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Common Response 3: Alternatives Development and Description

Overview

This Common Response addresses common themes and topics raised in public comments on the California Environmental Quality Act (CEQA) Delta Conveyance Project Environmental Impact Report (EIR). More specially, the Common Response discusses the scope of the alternatives; the approach to describing the Delta Conveyance Project (project) and alternatives; water rights, contracts, and use of water; and Temporary Urgency Change Petitions (TUCPs). Comments related to the following comment themes and topics are addressed in this Common Response:

- Requirements for identifying and analyzing a reasonable range and scope of alternatives to the project.
- The approach to screening alternatives as presented in Appendix 3A, *Identification of Water Conveyance Alternatives*.
- Additional explanation about commenter-suggested alternatives that were considered but eliminated from further review in the EIR, including for infrastructure and operational types of alternatives found to not meet a majority of the basic project objectives or reduce significant environmental impacts of the project.
- The adequacy and approach to describing the project and alternatives, including the level of detail presented for project components and comments suggesting that the description of the alternatives and their construction is deficient.
- Explanations for why requests to relocate project facilities sites were not evaluated in the EIR.
- Disclosure of refinements of project features following the publication of the Draft EIR and the public review process.
- Additional explanation regarding project operations and refinements to operational criteria to address a number of comments, including comments that misunderstood the purpose and approach to operating the project.
- Misconceptions about suggested impacts or alleged undisclosed impacts associated with operating the proposed north Delta intakes.

This Common Response provides additional explanation and clarifications about alternatives development and the approach to describing the project and alternatives to support EIR analyses and public disclosure.

CEQA and the Scope of Alternatives

CEQA Requirements

Comments identified CEQA requirements for screening and analyzing alternatives to the project and questioned the adequacy of the screening process and its results in selecting alternatives to be considered for further analysis in the EIR. As required in CEQA Guidelines Section 15126.6(a), the California Department of Water Resources (DWR), as the CEQA lead agency, considered a

1 reasonable range of alternatives that would feasibly attain all or most of the basic project objectives
2 and avoid or substantially lessen one or more of the significant impacts of the project. The
3 requirements regarding the selection of alternatives under CEQA are presented in CEQA Guidelines
4 Section 15126.6. CEQA requires a reasonable range of alternatives to be analyzed in an EIR, and
5 therefore there is no set number of alternatives that must be analyzed to fulfill the requirements of
6 CEQA.¹ Rather, as stated in CEQA Guidelines and supported by abundant CEQA case law,² the range
7 of alternatives required in an EIR is governed by the “rule of reason” that requires the EIR to set
8 forth only those alternatives necessary to permit a reasoned choice (CEQA Guidelines § 15126.6(f)).
9 To focus the range of alternatives, project objectives are the starting points for developing the
10 reasonable range of alternatives to be evaluated in detail in an EIR (CEQA Guidelines §§ 15124(b),
11 15126.6(c)).

12 Comments claimed the project objectives as presented in the EIR are too narrowly defined, and thus
13 unlawfully precluded other reasonable alternatives from being further evaluated. As presented in
14 Chapter 2, *Purpose and Project Objectives*, in the section titled *Project Purpose and Objectives*, the EIR
15 describes the basic project objectives that would further DWR’s fundamental purpose to restore and
16 protect the reliability of State Water Project (SWP) water deliveries and, potentially, Central Valley
17 Project (CVP) water deliveries south of the Delta, consistent with the state’s Water Resilience
18 Portfolio, in a cost-effective manner. The four related project objectives to address climate change
19 and sea level rise, minimize public health and safety impacts, protect the ability to deliver water, and
20 provide operational flexibility for Delta facilities are all directed toward improving SWP water
21 supply resiliency, consistent with applicable regulatory requirements.

22 Project objectives define the parameters for a project to attain desired results, in this case to
23 improve SWP water supply resiliency in the face of climate change, sea level rise, and seismic risks
24 identified in the state’s Water Resilience Portfolio in a cost-effective manner. As the owner and
25 operator of the SWP, DWR’s objectives are focused on sustaining the SWP into the future. Objectives
26 also serve to help select and refine the number and types of alternatives to the project that are
27 considered for further review in the EIR. The Delta Conveyance Project objectives are defined in a
28 broad manner to allow for consideration of a variety of actions in the Delta, including potential
29 infrastructure improvement types and facility locations and capacities, and provide a reasonable
30 framework for screening alternatives considered by DWR and suggested by other regulatory
31 agencies and EIR reviewers. The fundamental project purpose and basic project objectives do not
32 specify construction of a north Delta diversion facility, intake capacities or sizes, and types or
33 locations of conveyance facilities. Rather, as explained in Appendix 3A and addressed below in this
34 Common Response in the section titled *Approach to Alternatives Screening*, screening criteria were
35 developed, based on the project objectives, to systematically evaluate whether various alternatives
36 could reasonably meet most of the basic project objectives. The California Supreme Court has held
37 that lead agencies do not need to study alternatives that would not achieve the fundamental project

¹ See e.g., *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 566; *Save San Francisco Bay Association v. San Francisco Bay Conservation and Development Commission* (1992) 10 Cal.App.4th 908, 919; *Mann v. Community Redevelopment Agency* (1991) 233 Cal.App.3d 1143, 1151.

² See e.g., *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 566; *In re Bay-Delta Programmatic Environmental Impact Report Coordinated Proceedings* (2008) 43 Cal.4th 1143, 1163; *California Native Plant Soc. v. City of Santa Cruz* (2009) 177 Cal.App.4th 957, 980.

purpose because such alternatives are not feasible.³ Thus, some alternatives were properly screened at the first level because they would not meet the fundamental project purpose. Those alternatives that could meet most of the basic objectives were further considered in the second-level screening analysis for avoiding or reducing significant impacts of the project. In this way, the EIR meets the requirements of CEQA to consider a reasonable range of alternatives that meet most of the objectives, could reduce significant impacts, and are potentially feasible, while not forestalling consideration of other types of alternative projects or predetermining alternatives, as asserted in some comments on the Draft EIR. The results of the alternatives screening process found that of the alternatives identified by DWR or by comments during the scoping process, alternatives that included north Delta diversion facilities met most of the basic project objectives because of the ability to address future climate change and sea level rise conditions, improve seismic resiliency for the SWP in the Delta, improve water supply reliability, and allow for operational flexibility in combination with other SWP facilities. Other alternatives identified by DWR or by comments during the scoping process either could not address or could only address one of these objectives. Please also refer to Common Response 1, *CEQA Process, General Approach to Analysis, and Other Environmental Review Issues*, for a discussion of the scope of the project's purpose and objectives.

The sections *Approach to Alternatives Screening* and *Comment-Suggested Infrastructure and Water Management Alternatives* in this Common Response address specific comments on the adequacy of the screening process and provide reasons some of the suggested alternatives were eliminated from further review in the EIR. This discussion is provided to further clarify the information and analyses presented in Appendix 3A. Where appropriate, individual responses may be provided to specific comments in the response to comments tables in Volume 2, Chapter 4, *Response to Comments Tables*.

Comments also questioned whether the alternatives selected for further review in the EIR met CEQA requirements that alternatives should reduce significant impacts of the project, as presented in the second-level screening analysis. At the time of the screening analysis, the project identified in the Notice of Preparation (NOP) was north Delta facilities, sized to convey up to 6,000 cubic feet per second (cfs) of water from the Sacramento River to the SWP facilities in the south Delta. Early in the planning process, both the central tunnel alignment and eastern tunnel alignment conveyance facilities were being considered for the proposed project. Alternatives evaluated in the second-level screening analysis were compared to the NOP proposed project to determine if they had the potential to substantially lessen impacts of the proposed project. Of the alternatives evaluated in the second-level screening analysis, only the dual conveyance Bethany Reservoir alignment was identified to substantially reduce or lessen environmental impacts compared to the central and eastern alignment alternatives (NOP proposed project) and other alternatives. The Bethany Reservoir alignment reduces land-based impacts by eliminating the need for the NOP proposed project's Southern Forebay and Southern Complex, which reduces land-based impacts and impacts on wetlands and other waters of the United States. The other alternatives carried forward for evaluation in the EIR, such as the 3,000 cfs and 4,500 cfs dual conveyance alternatives on the western and eastern alignments, were evaluated in the EIR because their reduced diversion capacities were expected to potentially reduce impacts on fish and aquatic resources and water quality in the Delta and the land-based impacts intake facilities would have on terrestrial resources.

³ *In re Bay-Delta Programmatic Environmental Impact Report Coordinated Proceedings* (2008) 43 Cal.4th 1143, 1166 ["CALFED properly exercised its discretion when it declined to carry the reduced export alternative over for study into the final PEIS/R after concluding that such an alternative would not achieve the CALFED Program's fundamental purpose and thus was not feasible"].

Two 7,500 cfs diversion capacity alternatives were included in the EIR analysis because of the potential for federal involvement in the Delta Conveyance Project at the time of the EIR analyses.

The other alternatives, such as dual conveyance canals, dual conveyance with intakes at the Sacramento Weir, isolated conveyance tunnels and canals, and A Water Plan for All of California, evaluated in the second-level screening were found to have substantially greater footprint impacts, location impacts, or operational impacts compared to the NOP proposed project and were not considered for more detailed analysis in the EIR. As presented in Appendix 3A, nine dual conveyance tunnel alternatives with a range of maximum capacities were retained for further analysis in the EIR, including the NOP proposed project with 6,000 cfs capacity (Alternatives 1 and 3), six central and eastern alignment dual conveyance tunnel alternatives with capacities ranging from 3,000 to 7,500 cfs (Alternatives 2a, 2b, and 2c and 4a, 4b, and 4c), and the Bethany Reservoir alignment dual conveyance tunnel alternative with 6,000 cfs capacity (Alternative 5). DWR incorporated operational considerations into the selected alternatives by considering a range of capacities, subject to operational criteria, to evaluate the comparative merits of smaller and larger capacity alternatives and their impacts as directed by CEQA Guidelines Section 15126.6(a). Please refer to the discussion of operational scenarios in the section titled *Comment-Suggested Facility Operations Alternatives* in this Common Response.

