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Common Response 1: CEQA Process, General Approach to Analysis, and Other Environmental Review Issues

Overview

This Common Response discusses basic California Environmental Quality Act (CEQA) processes, requirements, and analysis methodology, as well as other CEQA components and underlying principles that broadly relate to all or multiple resource discussions in the environmental impact report (EIR). Other Common Responses generally pertain to individual resources or specific resource-topic areas. The purpose of this Common Response is to respond to comments related to CEQA adequacy and approach and to also provide additional clarity regarding the purposes behind the CEQA processes, what CEQA requires, how CEQA is applicable to the Delta Conveyance Project (project), and how the EIR was written to include pertinent information while complying with CEQA requirements. This Common Response addresses the following themes.

- Responses to general, non-substantive comments in support or opposition to the project.
- The purpose and definition of the CEQA existing conditions baseline.
- The appropriate scope of the project objectives and the use of agency discretion regarding the project objectives.
- The scope of the CEQA impact analyses contained in EIR resource chapters in light of the project description, scale, and geography.
- The definition of, purpose of, and general approach to the cumulative impact analysis.
- The project approval process and the use of findings and a statement of overriding considerations related to significant and unavoidable impacts.
- The length and complexity of the EIR and the ways the California Department of Water Resources (DWR) improved readability for reviewers.
- The use of best available science and tools.
- The roles and responsibilities of the U.S. Army Corps of Engineers (USACE) and the National Environmental Policy Act (NEPA) process.

Comments in Support of or Opposition to the Delta Conveyance Project

Many comments provided statements in support of or opposition to the Delta Conveyance Project. DWR thanks commenters for taking the time to provide their opinions on the project and participating in the environmental review process.¹ Although comments declaring general support for or opposition to the project are not considered to be substantive comments raising significant

¹ Section 15088 of the CEQA Guidelines provides this guidance: "The lead agency shall evaluate comments on environmental issues received from persons who reviewed the draft EIR and shall prepare a written response. The Lead Agency shall respond to comments raising significant environmental issues received during the noticed comment period and any extensions and may respond to late comments."

environmental issues and thus do not require a response, DWR will consider them in its decision-making process.

CEQA Environmental Baseline

Although existing baseline conditions were fully and adequately described throughout the Draft EIR pursuant to CEQA requirements, multiple comments claimed that the existing baseline conditions were inadequate, inappropriate, or insufficient or that they did not appropriately or adequately describe baseline conditions that would be present when the project becomes operational.

Comments suggested the use or inclusion of different actions or conditions in existing baseline conditions, such as the previously adopted 2008 and 2009 Biological Opinions (BiOps) issued by the U.S. Fish and Wildlife Service (USFWS) and National Marine Fisheries Service (NMFS) instead of the more recent 2019 BiOps issued by those agencies (which superseded the earlier BiOps), updates to the 2018 *Water Quality Control Plan for the San Francisco Bay/Sacramento–San Joaquin Delta Estuary* (Bay-Delta WQCP), or climate change. These and other comments indicated confusion about use of the existing baseline conditions at 2020 for the purposes of determining physical environmental impacts under CEQA and questioned the inclusion of the potential 2040 conditions, which are contained in appendices for the purposes of providing additional useful information that goes beyond CEQA requirements.

An EIR is required to identify a project’s potentially significant effects on the environment, and the baseline is an essential part of that determination because it establishes the setting against which a project’s prospective environmental impacts are compared (California Public Resources Code [Pub. Resources Code] § 21002.1(a)). CEQA defines a “significant effect on the environment” as “a substantial, or potentially substantial, adverse change in the environment” (Pub. Resources Code § 21068). As CEQA Guidelines Section 15125(a) states in part: “This environmental setting will normally constitute the baseline physical conditions by which a lead agency determines whether an impact is significant.”

The CEQA baseline for assessing the significance of impacts of any proposed project is normally the environmental setting, or existing conditions, at the time an EIR’s Notice of Preparation (NOP) is issued (CEQA Guidelines §§ 15125(a), 15126.2(a)). This directive was interpreted and applied by the California Supreme Court in *Neighbors for Smart Rail v. Exposition Metro Line Construction Authority* (2013).² There, the California Supreme Court reiterated that “[t]he CEQA Guidelines establish the default of an existing conditions baseline even for projects expected to be in operation for many years or decades.”³ According to the California Supreme Court, for such a project, “existing conditions constitute the norm from which a departure must be justified—not only because the CEQA Guidelines so state, but because using existing conditions serves CEQA’s goals in important ways.”⁴ As the California Supreme Court explained, “[a]n EIR stating that in 20 or 30 years the project will improve the environment, but neglecting, without justification, to provide any evaluation of the project’s impacts in the meantime does not ‘giv[e] due consideration to both the short-term and long-term effects’ of the project ... and does not serve CEQA’s informational purpose well.”⁵

² *Neighbors for Smart Rail v. Exposition Metro Line Construction Authority* (2013) 57 Cal.4th 439 (*Neighbors*).

³ *Neighbors*, *supra*, 57 Cal.4th at p. 455.

⁴ *Ibid.*

⁵ *Ibid.*, quoting CEQA Guidelines § 15126.2(a).

1 In addition, per the decision in *Communities for a Better Environment v. South Coast Air Quality*
2 *Management Dist.* (2010) 48 Cal.4th, a lead agency may not use hypothetical conditions in the
3 baseline because it can mislead the public and decision makers.⁶ And where environmental
4 conditions vary from year to year or where environmental conditions are expected to change
5 quickly during the period of environmental review for reasons other than the proposed project, lead
6 agencies have discretion to decide how the environmental conditions without the project should be
7 identified to provide a realistic assessment of project-specific impacts.⁷

8 In response to *Neighbors* and *Communities*, CEQA Guidelines Section 15125(a)(1) provides, in part,
9 the following.

10 Generally, the lead agency should describe physical environmental conditions as they exist at the
11 time the notice of preparation is published ... from both a local and regional perspective. Where
12 existing conditions change or fluctuate over time, and where necessary to provide the most accurate
13 picture practically possible of the project's impacts, a lead agency may define existing conditions by
14 referencing historic conditions, or conditions expected when the project becomes operational, or
15 both, that are supported with substantial evidence.

16 The EIR provides a full and adequate description of the existing conditions baseline throughout the
17 document. An overview of the CEQA baseline is provided in Chapter 4, *Framework for the*
18 *Environmental Analysis*, and supporting information can be found in Appendix 3C, *Defining Existing*
19 *Conditions, No Project Alternative, and Cumulative Impact Conditions*. Existing conditions are also
20 described in the *Environmental Setting* sections of Chapters 5 through 32. DWR, as the CEQA lead
21 agency, took care to make this EIR's CEQA impact conclusions as realistic and accurate as possible,
22 consistent with applicable legal principles. The CEQA baseline employed in the EIR is consistent
23 with the principles outlined in CEQA Guidelines Section 15125(a)(1). The CEQA baseline was
24 developed to assess the significance of impacts of the alternatives in relation to the existing facilities,
25 permits, and ongoing programs and physical environmental conditions generally at the time of the
26 2020 NOP release (which is described in Chapter 4, in the section titled *Baseline Assumptions and*
27 *Alternative Comparisons*). Existing conditions include continuation of operations of the State Water
28 Project (SWP) by DWR and the Central Valley Project (CVP) by the Bureau of Reclamation
29 (Reclamation). The baseline described in the EIR takes into consideration both existing physical
30 conditions and effects of existing programs and policies.

31 As addressed in the following sections, DWR correctly defined the EIR baseline by declining to
32 include past regulatory requirements, such as assumptions from previous BiOps, because including
33 them could introduce substantial uncertainty about the magnitude of the physical environmental
34 impacts associated with implementing the proposed project and alternatives. Similarly, DWR
35 correctly determined that speculation regarding potential future operational conditions or
36 regulatory requirements would not provide the most accurate picture of current environmental
37 conditions supported by substantial evidence in the EIR. As addressed in Common Response 9,
38 *Hydrologic Modeling and Approach*, although the use of the CalSim 3 model to represent baseline
39 conditions does not simulate historical operations, it is expected that many aspects of the model
40 simulation would be reasonably close to what occurred in recent history. Thus, using CalSim 3 to
41 provide a modeled baseline by which to compare changes under project conditions supports CEQA
42 Guidelines Section 15125(a)(1). Assumptions for the hydrologic modeled representation of baseline

⁶ *Communities for a Better Environment v. South Coast Air Quality Management Dist.* (2010) 48 Cal.4th 310, 322 (*Communities*).

⁷ *Supra*, at p. 328.)

existing conditions related to operations and regulations of the SWP and the CVP are described in Appendix 5A, *Modeling Technical Appendix*, and further information can be found in Common Response 9.

Inclusion of Recent Biological Opinions

In October 2019, USFWS and NMFS issued the 2019 BiOps on the coordinated operations of the CVP and SWP (U.S. Fish and Wildlife Service 2019; National Marine Fisheries Service 2019). Thereafter, in December 2019, DWR submitted an application for an Incidental Take Permit (ITP) to the California Department of Fish and Wildlife (CDFW) for operations of the SWP. In March 2020, after DWR certified its final environmental impact report for long-term operations of the SWP, CDFW issued the 2020 ITP for operations of the SWP to DWR (California Department of Fish and Wildlife 2020). The requirements of the current USFWS- and NMFS-issued 2019 BiOps for the long-term operations of the CVP and the 2020 CDFW ITP for the operations of the SWP supersede the previous 2008 and 2009 BiOps and ITP. The CVP and SWP began operating under these more recent changes in 2020. Thus, because the NOP was issued in 2020, the requirements of the 2019 BiOps and the 2020 ITP provide a realistic picture of existing conditions for evaluating potential impacts of the proposed project and project alternatives (CEQA Guidelines § 15125(a)(1)). For these reasons, DWR included the current 2019 BiOps and the 2020 ITP in the CEQA environmental baseline. Using the 2008 and 2009 BiOps in the baseline would be misleading as these do not represent existing conditions or conditions expected when the project becomes operational, and therefore using them would be contrary to CEQA's requirements.

The USFWS- and NMFS-issued 2019 BiOps for the long-term operations of the CVP are subject to reinitiation of consultation pursuant to 50 Code of Federal Regulations Section 402.16 and are being litigated in U.S. District Court. In addition, the 2020 ITP is subject to litigation. However, neither court has ruled that the permits are invalid. In September 2021, Reclamation requested reinitiation of consultation with USFWS and NMFS to assess the effects of anticipated modifications to the CVP operations that may cause effects on listed species or designated critical habitat not analyzed in the 2019 USFWS and NMFS BiOps. To address the review of agency actions required by Federal Executive Order 13990 and to voluntarily reconcile CVP operating criteria with operational requirements of the SWP under the California Endangered Species Act, Reclamation and DWR anticipate proposals to modify CVP and SWP operations and associated biological effects analyses that would result in new BiOps for the CVP and a new ITP for the SWP. While reinitiation of consultation is underway, it has not resulted in new requirements. Reinitiation of consultation by Reclamation for the long-term operations of the CVP and the new ITP for the long-term operations of the SWP are anticipated to result in modifications to CVP/SWP operations in the future, but the specific modifications associated with these ongoing processes are not reasonably foreseeable at this time.

Reclamation, USFWS, NMFS, and the State of California submitted to the court a proposed revised interim operations plan for the October 2021–September 2022 water year, covering the period of the ongoing reinitiated consultation. Reclamation and the State of California submitted motions requesting adoption of the interim operations plan and a stay of the litigation through September 2022; a federal court order granting these motions was issued in March 2022. In February 2023, the federal court granted further motions to reissue a temporary interim operations plan and to continue the stay of litigation until the end of 2023. That order explains that the interim operations

plan may not be appropriate after 2023. Parties in the litigation are negotiating a further interim operations plan that, if approved by the court, may remain in place through December 22, 2024.

Given that the prior and current interim operations plans were not in effect at the time the NOP was issued for the proposed project, assumptions from the interim operations plan were not used in the EIR baseline. However, the interim operation plan generally aligns the operations of the CVP with the SWP ITP. The interim operations plan includes a restriction on CVP exports not reflected in the existing 2019 BiOps. This restriction requires CVP to make a volume equivalent to meeting inflow/exports ratio requirements under below normal, dry, and critical years in April and May available for spring outflow. Implementation of the export restriction as described in the interim operations plan would reduce CVP exports and increase Delta outflow. Given the lack of material changes to the SWP and the export restriction on the CVP, the effects of operation under the Delta Conveyance Project using the interim operations plan would be similar or reduced, and the incremental difference would be relatively small. DWR performed a sensitivity analysis using the restriction on the CVP as required by the interim operations plan and determined there are no substantive changes associated with the operation of the Delta Conveyance Project.

CEQA Baseline and Climate Change

As discussed above, the baseline for CEQA analysis is typically the physical environmental conditions in the vicinity of the proposed projects when the lead agency publishes an NOP. Some comments suggested using a future baseline or baseline assumptions that anticipate conditions when the project becomes operational (e.g., projected conditions in the year 2040) to account for climate change. Per CEQA Guidelines § 15125(a)(2), a lead agency may only use a projected future conditions baseline instead of existing conditions “if it demonstrates with substantial evidence that use of existing conditions would be either misleading or without informative value to decision-makers and the public.” In the Delta Conveyance Project EIR, use of the existing conditions baseline is not misleading or without informational value to decision makers because it enables consideration of both near- and long-term impacts of the project alternatives based on existing, known, and measurable data and conditions. Use of a baseline that assumes future climate change assumptions would have introduced unnecessary uncertainty into CEQA-required analyses and significance conclusions without substantial evidence to indicate that such assumptions would have improved the informative value of the analyses for decision makers. Instead, as described in this Common Response, the EIR presents multiple future analyses with climate change assumptions for informational purposes. Thus, CEQA does not require that DWR use a future conditions baseline.

The EIR includes information to supplement the understanding of potential climate change conditions under 2040 and 2070 climate change scenarios as presented in appendices that provide long-term operations projections both with and without the proposed project and that compare these projections (e.g., existing conditions in 2020 vs. No Project Alternative under the 2040 scenario and No Project Alternative [2040] vs. project alternatives under the 2040 scenario). The following appendices describe the 2040 climate change scenario conditions.

- Appendix 5B, *Surface Water 2040 Analysis*
- Appendix 6A, *Water Supply 2040 Analysis*
- Appendix 7A, *Flood Protection 2040/2072 Analysis*

- Appendix 8C, *Groundwater 2040 Analysis*
- Appendix 9L, *Water Quality 2040 Analysis*
- Appendix 12C, *Fish and Aquatic Resources 2040 Analysis*
- Appendix 13F, *Terrestrial Biological Resources 2040 Analysis*
- Appendix 15C, *Agricultural Resources 2040 Analysis*
- Appendix 16B, *Recreation 2040 Analysis*
- Appendix 20C, *Delta Conveyance 2040 Traffic Analysis*
- Appendix 22B, *Energy 2040 Analysis*
- Appendix 23F, *Air Quality and Greenhouse Gases 2040 Analysis*
- Appendix 24E, *Noise and Vibration 2040 Analysis*
- Appendix 26A, *Public Health 2040 Analysis*

Appendix 4A, *Consideration of 2070 Conditions*, considers a 2070 future conditions scenario with an anticipated further decrease in reliability of the SWP and CVP deliveries due to sea level rise and climate change.

CEQA Guidelines Section 15126.2(a) directs that an EIR shall “analyze any significant environmental effects the project might cause or risk exacerbating by bringing development and people into the area affected. For example, the EIR should evaluate any potentially significant direct, indirect, or cumulative environmental impacts of locating development in areas susceptible to hazardous conditions (e.g., floodplains, coastlines, wildfire risk areas), including both short-term and long-term conditions.” Consistent with this requirement, the EIR analyzes climate change in consideration of the requirements of Section 15126.2(a) and based on best available science and multiple climate change scenarios. For example, Chapter 30, *Climate Change*, considers how the project’s impacts on resources in the study area may be affected by climate change (i.e., asking whether future changes in climate are likely to exacerbate project impacts). While climate change may alter operational impacts on critical fish habitat and special-status species, the project’s mitigation, including the Compensatory Mitigation Plan (CMP), accounts for impacts of sea level rise and, therefore, the project’s impacts would remain less than significant as mitigated. In consideration of future climate change and sea level rise, project alternatives would not result in an increase in flood risk (e.g., levee overtopping) or reduce flexibility for flood management in the Delta when compared to existing conditions. Finally, the analysis in Chapter 30 compares Alternative 5 (Bethany Reservoir alignment) and the No Project Alternative under three climate scenarios and concludes that climate change impacts on reservoir storage, river flows, Delta exports, salinity, and X2 position would be similar. Please refer also to Common Response 6, *Climate Resilience and Adaptation*, for additional discussion of the Delta Conveyance Project’s ability to improve the SWP’s water supply reliability and climate change resilience under future climate change conditions.

As discussed in the Chapter 30 section titled *Impacts of the Project Alternatives with Climate Change*, the proposed project and project alternatives were designed to operate within future hydrological conditions resulting from climate change, including even extreme changes in water surface elevation due to sea level rise. As a result, future changes in water surface elevation associated with climate change and sea level rise would not affect the project’s ability to operate under even extreme high sea level rise of 10.2 feet at the Golden Gate Bridge (the H++ scenario). CEQA does not require

analysis of the environment's impacts on proposed projects. DWR included this additional information to demonstrate that the proposed project and project alternatives would provide climate change resiliency far into the future under the most extreme sea level rise scenario.

Although Chapter 30 and the associated appendices make reasonable predictions regarding climate change under 2040 and 2070 scenarios, much is unknown or unknowable with a reasonable degree of certainty related to climate change. While the EIR considers a range of potential climate change scenarios, substantial evidence does not support the conclusion that any one of these scenarios is expected to occur when the project becomes operational. For this reason, the incorporation of climate change into the baseline for the purposes of an impact determination on all resources in the EIR would be speculative and would not support the CEQA objective that the existing conditions baseline constitute the most accurate picture practically possible. Please see Common Response 6 and Common Response 9 regarding further disclosure of projected future conditions with climate change in the EIR analysis and hydrologic modeling.

For all the reasons stated previously, the EIR's approach to identifying baseline conditions and evaluating potential project impacts while considering climate change complies fully with CEQA.

