change.

Response to Comment 12-7

See Master Response 2 for discussion of the range of alternatives evaluated in the DEIR. See also Master Response 4 for discussion of compliance with current environmental regulations BiOps and Master Response 5 on recirculation.

Response to Comment 12-8

The comment references and incorporates all the comments made in Letter 8 (NRDC, Defenders of Wildlife, and Bay Institute). Please see the responses to Letter 8. See Master Response 2 for discussion of the range of alternatives evaluated in the DEIR. See also Master Response 5 on recirculation.

Response to Comment 12-9

See Response to Comment 5-32 for discussion of consistency with the Delta Reform Act.

Response to Comment 12-10

The comment references and incorporates all the comments made in Letter 8 (NRDC, Defenders of Wildlife, and Bay Institute). Please see the responses to Letter 8. See also Master Response 5 on recirculation.

Response to Comment 12-11

See Response to Comment 5-11 for discussion of the definition of the proposed project and Master Response 2 for discussion of the range of alternatives evaluated in the DEIR. See Response to Comment 12-5 for discussion of climate change.

Response to Comment 12-12

See Master Response 5 on recirculation and Response to Comment 5-32 for discussion of consistency with the Delta Reform Act.

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