Comments suggested that other alternatives eliminated from further review in the first-level screening process were unfairly eliminated based on their inability to meet most of the project objectives. Commenters suggested that if these alternatives were included in the second-level screening they would have substantially reduced significant impacts compared to the proposed project and alternatives. Examples of the types of actions comments supported include water conservation, water supply demand management, water use efficiency, desalination facilities, and salinity barriers, among others. Although these types of actions generally are desirable for water resources management purposes, most were not considered as project alternatives or components of project alternatives because they did not address the underlying project purpose and would not meet most of the basic project objectives, and therefore are not feasible under California Supreme Court precedent.⁴ The EIR's exclusion of these types of actions for consideration as alternatives is supported by CEQA Guidelines Section 15126.6, which requires a reasonable range of alternatives be considered that could feasibly accomplish most of the basic objectives of the project and could avoid or substantially lessen one or more of the significant effects. The sections in this Common Response titled *Comment-Suggested Infrastructure and Water Management Alternatives* and *Comment-Suggested Facility Operations Alternatives* provide additional detail about suggested alternatives and why they were properly eliminated from further review in the EIR. Some of these types of suggested actions were considered cumulative projects for evaluation in combination with the project alternatives and are already being implemented by DWR or other water agencies as part of local and regional water resources management plans and the *California Water Resilience Portfolio* (California Natural Resources Agency et al. 2020). Please refer also to Common Response 1 regarding the approach to the cumulative analysis and cumulative projects included in Appendix 3C, *Defining Existing Conditions, No Project Alternative, and Cumulative Impact Conditions*, and throughout the EIR, and Common Response 8, *Relationship to Other Plans, Projects, Policies, and Programs*, for additional discussion of the *California Water Resilience Portfolio*.

⁴ *In re Bay-Delta Programmatic Environmental Impact Report Coordinated Proceedings* (2008) 43 Cal.4th 1143, 1166.

1 Approach to Alternatives Screening

2 Appendix 3A describes the development and screening of alternatives in detail. Having established
3 the project objectives prior to release of the NOP in January 2020, DWR took a fresh look at design
4 and engineering concepts, and additional alternatives were identified in consideration of
5 engineering studies, scoping, engagement with interested parties, and public outreach activities.
6 Additionally, DWR leveraged previous work conducted to identify and evaluate alternatives for the
7 *Bay Delta Conservation Plan/California WaterFix EIR/EIS*, as described in Appendix 3A. The Bay
8 Delta Conservation Plan (BDCP)/California WaterFix alternatives that could feasibly attain most of
9 the basic project objectives, in accordance with CEQA Guidelines Section 15126.6(a), were selected
10 or modified to be retained for consideration in the project alternatives screening analysis.
11 Alternatives were combined into four thematic groups for screening, and two levels of screening
12 criteria (filters) were developed.

13 As described in Appendix 3A and summarized in Chapter 3, *Description of the Proposed Project and*
14 *Alternatives*, first-level screening criteria corresponded to project objectives: *could an alternative*
15 *attain objectives of climate resiliency, seismic resiliency, water supply reliability, and operational*
16 *resiliency?* The Appendix 3A table titled Screening Filter Criteria and Project Objectives defines these
17 criteria as they were applied for this process. Whether an alternative passed first-level screening
18 depended on its ability to feasibly meet most (in this case, at least two) of the basic project
19 objectives. Appendix 3A table titled Alternatives Eliminated at First-Level Screening summarizes the
20 reasons for elimination. Alternatives that passed the first-level screening were then evaluated under
21 the second-level screening: *could the alternative avoid or lessen environmental impacts?* Those
22 alternatives that passed both screening levels were carried forward for detailed analysis in the EIR.

23 Some comments suggested that the alternatives screening analysis did not include enough detail
24 about why specific alternatives were rejected from further consideration in the EIR, suggesting that
25 studying these alternatives in greater detail would have revealed additional projects or alternative
26 strategies (e.g., salinity barriers, desalination facilities) that would meet first- and second-level
27 screening criteria. These types of comments appear to dismiss the screening process as presented in
28 Appendix 3A and may be based on a misunderstanding of CEQA's requirements. As directed in CEQA
29 Guidelines Section 15126.6(a), lead agencies "shall describe a range of reasonable *alternatives to the*
30 *project, or to the location of the project . . .*" (emphasis added). Using this guidance and following
31 California Supreme Court precedent and other caselaw, DWR reasonably explored alternatives that
32 were variations of the project in terms of the types and capacities of diversion alternatives and the
33 locations of intakes, conveyance facilities, and pumping facilities because projects outside the Delta
34 such as conservation, water use efficiency, and recycled water facilities would not address the
35 reliability of SWP supplies at all, so are properly eliminated as infeasible because they would not
36 address the fundamental project purpose.⁵ While an EIR is not required to include alternatives that
37 do not address the fundamental project purpose, Appendix 3A nevertheless considered, for public
38 disclosure, alternatives proposed in scoping (even those inconsistent with the fundamental
39 purpose) to determine if they were able to meet most of the project objectives. Appendix 3A
40 reasonably includes descriptions of 23 alternatives, describes the screening criteria and how they
41 were applied, and summarizes screening results in a tabular format. This approach provides a
42 comprehensive, synthesized, and reasonable approach to disclosure of the alternatives considered

⁵ Comments that DWR should have defined the fundamental project purpose more broadly to include addressing water supply reliability statewide or reducing reliance by taking actions to reduce demand for SWP water are addressed in Common Response 1 as well as in individual responses to comments.

and meets CEQA Guidelines Section 15126.6(c) to identify alternatives considered but eliminated from further consideration and briefly describes DWR's reasons for its determination. Please also refer to the sections titled *Comment-Suggested Facility Operations Alternatives* and *Comment-Suggested Infrastructure and Water Management Alternatives* in this Common Response for more information regarding alternatives eliminated from further analysis in the EIR.

Additional comments suggested that the alternatives screening process should have incorporated screening criteria that specifically included general factors that could influence cost, logistics, and function of an alternative. DWR determined whether alternatives could feasibly meet project objectives and could be potentially feasible to implement. DWR chose not to formally screen alternatives based on cost and logistics to ensure that alternatives capable of meeting project objectives and reducing significant environmental impacts were further considered in the EIR despite their potential for high costs and complex logistics. Furthermore, CEQA does not require an EIR to evaluate the economic feasibility of a proposed project or project alternatives (*Sierra Club v. County of Napa* (2004) 121 Cal.App.4th 1490, 1503). Final feasibility for alternatives evaluated in detail in the EIR would be determined as part of the project decision-making process following completion of the CEQA environmental review process and may include consideration of economic feasibility (*California Native Plant Society v. City of Santa Cruz* (2009) 177 Cal.App.4th 957, 981).

Comment-Suggested Infrastructure and Water Management Alternatives

Commenters identified different types of projects in their comments that DWR could potentially pursue instead of the project. Some of these suggested alternatives were considered or are relatively slight variations on alternatives eliminated by DWR from further review in the EIR, as presented in Appendix 3A. The types of alternatives and groups of suggested alternatives include the following.

- Alternative locations for water supply diversion facilities.
- Installation of fish screens at SWP and CVP south Delta diversions facilities.
- Construction of new water supply reservoir or groundwater storage facilities.
- Expansion of the use of water supply desalination facilities.
- Construction of Delta salinity control barriers.
- Upgrading existing Delta levees to support current Delta water supply diversions.
- Portfolio-type alternatives.
- Non-tunnel conveyance facility alternatives.
- Water supply demand management and conservation.

A considerable number of comments requested conveyance facilities to be relocated away from certain land uses, communities, agricultural land, and residences. For example, comments requested that the proposed north Delta diversion facility intakes be moved to avoid facilities near the town of Hood, in the vicinity of the Sacramento Regional Sanitation District facilities (upstream of the current intake locations), or on agricultural land at the proposed project locations. Other comments suggested that intakes should be located farther south on the Sacramento River, away from proposed project locations. Appendix 3A describes how intake locations were previously intensively analyzed for the BDCP/California WaterFix and reevaluated for the analysis of the Delta Conveyance Project. Appendix 3A considers intake locations upstream of the proposed intakes at the Deep Water Ship Channel, Sacramento Weir and Fremont Weir, and at downstream locations at Decker Island,

Sherman Island, and on the San Joaquin River near Antioch and Pittsburg. The analysis of these locations helped narrow the river reach considered during project planning. These intake locations were studied in the Engineering Project Reports (EPRs), and individual intakes were not treated as separate alternatives in Appendix 3A. The EPRs (Delta Conveyance Design and Construction Authority 2022a, 2022b) supporting the EIR present facility siting analyses for intake locations, conveyance facility alignments, and storage and pumping facilities. In general, these analyses incorporated land use constraints, facility engineering requirements, construction feasibility and logistics, and potential environmental impacts. As such, DWR's assessment of alternate intake locations upstream and downstream of the proposed facility sites found that these alternate locations did not meet a majority of the basic project objectives or were undesirable from an engineering/potential feasibility perspective and/or could conflict with existing facilities and land uses and habitat areas. In general, these eliminated intake locations were determined to not reduce significant impacts. Please refer to the Delta Conveyance Final Draft Engineering Project Report – *Technical Memorandum Intake Site Identification and Evaluation* (Delta Conveyance Design and Construction Authority 2022c). For example, intake locations upstream of Scribner Bend on the Sacramento River were determined to meet a majority of the project objectives for climate change, seismic and operational resiliency, and water supply reliability but were eliminated to ensure intake locations are downstream of where complete mixing is reported to occur with effluent discharges from the Sacramento Regional Wastewater Treatment Facility and to avoid construction impacts in an overly constrained conveyance corridor with historic building conflicts. Other locations, including west and south Delta locations, downstream of the proposed intake sites, were found to not meet sea level rise/climate-change resiliency and seismic resiliency criteria because these locations are more sensitive to salinity changes, closer to habitat areas used by Delta smelt and other special status species, and closer to known seismic fault zones. Because of this, these locations were also judged to not meet operational resiliency and water supply reliability criteria. This screening exercise narrowed the list of sites to five potential intake locations.