CEQA Baseline and State Water Resource Control Board Activities

As the agency with the authority and responsibility for amending the Bay-Delta WQCP, the State Water Resources Control Board (State Water Board) has been engaged in a process to update the Bay-Delta WQCP for over a decade. Common Response 8, *Relationship to Other Plans, Projects, Policies, and Programs*, describes the authorities of the State Water Board regarding water rights and the water quality control planning process as it relates to the Delta Conveyance Project and DWR. There are multiple phases to the Bay-Delta WQCP update: (1) amendments to the water quality objectives for the lower San Joaquin River and southern Delta regarding flow and salinity (Phase 1); (2) amendments for the Sacramento River and Delta watershed regarding Delta outflows, Sacramento River and Delta tributary inflows, cold water habitat and interior Delta flows and Delta outflows (Phase 2); and implementation of adopted Phase 1 and Phase 2 updates. There is currently no adopted implementation for Phase 1. Additionally, there are no approved plan amendments for Phase 2. Given the reasons detailed in this section of this Common Response, the quantitative modeled description of the existing conditions baseline used for this CEQA environmental impact analysis as represented in CalSim 3, does not include the Bay-Delta WQCP updates or implementation; instead, it uses the standards and requirements of State Water Board Water Right Decision 1641 (D-1641) that existed at the time of issuance of the 2020 Delta Conveyance Project NOP and that currently remain in effect, which require the SWP and the CVP be operated to meet certain water quality objectives in the Bay-Delta WQCP, among other requirements.

The San Joaquin River flow and southern Delta salinity amendments to the Bay-Delta WQCP (sometimes identified as Phase 1 updates in comments on the EIR) were approved by the State Water Board for the lower San Joaquin River and southern Delta in December 2018. Appendix 3C of the EIR acknowledges the approval of the San Joaquin River flow and southern Delta salinity water quality objective amendments in December 2018 as part of the existing conditions. Activities for the southern Delta salinity objective and the San Joaquin River flow objective were ongoing at the time of the 2020 Delta Conveyance Project NOP and remain ongoing, and ultimate implementation and potential changes to SWP and CVP operations as a result of these amendments remain unknown (see Table CR1-1 for a summary of activities). The approved amendments are not self-implementing, and the State Water Board must act to implement the new water quality objectives. The State Water

Board may implement amended objectives in multiple ways, including conducting a water right proceeding, adopting regulations, or both. As noted in the amendments, the State Water Board would “fully implement the February through June LSJR [lower San Joaquin River] flow objectives through water right actions or water quality actions” (State Water Resources Control Board 2018:24). The State Water Board has not fully implemented the water quality objectives through a revised water right decision or regulation replacing D-1641. None of the activities listed in Table CR1-1 describe implementation of the water quality objectives and the responsibilities of water rights holders for that implementation. Therefore, the D-1641 standards and requirements regarding compliance with southern Delta salinity objectives in existence prior to the 2018 Bay-Delta WQCP update were applicable for the EIR and remain applicable to current SWP and CVP operations.

Furthermore, the Delta Conveyance Project does not affect the primary mechanism by which south Delta salinity is controlled. Southern Delta salinity is primarily influenced by San Joaquin River inflows and agricultural return flows. The primary mechanism for existing water rights holders to meet the water quality objectives in the southern Delta is through control of San Joaquin River inflows, and this mechanism remains unaltered with the amended southern Delta water quality objectives. The Delta Conveyance Project does not affect the San Joaquin River or agricultural return flows, so even if the southern Delta water quality objectives were included in the EIR existing conditions baseline, there would be no demonstrable change.

Table CR1-1. Summary of Activities Since December 2018 Related to Lower San Joaquin River Flows/Southern Delta Salinity Water Quality Objectives

Timeframe	Status	Activity Description
September 2020	Submitted; remains in draft form	DWR and Reclamation submitted a Comprehensive Operations Plan that describes actions to fully address impacts of SWP and CVP export operations on southern Delta water levels and salinity conditions to the State Water Board for approval.
Initiated in 2019–May 2023	Conditionally approved by the State Water Board	DWR will develop and implement monitoring and special studies to characterize the spatial and temporal distribution and associated dynamics of water level, flow, and salinity conditions in the southern Delta waterways. The monitoring and special studies must also inform the development of long-term monitoring protocols to measure compliance with the performance goals of the Comprehensive Operations Plan.
Initiated June 2022	Sent invitation letters to interested stakeholders	The Stanislaus, Tuolumne, and Merced Working Group was formed to act as a regional watershed group that coordinates activities in the LSJR and the three eastside tributaries and assist with implementing the flow objectives.
September 2019–September 2023	Developed and approved biological goals and objectives	The State Water Board worked with the Stanislaus, Tuolumne, and Merced Working Group to develop biological goals for LSJR salmonids. These biological goals are quantitative metrics that the State Water Board will use to assess whether the actions it is taking under the <i>Water Quality Control Plan for the San Francisco Bay/Sacramento–San Joaquin Delta Estuary</i> , as well as the actions it is taking in coordination with state agencies and other entities to implement the plan, are making sufficient progress toward the plan’s objectives of achieving and maintaining the natural production of viable native fish and aquatic species populations. The State Water Board approved these biological goals and objectives in September 2023.

Timeframe	Status	Activity Description
August 2022	NOP released; ongoing	The State Water Board intends to evaluate a proposed regulation to implement the LSJR flows and southern Delta salinity objectives and assign “responsibility for achieving the LSJR flow and southern Delta salinity objectives; requiring the development and implementation of reservoir carryover storage targets, reservoir refill, or other requirements to help ensure that providing flows to meet the flow objectives will not have significant adverse temperature or other impacts on fish and wildlife or, if feasible, on other beneficial uses; implementation through a voluntary agreement, if proposed; and, other related components of the Bay-Delta Plan” (State Water Resources Control Board 2022). As stated by the Notice of Preparation, “the State Water Board is proposing to implement the LSJR flow and southern Delta salinity objectives through a regulation that would apply to water right holders and claimants in the lower San Joaquin River watershed and southern Delta consistent with applicable law” (State Water Resources Control Board 2022).
April 2023	NOP released; ongoing	The State Water Board released its Notice of Preparation of Environmental Documentation and Scoping Meeting for the possible amendment of the Bay-Delta WQCP to incorporate the Tuolumne River Voluntary Agreement (State Water Resources Control Board 2023a). No environmental document has been publicly released to date.

CVP = Central Valley Project; DWR = California Department of Water Resources; LSJR = Lower San Joaquin River; Reclamation = Bureau of Reclamation; State Water Board = State Water Resource Control Board.

The updates to the Bay-Delta WQCP in the Sacramento River and Delta watershed regarding the Delta outflows, Sacramento River and Delta tributary inflows, cold water habitat and interior Delta flows (sometimes identified as Phase 2 in comments on the EIR) were not proposed at the time of the 2020 NOP, and the Bay-Delta WQCP has not yet been amended to incorporate these water quality objectives.

The State Water Board released the public draft *Staff Report/Substitute Environmental Document in Support of Potential Updates to the Water Quality Control Plan for the San Francisco Bay/Sacramento–San Joaquin Delta Estuary for the Sacramento River and Its Tributaries, Delta Eastside Tributaries, and Delta* with proposed water quality amendments only recently, in September 2023 (State Water Resources Control Board 2023c). Similar to the lower San Joaquin River flow and southern Delta salinity water quality objectives and as described above, the State Water Board must approve the proposed amendments released on September 28, 2023, and then implement them according to the State Water Board’s authorities (e.g., water right proceedings, adopting regulations, or both). The September 2023 document used the D-1641 as a baseline as it relates to requirements for the lower San Joaquin River at Vernalis. This demonstrates that implementation is necessary to update the baseline and that without implementation for Phase 1, D-1641 is an appropriate baseline: “The SacWAM [Sacramento Water Allocation Model] boundary condition at Vernalis was developed using a CalSim 3 simulation based on the 2021 Delivery Capability Report ... specified to include State Water Board Water Right Decision 1641 (D-1641) Vernalis minimum monthly flows and salinity requirements” (State Water Resources Control Board 2023b:5). Therefore, implementation of the proposed Delta Outflows, Sacramento River and Delta Tributary Inflows, Cold Water Habitat and Interior Delta Flows amendment to the Bay-Delta WQCP

remains unknown, and it would be speculative to estimate how it would be implemented; therefore, it cannot be incorporated into the EIR modeled baseline.

Appropriate Scope of Project Objectives and Agency Discretion

Some comments argued that the project's purpose and objectives are not reasonable because they are artificially narrow and exclude non-diversion alternatives from detailed analysis. Other comments claimed that the objectives do not fully align with Governor Gavin Newsom's direction provided in Executive Order N-10-19. Still other comments suggested that continued operation of the SWP should not be pursued. Many comments disagreed with or offered opinions objecting to the fundamental purpose and existence of the SWP and used this disagreement to claim that the project objectives are too narrow or that they do not align with the opinions expressed in the comments regarding the purpose of the project. For example, some comments shared opinions in opposition to the project and fundamentally objected to exporting water to the Central Valley and Southern California, with or without the Delta Conveyance Project, via the SWP. Finally, a number of comments claimed that the objectives are inadequate because the project would not work or would not function as described to meet the objectives.

This section explains why DWR included the objectives that are described in the EIR and why consideration of other or different objectives is neither appropriate nor required under CEQA. It then provides a brief summary regarding use of the project objectives in the alternatives screening. Finally, the section discusses how, although DWR is not required to prove the proposed project would meet the stated objectives, substantial evidence, including the analysis in the EIR, shows the project would meet the project objectives.

Basis for the Project Objectives

CEQA is intended to be used in conjunction with discretionary powers granted to public agencies by other laws, and it gives lead agencies broad discretion in defining a project's purpose and objectives (CEQA Guidelines § 15040(a)). Under CEQA, an EIR must contain a statement of the objectives sought by the proposed project (CEQA Guidelines § 15124(b)). The project objectives should drive the agency's selection of alternatives for analysis and potential approval. As stated in the CEQA Guidelines, "[a] clearly written 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" (CEQA Guidelines § 15124(b)). Importantly, as California's state courts have determined, "CEQA does not restrict an agency's discretion to identify and pursue a particular project designed to meet a particular set of objectives."⁸ Further, as provided in *In re Bay-Delta Programmatic EIR Coordinated Proceedings* (2008), "Although a lead agency may not give a project's purpose an artificially narrow definition, a lead agency may structure its EIR alternatives analysis around a reasonable definition of underlying purpose and need not study alternatives that cannot achieve that basic goal. For example, if the purpose of the project is to build an oceanfront resort hotel [citation] or a waterfront aquarium [citation], a lead

⁸ *California Oak Foundation v. Regents of University of California* (2010) 188 Cal.App.4th 227, 276–277.

agency need not consider inland locations.”⁹ Indeed, the California Supreme Court upheld an EIR where one of the fundamental project purposes was the water supply reliability of the SWP and Central Valley Project.¹⁰

In contrast, courts have held that a project’s purpose and objects are unlawfully narrow where the objectives were so narrow as to preclude any alternative other than the proposed project.¹¹

As described in Chapter 1, *Introduction*, DWR is committed to the continual operation of the SWP, which provides clean, affordable water to SWP public agency contractors, which represent 27 million people (three out of five Californians) and 750,000 acres of irrigated farmland. The SWP, including existing exports, has been part of water supply development and management in California since approximately 1960. The Delta is a critical link in the SWP’s distribution system and a necessary conduit for moving water from the north of the state, where precipitation falls, to southern parts of the state, where there is greatest demand. The SWP is, and will continue to be, an important source of water for Californians, sustaining California’s multitrillion-dollar annual economic output. If the Delta Conveyance Project is approved, DWR is proposing to continue to operate the SWP as modified to include the project. Implementation of the proposed Delta Conveyance Project will be in compliance with all applicable state and federal water quality and environmental laws. This commitment to the continual operation of the SWP informed the project objectives.

DWR recognizes that climate change poses a threat to the existing SWP. Thus, the first objective focuses on reliably operating and maintaining the ability to continue SWP operations in the face of sea level rise and increasingly unpredictable precipitation patterns.¹² The second objective relates to the fact that the current SWP system relies heavily on natural channels within the Delta to convey water and is extremely vulnerable to seismic events because most land in the central Delta has subsided well below sea level; that is, if levees fail because of a seismic event, seawater intrusion from the western Delta could create salinity conditions that could require ceasing diversions from the SWP’s current point of diversion in the south Delta.¹³ Project implementation would avoid having the SWP shut down or severely limit operations because of one or more levee breaches in the Delta. A seismic event could cause major damage to property, infrastructure, and the environment that could affect the entire state. Major levee breaks also change the hydrology of the Delta and can impinge on SWP operations as a result. Because seismic activity poses a threat to the existing SWP, DWR included as the second project objective minimization of the potential for public health and

⁹ *In re Bay-Delta Programmatic EIR Coordinated Proceedings* (2008) 43 Cal.4th 1143, 1166. See also *California Native Plant Society v. City of Santa Cruz* (2009) 177 Cal.App.4th 957, 993–994, an upholding decision not to consider offsite trails where the project’s purpose concerned improvements on a specific property owned by the city, and *Jones v. Regents of University of California* (2010) 183 Cal.App.4th 818, 829, which states, “substantial evidence supports the determination that the offsite alternative would not achieve the ... objectives of creating a more campus-like setting with the goal of enhancing collaboration, productivity, and efficiency.”

¹⁰ *In re Bay-Delta Programmatic EIR Coordinated Proceedings* (2008) 43 Cal.4th 1143.

¹¹ *We Advocate Thorough Environmental Review v. County of Siskiyou* (2022) 78 Cal.App.5th 683, 692.

¹² “To help address anticipated rising sea levels and other reasonably foreseeable consequences of climate change and extreme weather events.” Chapter 2, *Purpose and Project Objectives*, in the section titled *Project Purpose and Objectives*.

¹³ “To minimize the potential for public health and safety impacts from reduced quantity and quality of SWP water deliveries, and potentially CVP water deliveries, south of the Delta as a result of a major earthquake that could cause breaching of Delta levees and the inundation of brackish water into the areas where existing SWP and CVP pumping plants operate in the southern Delta.” *Ibid*.

safety impacts from reduced quantity and quality of SWP water deliveries, and potentially CVP water deliveries, south of the Delta as a result of a major earthquake that could cause breaching of Delta levees. The third listed project objective is focused on water reliability in relation to changing hydrologic conditions.¹⁴ This objective focuses on the ability to manage changing hydrologic conditions and an increase in the SWP's ability to convey water when it is available. This objective is included so that diversion operations could be adjusted to capture and then use the excess water during periods of high water flows, such as conditions that generate excess water during the winter and spring. In sum, the third project objective aims to ensure that the project would maximize opportunities for water conveyance while still complying with applicable regulations. The fourth project objective responds to anticipated future regulations to protect aquatic species and water quality that could further constrain the SWP system.¹⁵ This allows flexibility in operations while both being responsive to the needs of the highly dynamic Delta estuary and improving aquatic conditions depending on hydrologic conditions and within the regulatory framework of operation.

Consideration of Different Project Objectives

Some comments assert that DWR should have included objectives to restore the Delta ecosystem, restore populations of specific species, protect Delta water quality, or reduce SWP exports. Comments attempted to connect these seemingly commenter-suggested objectives to consistency with the Sacramento–San Joaquin Delta Reform Act of 2009 (Delta Reform Act) or other processes. Comments maintained that the absence of an objective aimed at restoration of the Delta ecosystem is a deficiency in the objectives and in the project overall. Comments also identified that “new water sources” or “new water supplies” throughout the state should have been an objective of the project.

The underlying purpose and basic objectives of the project, as described in Chapter 2, *Purpose and Project Objectives*, are neither to restore the Delta nor to develop new sources of water or a new water supply. As already explained, lead agencies have discretion to define the fundamental project purpose and project objectives, as long as they allow for discussion of a reasonable range of potentially feasible alternatives. DWR has the discretion to set out to address risks to the continued reliability of SWP supplies in the face of known risks without also restoring the Delta ecosystem or solving water supply challenges statewide.

In addition, the Delta Reform Act does not require any reduction in SWP or CVP exports, as some comments assert. To the contrary, the state's coequal goals for the Delta include the goal of providing a more reliable water supply for California (Pub. Resources Code § 29702(a); California Water Code [Wat. Code] § 85001(c)). The Delta Reform Act also recognizes that new Delta water conveyance infrastructure is needed to address the risks to California's water supplies (Wat. Code §§ 85004(b), 85020(f)) and requires the *Delta Plan* to “promote options for new and improved infrastructure relating to the water conveyance in the Delta[,]” among other things (Wat. Code § 85304). Thus, the Delta Reform Act does not impose any particular project objectives on DWR with respect to the SWP or proposed projects to protect the reliability of SWP supplies; rather, it

¹⁴ “To protect the ability of the SWP, and potentially the CVP, to deliver water when hydrologic conditions result in the availability of sufficient amounts of water, consistent with the requirements of state and federal law, including the California and federal Endangered Species Act and Delta Reform Act, as well as the terms and conditions of water delivery contracts and other existing applicable agreements.” *Ibid.*

¹⁵ “To provide operational flexibility to improve aquatic conditions in the Delta and better manage risks of further regulatory constraints on project operations.” *Ibid.*

establishes improved Delta conveyance as one among many measures needed to achieve the coequal goals in the Delta.

Comments sometimes cite Wat. Code Section 85021, the reduced reliance policy, as somehow mandating that DWR have as a project objective the reduction of exports or a reduced reliance on the Delta. But that policy calls for a statewide strategy of investing in improved regional supplies, conservation, and water use efficiency to meet California's future water supply needs, and it calls on each region of the state that depends on water from anywhere in the Delta watershed to improve its regional self-reliance by investing in water use efficiency, water recycling, advanced water technologies, and other water supply projects and strategies. It does not impose a project objective on DWR to reduce SWP diversions from the Delta or to propose projects outside the Delta to reduce reliance. Nor does it restrict DWR's discretion to propose and study new Delta conveyance infrastructure aimed at protecting or enhancing the reliability of SWP supplies that the State Legislature has found essential to California's economy (Wat. Code § 85004(a)).

In short, the Delta Reform Act does not restrict DWR's discretion to identify project objectives. And DWR's proposed project is not being proposed instead of actions elsewhere in the state to reduce reliance, but rather in addition to such actions.