The *Intake Site Identification and Evaluation* technical memorandum ranks the five remaining intake locations based on site bathymetry and river encroachment, property and built-environment impacts, proximity to existing development, geotechnical concerns, environmental and habitat disruption, and road and traffic disruption. One important siting factor for these potential locations was identifying river locations that were suitable for water supply diversions and that would allow effective fish screen performance including the necessary sweeping velocities at fish screens to minimize effects on sensitive fish species. These investigations were conducted by a multi-agency fish facilities technical team that ranked the intake locations for their ability to meet fish screen design and performance requirements. A key result of these evaluations was the elimination of a potential intake site located immediately south of the town of Hood on state-owned property. This site was primarily eliminated because of potential impacts to structures and its proximity and potential impacts on the town of Hood, despite its high ranking for bathymetry and river encroachment criteria. This site was judged to not pass the second-level screening applied to potential alternatives because it did not have the potential to reduce significant impacts compared to intakes identified for the proposed project. Instead, DWR chose to select the current intake site (Intake B) located farther north of the town of Hood to reduce the potential for impacts associated with intake construction. DWR also eliminated construction haul routes through the town of Hood on Hood-Franklin Road for the same reason. Ultimately, the EIR describes nine project alternatives at three distinct alignments to help DWR consider the relative range of construction and operations impacts on Delta resources and communities. The nine project alternatives situated in different areas of the Delta provide a reasonable range from which to ensure a reasoned choice while striving

1 to reduce physical environmental impacts of the proposed project, as defined in the NOP, to the
2 extent possible.

3 Comments suggested alternative water supply or management facilities should be considered as a
4 component of a project alternative or as a stand-alone alternative in the EIR, such as fish screens at
5 south Delta export facilities, new reservoirs or groundwater storage, desalination facilities, salinity
6 control barriers, and improved Delta levees to support through-Delta conveyance. These types of
7 options were fully evaluated and determined to not meet most or all of the basic Delta Conveyance
8 Project objectives for water supply reliability and climate change, seismic, and operational
9 resiliency. For example, fish screens on existing facilities could improve conditions for fish near
10 Clifton Court Forebay but would not reduce SWP water export risks related to climate change and
11 seismic events or substantially improve operational resiliency or water supply reliability. As
12 demonstrated in Appendix 3A, a new Clifton Court Forebay fish screen could also create
13 impingement hazards for sensitive fish species and could potentially be infeasible because of
14 sweeping velocity requirements near new fish screening facilities in this area of the Delta. Similarly,
15 salinity control barriers would not meet climate change and seismic and operational resiliency
16 objectives because they would not improve SWP operational flexibility or water supply reliability
17 and would not improve the seismic resiliency of existing facilities. This alternative could also result
18 in changes to the Delta's estuary ecosystem and create fish migration issues for sensitive
19 anadromous fish species. Delta levee improvements may be potentially viable separate projects, but
20 levee improvements would not meet water supply resiliency and reliability criteria because they do
21 not address the effect that rising sea levels and seismic events could have on south Delta facility
22 operations and would not offer additional operational flexibility for conveying water supplies from
23 the Delta. Levee improvements could also result in relatively large surface impacts in and adjacent
24 to levee footprints that could impact Delta waterways and riparian and aquatic habitat.

25 Other suggested types of alternatives such as reservoir and groundwater storage and desalination
26 facilities would not address reliability of SWP water deliveries in consideration of sea level rise,
27 seismic events, operational resiliency (by addressing regulatory constraints), or water supply
28 reliability (by addressing changing hydrologic patterns) in the Delta. While such activities are not
29 potentially feasible alternatives to the proposed project, these types of projects are currently being
30 pursued by a number of water management agencies in areas outside the Delta. Where such projects
31 are reasonably foreseeable and meet the CEQA requirements for inclusion in the cumulative project
32 list and/or the No Project Alternative description, they have been fully considered and evaluated as
33 part of the EIR cumulative impact analyses and/or in the No Project Alternative analyses found in
34 Chapters 7 through 32 of the EIR.

35 Some commenters suggested that DWR should abandon the use of a conveyance tunnel and adopt
36 through-Delta conveyance approaches and Delta levee investment to improve the existing
37 conveyance approach. The Appendix 3A screening analysis revealed that this approach would not
38 address the resiliency and water supply reliability screening criteria because of reliance on the
39 existing SWP facilities and lack of resiliency for sea level rise, climate change, and seismic risk.

40 Finally, as presented in Appendix 3A and suggested in comments on the EIR, alternatives to the
41 project that combine a number of facility and water management actions are identified, generally, as
42 portfolio-type alternatives. Some of these suggested alternatives would combine additional actions
43 with various options for Delta diversions including water conservation, water use efficiency,
44 demand management, natural conveyance systems, reservoir and groundwater storage, seawater
45 desalination, or brackish water desalination. These types of alternatives were determined to not

meet most of the basic project objectives because they do not address the resiliency and reliability objectives of the project related to improving climate change, seismic and operational resiliency, and water supply reliability of the SWP. For example, water conservation and demand management actions would not restore and protect the ability of the SWP, and potentially the CVP, to deliver water south of the Delta because these types of actions, although important for overall water supply management, would not change the ability to respond to the risks that threaten delivery of water supply south of the Delta. Some portions of these suggestions, such as calls for new reservoirs, water conservation, and demand management, did not address the fundamental purpose of the project to sustain the SWP and meet objectives. These types of options and actions were fully considered during alternatives screening. For example, the portfolio alternative screening in Appendix 3A would not meet the fundamental purpose of the project and failed to address sea level rise and seismic and operational resiliency of the SWP because it would rely on existing south Delta facilities that would continue to be subjected to rising sea levels, salt water intrusion, seismic vulnerability, and limited ability to be operated when salinity and sensitive species presence in the south Delta limits SWP Delta operations. Although these types of alternatives were eliminated from further review in the EIR, it is noted that most of the portfolio-type actions are included in the *California Water Resilience Portfolio* (California Natural Resources Agency et al. 2020), along with improved Delta conveyance, and are being pursued by state, regional, and local agencies, including DWR.

Other types of alternatives suggested that are similar to or included in portfolio-type alternatives such as water supply demand management, conservation, and local and regional water supply projects are addressed in Common Response 5, *Public Water Agencies Water Management Practices*, and Common Response 8.

Comment-Suggested Facility Operations Alternatives

Commenters claimed a reasonable range of alternatives to the project was not analyzed in the EIR because DWR failed to provide a range of north Delta diversion facility operational scenarios in Chapter 3. Some of the comments claimed that alternatives should have been described and analyzed in detail that anticipate the State Water Resources Control Board's (State Water Board) Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary updates (Bay-Delta WQCP)/Voluntary Agreements to Update the Bay Delta Plan, vary the amount and timing of diversions/exports, increase in-stream flow conditions in the Delta for non-consumptive beneficial uses, and assume the maximum intake capacity could be used without the proposed new operational criteria in place. Other comments asserted that the range of alternatives is inadequate because conveyance facility operations do not address requirements or policies in the Delta Reform Act and *Delta Plan*.

CEQA and the CEQA Guidelines do not directly address requirements for diversion project operational alternatives other than those provided for alternatives in CEQA Guidelines Section 15126.6. Generally, lead agencies are given broad discretion in defining projects and alternatives that meet project objectives, are potentially feasible, and could reduce significant environmental impacts. For the Delta Conveyance Project, DWR considered multiple operational scenarios over the course of project development that were designed to meet the project's fundamental purpose and project objectives, enhance project benefits, and reduce or avoid the project's potentially significant impacts. Other operational scenarios evaluated that met the project objectives were found to not substantially reduce significant impacts on fish and aquatic resources compared to the proposed operations presented in Chapter 3. Analyses of an alternative regulatory scenario (refer to Appendix 4C, *Alternate Regulatory Scenario Sensitivity Analysis*) indicate that surface water changes would be

1 similar to those under the proposed project operational criteria. The features of alternatives,
2 including operational scenarios, were conceptually developed and refined over time to maximize the
3 achievement of the objectives while avoiding or minimizing potential significant effects to the extent
4 possible. Then, prior to the Delta Conveyance Project EIR initiation, DWR crafted its operations and
5 operational criteria approach to address the project objectives. The result of the evaluation was the
6 optimized version of operations described in Chapter 3 of the EIR. The description of operations is
7 focused on describing how operational criteria would be applied to each of the nine project
8 alternatives. This approach is appropriate because (1) it allows DWR to consider the benefits and
9 impacts associated with new SWP water diversion facilities across a range of alternative intake
10 capacities and locations that provide a consistent comparison of different alternatives under the
11 proposed new operational criteria; (2) it focuses the range of alternatives on those that could meet
12 DWR's project objectives, comply with existing Delta regulatory and operational requirements, and
13 minimize impacts on sensitive aquatic species, water quality, and other beneficial uses; and (3) it
14 respects the need to honor existing water rights, contracts, and uses of water in a way that other
15 suggested operational approaches could not.

16 For example, alternative approaches in comments suggest that the EIR should have analyzed in
17 detail various options for reducing SWP and CVP exports while increasing Delta in-stream flow
18 conditions to benefit existing Delta and upstream water uses, fish and wildlife, and water quality.
19 DWR's process for developing its operations approach benefited from past BDCP and California
20 WaterFix operations scenarios and sensitivity analyses as well as new Delta Conveyance Project
21 analyses. Generally, the environmental analysis for these prior alternative operational scenarios
22 provided impact results that were similar, providing limited additional information in which to
23 inform reasoned decision making. Suggestions for reducing exports/increasing in-stream flows
24 ignore the stated project objective to restore the reliability of the SWP to deliver water to its
25 contracted customers and err in their suggestion that DWR has the unilateral authority to modify
26 water rights and water user contracts. Also, water supply exports are a function of available supplies
27 (runoff), water rights permits, including the SWP's share of responsibility for meeting the Delta
28 water quality standards currently in State Water Board Water Right Decision 1641 (D-1641), as well
29 as terms of existing Endangered Species Act (ESA) and California Endangered Species Act (CESA)
30 permits. The State Water Board, along with the U.S. Fish and Wildlife Service (USFWS), National
31 Marine Fisheries Service (NMFS), and California Department of Fish and Wildlife (CDFW), influence
32 and regulate how much and when water can be delivered, based on available supplies and governing
33 regulations. These kinds of operational alternatives were, therefore, not evaluated in the EIR
34 because they ignore the existing regulatory environment and agency authorities, and they were not
35 able to meet most of the basic project objectives for climate change, seismic and operational
36 resilience, or water supply reliability of the SWP. These types of alternatives were also considered to
37 be potentially infeasible because they could conflict with existing regulatory requirements and
38 water rights law and may not substantially reduce the project's significant impacts. Because the
39 reduced export/increased streamflow alternatives would not lessen significant impacts of the
40 proposed project and alternatives as described in the Draft EIR, which are less than significant or
41 less than significant with mitigation measures, these types of alternatives are not required by CEQA
42 because the intent of such an alternative would more effectively address the Delta's existing
43 environmental problems, which would continue to exist with or without the Delta Conveyance
44 Project and are thus part of the baseline conditions rather than the project-generated environmental
45 impacts that determine the required range of project alternatives (*In re Bay-Delta etc.* (2008) 43
46 Cal.4th 1143, 1168). The project's operational approach strikes a balance that considers the needs of
47 all of the Delta beneficial uses.

1 Some comments referenced the Delta Reform Act and the Delta Stewardship Council's *Delta Plan* as
2 containing requirements for EIR alternatives to be based on natural systems or to reduce reliance on
3 the Delta for water supply. These comments generally suggest that DWR erred in not including an
4 alternative that adopted portions of this law and plan. DWR considered both the Delta Reform Act
5 and the *Delta Plan* in its project planning and EIR, as evidenced by the preparation of Appendix 3E,
6 *Delta Reform Act Considerations*. DWR will comply with the Delta Stewardship Council's *Delta Plan*
7 certification of consistency process as described in Appendix 3E and Common Response 8. Nothing
8 in the Delta Reform Act or the *Delta Plan* requires DWR to include specific operational rules or
9 alternative operational scenarios to reduce SWP and CVP exports from the Delta. As described in
10 Common Response 8, it is the obligation of each region that relies on water from the Delta to
11 determine the best ways to meet the goal to reduce reliance on the Delta by improving regional self-
12 reliance. As explained in Common Response 8, DWR could be consistent with the goal to reduce
13 reliance on the Delta for water supply even if exports under the Delta Conveyance Project increased.
14 DWR cannot impose a statewide investment strategy on regions or individual water suppliers. For
15 additional details regarding the Delta Conveyance Project and the relationship to the Delta Reform
16 Act and the *Delta Plan*, please refer to Common Response 8. Please refer to the discussion regarding
17 the approach to operations and operational criteria below for more information and clarification
18 about operation of the Delta Conveyance Project's dual conveyance system.

19 Other comments indicated that the EIR should have presented, as formal alternatives, operational
20 scenarios options that assume proposed Bay-Delta WQCP updates and voluntary agreements in the
21 baseline and alternatives' CalSim 3 modeling to reflect potential future WQCP objectives. As
22 presented in the baseline discussion in Common Response 1, DWR correctly chose not to include
23 these potential revisions in its quantitative alternatives analysis because the final Bay-Delta WQCP
24 updates have not yet been implemented and do not represent existing regulatory conditions
25 considered at the time the NOP was published. However, for informational purposes, DWR prepared
26 a sensitivity analysis for an alternative regulatory scenario describing modified requirements
27 related to water quality and flow in the Delta. The results of this sensitivity analysis show that the
28 impacts of the project under these requirements would be similar to those presented in the EIR
29 alternatives impact analysis. Please refer to Appendix 4C. This additional information reinforced
30 DWR's decision to assume existing regulatory requirements in its alternatives operational criteria,
31 modeling, and operations impact analyses. In addition, DWR and the Delta Conveyance Project
32 would be required to operate to updated water quality objectives approved by the State Water
33 Board through the water quality control planning process. As described in Common Response 8, it is
34 the State Water Board's authority and responsibility to approve water quality objectives that would
35 then be applied to the Delta Conveyance Project, and thus DWR cannot include water quality
36 objectives as part of an alternative to be evaluated by the EIR.

37 A number of comments claimed that DWR should have described and analyzed a maximum
38 diversion alternative based on the alternative intake diversion capacities presented in the EIR.
39 These comments suggested that because DWR has operational discretion within the existing Delta
40 regulatory requirements, the quantitative modeling descriptions and results for alternatives should
41 have assumed DWR would operate intakes at maximum capacity. These comments indicate that
42 during times/Delta conditions when the EIR CalSim 3 modeling results demonstrated intakes were
43 operated below the maximum intake capacity, they should have or could have been operated at
44 maximum capacity based on current regulatory requirements. Because of this modeling approach,
45 comments claim that the alternative operational analyses fail to disclose the correct magnitudes for
46 operational impacts, and therefore impact significance conclusions could be incorrect. DWR

provided sufficient detail regarding operations in Chapter 3 (see section below titled *Proposed Project*) and will operate the project as described in Chapter 3 and as modeled by CalSim 3. The intake diversion rates and timing assumed in CalSim 3 modeling accommodate multiple hydrologic and regulatory conditions under which water could be diverted (see the Chapter 3 figure titled North Delta Diversion Operations Concepts). Diversion priority, as described in Chapter 3, is the south Delta intakes. North Delta intakes would be operated as a secondary priority when Delta flow, fish, and water quality conditions allow. Furthermore, operating to the maximum capacity would not reduce significant environmental impacts, which is one of the primary functions of CEQA in developing the reasonable range of feasible alternatives. The section titled *Operational Criteria* in this Common Response discusses that CEQA does not require a lead agency to analyze a project that would not occur or is unlikely to occur. DWR presented in the EIR an operational scenario that allows diversions at the south Delta intakes and the proposed north Delta intakes at rates within limits imposed by ESA/CESA, Bay-Delta WQCP, water rights, and the U.S. Army Corps of Engineers requirements.

As described below, in the *Operations Description* section of this Common Response and in the Chapter 3 section titled *New Operational Criteria for the Proposed North Delta Intakes*, text has been clarified to demonstrate that DWR will operate intakes according to the operational criteria represented by CalSim 3. Please refer to Common Response 9, *Hydrologic Modeling and Approach*, for additional explanation about the modeling approach and assumptions.

DWR Accountability

Some comments expressed concern or skepticism that the Delta Conveyance Project would not be operated as described in Chapter 3. Concerns ranged from questions about the amount of operational discretion or flexibility DWR would have during different hydrological conditions to fear that the south Delta facilities and proposed north Delta intakes could be operated concurrently at maximum diversion capacities.

DWR's mission is to sustainably manage the water resources of California, in cooperation with other agencies, to benefit the state's people and protect, restore, and enhance the natural and human environments. As related to the Delta Conveyance Project, this means that proposed facility operations, including the operational criteria proposed in Chapter 3, have been designed to meet the needs for more reliable SWP water supply, consistent with the needs of other users of water and the natural environment. The EIR description of project operations and operational criteria and the operational representation provided by CalSim 3 and other models are aimed at meeting the stated underlying purpose of the project and project objectives as presented in Chapter 2 and complying with the applicable regulatory requirements as presented in Chapter 1, *Introduction*, and described further in Common Response 8.

As described in the EIR chapters and throughout this Common Response and other Common Responses, operations are regulated by multiple agencies, including federal fish and wildlife agencies, U.S. Army Corps of Engineers, CDFW, and the State Water Board, to ensure current and future operations occur consistent with current BiOp limits, Incidental Take Permits, export limits, Bay-Delta WQCP flow and water quality objectives, and water rights. The discretion that DWR has regarding operation of the Delta Conveyance Project as a component of the SWP (as described throughout this Common Response and in Chapter 3) would have to be in compliance with the described operations criteria and consistent with the requirements of the multiple agencies regulating the project. The EIR project description, modeling results, and operational impact

analyses incorporate all of these regulatory requirements in a reasonable manner by incorporating intake fish screen requirements and operational criteria to protect sensitive fish species, operating diversions primarily during excess flow conditions, avoiding water quality impacts and operating the SWP system to provide reliable water supply, within hydrological conditions and regulatory limits, and consistent with water rights and contracts.

The Delta Conveyance Project, as presented throughout the EIR, represents the manner in which it would be operated to balance the needs of the natural and human environment. Substantial changes to the proposed operations and operational criteria could only occur in cooperation with other agencies and subject to applicable environmental review, laws, and permits, as described further in this Common Response in sections *Operations Description* and *Operations Adaptive Management and Monitoring Plan and Real-Time Decision Making*. DWR will continue coordinating with fish and wildlife agencies on various aspects of the proposed project during both informal and formal ESA/CESA consultation. For example, these discussions will focus on various operational elements and potential refinements necessary to receive permits on the project, consistent with the requirements of ESA/CESA. Operational components such as pulse protection (e.g., number and timing of pulse protections), outflow (e.g., consistency with existing and future regulatory requirements and additional consideration for SWP operations with DCP), as well as biological triggers to inform potential operational adjustments will be evaluated and considered, if determined to be necessary to further minimize and mitigate effects under ESA/CESA, but such potential refinements are not required under CEQA.

Approach to Describing the Project and Alternatives

Comments alleged that the project and alternatives descriptions lacked information or engineering details or were not stable or adequate. Some comments claimed the lack of detail prohibited disclosure of the impacts of the project and alternatives. Common Response 1 also provides a discussion of CEQA and the project description as it informs the scope of analysis and overall CEQA approach used in the EIR. The discussion below provides information regarding the approach used by DWR to provide a stable and adequate project description as required by CEQA.

Under the CEQA Guidelines, “[a]n 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” (CEQA Guidelines § 15151). Further, “[a]n evaluation of the environmental effects of a proposed project need not be exhaustive, but the sufficiency of an EIR is to be reviewed in light of what is reasonably feasible” (CEQA Guidelines § 15151).⁶ The CEQA Guidelines explain that what is “reasonably feasible” inevitably varies from project to project in light of factors such as the magnitude of a proposed project (CEQA Guidelines § 15204(a)). For complex projects covering large geographic areas, such as the Delta Conveyance Project, what is “reasonably feasible” is different than what is reasonable for smaller projects with relatively simple analysis. Again, as explained in the CEQA Guidelines, the degree of specificity required in an EIR depends on the type of project being analyzed (CEQA Guidelines § 15146).