The overarching purpose for the proposed project is to work within the regulatory framework to protect the ability of the SWP, and potentially the CVP, to deliver water when hydrologic conditions result in the availability of sufficient amounts of water in light of the climate change, sea level rise, and seismic risks as described previously in this Common Response. The objectives of the project do not need to address all state and federal laws associated with the Delta, and the objectives are grounded in specific state actions over the years related to the continued operation of the SWP. Furthermore, the Delta Conveyance Project is DWR's project. CEQA does not require DWR to speculate on the potential objectives of users (e.g., public water agencies) for the water that the project may deliver if approved and developed by DWR. The four basic project objectives set forth in the EIR were identified in consideration of the policy and regulatory background described in the EIR, specifically in the sections titled *Prior Delta Conveyance Planning Efforts* and *Current Planning Effort* in Chapter 1. The policy and regulatory background is summarized as follows.

- The *California Water Resilience Portfolio* identified a suite of complementary actions to ensure safe and resilient water supplies, flood protection, and healthy waterways for the state's communities, economy, and environment.
- Executive Order N-10-19 directed the California Natural Resources Agency, California Environmental Protection Agency, and California Department of Food and Agriculture to develop a comprehensive strategy to build a climate-resilient water system and ensure healthy waterways through the twenty-first century.
- The Delta Reform Act established the Delta Stewardship Council and gave it the task of adopting an enforceable *Delta Plan* (Wat. Code §§ 85200, 85300(a)); the act defined and established the coequal goals (Wat. Code §§ 85001, 85002, 85004); and the act determined that improving the water conveyance system in the Delta and expanding water storage are inherent in the coequal goals (Wat. Code § 85020(f)).
- Executive Order S-17-06 commissioned a Blue Ribbon Task Force in order to provide a series of recommendations concerning the Delta ecosystem and its water supply in the *Delta Vision Strategic Plan*, issued in October 2008 (California Natural Resources Agency 2008), and to implement that vision.

Although the Bay Delta Conservation Plan and California WaterFix projects included project elements aimed at restoring habitat and contributing to the restoration and protection of sensitive species, these activities are not a fundamental purpose of the Delta Conveyance Project, nor does CEQA or any other statute require them to be. Since the issuance of the NOP in January 2020, DWR has been clear that the Delta Conveyance Project is a water supply reliability project. It is not an ecosystem or habitat restoration project. It is well within DWR's discretionary authority to focus the project's purpose on water supply reliability. This is also consistent with past and present statewide policy previously summarized in this Common Response and described in Chapter 1. Furthermore, there is no legal or policy directive that would make restoration of the Delta a prerequisite for DWR's pursuit of water supply reliability. Although restoration is not an objective of the project, it should be noted that the EIR contains the CMP (Appendix 3F, *Compensatory Mitigation Plan for Special-Status Species and Aquatic Resources*), which includes restoration as part of various mitigation measures that will be implemented through the project's Mitigation Monitoring and Reporting Program (MMRP). In addition, while ecosystem protection is not an objective of the project, the EIR considers—consistent with CEQA's requirements—whether the proposed water supply reliability project would have any significant impacts on the environment, including species impacts; and, where necessary and feasible, the EIR proposes mitigation to reduce impacts to less than significant. Please see Common Response 8 regarding the relationship of the project to the Delta Reform Act and the act's coequal goals, as well as the relationship of the project to the *Delta Plan*.

Use of Objectives in Alternatives Screening

As described in Chapter 2, the underlying purpose of the project is to “to restore and protect the reliability of SWP water deliveries and, potentially, CVP water deliveries south of the Delta, consistent with the State’s Water Resilience Portfolio in a cost-effective manner.” Given this underlying purpose, the project objectives are focused on providing operational flexibility and enhancing DWR’s ability to adjust to changing weather conditions and climate patterns that could result in excess flow conditions during the winter and spring months. The project also adds to the resiliency of the water supply against potential damage from seismic events or sea level rise that could disrupt service. Thus, DWR developed the project objectives to create a more resilient and flexible water supply. Non-conveyance alternatives were initially developed, but the non-conveyance alternatives that had been identified either would not achieve the majority of the project objectives or were determined not to be feasible. As described in Appendix 3A, *Identification of Water Conveyance Alternatives*, the first-level screening, Filter 1, used four criteria based on the project objectives to evaluate which alternatives should move forward to the second-level screening, Filter 2. Those alternatives that met even two of the four criteria were allowed to move to the second-level screening. Non-diversion alternatives that relied solely on the existing south Delta intake facilities, however, were determined not to meet the objective of climate resilience because they would not help facilitate continued operation of the SWP in the face of sea level rise or address seismic risks that could disrupt service. Ultimately, through use of the screening process, it was found that non-conveyance alternatives would not offer the operational flexibility that would allow the SWP to capture water during excess flow conditions and during times of the year when flows exceed the existing capacity of south Delta pumping facilities. Non-conveyance alternatives also would not protect the ability of the SWP to provide water consistent with regulations that protect federal and state endangered species.

Please refer to Common Response 3, *Alternatives Development and Description*, regarding the approach to alternatives screening and commenter-suggested infrastructure, water management, and facilities operations alternatives.

Objective Performance

CEQA case law has established that CEQA documents are generally not required to demonstrate that a proposed project will achieve its objectives. Lead agencies are generally entitled to assume that proposed projects will work as described. Lead agencies can make reasonable assumptions about how the project will work in the future without guaranteeing these assumptions will remain true. If, after project approval, it turns out that the project is not achieving its objectives and the project must be changed or modified such that a different project would result, then such future discretionary project changes would be subject to CEQA's subsequent review requirements.¹⁶ In particular, comments were received on the ability of the project to meet the objectives regarding sea level rise and extreme weather events as well as seismic events. Substantial evidence in the record demonstrates that the project would support the basic project objectives, particularly with respect to sea level rise and extreme weather events and with respect to seismic events, as stated in Chapter 2 and described in the following sections.

Sea Level Rise and Extreme Weather Events

No single project and, indeed, none of the project alternatives would be able to completely counteract all of the effects associated with sea level rise or climate change. However, the Delta Conveyance Project is part of the state's strategy in adapting the SWP water supply to climate change. Information is presented throughout the EIR documents that the project would operate under different sea level rise conditions and would allow adaptation to sea level rise and potential changes in hydrologic conditions associated with climate change. Multiple analyses were conducted and included in the EIR to test the robustness of the alternatives to a range of potential future climate change conditions. For example, water supply, aquatic resources, and terrestrial resources were all analyzed with projected future conditions under climate change (e.g., under the 2040 climate change scenario with an assumed extreme high level of sea level rise of 1.8 feet). The project would likely remain functional well into the future, when salinity intrusion may prevent use of the south Delta pumps. As described in Appendix 5A, studies demonstrate that the proposed north Delta intakes would not be vulnerable to saltwater intrusion even with an extreme high sea level rise of up to 10.2 feet. Therefore, as the EIR demonstrates, even in the face of extreme sea level rise, the north Delta intakes would continue to be operable. The anticipated hydrologic changes associated with climate change (i.e., increased temperatures and more years of extreme wet and dry precipitation conditions, increased water temperatures, changes in precipitation and runoff patterns, sea level rise, and tidal variations) will constrain and challenge future water management practices across the state, with or without the proposed project. However, as described in Appendix 30A, *CalSim 3 Results Sensitivity to 2040 Climate Change and Sea Level Projections*, the project would be able to operate to substantially lessen climate change impacts on SWP supplies under a drier climate with less long-term average precipitation when hydrologic conditions and the operational criteria allow diversions while meeting regulatory requirements for the protection of water quality and sensitive fish in the Delta. For more information regarding climate change and the project, including

¹⁶ *Village Laguna of Laguna Beach Inc. v. Board of Supervisors* (1982) 134 Cal.App.3d 1022; *Environmental Council of Sacramento v. City of Sacramento* (2008) 142 Cal.App.4th 1018.

engineering information and design considerations of 10.2 feet of sea level rise, please refer to Common Response 6.

Seismic Event

The Delta Conveyance Project features would be designed for seismic resiliency, as described in the Conceptual-Level Seismic Design and Geohazard Evaluation Criteria Technical Memorandum (Delta Conveyance Design and Construction Authority 2022a). Additional field investigations would be conducted during the detailed design phase to further develop seismic resiliency criteria for the new project features, as described in Chapter 3, *Description of the Proposed Project and Alternatives*, in the section titled *Field Investigations*. Because of the consequences of failure, the criticality of the structure for water delivery, and the downtime and cost for the repair of the facility, the tunnel would be designed to meet the highest, most conservative standards of DWR's 2012 *State Water Project—Seismic Loading Criteria Report* (California Department of Water Resources 2012), with some modifications to incorporate specific requirements of agencies, including DWR's Division of Safety of Dams, USACE, and the California Department of Transportation.

A moderate to strong earthquake could cause simultaneous levee failures on several Delta islands, which would result in island flooding and pull high-salinity water into the central and south Delta. According to the U.S. Geological Survey, there is a 72% chance of a 6.7 or greater magnitude earthquake occurring in the Bay Area by 2043 (U.S. Geological Survey 2016:1). The project intends to reduce the vulnerability of the water supply delivery system by making it less likely to be affected by seismic risks associated with the existing levee system. The project does not change the state's flood protection policies or programs, including continued public funding for public and private levee maintenance and enhancements in the Delta.

Should a seismic event occur, depending on its intensity and location, DWR would inspect all proposed project facilities for potential damage that could affect project operations and assess the need for repair. This inspection could involve a temporary outage, but proposed project facilities are designed to allow for continuous operations during facility inspections, under most situations. Additionally, the proposed project facilities would be designed as critical infrastructure, which requires a robust design that accounts for the potential for significant seismic events and incorporates emergency features, such as backup power facilities and communications systems, needed to operate facilities during an emergency. The capability of the Delta Conveyance Project to continue operations would improve the ability of SWP Delta facilities to function after a seismic event by operating diversion facilities upstream of existing SWP facilities. The operations of the project would allow continued water supply diversions should south Delta export facilities become inoperable. Thus, the proposed Delta Conveyance Project would meet the seismic resilience project objective.

The project does not purport to protect existing levees from seismic ground shaking. Changing the seismic reliability of levees and other Delta features is not addressed in the project objectives in Chapter 2 because, as described in Appendix 3A, improving Delta levees would require extensive construction and result in substantial environmental impacts. In addition, it would be difficult and expensive to reconstruct all levees to meet water supply reliability goals, and, as explained in Appendix 3A, levee reconstruction would not meet most of the project objectives, including the objective to address the risks of sea level rise to SWP reliability in the Delta.

Water Supply Reliability and Operational Flexibility

The EIR provides information demonstrating that the project would protect the ability of the SWP, and potentially the CVP, to deliver water when hydrologic conditions result in the availability of sufficient amounts of water. For example, the section titled *Project Alternatives* in Chapter 6, *Water Supply*, explains that under project alternative operations, long-term average exports would increase relative to existing conditions, thus improving water supply reliability. Analyses in Appendix 6A, indicate that long-term average annual SWP deliveries under the future No Project Alternative could decline by approximately 236,000 acre-feet compared to existing conditions and that implementing the proposed project (Alternative 5) would increase long-term average annual SWP deliveries by approximately 287,000 acre-feet. This analysis shows that the Delta Conveyance Project would improve SWP water supply reliability under current and future conditions. The operations described in Chapter 6 are consistent with the requirements of state and federal law, including applicable water quality standards and the state and federal Endangered Species Acts, as well as the terms and conditions of water delivery contracts and other existing applicable agreements, as represented by the hydrologic model. In addition, Common Response 3 provides multiple figures that demonstrate how the project would operate during certain hydrologic conditions by diverting excess water during high-flow events and help provide a more reliable water supply responsive to changing weather conditions and rainfall patterns. Please refer to Common Response 3 for a full definition of excess water and additional discussion of the conditions under which excess water could be more efficiently managed and diverted.

Finally, as noted in the section of this Common Response titled *Sea Level Rise and Extreme Weather Events*, the project would operate and supply water under climate change conditions. The operations analyzed throughout the EIR also demonstrate the operational flexibility of the project as described in Chapter 3, in the section titled *Integration of North Delta Intakes with South Delta Facilities*, and in Common Response 3. The modeled results provided in Chapter 6 and in other parts of the EIR (e.g., Chapter 12, *Fish and Aquatic Resources*, Appendix 4B, *North Delta Diversion Priority Sensitivity Analysis*, and Appendix 4C, *Alternate Regulatory Scenario Sensitivity Analysis*) accurately reflect and demonstrate the type of operational flexibility that the project would provide to improve aquatic conditions and better manage risks of further regulatory constraints.

Scope of Analysis

Comments claimed that the overall scope of analyses contained in the EIR was inadequate and did not meet the requirements of CEQA for multiple reasons, including alleged lack of project description details; incomplete project engineering and design; acknowledgment in the EIR of additional studies that need to be done, including geotechnical studies; and assumptions used in the environmental impact analysis.

CEQA does not require technical perfection in an EIR, but rather adequacy, completeness, and a good-faith effort at full disclosure (CEQA Guidelines § 15003(f)). The CEQA Guidelines explain this more fully.

An EIR should be prepared with a sufficient degree of analysis to provide decisionmakers with information which enables them to make a decision which intelligently takes account of environmental consequences. An evaluation of the environmental effects of a proposed project need not be exhaustive, but the sufficiency of an EIR is to be reviewed in the light of what is reasonably feasible. Disagreement among experts does not make an EIR inadequate,

1 but the EIR should summarize the main points of disagreement among the experts. The
2 courts have looked not for perfection but for adequacy, completeness, and a good faith effort
3 at full disclosure.

4 (CEQA Guidelines § 15151)

5 The scope of the environmental impact analysis in each resource chapter provides comprehensive
6 discussion of construction, operations, and facility maintenance specific to each resource topic. The
7 analysis methodology for each resource is prepared with a sufficient degree of detail (based on the
8 contents of Chapter 3 and supporting appendices, such as Appendix 3F) to provide decision makers
9 with information about the type of impacts and the level and magnitude of those impacts. The
10 information disclosed in the EIR enables decision makers to decide on the approval of the project,
11 while intelligently disclosing potentially significant environmental impacts and providing feasible
12 mitigation measures to reduce impacts. The overall methodology of impact analysis within the EIR
13 and in each resource chapter is compliant with CEQA Guidelines Section 15151 and provides an
14 evaluation to the degree that was feasible and based on known science, existing as well as
15 reasonably foreseeable environmental conditions, reasonably foreseeable environmental effects,
16 best practices, and best available engineering.

17 To prepare a scope of impact analysis sufficient to disclose potentially significant environmental
18 impacts, the EIR includes complete information and data on the location, design, schedule, and
19 operation of project components for each of the nine alternatives evaluated based on the current
20 level of design detail. The EIR also includes detailed operational criteria regarding the project and
21 describes conditions and requirements under which the proposed north Delta intakes would divert.
22 This information can be found in multiple sections of Chapter 3, including, but not limited to, the
23 following: *Common Features of the Alternatives*; a section for each of the nine alternatives (e.g.,
24 *Alternative 1—Central Alignment, 6,000 cfs, Intakes B and C*); *Intake Operations and Maintenance*;
25 *Real-Time Operational Decision-Making Process*; and *North Delta Diversions*. The description of
26 project operations is provided in multiple forms (narrative, tabular, and graphical) throughout
27 Chapter 3 to clearly describe the details and allow for readability and understanding. Common
28 Response 3 provides an overview of the proposed facility operations and a description of the
29 operations criteria approach presented in Chapter 3. Where design detail may be preliminary or
30 limited for certain facilities or construction or operation activities, the scope of the impact analysis
31 accounts for this and makes reasonable assumptions predicated on fact. This approach provides the
32 flexibility to avoid resources as the project design is refined. Each resource chapter identifies
33 specific study areas and facility footprints based on the details in Chapter 3 for environmental
34 impact analysis purposes. Figures and mapbooks that are part of Chapter 3 and other parts of the
35 EIR provide additional detail regarding facility footprints and depict the location and boundaries of
36 the project alternatives in narrative form as well as visual form. The maps in Chapter 3 and
37 throughout the EIR have been designed to provide the level of detail appropriate to depict the
38 effects of conveyance facilities on these resource areas. Accordingly, not all maps are at the same
39 scale; rather, the scale was selected on the basis of the nature of the effects for a given resource. In
40 order to maintain clarity and ease of use, labeling in many mapbook figures has been minimized to
41 be consistent with discussions in the narrative. These factors, as well as the magnitude of the project
42 at issue, the severity of its likely environmental impacts, and the geographic extent of the project,
43 are all accounted for in the EIR.

44 As discussed in Chapter 4, the project includes two Engineering Project Reports (EPRs) developed
45 by the Delta Conveyance Design and Construction Authority at the direction of DWR: *Volume 1: Delta*

1 *Conveyance Final Draft Engineering Project Report—Central and Eastern Options and Volume 1: Delta*
2 *Conveyance Final Draft Engineering Project Report—Bethany Reservoir Alternative* (Delta
3 Conveyance Design and Construction Authority 2022b, 2022c). The project also includes specific
4 engineering refinements, which are described in *Central and Eastern Corridor Options Engineering*
5 *Project Report Update* (Delta Conveyance Design and Construction Authority 2023a) and *Bethany*
6 *Reservoir Alternative Engineering Project Report Update* (Delta Conveyance Design and Construction
7 Authority 2023b). The EPRs are provided online at <https://www.dcdca.org>. The EPRs provide a
8 summary report and associated technical memoranda, engineering concept drawings, and GIS
9 analysis used to develop conceptual project plans. As is common practice and as is discussed in the
10 EPRs and Chapter 3, if the proposed project or a project alternative is approved, future
11 investigations (i.e., geotechnical studies) will be conducted during preconstruction and construction
12 phases. The future investigations will be based on the specific project elements and the
13 environmental conditions, some of which are currently unknown and which do not provide an
14 adequate level of detail to enable a final site-specific design at this time. The information from the
15 EPRs was reviewed and incorporated by reference into various resource analyses in the EIR.