DWR used a number of resources, technical information, and subject matter experts to prepare an adequate and stable project description, included in Chapter 3. Specific data on the location,

⁶ See also CEQA Guidelines § 15147 (“The information contained in an EIR shall include summarized technical data, maps, plot plans, diagrams, and similar relevant information sufficient to permit full assessment of significant environmental impacts by reviewing agencies and members of the public”).

conceptual design, schedule, and operation of the various components of the proposed facilities have been developed and were available during the environmental review process and are contained, referenced, or described in Chapter 3. In addition, Chapter 4, *Framework for the Environmental Analysis*, discusses and the project includes two EPRs, *Volume 1: Delta Conveyance Final Draft Engineering Project Report—Central and Eastern Options* and *Volume 1: Delta Conveyance Final Draft Engineering Project Report—Bethany Reservoir Alternative*, developed by the Delta Conveyance Design and Construction Authority (DCA) at the direction of DWR (Delta Conveyance Design and Construction Authority 2022a, 2022b). The project also includes specific engineering refinements, which are described in *Central and Eastern Corridor Options Engineering Project Report Update* (Delta Conveyance Design and Construction Authority 2023a) and *Bethany Reservoir Alternative Engineering Project Report Update* (Delta Conveyance Design and Construction Authority 2023b). Available data included specific and detailed footprints for all alternatives, precise locations of access roads and staging areas, reliable estimates of crew sizes, construction equipment and vehicle use, and construction schedules, as well as employees and equipment required for operations. The *Intake Operations and Maintenance* section of Chapter 3 provides a detailed description of the project's intake operations, operational criteria, integration of project facilities, and the real-time operations approach. The operational criteria were developed with input from regulatory agencies (e.g., CDFW), as described further below in the section titled *Operational Criteria*.

The details described above meet or exceed the mandatory components of a project description as required by CEQA, which include precise location and boundaries on topographic and regional maps; a statement of objectives; a general description of technical, economic, and environmental characteristics; and a statement describing the intended use of the EIR (CEQA Guidelines § 15124). The general description requirement of project elements under CEQA for the technical attributes of a project is consistent with the other CEQA mandates “to make the EIR a user-friendly document.”⁷ “The EIR must achieve a balance between technical accuracy and public understanding.”⁸ Further, in drafting CEQA, the legislature declared it to be the policy of the state that “[e]nvironmental impact reports omit unnecessary descriptions of projects” (Pub. Resources Code § 21003(c)). Courts have even recognized the danger of an EIR including too much detail: “engineered drawings may well supply ‘extensive detail beyond that needed for evaluation and review of the environmental impact’ in violation of Guidelines section 15124.”⁹ Under CEQA, therefore, an EIR should only include the level of detail necessary to allow the decision makers and the public to adequately understand and evaluate the environmental impacts of a project. The EIR complies with this requirement. This level of detail for the project and alternatives is primarily contained in Chapter 3; Appendix 3B, *Environmental Commitments and Best Management Practices*; Appendix 3D, *Intakes, Roads, and Shafts Summary Tables*; and Appendix 3G, *Community Benefits Program Framework*.

Proposed Project

A number of comments suggested that identification of a proposed project in the EIR predetermined decision-making for the project and precluded consideration of other EIR alternatives and those that were eliminated from further consideration in the EIR. Other comments questioned the selection of Alternative 5 as the proposed project because it differed from the NOP proposed project.

⁷ *Dry Creek Citizens Coalition v. County of Tulare* (1999) 70 Cal.App.4th 20, 28.

⁸ *Ibid.*

⁹ *Id.* at p. 36.

Under CEQA, a typical draft EIR includes a defined proposed “project,” supported by a set of “project objectives,”¹⁰ as well as “alternatives to the proposed project” that would “feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project.”¹¹ These terms juxtapose a proposed “project” against “alternatives to the project,” suggesting that CEQA anticipates that a draft EIR will identify the proposed project as compared with the alternatives to the proposed project. The analysis of the alternatives to the proposed project need not be as searching as for the proposed project itself.¹²

In consideration of scoping comments and additional evaluation undertaken in preparation of the Draft EIR, the proposed project as defined in the NOP (a 6,000 cfs diversion capacity alternative, to be located on either a central or eastern alignment from intakes in the north Delta to pumping facilities in the south Delta near Clifton Court Forebay) differs from the proposed project as defined in the Draft EIR (Alternative 5, Bethany Reservoir Alignment). This change to define the proposed project is encouraged by CEQA and occurred based on preliminary environmental results and engineering planning information developed during the environmental review process. CEQA compels an interactive process of assessment of environmental impacts and responsive project modifications, which must be genuine. It must be open to the public, premised upon a full and meaningful disclosure of the scope, purposes, and effect of a consistently described project, with flexibility to respond to unforeseen insights that emerge from the process. In short, a project must be open for public discussion and subject to agency modification during the CEQA process. Therefore, the development of Alternative 5, and its selection as the proposed project after the NOP was released and during the preparation of the EIR, demonstrates DWR’s use of the CEQA process as intended to consider scoping and NOP comments, preliminary environmental analyses, and engineering information to refine a project to reduce its significant impacts and improve its ability to meet project objectives.

Nothing about the identification of Alternative 5 as the proposed project “pre-commits” DWR, as the lead agency, to that alternative. It is true, as a few comments note, that public agencies must not commit to a definite course of action with respect to a project prior to the completion of environmental review. When such a commitment occurs, it can constitute a violation of CEQA, commonly referred to as impermissible “pre-approval” or “pre-commitment.” Neither pre-approval nor pre-commitment, however, has occurred.

The leading CEQA case on the issue of whether an agency has impermissibly pre-approved or pre-committed is *Save Tara v. City of West Hollywood* (2008) 45 Cal.4th 116 (*Save Tara*). In that case, the Supreme Court declined to establish a bright-line rule to determine when an agency has “pre-approved” a project. Instead, the court applied the “general principle that before conducting CEQA review, agencies must not ‘take any action’ that significantly furthers a project ‘in a manner that

¹⁰ CEQA Guidelines § 15124.

¹¹ CEQA Guidelines § 15126.6(a).

¹² “The discussion of alternatives need not be exhaustive, and the requirement as to the discussion of alternatives is subject to a construction of reasonableness.” (*Residents Ad Hoc Stadium Com. v. Board of Trustees* (1979) 89 Cal.App.3d 274, 286.) The discussion of alternatives must include “meaningful detail” supported by “facts and analysis” and not just “bare conclusions.” (*Laurel Heights Improvement Assn. v. Regents of the University of California* (1988) 47 Cal.3d 376, 404–406.)

forecloses alternatives or mitigation measures that would ordinarily be part of CEQA review of that public project.”¹³

DWR has not taken any steps that irrevocably commit to Alternative 5 or that would foreclose on its ability to evaluate or approve other alternatives, or to take no action (i.e., opt to not implement the proposed project or a project alternative). Approval of any alternative, or hybrid alternative, is contingent on DWR’s decision-making process, which includes review and consideration of the EIR, consideration of public comment, determination of project feasibility, and social, economic, and logistic considerations.

Comparisons Between BDCP/California WaterFix and the Delta Conveyance Project

Multiple comments attempted to draw comparisons between previous projects (BDCP/California WaterFix) and the Delta Conveyance Project. Based on these comparisons, some comments then made assertions that the current Delta Conveyance Project was not protective of the Delta ecosystem or would result in more impacts than previously evaluated. DWR cautions comparison of the Delta Conveyance Project with previous projects that are no longer being pursued because the Delta Conveyance Project includes both operational and physical differences compared to previous projects. In addition, because of the requirement of CEQA to analyze and disclose potentially significant environmental impacts of the project as currently proposed by the lead agency, there is no reason to compare previous projects to the current Delta Conveyance Project. Operational and physical differences between the Delta Conveyance Project and previous projects make comparisons inaccurate. For example, the Delta Conveyance Project has reduced intake capacity compared to previous projects. In addition, dual conveyance operations for the Delta Conveyance Project include prioritizing use of south Delta facilities before north Delta intakes are used, as described in Chapter 3, which is different than previous projects. The potential diversion rates and facility priority result in changes to the project operations that reduce hydrological, water supply, ecosystem, and water quality effects in the Delta. The Delta Conveyance Project also includes changes to conveyance facility types and locations compared to previous projects. These changes, which are focused on improving water supply reliability and SWP system resiliency, and the current description of the proposed project and alternatives in Chapter 3 are the basis for the current evaluation of impacts and mitigation measures proposed in each EIR resource chapter, including Chapter 12, *Fish and Aquatic Resources*. Chapter 12 discloses that significant impacts of the proposed project and alternatives on fish and aquatic resources would be less than significant or less than significant after mitigation incorporated.

Facility and Construction Description

Some comments on the EIR questioned the level of detail of specific components of the project and alternatives. Comments argued that the descriptions and subsequent impact analyses for facilities,

¹³ *Save Tara, supra*, 45 Cal.4th at p. 138, quoting CEQA Guidelines § 15004(b)(2)(B); see also *Neighbors for Fair Planning v. City and County of San Francisco* (2013) 217 Cal.App.4th 540, 550–558 (city’s predevelopment loan to a proposed community center to cover cost of environmental review and supervisor’s introduction of special use district ordinance for the center prior to the certification of the EIR was not an approval of the community center project); *Cedar Fair, L.P. v. City of Santa Clara* (2011) 194 Cal.App.4th 1150, 1171 (rejecting the view that a “term sheet” setting forth details of a proposed stadium project required CEQA review because the term sheet expressly bound the parties to only continue negotiating in good faith, and recognized that a no project option was still available); *City of Santee v. County of San Diego* (2010) 186 Cal.App.4th 55, 59 (“siting agreement did not as a practical matter preclude any alternatives, mitigation measures, or the alternative of not going forward”).

the construction process and logistics, field investigations, and land reclamation were not described in sufficient detail to fully understand these project components and their potential impacts. CEQA affords substantial discretion to determine what level of analysis is appropriate for a particular project or action.¹⁴ Here, as described in Chapter 4, the EIR provides a project-level analysis for construction of the water conveyance facilities, project operations, and maintenance. As described above, Chapter 3 provides sufficient detail about the project and alternatives to foster informed decision making. All of the facility locations and site sizes, including temporary construction areas and material storage areas, conveyance facility alignments, construction access roads, power, and appurtenant facilities are described in text descriptions, figures, and detailed mapbooks in a site-specific manner. These proposed facility features are analyzed in the project's geographic information system (GIS) database to ensure that all temporary and permanent surface feature footprints are accounted for in the facility descriptions and impact analyses, as applicable and appropriate. The locations and sizes of subsurface facilities such as conveyance tunnels, tunnel shafts, powerlines, and SCADA lines are also described and shown on figures and mapbooks throughout the EIR. DWR, as lead agency, has determined that the facility descriptions are described in sufficient detail to reasonably disclose the potential physical impacts on the environment associated with proposed facility construction. These impacts are described in Chapters 7 through 32. Additional facility design would be required following completion of the environmental review and project decision-making process. As lead agency, DWR would be responsible for determining if future project design could result in the need for additional environmental review to comply with CEQA.