16 The Chapter 3 section titled *Field Investigations* discusses the anticipated geotechnical,
17 hydrogeologic, and agronomic investigations and studies that would be conducted to fully inform
18 project design if the proposed project or a project alternative is approved. Due to the scope and
19 scale of the project and the timeline of implementation, it was not feasible to conduct all needed
20 studies at this time, nor is that required under CEQA as it would be inconsistent with the mandate
21 that “EIRs ... should be prepared as early as feasible in the planning process to enable environmental
22 considerations to influence project program and design and yet late enough to provide meaningful
23 information for environmental assessment” (CEQA Guidelines § 15004(b)). All testing would occur,
24 as is standard practice, prior to or during the preconstruction phase and would be ongoing as
25 necessary during construction of the project; it would be premature to conduct such studies prior to
26 identifying a final project footprint, exact siting of project elements, and acquisition of all required
27 permits. Additional studies and testing would be used to support permitting and to ensure designs
28 both meet necessary regulations and provide specificity regarding measures necessary to minimize
29 potential effects. Final designs will include and conform to applicable government codes and safety
30 standards and will be used to identify appropriate construction methods to ensure the conveyance
31 facilities would withstand a design-level catastrophic event. If the project is approved, the final
32 design of the proposed project or project alternative is anticipated to occur within the same project
33 footprints that are evaluated in the EIR; however, for any unanticipated facility changes resulting
34 from field investigations or from other future changes in circumstances that are not analyzed in this
35 EIR, DWR would comply with the necessary state environmental review requirements and CEQA’s
36 subsequent review requirements, which exist precisely because project design may (and often does)
37 change as more detailed design and field studies become available after project approval.

38 In addition, Appendix 3B, *Environmental Commitments and Best Management Practices*, describes
39 environmental commitments, best management practices, and management plans that are to be
40 implemented primarily during construction. Environmental commitments are included as integral
41 components of the project description. The environmental commitments are discussed in Appendix
42 3B and are incorporated by reference into the methods of analysis and impact analysis for each
43 environmental topic as appropriate.

44 Therefore, as this Common Response has outlined, Chapter 3, its accompanying appendices, and the
45 EPRs provide sufficient detail regarding the project to inform the scope of the impact analyses to

appropriately evaluate impacts and for decision makers to understand the alternatives being evaluated. A greater level of detail for the project description is not necessary for the lead agency, decision makers, or the public to reasonably consider and understand the environmental impacts of the project; nor is a greater level of detail for the project description feasible for inclusion in an EIR. Design engineering for the project proceeds along routine and regimented completion milestones to meet professional engineering standards and requirements, such that design can be certified complete. The project's current design is not 100% complete, and CEQA does not require a project's design to be 100% complete. Engineering details that will be developed will support the construction and operation of a final alternative if approved, but these design details do not provide additional information necessary for decision makers to reasonably consider the project and to compare the impacts and merits of the alternatives.

Given the considerations outlined here, however, CEQA does not require, even with smaller projects, that all final design and engineering be completed prior to the completion of CEQA review, nor is such a practice typical. With a project as large and complex as the Delta Conveyance Project, it is even more common and necessary for final design and engineering to be completed only if the proposed project or a project alternative is approved. Information about the construction, operation, and maintenance of project facilities is available and described in the EIR. Due to the project's size, scale, and construction timeline, however, it is not possible to have all final design and engineering plans completed. In addition, as technology improves, it is likely that some engineering specifications and requirements will change, and it would be speculative to assume what those changes may consist of. Any changes to the project would be compared to what was proposed and analyzed in the EIR. Depending on the nature of the change and the potential for additional impacts, subsequent CEQA analysis consistent with the CEQA Guidelines could be required. The CEQA Guidelines describe this practice, which is particularly common for large, complex projects that are expected to be built over a period of time, and it is accounted for in CEQA Guidelines Sections 15162–15164, which describe the process and conditions that would require preparation of subsequent documents for previously approved projects.

Planning Scope and Permit Requirements

Comments frequently conflated the CEQA planning process and the permitting process. Some comments claimed that because permits had not been issued for the project, the EIR was inadequate or invalid or should be recirculated. Other comments suggested that the analysis contained in the EIR was inadequate because permitting requirements had not been incorporated.

The CEQA planning process and the project permitting process are separate processes. Permits required for the project and project-related activities do not need to be issued for an EIR to be adequate for CEQA compliance or for a lead agency to approve a project or certify an EIR. In fact, under CEQA, state and local discretionary permits cannot be issued prior to the completion of CEQA compliance.¹⁷ As described in Chapter 1, in the section titled *Intended Uses of This Final EIR and*

¹⁷ See, e.g., CEQA Guidelines § 15004(a): "Before granting any approval of a project subject to CEQA, every Lead Agency or Responsible Agency shall consider a final EIR"; § 15050(b): "Except as provided in subdivision (c), the decision-making body of each Responsible Agency shall consider the Lead Agency's EIR or Negative Declaration prior to acting upon or approving the project. Each Responsible Agency shall certify that its decision-making body reviewed and considered the information contained in the EIR or Negative Declaration on the project"; and § 15096(f): "Prior to reaching a decision on the project, the Responsible Agency must consider the environmental effects of the project as shown in the EIR or Negative Declaration. A subsequent or supplemental EIR can be prepared only as provided in Sections 15162 or 15163."

1 *Agency Roles and Responsibilities*, DWR will obtain all required permits for the project from all
2 regulating agencies, including an ITP from CDFW for applicable species identified under Section
3 2081(b) of the California Endangered Species Act (refer to the Chapter 1 section titled *California*
4 *Department of Fish and Wildlife*). The EIR acknowledges and incorporates where appropriate the
5 need for permits; this disclosure is adequate for the purposes of CEQA. The lack of permits at the
6 time of the publication of the Draft EIR or Final EIR does not constitute an inadequacy under CEQA.

7 Permitting agencies that are “responsible agencies” under CEQA have been consulted during the
8 CEQA process and received the EIR for review and comment. Lead agencies are encouraged to work
9 with federal permitting agencies in coordination with the CEQA planning process, though this is not
10 a requirement. DWR has been in regular communication and coordination with federal permitting
11 agencies, including USFWS and NMFS. Given this, it is expected that the content of the EIR will be
12 used to inform the permitting process, as is typical of the relationship between CEQA planning
13 requirements and the multiple local, state, and federal permitting requirements.

14 Permitting agencies have different standards and requirements for issuing permits as compared to
15 CEQA standards, which can lead to differing environmental protections. CEQA does not limit or
16 restrict the power or authority of any public agency in the enforcement or administration of any
17 provision of law that the agency is specifically permitted or required to enforce or administer (Pub.
18 Resources Code § 21174). As discussed previously in this Common Response, the EIR identifies a list
19 of permits that will be required for the project in Chapter 1. Because some of the details of the
20 project (e.g., specific phasing and timing of construction) are not known, it is not feasible to know all
21 specific permit requirements at this time. In light of this, multiple on-the-ground habitat
22 assessments and surveys, including nesting bird surveys, species-specific protocol-level surveys,
23 and preconstruction surveys, will be conducted as discussed in the EIR and will be used to inform
24 permit development. In addition, the CMP provides further discussion and requires additional
25 studies to determine mitigation details. DWR included the CMP to assist in obtaining federal
26 Endangered Species Act and California Endangered Species Act permits. The CMP accounts for some
27 of the uncertainty at this time and is a vehicle by which DWR and the permitting agencies can
28 coordinate to develop and satisfy permitting requirements. From a biological resource perspective,
29 specific permit requirements and implementation of appropriate habitat protection, enhancement,
30 or restoration ratios will not be known until surveys for biological resources are completed. Please
31 refer to Chapter 13, *Terrestrial Biological Resources*, and Common Response 11, *Terrestrial*
32 *Biological Resources and Compensatory Mitigation Plan*, for more information specifically related to
33 terrestrial wildlife species and the scope of analysis and mitigation measures required. Finally, as
34 part of the planning and environmental assessment process, DWR, as the lead agency, will
35 incorporate environmental commitments and best management practices into the project to avoid
36 or minimize potential significant impacts. DWR will implement these environmental commitments
37 as part of the project construction activities. These commitments will be satisfied even if not
38 separately imposed by the permitting agencies. In summary, the EIR commits to the implementation
39 of environmental commitments, best management practices, and mitigation measures; identifies
40 specific performance standards for mitigation measures; and includes requirements assuring that all
41 measures will be effective at the time the anticipated impact occurs. These requirements include the
42 requirements to obtain regulatory permits from other agencies, as identified in the EIR.

1 Coequal Level of Evaluation in the EIR

2 Comments expressed the concern that DWR did not meet NEPA requirements for coequal level of
3 analysis or for the scope of analysis. Comments also suggested that comparisons were not made
4 within the EIR between alternatives or that the coequal level of analysis was performed incorrectly.

5 The document prepared by DWR for the project (an environmental impact report, or EIR) is a CEQA
6 document, not a NEPA document (an environmental impact statement, or EIS). Content and process
7 requirements for an EIR are different from those for an EIS in a number of ways, including how
8 alternatives are described and analyzed. CEQA Guidelines discuss requirements for alternatives
9 analysis for these types of documents. (For a discussion of the preparation of an EIS for the Delta
10 Conveyance Project by USACE, please refer to the section titled *U.S. Army Corps of Engineers and*
11 *NEPA Process* in this Common Response.) CEQA Guidelines Section 15126.6(d) notes that “[t]he EIR
12 shall include sufficient information about each alternative to allow meaningful evaluation, analysis,
13 and comparison with the proposed project.” A lead agency may employ various ways to compare
14 alternatives, such as using a matrix or a discussion in text to summarize and compare the differences
15 and to disclose the different impacts for each resource category for each alternative.

16 CEQA, however, does not disallow discussion of alternatives in an EIR at an equal level of detail.
17 Accordingly, the section titled *Analysis Level of Detail* in Chapter 4 states that the EIR analyzes each
18 alternative at a project level of detail, including its design information, the water conveyance
19 facilities, and project operations and maintenance requirements. All project alternatives are
20 discussed at this level of detail in Chapter 3 and are included for the purposes of the USACE’s
21 satisfying NEPA. In this way, the EIR and the EIS could include similar discussions. This was done to
22 help avoid conflicts, create coherent analysis between the documents, and, ultimately, to aid readers
23 who may try to compare the evaluations in the two different environmental documents.

24 Further, one of the purposes of the alternatives section in the CEQA document is to disclose to
25 decision makers a reasonable range of potentially feasible alternatives that would fulfill most or all
26 of the basic project objectives and that have the potential to reduce significant environmental effects
27 of the proposed project. This aspect of CEQA, as with overall intent of CEQA, is to inform decision
28 makers about the environmental effects of a project. While one particular alternative may result in a
29 reduction of significant impacts, the lead agency is not bound to adopt that alternative. The lead
30 agency may approve or adopt any of the project alternatives analyzed. Please refer to the section
31 *Significant and Unavoidable Impacts* in this Common Response and the discussion of the adoption of
32 a statement of overriding considerations that describes these processes.

33 Thus, although the EIR includes additional discussions, information, and analysis required by NEPA,
34 it remains a CEQA document. Therefore, not every NEPA requirement, analysis methodology, or
35 summary is included in the EIR.

36 Analysis of Project as a Whole

37 Comments alleged that DWR did not describe the project wholly or completely, that it improperly
38 piecemealed or segmented the project, or that it otherwise failed to analyze the project as a whole as
39 required by CEQA. Some comments pointed to specific activities as purported evidence of
40 piecemealing or segmenting, including recent extension of SWP contracts or the fact that SWP
41 contracts would be amended if the Delta Conveyance Project was approved; the reinitiation of
42 consultation under the federal Endangered Species Act for the coordinated long-term operations of
43 the CVP and SWP; and the lack of inclusion of Reclamation, the CVP, or a federal component in the

1 project. Other comments claimed that the exclusion or lack of evaluation of temporary urgency
2 change petitions (TUCPs) constituted the lack of evaluation of the project as a whole. Still other
3 comments alleged that incomplete studies, surveys, or design constituted piecemealing or
4 segmenting. This section explains that none of the comments' claims regarding piecemealing or
5 segmenting are valid and that DWR conducted a full evaluation of the project as a whole in the EIR.

6 CEQA requires that a lead agency must analyze an entire project, or the whole of an action, that has a
7 potential for physical impact on the environment. Lead agencies cannot piecemeal their review of
8 the project's significant environmental impacts such that those impacts could be artificially
9 minimized. In other words, the CEQA prohibition on piecemealing ensures that environmental
10 considerations do not become obfuscated or minimized by chopping a large project into many little
11 ones—each with a minimal potential impact on the environment—that cumulatively may have
12 significant adverse impacts. However, CEQA allows a lead agency to pursue multiple projects in
13 individual planning efforts, and CEQA does not mandate a single environmental document for two
14 projects simply because they are being contemplated by the same agency at the same time. CEQA
15 further allows that two projects may properly undergo separate environmental review when the
16 projects have different proponents, serve different purposes, or can be implemented independently.
17 CEQA's intent to integrate the CEQA review with the related environmental review and consultation
18 processes of different agencies (CEQA Guidelines § 15124(d)) does not preclude or supersede the
19 lead agency's discretion of describing individual projects that meet different objectives, nor does
20 CEQA mandate that a lead agency artificially and forcibly merge projects when there is independent
21 utility between projects (i.e., when projects can proceed with or without one another). Independent
22 utility does not mean there is absolutely no relationship between projects.

23 DWR and other federal, state, and local water resource management agencies pursue various water
24 supply reliability, development, and infrastructure projects at the same time for different purposes
25 and in different geographic areas (e.g., proposed changes to the long-term operations of the SWP,
26 extension of SWP contracts to address the cost of debt to finance maintenance and operation of the
27 entire SWP, reinitiation of consultation on the coordinated long-term operations of the CVP and SWP
28 to comply with the federal Endangered Species Act). The approval of the Delta Conveyance Project is
29 not contingent on other projects identified or suggested in comments on the Draft EIR, and they are
30 not contingent on approval of the Delta Conveyance Project. In other words, the Delta Conveyance
31 Project has independent utility and its approval or operation does not rely on the approval or
32 implementation of other projects. When the Delta Conveyance Project is completed, it will be
33 operated as part of the long-term operations of the SWP and consistent with the reinitiation of long-
34 term operations of the CVP. DWR appropriately considered these types of ongoing water
35 management activities, as applicable, in the existing baseline conditions and the cumulative impacts
36 analysis in each resource chapter. Please also refer to Common Response 8 for further discussion of
37 the relationship of the Delta Conveyance Project to other plans, projects, policies, and programs.

38 Water quality standards identified in the existing Bay-Delta WQCP, D-1641, and TUCPs and their
39 resulting temporary urgency change orders (TUCOs) addressing extreme drought conditions are not
40 part of the project. They are requirements that DWR must meet or actions it took with respect to
41 operations of the existing SWP facilities because DWR is an agency that is required to comply with
42 the water quality standards contained in the Bay-Delta WQCP. If water quality standards cannot be
43 met, DWR has the recourse to file a TUCP with the State Water Board seeking a TUCO, which
44 requires a full and separate adjudicatory process before the State Water Board under California
45 water rights law. A TUCO is an action taken during emergency conditions; it does not occur on a

regular basis and is a temporary change in water rights, as its name reflects. DWR appropriately considered the Bay-Delta WQCP and D-1641 in the existing baseline conditions and the cumulative impacts analysis in each resource chapter. Because TUCOs are considered temporary, and because they are approved by the State Water Board for DWR to meet during certain hydrologic conditions, they are not part of the project, and DWR did not include them in the EIR. For additional information regarding TUCPs, TUCOs, and the reasons they are not appropriate as components of the Delta Conveyance Project, please refer to Common Response 3.

The EIR's inclusion and disclosure of future studies or surveys or additional design does not mean the project was not analyzed as a whole or that there is a deficiency in the impact analysis. The EIR used available information to evaluate potential impacts of the project. For example, in some instances access restrictions existed and site-specific data were not available for all areas potentially affected by the proposed project and project alternatives, so project design could not be 100% complete at the time of publication of the EIR. Further, as described already in this Common Response, in many CEQA documents final project design is not 100% complete when CEQA analysis begins, and having 100% project design is not a CEQA requirement.

Further, the EIR discusses those instances for which sufficient information is not available to conclude that an impact would be less than significant or less than significant with mitigation and discloses that future study or surveys will be needed, if appropriate. In these circumstances, the EIR appropriately finds the impact to be significant and unavoidable. This approach complies fully with CEQA.

In addition, where it is necessary to implement a plan for mitigation, the EIR provides that future site-specific studies will be performed as part of project design or construction and that they will be included in the project. This approach is consistent with the fact that the Delta Conveyance Project is a multiyear construction project that requires the design of hundreds if not thousands of individual parts at individual facilities, many of which are proposed on properties with current limited access.

As disclosed in the EIR, project design will continue should DWR approve the proposed project or a project alternative. It is reasonable that DWR, as the lead agency, would be required to perform additional studies and that those studies are described appropriately either as part of the project (e.g., geotechnical studies) or as mitigation measures (e.g., wildlife surveys). If they are described as mitigation, the measures must include performance standards that must be met throughout implementation. (See the section titled *Use and Incorporation of Mitigation Measures* in this Common Response for more information.)

Regarding SWP contracts, discussion of these can be found in Chapter 3 in the section titled *Contract Amendments*. As described in that section, the potential for the SWP contract amendments for the Delta Conveyance Project to cause a direct or indirect environmental impact is presented and analyzed in the Draft EIR as part of the approvals associated with the Delta Conveyance Project. In other words, the project as evaluated in the EIR covers the direct and indirect impacts that could result because of amendments that may occur to existing contracts. As such, DWR did not improperly exclude consideration of SWP contracts.

Please refer to the section titled *U.S. Army Corps of Engineers and NEPA Process* in this Common Response for a discussion of comments related to the Delta Conveyance Project EIS and comments that claimed the preparation of separate EIR and EIS documents for the evaluation of the Delta Conveyance Project, or the evaluation of the project related to the "federal handle" of USACE, is piecemealing, segmenting, or otherwise not evaluating the project as a whole. As has been presented

in this section of this Common Response, DWR properly considered the project as a whole and analyzed the project as a whole.

Substantial Evidence

A number of comments questioned the information and conclusions in the EIR and alleged a lack of substantial evidence.

The Draft EIR, taken in sum with the appendices, data, models, and other sources, as well as the Final EIR and materials supporting the Final EIR, including the responses to comments that highlight the points of disagreement, conforms to CEQA and the CEQA Guidelines and presents substantial evidence to support DWR's factual determinations and methodological choices. This substantial evidence supports the EIR's conclusions and disclosures and properly informs the public, interested parties, and decision makers.

CEQA Guidelines Section 15384(a) describes "substantial evidence" as enough relevant information and reasonable inferences from the information to establish that there is a fair argument to support a conclusion, even though other conclusions might also be reached. This is based on statutory provisions found in Pub. Resources Code Section 21082.2: Section 21082.2(c) defines "substantial evidence" to include "facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts," and Section 21082.2(a) provides that the determination of significance in the EIR shall be based on this substantial evidence considering the whole record before the agency. The record includes materials that are not necessarily part of the environmental document, but that are known and have been considered by the lead agency in the preparation of the document and that can be used to meet the criteria of substantial evidence.

The record for the EIR includes, but is not limited to, information obtained through public scoping, technical reports, multiple modeling tools, GIS resources, and public records. More than 5,000 reference documents and datasets were used to inform the analysis contained in the 34 chapters of the EIR and more than 80 different appendices related to existing conditions, project elements, and changes that would occur in the environment as a result of project construction and operation. Among these references are the two EPRs prepared by the Delta Conveyance Design and Construction Authority (Delta Conveyance Design and Construction Authority 2022b, 2022c). The EPRs are extensive, multivolume reports comprising narrative reports, numerous appendices, and multiple attachments containing 79 technical memoranda, engineering concept drawings, and GIS mapbooks. These background and supporting documents, as well as expert judgment, constitute substantial evidence, which is used to determine the environmental baseline, establish methodology, develop the thresholds of significance, and determine and disclose potential environmental effects. The substantial evidence is also used to develop feasible mitigation measures to reduce significant impacts, which are discussed in the section titled *Significant and Unavoidable Impacts* in this Common Response.

Just as a lead agency must have sufficient evidence to reach a plausible conclusion, comments on Draft EIRs must provide substantial evidence to support opposing conclusions for the lead agency to consider. As CEQA Guidelines Section 15204(c) states, "Reviewers should explain the basis for their comments, and should submit data or references offering facts, reasonable assumptions based on facts, or expert opinion supported by facts in support of the comments." Although multiple comments claimed that the EIR lacks substantial evidence to support its conclusions, many of the same comments do not provide evidence, data, facts, or reasonable assumptions (substantial

evidence) to refute the EIR's conclusions. DWR has reviewed all information presented in the comments and has responded in this and the multiple other Common Responses and in the individual responses compiled in Volume 2, Chapter 4, *Response to Comments Tables*; and DWR has made revisions in Volume 1 of the Final EIR as needed. The comments that provided details of evidence regarding the adequacy, accuracy, and completeness of the DWR, as well as evidence regarding significant environmental effects, were responded to in an appropriate or similar level of detail.

Some comments expressed disagreement with impact conclusions in the EIR, particularly those impact conclusions regarding fish and aquatic resources, water quality, and wildlife resources. To support disagreement with the EIR's conclusions, comments cited information such as the *California Water Resilience Portfolio*; California's Water Supply Strategy; Sustainable Groundwater Management Act; Bay Delta Conservation Plan/California WaterFix EIR/EIS; California Public Trust Doctrine; and USFWS and NMFS BiOps. Section 15151 of the CEQA Guidelines states, "Disagreement among experts does not make an EIR inadequate, but the EIR should summarize the main points of disagreement among the experts." CEQA recognizes that other evidence suggesting a different conclusion may exist, but that does not invalidate the conclusion reached by the lead agency based on its own substantial evidence.¹⁸ For those comments that did provide evidence regarding significant environmental effects, DWR has reviewed all information, identified where experts disagree when applicable, and responded in the multiple other Common Responses, in individual responses in Volume 2, Chapter 4, and, as needed, by making revisions in Volume 1 of the Final EIR. DWR will ultimately determine, based on the substantial evidence presented in the EIR and other documents contained in the record, and in consideration of evidence disagreeing with conclusions, whether to certify the EIR and approve the proposed project or a project alternative.

Thresholds of Significance

Comments suggested generally that the thresholds of significance used to determine the significance of impacts analyzed throughout the EIR were not appropriate, were unsupported by substantial evidence, or were otherwise inadequate and therefore rendered the CEQA impact analysis inadequate or unsubstantiated. This section of this Common Response provides a general discussion of the CEQA requirements related to thresholds of significance, the approach contained throughout the EIR regarding thresholds of significance, and why the approach is appropriate and meets CEQA requirements. All thresholds of significance and impact conclusions in the EIR are supported by substantial evidence.

According to CEQA Guidelines Section 15064.7, thresholds of significance may be quantitative or qualitative, and they are to be supported by substantial evidence. Substantial evidence, as described in the previous section of this Common Response, is based on the whole record and includes scientific data and facts. Thresholds of significance can vary based on the setting (or settings) and elements of a project, and lead agencies are authorized to develop unique thresholds on a project-by-project basis.¹⁹ This flexibility enables the lead agency to be more responsive to the environmental conditions in the area(s) and better frame the potential for impacts to occur.

¹⁸ Per *City of Long Beach v. City of Los Angeles* (2018) 19 Cal.App.5th 465, projections by experts may constitute substantial evidence to support an EIR's assumptions.

¹⁹ *Save Cuyama Valley v. County of Santa Barbara* (2013) 213 Cal.App.4th 1059, 1068.

1 Importantly, this helps ensure full disclosure to the public, interested parties, and decision makers
2 and leads to a more thorough and complete EIR.

3 Typically, a CEQA document will use the environmental checklist in Appendix G of the CEQA
4 Guidelines to identify thresholds of significance. However, as just discussed, lead agencies have
5 discretion in the thresholds of significance used. The Chapter 4 section titled *Organization of the*
6 *Final EIR* discusses these requirements and thresholds of significance in the context of how they are
7 used to evaluate impacts for the project throughout the EIR. And each chapter describes the
8 thresholds used to evaluate impacts on a particular resource generally in the *Methods for Analysis*
9 section of the chapter. These sections of the resource chapters further describe whether qualitative,
10 quantitative, or performance levels are used. In general, some of the information in the Appendix G
11 environmental checklist is used in the resource chapters, with a few adjustments; in some cases,
12 many more resource-specific thresholds are included, and several examples of these are discussed
13 in the following paragraphs. The thresholds of significance are based on substantial evidence,
14 including technical reports, unique conditions within the study area, unique elements of the project,
15 and other information known from modeling and background research. As applicable, this
16 information was combined with regulations, policies, plans, and environmental standards to create
17 thresholds with qualitative or quantitative measures, or performance standards.

18 As discussed above, multiple resource chapters in the EIR use modified thresholds compared to
19 what would typically be used in an EIR. For example, the CEQA Guidelines Appendix G checklist
20 includes a broad resource category entitled Hydrology and Water Quality that describes several
21 thresholds related to surface water and groundwater water quality, groundwater depletion,
22 stormwater runoff, and flooding. However, the checklist thresholds from the standard Hydrology
23 and Water Quality checklist questions are addressed in the EIR in three separate chapters—Chapter
24 7, *Flood Protection*; Chapter 8, *Groundwater*; and Chapter 9, *Water Quality*—each of which provides
25 for more focused discussion of potential impacts on these resources. Additionally, one of the CEQA
26 Guidelines Appendix G thresholds for hydrology and water quality reads, “Would the project violate
27 any water quality standards or waste discharge requirements or otherwise substantially degrade
28 surface or ground water quality?” Instead of using this single threshold, the EIR includes a series of
29 more specific thresholds aimed at addressing a wide range of water quality constituents and
30 conditions (e.g., bioaccumulative constituents, waterbodies identified as impaired for certain
31 constituents on the state’s Clean Water Act Section 303(d) list). This more-detailed framing of the
32 impact discussion and the use of refined thresholds enable different and specific analysis of water
33 quality constituents, which is appropriate for details and specifics of the Delta Conveyance Project.

34 A second example of the use of refined thresholds can be seen in Chapter 26, *Public Health*. An EIR
35 does not typically include a chapter addressing public health; however, including one facilitates
36 focused impacts considerations, including vector-borne diseases, potential effects on drinking water,
37 and mobilization of or increase in constituents known to bioaccumulate. Again, in this way, use of
38 project-specific and refined thresholds of significance enables a thorough and complete analysis of
39 the project’s potential impacts.

40 In summary, the use of the refined thresholds of significance enables a project-specific and thorough
41 evaluation, allows full disclosure of potential impacts of the project, and ultimately improves the
42 development of project-specific and targeted mitigation for potential impacts. By using the refined
43 thresholds of significance, the EIR fully meets the requirements of CEQA Guidelines Section
44 15002(a)(1), which is to, “[i]nform governmental decision makers and the public about the
45 potential, significant environmental effects of proposed activities.”

For additional details regarding resource-specific thresholds of significance raised in comments about surface water quality, air quality and greenhouse gases, and transportation, please see Common Response 10, *Surface Water Quality and Groundwater Resources*; Common Response 15, *Air Quality and Greenhouse Gases*; and Common Response 14, *Transportation*, respectively. Please also refer to individual responses in Volume 2, Chapter 4.

Selection of Study Areas

Comments alleged that study areas defined in the EIR are unclear, undefined, or irregular or that they are inappropriately narrow. In addition, comments claimed that the study area should include Suisun, San Pablo, and San Francisco Bays. Comments also asserted that the EIR narrowly restricted study areas because rivers and reservoirs upstream of the north Delta intakes were not evaluated and that the EIR did not disclose that significant impacts would occur upstream. Specifically, comments argued that the study area should have included the American, Feather, Eel, Klamath, McCloud, Sacramento, Trinity, and Yuba Rivers, which are to the north of the proposed north Delta intakes. Comments also identified the San Joaquin River, which is to the south of the proposed north Delta intakes, as a potential area of study.

DWR is clear throughout the EIR regarding the study area evaluated for each resource and provides substantial evidence supporting the identification and description of the study areas. As described in the section titled *Organization of the Final EIR* in Chapter 4, “Study area boundaries vary for each resource topic depending on impact mechanisms and the extent of the area in which impacts are expected to occur for a resource.” In other words, the study area for a particular resource is clearly defined in the resource chapter and depends on both the resource being evaluated and the types of impact mechanisms that could occur. The information that informs the selection of study areas for each resource evaluated in the EIR is described in the methodology sections of Chapters 7 through 32 for the CEQA impact analyses. Furthermore, as identified in the Chapter 1 section titled *Public Scoping and Issues of Known Controversy* and as discussed in more detail in Common Response 2, *Public Outreach Activities*, DWR undertook an extensive scoping effort to inform the geographic and subject matter scope of the EIR. DWR appropriately considered scoping comments regarding the potential impacts to evaluate and the geographic area in which to evaluate.

Several of the rivers identified in comments are excluded from the study area simply because construction and operation of the project would not result in direct or indirect effects. For example, the Eel River is outside the area influenced by the operation of the CVP and SWP and is not hydrologically connected to the Sacramento or San Joaquin River systems; therefore, it is not evaluated in the EIR because the proposed project will have no effects in that area. Likewise, the McCloud River discharges into Shasta Lake, and the operation of reservoirs on the McCloud River system would not be affected by the construction or operation of the Delta Conveyance Project; therefore, the McCloud River is not within any study area evaluated in the EIR.

Based on descriptions in Chapter 3, DWR appropriately identified study areas for all resources and properly evaluated potentially significant direct and indirect impacts associated with construction and operation on multiple resources in those study areas. As described in the Chapter 3 section titled *Intake Operations and Maintenance*, the project would be operated as an element of the SWP and in conjunction with the SWP and the CVP. As described in Chapter 3, the Delta Conveyance Project would not change existing senior water rights, would not change existing regulations, and would be operated within existing contracts and agreements, including the Coordinated Operations Agreement. Multiple water rights, regulations, contracts, and agreements govern the operation of

reservoirs and diversions within the SWP and the CVP systems. These are represented in the EIR by the CalSim 3 model and are described in Appendix 5A and elsewhere. For example, as described in the Chapter 6 section titled *Trinity River Division*, Reclamation operates the Trinity River Division, and diversion of Trinity water to the Sacramento Basin occurs through multiple smaller downstream re-regulating reservoirs and a tunnel. This water then enters the Sacramento River system in Keswick Reservoir downstream of Shasta Dam. Transbasin diversions from the Trinity River system to the Sacramento River system are managed to support water supply and temperature objectives in the Sacramento River system (Bureau of Reclamation 2019). These transbasin diversions are regulated by a number of agreements, including the provisions of the Trinity River Division Act of 1955 (CVP), Reclamation's water rights on the Trinity River, the 2000 Trinity River Record of Decision, and the 2017 Record of Decision for the Long-Term Plan for the Lower Klamath River. The Delta Conveyance Project is not proposing to modify any of these agreements. With or without the project, Reclamation would continue to operate the CVP Trinity River Division facilities consistent with all applicable statutory, legal, and contractual obligations, including, but not limited to, Reclamation's Trinity River water rights, the 2000 Trinity River Record of Decision, the 2017 Lower Klamath River Record of Decision, and the provisions of the Trinity River Division Act of 1955. Because the project does not propose modifying any of these factors, and because the changes disclosed in the EIR related to the Trinity River are minor, these upstream facilities are not further discussed in the EIR beyond Chapter 5, *Surface Water*, Chapter 6, and Appendix 5A.

As demonstrated in this section of this Common Response, DWR appropriately evaluated and disclosed potential changes upstream of the north Delta intakes using the CalSim 3 model in the EIR, including Chapter 5, Chapter 6, and Appendix 5A. Upstream reservoirs and rivers described and evaluated in these chapters are the Feather River and Lake Oroville; the Trinity River, and the Sacramento River and Trinity Lake and Shasta Lake; and the American River and Folsom Lake. In addition, although SWP has no facilities within the San Joaquin River watershed, the San Joaquin River is included in the CalSim 3 model. Minor changes in upstream reservoir storage and water supply with the SWP and CVP system are disclosed in these chapters and appendix and are a result of project alternative operations. In general, this means upstream reservoir storage conditions are similar between the project alternatives and baseline conditions. As identified in the Chapter 6 section titled *Project Alternatives*, the deliveries provided by the SWP and the CVP would occur, and generally would not be reduced, under the project alternatives. For example, the CVP Settlement and Exchange Contractors do not show any change in average annual deliveries under dry and critical dry water years, because those deliveries are under water rights that are unaffected by the operations of the north Delta intakes.

Where appropriate, DWR examined model outputs for various parameters (e.g., reservoir storage, flows, and water temperature) at one or more locations in the Trinity, Sacramento, Feather, American, San Joaquin, and Stanislaus Rivers and Clear Creek for the project alternatives and existing conditions to inform the selection of study areas for certain resources, such as water quality or fish, as identified in the methodology section of the resource chapters (see the section titled *Upstream of the Delta* in Chapter 9; the section titled *Evaluation of Operation and Maintenance* in Chapter 12; and ICF 2023). For example, the examination of model outputs for fish identified that all locations evaluated, other than the Feather River, had negligible differences in storage, flow, and water temperatures between each project alternative and existing conditions or No Project Alternative (at 2040) (ICF 2023). Further examination of physical model outputs showed that, except in the Feather River, differences were not persistent or large enough to have the potential to

cause any biologically meaningful effects to aquatic resources (ICF 2023). Results of SALMOD and the Martin and Anderson egg mortality models corroborated physical modeling results for the Sacramento River (ICF 2023). As a result, the following upstream areas are excluded from further biological analyses in Chapter 12: Trinity, Sacramento, American, San Joaquin, and Stanislaus Rivers and Clear Creek. For the Feather River, analyses were conducted to assess potential effects to aquatic resources, including spawning usable area and redd dewatering risk to salmonids, stranding risk for multiple fish species, and passage obstruction for salmonids and sturgeon. Based on these analyses, the project alternatives would not affect any species in the Feather River relative to existing conditions or the No Project Alternative (for 2040 model runs), and the Feather River was excluded from further biological analysis in Chapter 12 (ICF 2023).

Given the results presented in Chapter 5, Chapter 6, and Appendix 5A, as well as the information presented in this Common Response and in the methodology sections of Chapters 5 through 32 of the EIR, the selection of study areas for each resource in the EIR is appropriate, and further analysis of resources upstream of the north Delta intakes, or on the San Joaquin River, is not warranted. For further details regarding upstream operations, please refer to Common Response 3; for further information regarding the modeled representation of project operations, please see Common Response 9.

Evaluation of Water-Dependent Resources

Some comments alleged that impacts to surface water or water supply were not included in the EIR. Other comments asserted that changes to the volume of water flows and the availability of or use of surface water should be evaluated under CEQA and that CEQA impacts should be disclosed. Comments also asserted that the lack of an evaluation of surface water or water supply constituted an inadequacy under CEQA.

The scope of the CEQA analysis contained in the EIR evaluates all environmental resources required by CEQA and makes significance determinations for those resources in the respective CEQA chapters, generally Chapters 7 through 32, though Chapter 17, *Socioeconomics*, and Chapter 29, *Environmental Justice*, are not CEQA chapters. While the resources evaluated in the EIR are based on Appendix G of the CEQA Guidelines, additional resources, such as public health, are also included. In addition, due to the parallel USACE project evaluation, the analysis contained in the EIR extends beyond CEQA Guidelines Appendix G to consider resources typically evaluated under NEPA, such as socioeconomics and environmental justice in Chapters 17 and 29, respectively, as discussed previously in this Common Response in the section titled *Coequal Level of Evaluation in the EIR*.