Some commenters suggested that details about the design of facilities and construction management/logistics should have been included in the description of the project and alternatives to allow for a complete understanding of facilities and the construction process and their potential effects. DWR has put considerable resources into describing the project in as much detail as practical given the size and geographic scope of the project and to accommodate the level of detail needed to assess environmental impacts. The description of the project and alternatives provided in Chapter 3 is based on project planning and conceptual design information presented in the EPRs (Delta Conveyance Design and Construction Authority 2022a, 2022b, 2023a, and 2023b). The EPRs provide the detail on which the project description is based and, as explained in the Draft EIR, were available for those commenters requiring detail in addition to that presented in Chapter 3. In addition, the conceptual design team for the Delta Conveyance Project developed preliminary construction schedules for each of the action alternatives, which were included in Chapter 3 of the EIR. The preliminary construction schedule for the proposed project (Alternative 5) is shown in the figure titled Alternative 5 Construction Schedule in Chapter 3. That schedule is the most accurate representation of the overall construction schedule given project design thus far. For example, construction of Alternative 5 would take approximately 13 years. Construction would not take place in all locations at the same time. Rather, it would proceed in stages, starting with access roads and site work at the intakes and Twin Cities Complex and power and SCADA at maintenance shafts, and proceeding to equipment decommissioning, site reclamation, and road overlays in the final years. DWR anticipates that the first Notice to Proceed for construction of the initial phases of the Delta Conveyance Project will be issued approximately in mid-2028, with the remaining contracts for other phases being issued at approximately 6-month intervals thereafter.

¹⁴ To comply with CEQA, the question is whether the "EIR provide[s] 'decision makers with sufficient analysis to intelligently consider the environmental consequences of [the] project.'" (*Citizens for a Sustainable Treasure Island v. City & Cnty. of San Francisco* (2014) 227 Cal.App.4th 1036, 1052.)

1 Even with the engineering and construction details described above, the project description has
2 been designed to provide a layperson's level of detail that is accessible to members of the public and
3 others who may not require a more detailed description. The description of the project also provides
4 all of the information needed to support the multiple analyses presented in chapters or appendices
5 of the EIR. Decisions about the information needed to be presented is a balance between a
6 reasonable presentation of the whole of the project as required by CEQA and the information
7 needed to support the description of impact mechanisms and estimate the significance of impacts
8 based on impact thresholds of significance. For example, resource topics such air quality,
9 transportation, and noise required detailed information about construction equipment, truck trips,
10 and employees needed for facility construction but did not require the same level of detail about
11 conveyance facilities design or operation to estimate air quality emissions, vehicle miles traveled, or
12 construction-generated noise. In this way, the project description was crafted to support
13 understanding of the project and information needed for impact analyses. Please refer to Common
14 Response 1 for a discussion of the scope of the analysis and analysis level of detail, aggregating
15 project impacts, and describing the whole of the project as required by CEQA.

16 Other comments noted that the descriptions of field investigations and land reclamation activities
17 were not provided in as much detail as other Chapter 3 discussions about facility siting and
18 construction. In these cases, the level of detail required to support EIR impact analyses was less
19 rigorous because much of the potential impacts from surveys, geotechnical investigations, or
20 restoring temporary construction sites would occur within the described facility footprints and
21 would not create additional physical effects on the environment beyond what was described for
22 construction, operations, and maintenance impacts. In cases where investigations would occur
23 outside facility footprints, such as for fault zone areas, those impacts were captured in the
24 appropriate resource chapters. If DWR approves changes following the project decision-making
25 process, DWR would determine which, if any, changes could potentially create new significant
26 impacts or constitute substantial new information that could require further environmental review
27 pursuant to CEQA.

28 A number of comments noted that the description of the Compensatory Mitigation Plan (CMP) in
29 some cases was not described at the same level of detail or at a level of detail to match the Chapter 3
30 project description. This is because the EIR presents the CMP as a mitigation measure to reduce
31 significant impacts of the project and alternatives to less-than-significant levels. The CMP is not a
32 component of the project and is not described in detail in Chapter 3. However, despite this, the CMP
33 is described in Appendix 3F, *Compensatory Mitigation Plan for Special-Status Species and Aquatic*
34 *Resources*, at a level of detail needed to determine if impacts on terrestrial and aquatic biological
35 resources could be mitigated to a less-than-significant level. For example, the CMP presents
36 descriptions, locations, and acreages for proposed restoration sites at the I-5 ponds and on Bouldin
37 Island and provides information about who will implement the CMP, timing for actions, performance
38 standards, and adaptive management and monitoring to judge the success of habitat restoration and
39 adjust actions to achieve the desired outcomes. For tidal habitat restoration and channel margin
40 habitat actions in the CMP (Attachment 3F.1, *Compensatory Mitigation Design Parameters: CMP-1,*
41 *CMP-2, CMP-23, CMP-24, CMP-25, CMP-26, CMP-27, CMP-28*), less detail about the precise locations
42 was presented to reflect the level of information available at the time of the EIR. However, the detail
43 presented provides more than enough information to judge whether significant impacts of the
44 project could be reduced by the actions, and the EIR also discloses the potential impacts of proposed
45 mitigation measures, including for the CMP in Chapters 7 through 32. In addition, the CMP and other

mitigation measures will be incorporated in the Mitigation Monitoring and Reporting Program to further describe how they will be implemented to reduce project impacts.

Refinements to Project Facilities

This section describes key refinements to project facilities that have been made as part of the design process or in response to public or agency comments. It describes the refinements and whether they result in impacts different from those disclosed in the Draft EIR.

Overhead SCADA Lines Moved Underground

The Draft EIR stated that wherever possible, underground routes would be located along existing roads and project access routes. Overhead fiber installation would be limited to alignments with existing power pole corridors. The figure titled SCADA Fiber Routes in Chapter 3 of the Draft EIR demonstrated that a portion of the SCADA line between Freeport and north of Intake A would be installed on existing power poles aboveground. The existing power poles are installed between State Route 160 and the abandoned railroad embankment. As design progressed in early 2023, project engineers determined to underground approximately 1.9 miles of the SCADA alignment north of the intakes rather than have them on existing powerlines above ground (Delta Conveyance Design and Construction Authority 2023a and 2023b). The SCADA fiber would be installed underground using a walk-behind trenching machine, such as a Ditch Witch. The machine would create a trench approximately 6 inches wide and 3 feet deep in which the SCADA fiber cable would be placed. This would total approximately 5 acres of disturbance along the narrow 1.9-mile strip that follows the edge of agricultural fields. The figure titled SCADA Fiber Routes in Chapter 3 of the Final EIR and relevant mapbooks or other figures throughout the EIR have been revised to reflect the change from 1.9 miles of SCADA lines on poles to lines underground, where appropriate.

Resource-Related Impacts

Construction of undergrounding approximately 1.9 miles of SCADA lines would result in minimal changes to acres temporarily disturbed, as disclosed in Chapters 7 through 32. The alignment of temporary disturbance for undergrounding the SCADA lines follows the same alignment as the existing power lines. The analysis in the Draft EIR accounts for disturbance in that alignment associated with the aboveground SCADA work at the existing power lines and is included in the study area(s) for resources such as vegetation, wildlife, agriculture, cultural resources, and Tribal cultural resources. Undergrounding the SCADA lines as described in the EIR would result in highly localized, temporary, and minor soil disturbances that use similar construction equipment and trips as already included in the EIR evaluation for all resources. These types of disturbances are described throughout the EIR and would include implementation of all appropriate best management practices and environmental commitments as described in Appendix 3B, such as the preparation of stormwater pollution prevention plans (e.g., EC-4b). Furthermore, all mitigation measures described in the EIR related to construction or soil disturbance would be applicable to this area, including those identified for the discovery of unknown cultural resources. Once the SCADA lines are underground, operation of the SCADA lines would neither change acres permanently disturbed nor result in an operational impact on resources evaluated in the Draft EIR because they would be underground. The undergrounding of approximately 1.9 miles of SCADA lines would not result in a change to any of the evaluations or impact conclusions contained in the Draft EIR related to any resource analyzed in the EIR, including the following resources: flood protection, surface water quality, groundwater quality, vegetation and wetlands, wildlife, aquatic biological resources, geology