CEQA does not provide specific guidance on the inclusion of stand-alone chapters related to surface water and water supply. Surface water and water supply effects of the proposed project and alternatives are fully disclosed in Chapters 5 and 6, respectively. Chapter 5 describes modeled results for surface water flow conditions in multiple rivers and compares the proposed project and alternatives conditions to existing conditions in order to describe changes. It does not describe water quality or potentially significant impacts associated with water quality because those impacts are addressed in Chapter 9. Chapter 6 describes modeled results for SWP and CVP water supply and compares the proposed project and alternatives conditions to existing conditions in order to describe changes. It does not address potential growth-inducing effects because those effects are described in Chapter 31, *Growth Inducement*. Both Chapter 5 and Chapter 6 are important for describing the potential changes to water supply and the physical changes in surface water hydrodynamics, but the EIR does not describe these changes as environmental impacts or make

CEQA determinations as to whether a change in water supply or hydrology would be significant. The EIR took this approach because when considered alone, surface water and water supply changes are not environmental impacts as defined by CEQA and the CEQA Guidelines. The analyses of surface water and water supply and the modeling used to describe changes therein are used to evaluate the impacts on environmental resources in other CEQA-required chapters, including the chapters dedicated to water quality, fish and aquatic resources, terrestrial biological resources, agricultural resources, and other natural resources that could be affected by changes in surface water. For each of the environmental topics presented in Chapters 7–16, 18–28, and 31–32 (generally Chapters 7 through 32), the EIR provides CEQA thresholds of significance, CEQA impact significance conclusions, and mitigation measures to reduce significant impacts. In short, the environmental resource evaluations that depend on understanding and evaluating the changes associated with surface water or water supply under operating conditions (i.e., water-dependent resources) are fully considered in the EIR.

Accordingly, the scope of the CEQA analysis contained in the EIR fully and adequately evaluates potentially significant environmental impacts on the appropriate environmental resources by identifying potential impact mechanisms of the proposed project and project alternatives based on documented methodologies in the following chapters: Chapter 7, 8, 9, 12, 13, 26, and 31, which have been mentioned in this Common Response, as well as Chapter 15, *Agricultural Resources*; Chapter 18, *Aesthetics and Visual Resources*; Chapter 19, *Cultural Resources*; Chapter 21, *Public Services and Utilities*; Chapter 22, *Energy*; Chapter 23, *Air Quality and Greenhouse Gases*; and Chapter 32, *Tribal Cultural Resources*. As already discussed here, the potential impact mechanisms evaluated for each resource, found in these chapters, include potential changes to surface water and water supply because surface water or water supply changes could influence potentially significant physical environmental effects on the water-dependent resources identified. For example, the change in the flow of a river by itself is a physical change but is not considered an impact on the environment. Yet this physical change can be an impact mechanism or a portion of an impact mechanism that results in a potentially significant environmental impact on a water-dependent resource, such as a reduction in river flow that creates a potentially significant impact on the habitat for fish (e.g., Impacts AQUA-2: *Effects of Operations and Maintenance of Water Conveyance Facilities on Sacramento River Winter-Run Chinook Salmon*, and AQUA-3: *Effects of Operations and Maintenance of Water Conveyance Facilities on Central Valley Spring-Run Chinook Salmon*, discussed in Chapter 12). Reduced flows also can influence the potential dissolution, concentration, or transportation of water quality constituents (e.g., Impacts WQ-1: *Impacts on Water Quality Resulting from Construction of the Water Conveyance Facilities*, WQ-2: *Effects on Boron Resulting from Facility Operations and Maintenance*, and WQ-3: *Effects on Bromide Resulting from Facility Operations and Maintenance*, discussed in Chapter 9). Thus, consideration of these potential changes in surface water and water supply in turn enable a more meaningful impact analysis. Their inclusion in the EIR in this way consequently aids in making a better-informed impact conclusion for impacts on, for example, fish and various water quality constituents. Further discussion of the typical use of thresholds of significance in an EIR and their use to evaluate impacts based on the CEQA Guidelines Appendix G checklist as a starting point is provided in the section titled *Thresholds of Significance* in this Common Response.

In summary, as is appropriate under CEQA, no CEQA impact conclusion was made for surface water or water supply; and no threshold was overlooked or excluded in the EIR. The impact analyses for the resources evaluated in Chapters 7 through 32 of the EIR cover all of the environmental

resources that the project and project alternatives may adversely affect and are adequate and comprehensive.

It is appropriate, therefore, that in response to comments on the Draft EIR (compiled in Volume 2, Chapter 4), DWR frequently references Chapters 7 through 32 when identifying or describing CEQA impact analyses or effects analyses. DWR may reference Chapters 5 through 32 when identifying or describing analyses in general; it may also specifically identify Chapter 5 and Chapter 6 related to hydrologic modeling analyses or changes in surface water and water supply based on hydrologic modeling.

Cumulative Impact Assessment

Multiple comments alleged that the EIR did not include an adequate cumulative study area or did not identify appropriate projects to include as part of the cumulative impact analysis, and others claimed that quantitative analyses are required to evaluate cumulative impacts or that the methodology and cumulative analysis in the EIR artificially narrowed an appropriate scope for a cumulative impact analysis. Some comments stated that these types of omissions resulted in a failure to fully disclose cumulative impacts or restricted the ability of the public and agencies to understand the scope of cumulative impacts.

The cumulative analysis in the EIR has been prepared to meet the requirements of CEQA and is described in Chapter 4, Appendix 3C, and in the *Cumulative Analysis* sections at the end of each resource chapter (Chapters 7 through 32). Chapter 4 provides an overview of the cumulative analysis in the EIR, pertinent CEQA sections, the process for the cumulative analysis, and sources used to determine the scope of the cumulative project list; and Appendix 3C provides supporting information regarding the cumulative analysis approach and the cumulative projects considered in the EIR. As discussed in Chapter 4, the requirements of CEQA related to the cumulative analysis include an analysis of closely related past, present, and reasonably foreseeable probable future projects that could contribute to a cumulatively significant impact when combined with project impacts; and, for any cumulatively significant impacts, the EIR includes an analysis as to whether the project would make a cumulatively considerable contribution and, therefore, constitute a significant impact and an analysis as to whether the project's contribution has been rendered less than cumulatively considerable with mitigation (CEQA Guidelines § 15355(b)).

The cumulative impact analysis in an EIR is used to evaluate the severity of the impacts and the likelihood that they will occur in conjunction with a project. A "list approach" for the cumulative analysis, which includes descriptions of other past, present, and reasonably foreseeable probable future projects, programs, and policies that could produce related or cumulative impacts on the environment, is generally used in the EIR. When a lead agency uses a list approach for the cumulative impact analysis, CEQA does not require analysis of speculative future projects; rather, CEQA requires analysis of reasonably foreseeable probable future projects as described in Appendix 3C, in the section titled *Cumulative Impact Assumptions* (CEQA Guidelines §§ 15130(b)(1)(A), 15355). Appendix 3C identifies projects considered to be reasonably foreseeable probable future projects and then provides information about these projects. The cumulative impact assumptions also include applicable and probable programs and policy. Cumulative analysis based solely on programs and policy documents is typically labeled as the "projection approach" and contains information from related adopted local, regional, or statewide plans or from related planning documents (e.g., city and county general plans, regional habitat conservation plans). These types of program and policy documents are considered within the cumulative analysis for the Delta

1 Conveyance Project and included in the cumulative project list in the Appendix 3C table titled
2 Descriptions of Programs, Projects, and Policies Considered for Existing Conditions, No Project
3 Alternative, and Cumulative Impact Analysis, as appropriate and applicable. In general, the
4 cumulative approach and information contained in Appendix 3C and this Appendix 3C table
5 generally align with CEQA's "project list" approach, with the inclusion and consideration of
6 programs and policies. The EIR considers projects, programs, and policy documents, that, in light of
7 the possible impacts of the Delta Conveyance Project identified in the EIR, could contribute to a
8 cumulative significant impact. Furthermore, the projects, programs, and policies contained in
9 Appendix 3C cover a broad temporal scale, meaning they include past, present, and reasonably
10 foreseeable probable future projects, including those that would occur upstream, as appropriate to
11 consider in a cumulative analysis.

12 Cumulative impacts are disclosed and analyzed in accordance with the requirements of CEQA
13 Guidelines Section 15130. As such, the cumulative analysis provides details including the sources
14 from which cumulative projects are identified, under what conditions cumulative impacts may
15 occur, the methodology and study area for cumulative impacts, and determinations of significance
16 and cumulatively considerable contributions. CEQA Guidelines Section 15130(b) notes "[t]he
17 discussion should be guided by the standards of practicality and reasonableness." In keeping with
18 the overall analysis in the EIR, inclusion and discussion of "existing" and "probable future" projects
19 are guided by the same project baseline that is determined by the NOP's date of publication. Please
20 see the previous discussion of baseline and publication of the NOP in the section titled *CEQA*
21 *Environmental Baseline* in this Common Response. Potential future projects that, as of publication of
22 the NOP, were not both probable and sufficiently certain to allow for meaningful cumulative impacts
23 analysis are not included in the cumulative project list and are not included in the cumulative
24 analysis. It is not reasonable, feasible, or required to continually revise the cumulative analysis to
25 accommodate projects that continue to be developed or planned for or to accommodate requests to
26 include these projects during the preparation of the EIR.²⁰ Therefore, the information contained in
27 Appendix 3C meets the requirements of CEQA as to the types of projects to include in the cumulative
28 project list and to consider in the cumulative impact analysis throughout the EIR.

29 A resource-by-resource discussion of the cumulative impacts analysis is provided in the individual
30 resource chapters (Chapters 7 through 32) and is typically qualitative in nature. This approach
31 meets the requirements of CEQA to consider the Delta Conveyance Project impacts described and
32 identified in the context of cumulative projects that may have related impacts in the study areas.
33 There is no requirement in CEQA to prepare a quantitative cumulative analysis. There is also no
34 CEQA requirement to synthesize or integrate cumulative effects of the project across multiple
35 impact or resource types. In other words, an evaluation of the ecological system as a whole is not a
36 requirement of cumulative analysis under CEQA. Neither is an assessment of multiple biophysical
37 processes associated with the Delta required or necessary to allow decision makers to understand
38 the potential cumulative effects of the project. The cumulative impact discussions in each chapter
39 are tailored to the resource being evaluated, the type of impacts described, and the area in which
40 those impacts would occur. Each resource chapter identifies the cumulative projects evaluated
41 specifically for the purposes of that resource and the area considered in the chapter. For example,
42 cumulative impacts related to geology are typically limited to those within the areas of disturbance
43 that would occur from the project and therefore to identified projects that may occur in proximity to
44 construction footprints. Comparatively, cumulative impacts on water quality or fisheries and aquatic

²⁰ *Gray v. County of Madera* (2008) 167 Cal.App.4th 1099, 1128.

resources consider a larger cumulative study area, and thus projects related to that area, to account for the differences in the resources and changes that would occur that have the potential to affect resources at a greater distance from the project footprint. The cumulative projects identified in Appendix 3C have some or limited details and planning level documents, which were reviewed and considered in the cumulative description and the impact analysis, as appropriate. Because of this, the EIR includes a primarily qualitative cumulative analysis encompassing the Delta Conveyance Project in addition to other projects.

While the cumulative analysis contained in the EIR is primarily and necessarily qualitative, hydrologic modeling provides a quantitative aspect of the cumulative analysis. The cumulative analysis takes into account hydrologic modeling results that are cumulative in nature because the model inputs incorporate use of water outside the project area. The model uses a 94-year historical hydrologic sequence to simulate a wide range of hydrologic conditions that could occur, including extended wet periods and dry and critical dry periods. In addition, the model includes assumptions about population growth conditions that could occur in the future with or without the project alternatives. The CalSim 3 modeling includes increased demand based on the level of buildout, as described in Appendix 5A, Section B, *Hydrology and Systems Operations Modeling*, in the section titled *Level of Development* and the section titled *Water Demands and Water Use*. As demonstrated in the methodology sections of some resource chapters, the results of the hydrologic impact analyses are used as the foundation for some of the impact assessments of the project alternatives and conditions under existing baseline conditions. The evaluation is a comparative analysis that determines the incremental difference between conditions under the project alternatives and conditions under the existing baseline conditions. Therefore, the elements of the various impact assessments (e.g., water quality, fish and aquatic resources) that relied on the hydrologic impact assessment as the foundation for their unique assessments are also cumulative in nature. The projects, programs, and regulations that are included in the modeling and, therefore, included in the cumulative impact analysis are identified in Appendix 5A, Section B, Attachment 1, CalSim 3 State Water Project and Central Valley Water Project Contract Assumptions, and Attachment 3, *CalSim3 Model Results for Existing Condition and Alternatives at 2020*, and Appendix 5A, Section D, *Water Temperature Modeling Results*.

Some comments suggested that specific projects (Sites Reservoir, Los Vaqueros Reservoir Expansion, and the State Water Board's Bay-Delta WQCP updates, in particular) should have been included in the cumulative analysis quantitative modeling or that groundwater cumulative impacts should have been modeled. As noted earlier in this section of the Common Response, CEQA does not require quantitative modeling for cumulative effects, and the EIR primarily used the "project list" approach to identify the projects to be included in the cumulative analysis, consistent with the CEQA Guidelines. Operational criteria for cumulative projects such as Sites Reservoir or Los Vaqueros Reservoir are subject to development and refinement under CEQA and subsequent permitting processes. This makes an accurate quantitative representation of these two cumulative projects uncertain at the time of the development of the EIR, particularly in the case of projects with water rights junior to SWP (e.g., Sites Reservoir). Furthermore, these types of other projects used CalSim II to model potential operations and not CalSim 3, which was used by DWR for the Delta Conveyance Project. Although these planning models are similar, the use of two different hydrologic models on different projects is not conducive to an apples-to-apples comparison of operational effects or an integration of these projects into the Delta Conveyance Project modeling. Furthermore, as described in the EIR (e.g., Chapter 12), cumulative projects include or would be anticipated to include mitigation to address types of effects similar to those that could occur under the proposed project

and project alternatives. With respect to the State Water Board Bay-Delta WQCP updates, while plan amendments have been approved for part of the WQCP (i.e., the San Joaquin River watershed, including the lower San Joaquin River and southern Delta), amendments have yet to be approved for the Sacramento River and Delta watershed. Because implementation of the updates has yet to be determined, it is unknown what exactly could be modeled. The Bay-Delta WQCP updates are qualitatively described and discussed in the cumulative analysis per Appendix 3C and, where appropriate, in the resource chapters of the EIR (e.g., Chapter 9). In other words, the EIR considered (in chapters such as Chapter 9) the types of impacts associated with the Delta Conveyance Project (e.g., changes in water quality) and discussed the Bay-Delta WQCP updates in the context of those changes, if appropriate, to identify whether cumulatively considerable effects would occur in conjunction with the Delta Conveyance Project and the Bay-Delta WQCP updates. As acknowledged in Chapter 9, the qualitative cumulative analysis recognizes that new or more restrictive water quality objectives, such as those contemplated in the Bay-Delta WQCP updates, generally are in a direction that would result in improvements in water quality. The EIR includes a quantitative evaluation of a potential alternate regulatory scenario related to the Bay-Delta WQCP updates in Appendix 4C. Please also see the section in this Common Response titled *CEQA Environmental Baseline* and Common Response 8 for more information regarding the State Water Board's Bay-Delta WQCP updates and the Delta Conveyance Project.

The EIR is clear and explains in numerous chapters (including the Executive Summary and Chapters 1, 3, and 6) that the project does not include any proposals or plans to alter the water rights of other water rights holders, including senior water rights holders. The project would have no direct or indirect CEQA-related impact on other water rights. Therefore, water rights do not need to be considered as part of the CEQA cumulative impact analysis. Please see Common Response 3 for more information regarding the project and water rights; please also see Common Response 8 for a discussion of the authority of the State Water Board regarding water rights and the change in the point of diversion proceeding.

Significant and Unavoidable Impacts

DWR has made substantial efforts to fully disclose the potential for significant environmental impacts, include feasible mitigation measures where appropriate to reduce impacts to less-than-significant levels, and publish an EIR that is fair and objective and that provides a complete evaluation to inform decision making. As the lead agency under CEQA, DWR is following the appropriate legal process and complying with CEQA in preparing the EIR for the proposed project, including considering and documenting significant and unavoidable impacts, if impacts cannot be reduced to a less-than-significant level. Significant and unavoidable impacts and the requirement to adopt a statement of overriding considerations are interrelated and discussed in more detail in the following sections.

Approval of Projects with Significant and Unavoidable Impacts

As the lead agency, DWR can decide to approve the project even if significant and unavoidable impacts are disclosed in the EIR pursuant to CEQA. When significant and unavoidable impacts are disclosed in an EIR, CEQA requires decision makers to balance the benefits of the proposed project against its significant and unavoidable environmental risks and then explain that balance in a formal statement of overriding considerations. Decision makers perform this balance when determining whether to approve the project. A project with significant and unavoidable impacts may be

approved by lead agencies through the process of making CEQA findings and issuing and approving a statement of overriding conditions (CEQA Guidelines §§ 15091–15093).

Findings should discuss the impact conclusions from the EIR and explain the reasoning for approving the project despite significant impacts. Rationales typically include one or more of the following reasons: (1) changes or alterations (e.g., mitigation) was introduced that avoid or substantially lessen the significant impacts; (2) actions of other agencies will be taken that will avoid or substantially lessen the significant impacts; or (3) specific economic, legal, social, technological, or other considerations make it infeasible to avoid or substantially lessen the significant impacts. Findings also explain the rationale for not selecting project alternatives in place of the project.

CEQA allows a project to be approved by the lead agency even with significant and unavoidable impacts when the lead agency is able to balance the impacts of the project against specific economic, legal, social, technological, or other benefits, including region-wide or statewide environmental benefits. This rationale is described in a statement of overriding considerations pursuant to CEQA Guidelines Section 15093.

For most resources analyzed in the EIR, impacts for each alternative were found to be less than significant either before or after the implementation of mitigation measures. Some impacts on certain resources cannot be mitigated to a less-than-significant level under one or more of the alternatives, and these are identified as significant and unavoidable impacts. These resources include agricultural resources, aesthetics and visual resources, air quality and greenhouse gases, transportation, noise, cultural resources, paleontological resources, and Tribal cultural resources. In light of the CEQA requirements, DWR is required to adopt a statement of overriding considerations for these impacts if DWR decides to approve the project or one of the project alternatives. As described in Chapter 3, DWR will not make a final decision about denial or approval of the project until all public comments on the Draft EIR are addressed, the Final EIR is certified, all necessary findings as required by CEQA are made, and any other actions required to comply with CEQA are taken, which would include developing and adopting a statement of overriding considerations.

Use and Incorporation of Mitigation Measures

Multiple comments expressed general dissatisfaction with proposed mitigation measures throughout the EIR; comments suggested that proposed mitigation measures were insufficient to make up for the severity of the potential impacts, that mitigation measures were not feasible, that mitigation measures were generally inadequate, or that mitigation was deferred and did not meet the requirements of CEQA. For a specific discussion related to wildlife and vegetation mitigation measures, air quality mitigation measures, or Tribal cultural resources mitigation measures, please refer to Common Response 11, Common Response 15, and Common Response 16, *Tribal Cultural Resources*, respectively. Multiple comments also asserted that there must be funding assurances to implement the mitigation measures proposed in the EIR.

Under CEQA, the need for mitigation measures arises out of the substantive policy that lead agencies should not approve projects that would cause significant environmental impacts without first adopting any feasible mitigation measures and considering any feasible alternatives that would avoid or substantially lessen such significant effects (Pub. Resources Code §§ 21002, 21081; CEQA Guidelines §§ 15002(a)(3), 15021(a)(2)). This requirement is typically met by the lead agency when it includes feasible mitigation measures in the EIR and adopts those measures as part of the project review and approval process.

Mitigation under CEQA is focused on avoiding or mitigating significant effects on the environment, which are substantial or potentially substantial adverse changes in any of the physical environmental conditions within the area affected by a project (CEQA Guidelines §§ 15126.2, 15126.4, 15382). The concept of mitigation as defined by CEQA, however, does not equate to general compensation (e.g., financial) to make an agency, individual, or entity whole as a result of an approval of a project. Mitigation is included in an EIR, when required, to reduce potentially significant impacts of a project, and it is strongly influenced by actions that could be undertaken to lessen, avoid, or minimize substantial or potentially substantial adverse change that would occur as a result of project construction and operation in any of the baseline physical conditions of the environment. The effects of a project (i.e., potentially significant environmental impacts) are determined by comparing the changes that would occur under the project to the baseline physical conditions of the environment. This comparison determines whether baseline conditions would be substantially degraded, worsened, or otherwise substantially changed under project conditions (CEQA Guidelines § 15125(a)). A lead agency is required to mitigate potentially significant impacts when feasible (regarding requiring public agencies to include feasible proposed mitigation measures for potentially significant impacts identified in EIRs, see Pub. Resources Code §§ 21002, 21002.1(b), 21081(a)(1); see also § 21100(b)(3)). CEQA Guidelines Section 15370 defines “mitigation” as including the following.

- Avoiding the impact altogether by not taking a certain action or parts of an action.
- Minimizing impacts by limiting the degree or magnitude of the action and its implementation.
- Rectifying the impact by repairing, rehabilitating, or restoring the impacted environment.
- Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action.
- Compensating for the impact by replacing or providing substitute resources or environments.

Under CEQA, the EIR includes an evaluation of the anticipated effectiveness of a mitigation measure, which is determined by evaluating whether the impact remains or a portion of the impact would occur after the application of the mitigation and whether one of two conclusions is reached: (1) the mitigation reduced the impact to a less-than-significant level or (2) no feasible mitigation exists to reduce the impact to a less-than-significant level. In some instances, more than one mitigation measure may be needed to reduce an impact below the level of significance. If there is no feasible mitigation or combination of mitigation that can reduce an impact to less than significant, the impact was determined to be significant and unavoidable. Significant and unavoidable impacts are discussed further in this Common Response in the section titled *Approval of Projects with Significant and Unavoidable Impacts*.

The mitigation measures in the EIR describe who will implement each measure, when the measures will be implemented, how they will be implemented, and what the expected outcomes are. Where appropriate, the mitigation measures may include some type of performance standard, metric, or criteria to identify the expected outcome of the mitigation measure. CEQA Guidelines Section 15126.4(a)(1)(B) allows the preparation of future plans, studies, or surveys as mitigation measures, as long as they have performance standards describing what the lead agency will do to minimize the effects of the project. As described in the section titled *Analysis of Project as a Whole* in this Common Response, some of the mitigation measures include development and implementation of plans or future surveys. In these instances, the mitigation measures include performance standards as required by CEQA.

1 The CEQA Guidelines note that development and implementation of plans or future surveys as
2 mitigation is allowable when it is impractical or infeasible to include those details during the
3 project's environmental review process. In the case of the Delta Conveyance Project, due to access
4 restrictions and other factors, site-specific data was not available for all areas potentially affected by
5 the proposed project and project alternatives. In these instances, the EIR used available information
6 to evaluate potential impacts of the project. Further, for projects that would be constructed and
7 operated over a long time, such as the Delta Conveyance Project, it is not practical or possible to
8 specifically define all mitigation measures in the EIR because of anticipated changes to regulations
9 and fluctuations in environmental conditions. Consequently, some flexibility in mitigation is needed
10 to be responsive to changes and to enable adjustments in order to ensure that impacts remain less
11 than significant. Accordingly, for some impacts, the EIR finds that the evidence available is sufficient
12 to conclude that impacts of the project and the project alternatives will be less than significant or
13 less than significant with mitigation. For other impacts, given the reasons stated above, the EIR
14 concludes that available information is not sufficient to make such an impact determination and, in
15 those instances, the EIR finds the impact to be significant and unavoidable. It is important to note,
16 however, that even when it was determined that impacts cannot be fully reduced to less-than-
17 significant levels—as in the case of agricultural resources, aesthetics and visual resources, air
18 quality and greenhouse gases, transportation, noise, cultural resources, paleontological resources,
19 and Tribal cultural resources—feasible mitigation measures are nevertheless proposed and will be
20 implemented by DWR. In some of these instances, typically where site-specific conditions could
21 change over time, the EIR provides that future site-specific studies will be performed as part of
22 project design or construction to inform mitigation in accordance with the mitigation plan. This
23 approach complies fully with CEQA.

24 As described throughout the EIR and summarized in the Executive Summary table titled Summary of
25 Delta Conveyance Project Impacts and Mitigation Measures, DWR included over 80 mitigation
26 measures, including those actions identified as mitigation measures that are part of the CMP (e.g.,
27 Mitigation Measure CMP-2: *Tidal Freshwater Emergent Wetland*). If DWR approves the project, these
28 measures will be included in an enforceable MMRP. In addition, DWR included a total of 18 best
29 management practices and environmental commitments detailed in Appendix 3B; again, if DWR
30 approves the project, these best management practices and environmental commitments will be
31 included in an enforceable MMRP. The MMRP is required by CEQA Guidelines Section 15097 and is
32 used to help ensure that the mitigation measures and project revisions identified are implemented.
33 The MMRP provides a detailed listing of the impacts, the mitigation measures intended to reduce the
34 effects, the party or parties responsible for implementing the measures, the timing and location of
35 implementation, and how mitigation measures will be carried out to reduce significant impacts.
36 Although CEQA does not require an MMRP to include best management practices and environmental
37 commitments, DWR will include these in its MMRP to ensure their implementation. (See the section
38 titled *Environmental Commitments and Best Management Practices* in Chapter 4.)

39 The MMRP will require monitoring and reporting on the effectiveness of mitigation measures, the
40 CMP, and the best management practices and environmental commitments. While CEQA does not
41 mandate that the monitoring program incorporate adaptive management, the Delta Reform Act,
42 through a project's consistency with the Delta Plan, requires the use of science-based, transparent,
43 and formal adaptive management strategies for ongoing ecosystem restoration and water
44 management decisions (23 Cal. Code Regs. § 5002(b)(4)). Thus, in addition to the MMRP, as
45 described in the section titled *Performance Standards and Monitoring* in Appendix 3F, DWR will have
46 additional implementation tools related to the CMP to adaptively manage and monitor activities. For

example, compliance monitoring would be conducted to document, in a GIS database and by measuring constructed outputs, the extent of natural communities and species habitats restored. The initial monitoring period would last 5 years and would evaluate establishment success of aquatic resources and special-status species habitat at the mitigation sites. Performance standards include current USACE uniform performance standards for compensatory mitigation monitoring (33 Code of Federal Regulations § 332). The CMP actions would be monitored by state and federal agencies, such as CDFW and USFWS, and require their approval. The CMP actions include performance standards, and the CMP identifies the performance, elements, and monitoring of mitigation that mitigation sites will undergo to ensure they meet the performance standards. Appendix 3F, in the section titled *Financial Assurances*, states that funding would be available from DWR and participating SWP contractors to implement the mitigation described in the CMP, thus ensuring the feasibility of the mitigation measures. In addition, the project's MMRP and its Operations Adaptive Management and Monitoring Plan (OAMMP) together will be used to track successful implementation of the mitigation measures set forth in the EIR and to evaluate the effectiveness of management actions in achieving resource objectives and will do so by comparing mitigation outcomes to predicted responses and providing the scientific basis for continuing or modifying actions or implementing alternative actions. Please refer to Common Response 3 for more information regarding the operations of the project and the purpose and use of the OAMMP.

The EIR presents substantial evidence supporting its impact conclusions and the effectiveness of proposed mitigation measures. For purposes of CEQA, "substantial evidence" is described in this Common Response under the heading *Substantial Evidence* and means "enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached" CEQA Guidelines § 15384(a)). In other words, analysis that complies with CEQA because it is supported by substantial evidence does not eliminate the potential for unanticipated outcomes. Adaptive management exceeds CEQA's requirements as described above because it constitutes a science-based approach to monitor and respond to uncertainties that remain even where conclusions and mitigation measures included in the EIR are supported by substantial evidence. Adaptive management also allows implementation of mitigation measures and project operations to be responsive to future real-time changes in environmental conditions in the Delta ecosystem.

Some comments on the Draft EIR claimed that the environmental commitments are not mitigation measures or that the environmental commitments cannot be part of the project and should be mitigation measures. The environmental commitments are not purported to be mitigation measures. The environmental commitments are part of the project and are activities that DWR or the Delta Conveyance Design and Construction Authority will be required to perform as a result of the design of the project, the construction of the project, or as required by regulations, such as the preparation of a stormwater pollution prevention plan for the disturbance of ground over 1 acre. DWR properly described these environmental commitments as part of the project in Appendix 3B and appropriately evaluated their effectiveness in reducing project impacts where relevant in the EIR. These project components would reduce the potential severity of impacts and are properly accounted for in determining the net impact of the project on the environment. The impact analysis discloses impacts (e.g., type and magnitude of impact) to properly evaluate the project's potential impacts on resources prior to the discussion of an environmental commitment or best management practice. Further, the impact analysis describes how the project's environmental commitments or best management practices may lessen, reduce, or avoid the impact. By this method, decision makers can understand how the environmental commitments or best management practices

incorporated into the project affect the impact determination and what would occur without the environmental commitments or best management practices. For example, the discussion of Impact GEO-2: *Loss of Property, Personal Injury, or Death from Strong Earthquake-Induced Ground Shaking* in Chapter 10, *Geology and Seismicity*, discloses the impacts and how they may occur in association with seismically induced ground shaking during operating conditions. It then provides the project's required seismic guidelines, precautions, and system redundancy, as well as the impacts with the environmental commitments and best management practices in place.

If the project or project alternative is approved, an MMRP (which will include all mitigation measures, all CMP actions, and all environmental commitments) will be adopted, along with a notice of determination, which is filed by the lead agency once it determines to carry out a project subject to the requirements of CEQA. As the final step in the CEQA approval process, the project's Notice of Determination would provide notice that DWR has certified the Final EIR; adopted CEQA Findings, a Statement of Overriding Considerations, and an MMRP; and approved the proposed project or a project alternative.

Recirculation

Comments claimed that the Draft EIR needed to be recirculated for a number of reasons, including failing to provide substantial evidence for impact determinations or conclusions and failing to identify and describe adequate and feasible mitigation measures, significant and unavoidable impacts, and mitigation measures to avoid or substantially lessen significant and unavoidable impacts. DWR does not need to recirculate the Draft EIR, nor does the Draft EIR meet any of the CEQA criteria for recirculation.

Based on requirements of CEQA Guidelines Section 15088.5, lead agencies are required to recirculate an EIR if significant new information is added to the EIR after public notice and after the Draft EIR has been circulated. "Information" includes changes in the project or the environmental setting or the introduction of significant additional data or other information. New information is not considered to be "significant" unless it would change the analysis in the EIR in such a way that the public was deprived of a meaningful opportunity to comment on the document. Pursuant to CEQA Guidelines Section 15088.5(a), "significant new information" that would require recirculation generally includes the following.

- A new significant environmental impact.
- New mitigation that would result in a new significant environmental impact.
- A substantial increase in the severity of an environmental impact (unless mitigation measures to reduce effects are adopted reducing the level to less than significant).
- A feasible but considerably different suggested project alternative or mitigation measure that would clearly lessen the significant environmental impacts of the project but that DWR declines to adopt.
- A Draft EIR so fundamentally and basically inadequate and conclusory in nature that it precludes meaningful public review and comment.

The Delta Conveyance Project EIR does not meet the requirements for recirculation because no new significant impacts or new significant impacts resulting from new mitigation measures have been identified since circulation of the Draft EIR for public review. Similarly, no substantial increases in

1 the severity of environmental impacts associated with implementing the proposed project or project
2 alternatives have been identified.

3 The Final EIR contains revisions made by DWR. As described in Volume 2, Chapter 1, *Introduction*,
4 some revisions are based on public comments received on the Draft EIR and some are made
5 voluntarily by DWR, including administrative changes. In some instances, modifications were made
6 to improve the readability of the Final EIR by clarifying references, clarifying the use of and
7 discussion of resources, clarifying the permitting process, clarifying project design elements, and
8 refining parts of the project description. In all instances where impact analyses were clarified,
9 refined, or expanded, impacts are identified as less than significant or less than significant with
10 mitigation incorporated (e.g., please see Impacts AQUA-2: *Effects of Operations and Maintenance of*
11 *Water Conveyance Facilities on Sacramento River Winter-Run Chinook Salmon* and AQUA-20: *Effects*
12 *of Construction of Water Conveyance 1 Facilities on California Sea Lion* in Chapter 12; Impacts BIO-44:
13 *Impacts of the Project on Tricolored Blackbird* and BIO-57: *Impacts of the Project on Monarch*
14 *Butterfly* in Chapter 13; or Impacts REC-1: *Increase the Use of Existing Neighborhood and Regional*
15 *Parks or Other Recreational Facilities Such that Substantial Physical Deterioration of the Facility*
16 *Would Occur or Be Accelerated* and REC-2: *Include Recreational Facilities or Require the Construction*
17 *or Expansion of Recreational Facilities That Might Have an Adverse Physical Effect on the Environment*
18 *in Chapter 16, Recreation*). The EIR is consistent with CEQA Guidelines Section 15088.5(b), which
19 specifically allows and encourages refinements and clarifications of the environmental document
20 where questions may arise and requires a good-faith effort to fully disclose potentially significant
21 environmental impacts. The refinements and clarifications in EIR chapters and appendices included
22 in this Final EIR are not considered substantial new information, would not result in a new
23 undisclosed significant environmental impact, would not preclude substantive public review, and do
24 not trigger the CEQA criteria for recirculation.

25 DWR has refined some mitigation measures to clarify the mechanisms for and timing of
26 implementation of environmental protections, including refinements in Appendix 3F and the CMP.
27 These refinements to mitigation measures would not cause any new significant environmental
28 impact or substantially increase the severity of a previously disclosed environmental impact. All
29 refinements to mitigation have been included to further enhance or improve environmental
30 protections. In addition, any new mitigation measure included in the Final EIR would not cause new
31 significant environmental impact or substantially increase the severity of a previously disclosed
32 environmental impact. For example, new Mitigation Measure WQ-4: *Contra Costa Water District*
33 *Interconnection Facility* is included in the Final EIR to further reduce less-than-significant impacts on
34 chloride previously disclosed under Impact WQ-4: *Effects on Chloride Resulting from Facility*
35 *Operations and Maintenance* in Chapter 9. As discussed in Appendix 9M, *Contract Costa Water*
36 *District Interconnection Facility Mitigation Measure*, the inclusion of Mitigation Measure WQ-4 would
37 not result in any new significant impacts or increase the severity of impacts not already previously
38 disclosed in the EIR, nor would it require additional mitigation measures that DWR is unwilling to
39 commit to. Some comments suggested that mitigation was not technically or practically feasible or
40 suggested mitigation that was already included or addressed by mitigation or environmental
41 commitments described in the EIR. The section *Use and Incorporation of Mitigation Measures* in this
42 Common Response discusses further the adequacy of the mitigation measures included in the EIR.

43 In all cases, revisions to the Draft EIR that are contained in this Final EIR have been made to increase
44 clarity and consistency and to be responsive to comments received from other agencies and
45 members of the public. Revisions in the Final EIR fall within the scope and scale of the project

analysis included in the Draft EIR and do not result in an increase of identified impacts, nor would these revisions result in any new significant impacts or in a greater magnitude of any previously identified environmental impact. (Additional details are provided in Common Response 3, as well as in individual responses to comments throughout Volume 2, Chapter 4.) The revisions are clarifications to or elaborations of information already contained in the Draft EIR, or they are considered “insignificant modifications in an adequate EIR” pursuant to CEQA Guidelines Section 15088.5(b). The revisions are not substantial by CEQA standards in that their inclusion does not constitute a significant change that deprives the public of a meaningful review and opportunity to comment on the information. None of these refinements results in changes to significant impacts or results in any new or previously unidentified significant impacts. All of the refinements are consistent with CEQA Guidelines Section 15088.5(a), which states, “[n]ew information added to an EIR is not ‘significant’ unless the EIR is changed 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.”

A considerable number of alternatives to the proposed project were suggested prior to and as part of the Draft EIR public review process. None of the suggested alternatives were determined to address the fundamental purpose of the project or project objectives as described in Chapter 2. None of the suggested alternatives were found to reduce significant environmental impacts of the project. Please refer Common Response 3 regarding screening and selecting alternatives, as well as consideration of comment-suggested alternatives.

As discussed in this Common Response in the sections titled *Substantial Evidence* and *Use and Incorporation of Mitigation Measures*, DWR has provided substantial evidence for conclusions made in the EIR within the complete record of the document, and, where applicable, the EIR includes feasible and adequate mitigation measures to reduce impacts to less-than-significant levels or substantially lessen potentially significant impacts even though impacts may remain significant and unavoidable. None of the comment claims alleging a lack of substantial evidence or infeasible and inadequate mitigation measures meet the CEQA requirements for recirculation. The EIR’s substantial evidence, attention to CEQA requirements, presentation of analyses based on accepted analysis methodologies, use of thresholds of significance, and discussions and support for CEQA significance conclusions and mitigation measures do not reasonably support comments that the EIR is fundamentally and basically inadequate and conclusory in nature or that it precludes meaningful public review and comment.