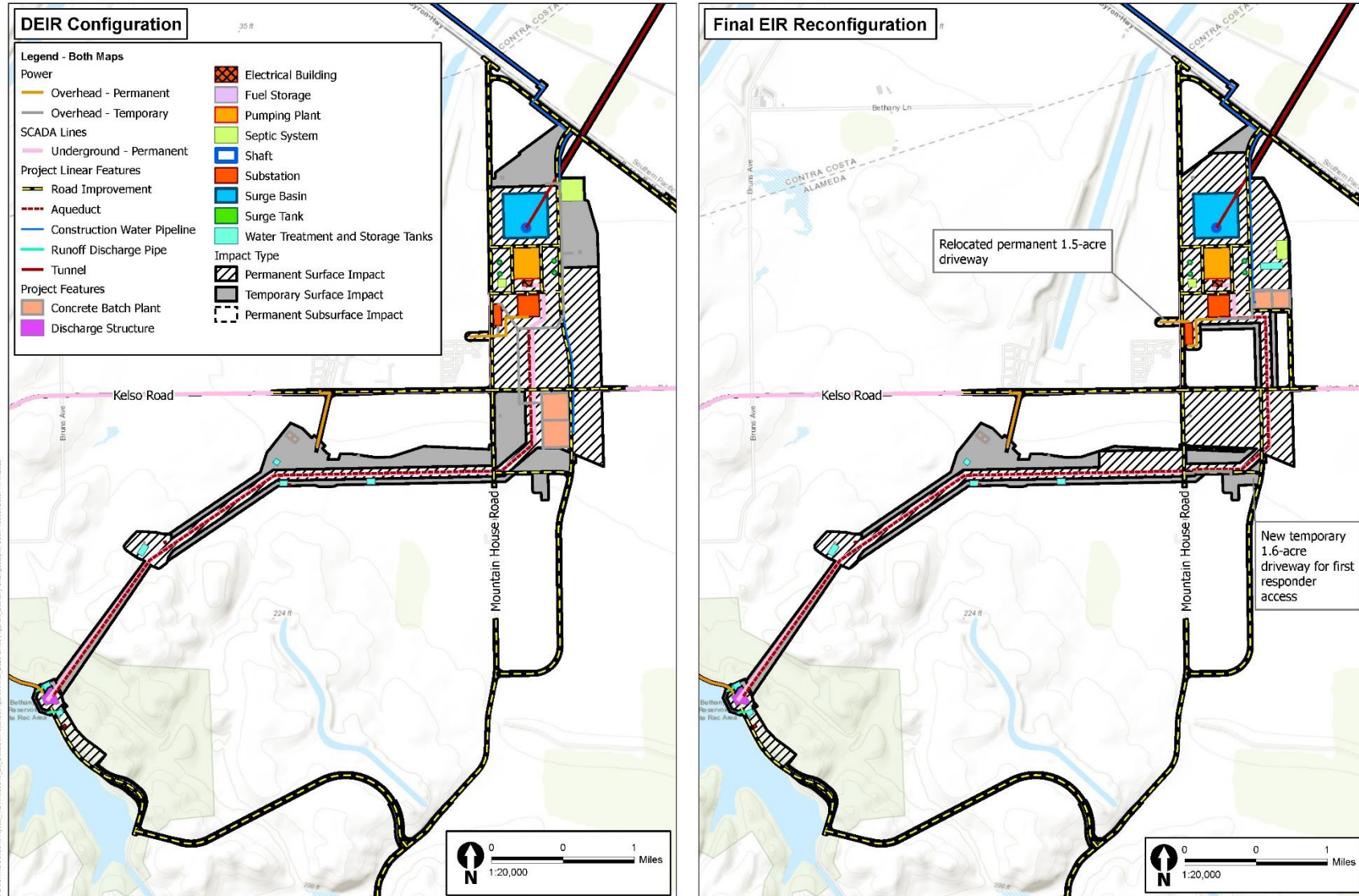
1 and soils, minerals, paleontological resources, land use, recreation, energy, transportation and
2 navigation, noise, cultural resources, Tribal cultural resources, visual resources, population and
3 housing, public services and utilities, and hazards and wildfire. Therefore, this revision in the project
4 description does not result in any new or more severe impacts requiring additional analysis and
5 does not change impact conclusions presented in the Draft EIR.

6 **Design Reconfiguration at the Bethany Complex**

7 In the Final EIR, DCA and DWR have reconfigured the Bethany Complex equipment and facilities
8 previously described in Chapter 3 of the Draft EIR section titled Bethany Complex to better
9 accommodate potential future facilities for the Transmission Agency of Northern California (TANC)
10 and Western Area Power Administration (WAPA). These facilities would be evaluated under
11 separate environmental documentation by TANC or WAPA as the project proponents and would be
12 independent of and not required by the proposed project (Delta Conveyance Design and
13 Construction Authority 2023b). To accommodate the potential future TANC or WAPA facilities, DWR
14 would not acquire approximately 35 acres that had been described for use in the Draft EIR for the
15 Bethany Reservoir Pumping Plant, Surge Basin, and northern portion of the Aqueduct. Those acres,
16 which were included in the Draft EIR analysis, are no longer part of the project and would not be
17 disturbed by the Delta Conveyance Project. The reconfigured facilities in the Final EIR primarily
18 remain within the area of disturbance previously analyzed for the Bethany Complex, despite the
19 overall reduction in acreage.

20 Within the overall area of disturbance previously analyzed in the Draft EIR, the following facilities
21 have been reconfigured: Bethany Reservoir Aqueduct, contractor yards, concrete batch plants,
22 onsite power, SCADA lines, septic system, permanent stockpiles, and two driveways. Within the
23 footprint of the Bethany Complex analyzed in the Draft EIR, the reconfiguration reroutes the
24 Bethany Reservoir Aqueduct where it leaves the pumping plant to avoid the unacquired 35 acres,
25 which slightly lengthens the aqueduct by 1,900 feet for a total aqueduct length of 2.8 miles. The
26 reconfiguration also relocates the concrete batch plants (which are reduced in size), the
27 northeastern septic system (also reduced in size), Aqueduct contractor's yard, Surge Basin
28 contractor's yard, and onsite power and SCADA fiber cables. Five, rather than four, permanent
29 stockpile locations are designated for excess topsoil and excavation material within the Bethany
30 Complex; however, these locations were analyzed in the Draft EIR. Temporary parking areas are also
31 relocated within the Bethany Complex. Just outside the Bethany Complex described in the Draft EIR,
32 the reconfiguration adds a new 1.6-acre temporary driveway south of Kelso Road for first
33 responders and relocates a 1.5-acre permanent driveway to the west of Mountain House Road.
34 Figure CR3-1 shows the Bethany Complex facilities described and analyzed in the Draft EIR and the
35 reconfigured facilities in the Final EIR and identifies the two driveways.

36 Chapter 3 of the Final EIR, in the section titled Alternative 5—Bethany Reservoir Alignment, 6,000
37 cfs, Intakes B and C (Proposed Project) and the table titled Summary of Distinguishing Physical
38 Characteristics of Alternative 5, has been revised to reflect the facility reconfiguration. The figure
39 titled Bethany Reservoir Pumping Plant and Surge Basin in Chapter 3, Mapbook 3-3, and the
40 Appendix 3D table titled Shaft Site Acreages under the Bethany Reservoir Alignment, which provide
41 detailed information on the reconfiguration, have also been updated. Additionally, other EIR figures
42 showing the Bethany Complex have been revised to show the reconfiguration of facilities and the
43 new undisturbed 35-acre area.



1
2 **Figure CR3-1. Bethany Complex Reconfiguration**

Resource-Related Impacts

This section describes why the reconfiguration of the Bethany Complex in the Final EIR would not create new surface impacts relative to the Draft EIR or require additional mitigation measures. The section describes impacts related to the total surface area of disturbance, the addition of two driveways, and the change in type of disturbance (i.e., temporary to permanent surface disturbance). Specific resources are also discussed.

The total surface area of disturbance of the reconfigured Bethany Complex facilities would not be greater or of a different type than disclosed in the Draft EIR. The Bethany Complex analyzed in the Draft EIR, including the Bethany Reservoir Aqueduct, had a total area of disturbance of approximately 394 acres, whereas this area, including the two driveways discussed below, is now reduced to approximately 358 acres in the Final EIR. Approximately 215 of those acres of disturbance are primarily associated with the Bethany Reservoir Pumping Plant and are located around the 35 acres that would not be acquired (i.e., in the area to the north and south of Kelso Road and east of Mountain House Road). The reconfiguration does change some areas previously designated as temporary disturbance in the Draft EIR to permanent disturbance, as described further in this section. The total area of disturbance includes areas of both permanent and temporary impact, as depicted in Figure CR3-1.

The two driveways located outside the original footprint evaluated in the Draft EIR of the Bethany Complex also would not result in impacts greater or of a different type than disclosed in the Draft EIR. The first driveway would provide temporary access to facilities for first responders. It would be located on 1.6 acres of the same type of agricultural lands and highly disturbed land as the other lands being disturbed for the Bethany Complex facilities. The addition would result in a minimal amount of additional temporary disturbance (approximately 0.4% of the total surface disturbance of 358 acres). The second driveway is permanent and would be the same size (1.5 acres) as evaluated in the Draft EIR. This second driveway would continue to be located west of Mountain House Road and the proposed substation but would be shifted approximately 270 feet to the north so that it is on the north side of the proposed substation. Because the driveway is relocated slightly, rather than being a new feature, it would not increase the area of total permanent disturbance. The area of permanent disturbance associated with the driveway is minimal (approximately 0.4%) in comparison to the total area of surface disturbance of 358 acres. Given the minimal area disturbed by the two driveways, there would be no change in the severity or magnitude of the impacts already disclosed in the resource chapters of the EIR (i.e., Chapters 7 through 32).

The change in disturbance type at the Bethany Complex, from temporary surface impacts in the Draft EIR to permanent surface impacts in the Final EIR, also would not result in impacts greater or of a different type than disclosed in the Draft EIR, and therefore would not change impact determinations, for several reasons. First, the change in disturbance type is within the construction boundaries analyzed in the Draft EIR for the Bethany Complex. For example, approximately 12 acres in proximity to the Bethany Reservoir Pumping Plant and the unacquired 35 acres that were previously identified as temporary surface disturbance would now be considered permanent surface disturbance. This change would not create new surface impacts or require additional mitigation measures because changes from temporary to permanent disturbance would be within the boundaries of the Bethany Complex, and no new or different resource impacts would occur in these areas. Another reason impact determinations would not change is that all impacts related to permanent or temporary surface disturbance in the Final EIR are accounted for in the Draft EIR, and

mitigation measures in the Draft EIR would reduce all impacts whether they are identified as permanent or temporary. For example, when considering terrestrial biological resources, long-term temporary surface disturbances were treated as if they were permanent, and proposed mitigation measures are applied to permanent and long-term temporary impacts in the same way. For other resources, mitigation measures were designed to reduce the significance of permanent surface disturbance impacts to less-than-significant levels (where feasible); therefore, marginal increases in permanent surface disturbances within the Bethany Complex would be fully mitigated in the same manner as described in the Draft EIR, and the impact conclusion would remain the same. A final reason impact determinations would not change is that the Draft EIR conservatively disclosed approximate acreage estimates at the high end of the potential acreage disturbance range. Therefore, some impacts related to the Bethany Complex reconfiguration would be reduced as a result of the reconfiguration of Bethany Complex facilities, including the unacquired 35 acres (refer to Chapter 15, *Agricultural Resources*, and agriculture acres discussion below). The following discussion of resource-specific impacts provides examples that demonstrate why the impact determinations for the reconfigured Bethany Complex in the Final EIR would not differ from the findings for the Bethany Complex in the Draft EIR.