Last, in requesting recirculation, some comments noted the length or voluminous nature of the EIR and alleged that the appendices were too long and complex and that the length and volume of the document is a fundamental flaw of the EIR. The EIR and appendices do contain a substantial amount of information because the project is complex and affects resources that require sophisticated modeling of project impacts. However, the information is organized into chapters with up-front summaries and clear subheadings, it follows a resource-by-resource discussion, with appropriate in-text citations and references, and it provides appropriate cross-references informing readers where related or more detailed information is located in other chapters or technical appendices. The EIR is prepared in this way to provide needed and adequate information in order to ensure complete disclosure of impacts and ensure the basic CEQA requirements in this regard are met, all while affording decision makers and the public clear, concise comparisons to foster comments and informed decision making. This comprehensiveness ensures that the EIR does not conflict with the

CEQA requirements that an EIR not be so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment are precluded. Please see the next section in this Common Response, *Length and Complexity of the EIR*, for more information regarding the organization and content of the EIR.

Length and Complexity of the EIR

Comments raised concerns about the length and complexity of the Draft EIR. Comments ranged from claiming that the document was too long and too complicated to understand, to claiming that DWR did nothing to make it shorter or easier to understand, to claiming that the document is so complex and complicated that it prohibits an understanding of the materials.

DWR focused on presenting information throughout the EIR in plain language and in a clear and organized format with emphasis on information that is useful to the public, agencies, and decision makers (CEQA Guidelines § 15006(q)–(s)). Chapter 4 describes the various ways DWR attempted to summarize and consolidate information and to organize the information in a manner that allowed the public to find summaries of information easily and in an unfragmented way. In preparing the Delta Conveyance Project EIR, DWR made every attempt to balance readability, the need for accurate and thorough technical analyses of the numerous complex issues involved for each resource potentially affected by the project, and responses to public and agency requests for information. This balance has been accomplished by combining analyses for alternatives with similar impacts and including extensive graphs, tables, and figures to assist with simplifying the complex analyses required to assess impacts (CEQA Guidelines § 15147). A summary comparison of alternatives is provided at the beginning of each EIR resource chapter and, for certain resources, the analyses described in the EIR are supported by more detailed and technical analyses contained in the corresponding appendices. Finally, Chapter 33, *Other CEQA-Required Analyses*, provides a description of the environmentally superior alternative and includes narrative comparisons between the alternatives as a summary for readers to understand the differences between alternatives without having to read the entire EIR. These efforts to eliminate duplication, avoid inclusion of highly technical analyses in the text of the EIR, and summarize information are consistent with CEQA's focus on the readability of the document and reduction in paperwork, while still presenting adequate information to analyze and disclose the significant and adverse environmental impacts of the project. Because of the highly technical and complex nature of the proposed project and alternatives, and given the importance of the Delta as a natural resource and its importance to the California water supply, the EIR necessarily includes a considerable amount of information to adequately analyze potential impacts pursuant to the requirements of CEQA. The analyses in Chapters 7 through 32 consider and describe potential impacts from construction and operation of 9 project alternatives on 21 aquatic species, 105 wildlife or plant species, and 30 other environmental resources. DWR acknowledges that CEQA Guidelines Section 15141 recommends that proposals of unusual scope or complexity should normally be less than 300 pages; however, the EIR and the record of the EIR exceeded this suggested length. Most large and complex projects, such as the Delta Conveyance Project, are technical and include not only the impact analyses contained in the EIR itself, but multiple technical reports, studies, and other background information needed to develop a baseline for analysis, methodologies, impacts discussion, mitigation, and other required elements of an EIR. Thus, while the EIR contains numerous volumes and appendices, this reflects the complexity of the project and project alternatives that are being considered for approval.

The Executive Summary provides 27 summary comparison tables to aid readers in comparing alternatives. The tables provide comparisons between, but not limited to, key project features and impacts and mitigation measures by alternative. To further the reader's ability to access important information, summaries of each individual resource chapter are provided in the Executive Summary and at the beginning of each resource chapter. The summaries for each chapter include text descriptions and tables that discuss and compare a selection of key impacts across all project alternatives. Chapter 4 describes how, in order to determine the magnitude of impacts, resource analyses address baseline assumptions for comparing the proposed project and alternatives. Resource-specific information about the approach and methodology for evaluating project alternatives is provided in the Draft EIR's respective resource chapters. The Chapter 4 section titled *Baseline Assumptions and Alternative Comparisons* describes how DWR, in compliance with CEQA Guidelines Section 15125(a), established the CEQA baseline for the Draft EIR.

The mitigation measures, including those from the CMP, are described in the resource chapters where they are needed in order to reduce impacts. The full CMP is described in Appendix 3F, but the evaluation of potential environmental effects of CMP activities is included in the impact analyses provided in the resource chapters. All mitigation measures needed to reduce impacts are listed in the Executive Summary in the table titled Summary of Delta Conveyance Project Impacts and Mitigation Measures.

In summary, legal sufficiency of the EIR depends on the substantive content, procedural compliance, and the overall quality and readability of the documents. The EIR combines the informational requirements of CEQA, summarizes relevant information, focuses on the significant environmental impacts of the project alternatives and mitigation measures to avoid or substantially reduce those impacts, avoids duplication, and uses technical appendices to avoid including highly technical analysis in the text of the EIR. Although the Draft EIR and this Final EIR contain considerable amounts information by virtue of the highly technical and complex nature of the project and CEQA-required analysis, DWR emphasized presenting information in plain language and in a clear format that is useful to the public, agencies, and decision makers. This approach balances the need for technical information and the readability of the EIR, and it is fully consistent with the procedural and informational requirements of CEQA.

Use of Best Available Tools and Science

The analyses in the EIR used a wide range of range of relevant data, literature, and tools, including some that are specific to the Sacramento–San Joaquin Delta. DWR used the best available scientific information to produce analyses of the effects of the project, drawing on a number of scientific and engineering disciplines that include geology, hydrology, biology, ecology, chemistry, engineering, and climatology. These data, models, and literature are publicly available, and the methodologies used to apply the tools and information are described in the analyses. The data, models, literature, and analyses have been subjected to review either as part of the customary practices of scientific publication or as part of legal and regulatory processes. In addition, and as highlighted in Common Response 16 and Chapter 32, DWR also undertook a multiyear communication and consultation with interested Tribes willing to share tribal knowledge of resources and used the information and knowledge shared by the Tribes to inform the impact analyses in the EIR. The impact analyses produced for the project using these multiple resources were themselves subject to review and comment by the general public, experts in relevant scientific disciplines, and expert staff from

regulatory agencies having jurisdiction over one or more aspects of the project or its permitting (e.g., CDFW, the State Water Board, air quality management districts, and USACE).

DWR regularly coordinated and communicated with members of the scientific community during the development of the EIR. DWR gave presentations to the Delta Independent Science Board several times, including a presentation from subject matter experts on the detailed approach to technical analyses. DWR attended multiple public meetings with the Delta Stewardship Council to provide updates on the project. DWR engaged and met with the State Water Board, USFWS, NMFS, and CDFW regarding the project and aspects of the analyses contained in the EIR related to these agencies' areas of expertise and authorities.

In choosing the models and methods used in this EIR, DWR selected widely accepted and frequently used tools that provide reliable outputs regarding the environmental effects of the project alternatives and the extent to which conditions would differ between various alternatives (i.e., the best available science and tools). The models used in support of this document reflect consensus among DWR's expert staff and consultants at the time assessment methods were chosen. CEQA does not require a continual update of models or methods throughout the life of an EIR, as models or methods may change over time and over the life of planning for a project.²¹ DWR has reviewed evidence provided in comments, reviewed suggestions about models or model assumptions and methods, and considered whether the information would possibly enhance the analysis contained in the EIR. DWR has included information that further explains and justifies the use of specific models, model assumptions, or methods or that provides additional clarifying information or refinements to specific analyses; and this information can be found in other Common Responses (e.g., Common Response 9, Common Response 10, Common Response 11, Common Response 15, and Common Response 16) or in the content of Volume 1 of the Final EIR, where appropriate. Responses contained in Volume 2, Chapter 4 provide additional explanations, clarifications, refinements, or other unique answers to individual comments, as appropriate. All models used and their associated limitations are described in Chapters 5 through 32. The *Methods for Analysis* section of each applicable resource chapter provides an overview of how different models were applied for the environmental impact analyses. In certain cases, quantitative models are not necessary or useful for determining the effects of the project. For qualitative assessments, where models are not available or necessary, the EIR uses currently accepted research, such as peer-reviewed articles or published data by agencies, and the best available information in support of qualitative assessments. Qualitative methods are further described in the individual resource chapters (Chapters 7 through 32).

As described in Appendix 3E, *Delta Reform Act Considerations*, the *Delta Plan* includes "measures 'to promote options for water conveyance, storage systems, and the operation of both as required by Water Code Section 85304, based on historical information and the best currently available science.'" The *Delta Plan's* Appendix 1A, *Best Available Science*, describes best available science for the purpose of implementing the requirement of using best available science to determine consistency with the *Delta Plan*. While DWR will use information in the CEQA administrative record during the *Delta Plan* certification of consistency process, additional information to satisfy the best available science requirement or the needs of the Delta Stewardship Council may be developed and used outside of the CEQA planning process.

²¹ *North Coast Rivers Alliance v. Marin Municipal Water District Board* (2013) 216 Cal.App.4th 614; *Laurel Heights Improvement Assoc. of San Francisco v. The Regents of the University of California* (1988) 47 Cal.3d 376.

Models are used throughout the EIR to compare and contrast the effects among various operating capacities. These models incorporated a set of base assumptions, which were then modified to reflect the operations associated with each of the alternatives. The output of the models is used to show the comparative difference in the conditions among the different alternatives. The model output does not predict absolute conditions in the future; rather, the output is intended to show what type of changes would occur. This type of model is described as *comparative* rather than predictive. Because of the comparative nature of these models, these results are best interpreted using various statistical measures such as long-term and year-type averages and probability of exceedance. Additionally, because results from one model cannot be quantitatively compared to historical observed data or results from another model, comparisons between alternatives must be based on results that are derived from a consistent modeling approach.

In general, CalSim 3 is used to simulate the operations of the SWP and CVP. The output of this model is then used by the Delta Simulation Model II (DSM2) to simulate hydrodynamics, water quality, and particle tracking. With the information generated from these models, water supply, flows, and water quality can be compared under different project design capacities. A variety of other models use the outputs from these models to support the comparative analysis of various other resources, such as economics, energy, and water temperature and other water quality characteristics. Please see Common Response 9 for more information regarding the CalSim 3 model and Common Response 10 for more information regarding the DSM2 model.

Uncertainty

Comments frequently discussed uncertainty and asserted that uncertainty exists, that uncertainty was not disclosed, and that impact determinations did not take uncertainty into account.

Uncertainty is closely tied to CEQA's requirements to base factual determinations and methodological choices on substantial evidence and to avoid speculation, which are discussed earlier in this Common Response. The EIR focuses on minimizing uncertainty by using the best available science and reasonable methodologies available at the time of the preparation of the EIR and by identifying uncertainty as appropriate. The best available science, including multiple discussions of climate change, is used to develop reasonable conclusions and disclose impacts. In this way, the EIR acknowledges and, to the extent feasible, minimizes uncertainty in the impact analyses. In addition, the EIR includes the CMP and the OAMMP, as described in the Chapter 3 section titled *Adaptive Management and Monitoring Program*, and both of these programs appropriately account for uncertainty throughout project design, construction, and operation and allow the integration of best available science and tools throughout project implementation.

Resource-specific information about the approach and methodology for evaluating project alternatives is provided in the respective resource chapters. Uncertainty is addressed, as appropriate and applicable, in each resource chapter. For example, Chapter 12 discusses uncertainty with respect to variation between alternatives as well through discussion of adaptive management. Chapter 12 also discusses different factors in the impact analysis, including applicability of certain lab results and uncertainty-associated variability in statistical relationships. This chapter also accounts for uncertainty in the existing analysis by, for example, using additional fishery studies to adaptively manage project operations and to implement strategies that further minimize entrainment and impingement, sedimentation, predation on juvenile fishes, and near and far-field effects on fish species.

Another example is in the Chapter 9 discussion of Impact WQ-14: *Effects on Cyanobacteria Harmful Algal Blooms Resulting from Facility Operations and Maintenance*, which clearly characterizes the uncertainties that are inherent to the cyanobacteria harmful algal bloom (CHAB) analysis because the current scientific understanding of CHABs in the Delta is incomplete. Nevertheless, that does not mean that the analysis lacks a solid scientific foundation. Impact WQ-14 is based on the best scientific information available for CHABs from past CHAB studies conducted in the Delta and elsewhere. Although the impact analysis addresses and incorporates uncertainty where appropriate, the uncertainty disclosed in the document does not negate the substantial evidence provided in the EIR to enable decision makers' understanding of the context of an impact, the type of impact, and the magnitude of an impact. In other words, uncertainty exists for some of the impacts evaluated in the EIR; and although this uncertainty is disclosed, there is sufficient information and evidence provided throughout the resource chapters in the EIR for DWR to make an impact determination.

Finally, uncertainty is addressed in the EIR beyond the analysis used to support the CEQA impact determinations for each resource. Supplemental analyses factoring in uncertainty about future hydrologic conditions, climate change, and regulatory requirements were conducted to evaluate whether certain impact conclusions that were documented in the EIR and that are influenced by these factors would change when considered under alternative future condition assumptions. Although not required by CEQA, these analyses are presented in several appendices and provide additional information about both how the project might operate in future conditions and what potential impacts could be anticipated as a result of the proposed project. These informational analyses disclosed effects that range from generally similar to nearly identical to those identified in the CEQA-required analyses of the proposed project and alternatives. These results confirmed that the analyses approach and conclusions in the EIR are accurate and would not substantially change. These informational analyses are provided in Appendices 4A, 4B, 4C, and 30A, in addition to all of the 2040 appendices (i.e., Appendices 5B, 6A, 7A, 8C, 9L, 12C, 13F, 15C, 16B, 20C, 22B, 23F, 24E, and 26A).

U.S. Army Corps of Engineers and NEPA Process

Some comments alleged that a federal agency was required for the project, that an EIS was required for the project, and that the EIR should include discussion of NEPA elements or be a joint document or risk segmentation; and some comments requested more information about the EIS. Comments also suggested the project was preselected because DWR has submitted applications to USACE for the approval of permits.

As the federal lead agency under NEPA, USACE is preparing a separate EIS for the Delta Conveyance Project. Accordingly, Chapter 1 of the EIR states that the federal lead agency for compliance with NEPA for the project is USACE. After the July 2022 publication of the Draft EIR, USACE completed and published the Draft EIS for the Delta Conveyance Project. The EIS was prepared to comply with NEPA requirements and to be consistent with USACE's role, as outlined in Chapter 1 of the EIR in the section titled *U.S. Army Corps of Engineers*. The EIS was released on December 16, 2022, and the public review and comment period was initially intended to close on February 14, 2023, for a total of 61 days; however, the review period was extended to March 16, 2023, for an additional 30 days. USACE also held four public meetings (January 10, 2023; January 12, 2023; January 18, 2023; and March 1, 2023). The EIS public review period did not overlap with the EIR public review period. The separate review periods allowed for a reasonable amount of time to review each document and to prepare separate comments on each document.

1 Although CEQA allows the preparation of joint CEQA and NEPA documents, it was determined that
2 separate CEQA and NEPA documents would be prepared. Separate documents are commonly
3 prepared to more clearly delineate the different environmental disclosures and to account for
4 differences in the CEQA and NEPA processes. DWR and USACE are coordinating to ensure
5 consistency between the two documents for ease of public review. Consideration of the project
6 under NEPA for the purposes of having USACE issue a permit or other authorizations does not mean
7 the project has been segmented or piecemealed. The same project was evaluated in both this EIR
8 and the NEPA document prepared by USACE. Although USACE's federal responsibility for the project
9 (issuance of federal regulatory authorizations) informed the scope of analysis in the EIS, the project
10 that was evaluated in the NEPA document is the same as the project evaluated in the EIR.
11 Furthermore, the EIS contemplated the information contained in the EIR, primarily by incorporating
12 by reference information from the EIR.

13 As described in Chapter 4 in the section titled *Relation to U.S. Army Corps of Engineers EIS and NEPA*
14 *Compliance*, USACE has regulatory authority over certain activities, and the agency's authorization is
15 required for any activity that falls under the regulation of Section 404 of the Clean Water Act,
16 Section 10 of the Rivers and Harbors Act, and Section 14 of the Rivers and Harbors Act (33 United
17 States Code §§ 1344, 403, and 408, respectively), all of which are anticipated to be needed for the
18 Delta Conveyance Project. The separate EIS considers and discloses whether the proposed project
19 (or alternatives) would significantly affect the quality of the human environment within USACE
20 permit authorities as required by NEPA. DWR submitted its Section 404 permit application for the
21 project in order to formally engage USACE in early coordination with DWR's CEQA process and to
22 assist with the environmental review under USACE's authority for compliance with NEPA, as well as
23 with the Clean Water Act and the Rivers and Harbors Act.

24 Chapter 4 of the EIR also discusses how Reclamation may be a potential participant through the
25 inclusion and evaluation of Alternatives 2a and 4a (central and eastern alignments, respectively).
26 These two alternatives describe potential CVP participation (by Reclamation or one or more CVP
27 contractors) as a result of constructing and operating infrastructure that would link the project to
28 the Jones Pumping Plant, allowing for 1,500 cubic feet per second delivery, of the total project
29 capacity of 7,500 cubic feet per second, of water to the CVP. However, as noted in Chapter 4, at the
30 time of this Final EIR, neither Reclamation nor a CVP contractor (or contractors) has expressed
31 interest in participating in the Delta Conveyance Project as project proponents.

32 USACE will complete the NEPA process by considering all agency and public comments and, as
33 appropriate, will respond to those comments and make any changes to the Draft EIS that may be
34 necessary. If the NEPA process moves on, USACE will make its final decision for approval and issue a
35 Record of Decision on the project. The USACE permit process will not be concluded until the NEPA
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