For Chapter 15, Impact AG-1: *Convert a Substantial Amount of Prime Farmland, Unique Farmland, Farmland of Local Importance, or Farmland of Statewide Importance as a Result of Construction of Water Conveyance Facilities* acres of impacts in the Final EIR related to the reconfiguration are addressed in the Draft EIR and the reconfiguration would affect fewer acres of Important Farmland (i.e., Prime Farmland, Unique Farmland, Farmland of Local Importance, or Farmland of Statewide Importance). The Draft EIR quantified acreage impacts on Important Farmland by county and conservatively identified that the areas that may experience conditions that may prevent the ability to return the land to productive farmland postconstruction are permanently impacted (Chapter 15, in the section titled *Evaluation of Construction Activities*, and Appendix 15A, *Supplemental Tables for Agricultural Resources Chapter*, tables titled *Estimated Conversion of Important Farmland by Alternative (acres) as a Result of Construction of Bethany Reservoir Aqueduct* and *Estimated Conversion of Important Farmland by Alternative (acres) as a Result of Construction of Bethany Reservoir Pumping Plant and Surge Basin*). Because most impacts were treated as permanent in the Draft EIR, the change in the Final EIR from temporary to permanent impacts is addressed by the analysis in the Draft EIR. In addition, the number of acres of Important Farmland affected in the Final EIR would be less than those reported in the Draft EIR. For example, Appendix 15A of the Draft EIR reported that the Bethany Pumping Plant and Surge Basin would affect a total of approximately 225 acres of Important Farmland in Alameda County, and the Bethany Reservoir Aqueduct would affect approximately 60 acres of Important Farmland in Alameda County. Under the reconfiguration of facilities in the Final EIR, the Bethany Pumping Plant and Surge Basin would affect approximately 199 acres of Important Farmland, and the Bethany Reservoir Aqueduct would affect approximately 51 acres of Important Farmland. Therefore, the area of Important Farmland that would be disturbed as a result of the reconfiguration would be reduced by approximately 26 acres for the reconfigured Pumping Plant and Surge Basin and approximately 9 acres for the reconfigured Bethany Reservoir Aqueduct, for a total reduction of approximately 35 acres.

For Chapter 18, *Aesthetics and Visual Resources*, the reconfiguration changes in the Final EIR, including those related to the number of stockpiles and their locations, would not alter the visual character or quality of the surroundings beyond what was described in the Draft EIR. There are either no sensitive receptors in the general vicinity to experience such a change or no scenic areas to

be affected. In addition, the existing landscape is so expansive and broad that any such change in the number or location of stockpiled materials would be minimally perceived by viewers.

For resources affected by construction methods, the reconfigured Bethany Complex would remain the same as those evaluated in the Draft EIR because construction equipment, phasing, and methodology would remain the same. Therefore, the changes in temporary and permanent areas of disturbance with the reconfiguration would not change the construction-related analyses or impacts on resources such as traffic, air quality, greenhouse gases, noise, hazards, or hazardous materials.

The reconfiguration of the facilities in the Bethany Complex would not result in a change to any of the evaluations or impact conclusions contained in the Draft EIR related to any resource analyzed in the EIR, including flood protection, surface water quality, groundwater quality, vegetation and wetlands, wildlife, aquatic biological resources, geology, soils, minerals, paleontological resources, land use, recreation, energy, transportation and navigation, noise, cultural resources, Tribal cultural resources, visual resources, population and housing, public services and utilities, and hazards and wildfire. The operation of the facilities under the reconfigured Bethany Complex in the Final EIR would be the same as described in the Draft EIR and there would be no changes to any operation-related impacts. Therefore, this revision to the project description of the Bethany Complex in the Final EIR does not result in any new or more severe impacts requiring additional analysis and does not change impact conclusions presented in the Draft EIR.

Operations Description

This section provides additional information and addresses comments received on project operations and intake operational criteria as presented in the Chapter 3 sections titled *Intake Operations and Maintenance*, *Real-Time Operational Decision-Making Process*, and *Adaptive Management and Monitoring Program*. Project operations and maintenance are fully described in Chapter 3, including clarifications made to the Draft EIR text that are included in this Final EIR. Project operational descriptions are adequate for the purposes of describing the project and alternatives and for use in the multiple analyses contained in Chapters 5 through 32 and supporting appendices. As described further below, the alternatives description in Chapter 3 and the modeled representation of the alternatives provides planning-level details, such as timing and volume of diversions, among other numerous factors regarding the operating criteria and hydrologic conditions of the Delta Conveyance Project. These details and factors are disclosed throughout the EIR and provide decision makers with an understanding of the magnitude and level of potential impact of an alternative when compared to the existing conditions baseline and the differences between alternatives under operating conditions.

The purpose of this section of the Common Response is to provide additional context about the proposed operation of the project as it is integrated into the SWP and to further address common types of comments received on the EIR related to a number of topics associated with project operations, such as clarifications about dual conveyance operations, the limits and priority of operating the north Delta diversions and under what circumstances they would operate, the adequacy of proposed operational criteria, and the real-time operations approach and Operations Adaptive Management and Monitoring Plan (OAMMP).

Dual Conveyance: Integration of the Delta Conveyance Project with SWP

A number of comments were received questioning the general approach to operating the proposed north Delta diversion facilities that suggest commenters could benefit from a more synthesized

discussion of the project operations as it relates to existing SWP operations and facilities and additional clarification regarding the concept of dual conveyance. In addition, multiple comments requested clarification on the definition of the term *excess flow* or described confusion over the use of the term excess flow in Chapter 3, and some comments claimed that there is no excess water available for the Delta Conveyance Project to divert. Finally, comments asserted that DWR would have discretion to operate the Delta Conveyance Project at maximum conveyance capacity more often than described in Chapter 3 or assumed in modeling and that DWR would operate during dry conditions, increasing exports when there is insufficient water in the system to allow water supply exports, or claimed that DWR would operate the north Delta diversions continuously at full capacity.

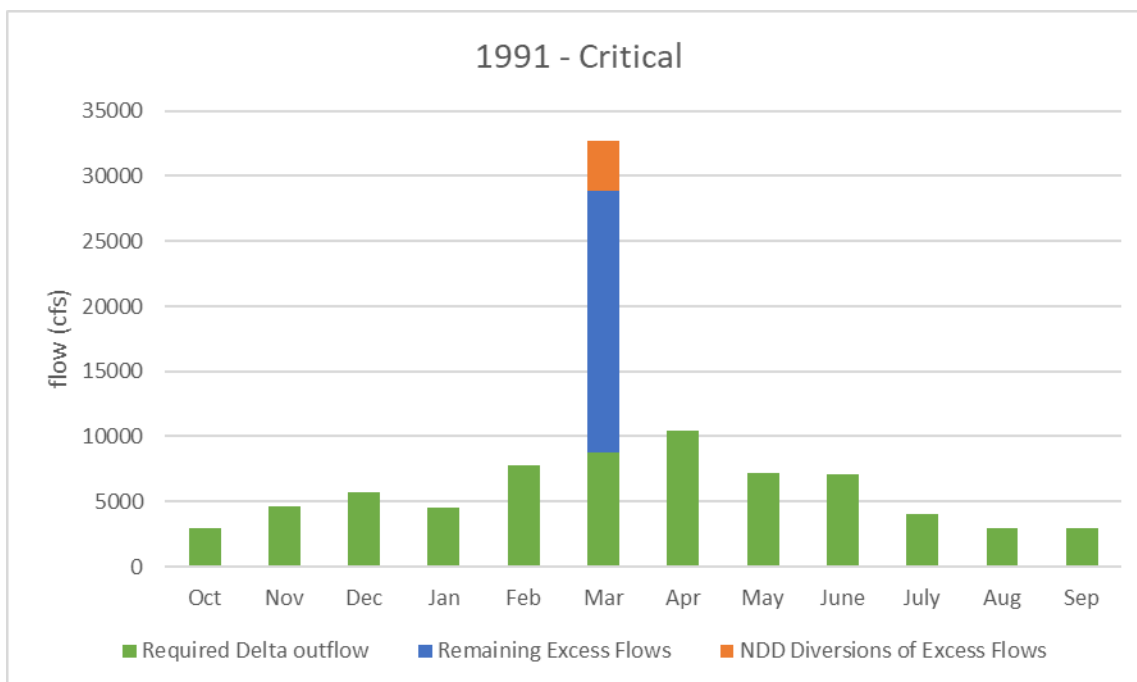
As addressed in Chapter 1, the SWP is operated in a coordinated manner with the CVP based on the Coordinated Operations Agreement (COA) and joint point of diversion procedures. The SWP and CVP water delivery systems rely on runoff and reservoir releases in areas upstream of the Delta to deliver contracted water via the Sacramento and San Joaquin Rivers to Delta export pumps in the south Delta. SWP operations are regulated by flow and water quality objectives administered by the State Water Board based on the Bay-Delta WQCP in D-1641, ESA and CESA requirements, flood protection rules, water supply contracts, and U.S. Army Corps of Engineers permits. Reservoir storage, releases, conveyance, in-stream flows, and water supply exports are highly regulated by multiple state and federal agencies (*DWR Accountability* section in this Common Response).

The project would enable DWR to construct and operate new conveyance facilities to improve water supply reliability, consistent with California law (see e.g., Cal. Wat. Code § 85001(c)). During the winter and spring, there are typically periods when Delta inflows from storm events are more than needed to meet Delta requirements and more than can be captured at the existing SWP/CVP export facilities or south Delta diversions (refer to the discussion below for definition of excess flows). The north Delta diversion would augment the existing infrastructure by providing additional capacity to capture these excess flows, up to what is permitted under the existing DWR water rights. The Delta Conveyance Project would also provide operational flexibility in late spring, summer, and fall, together with the SWP south of Delta facilities, to meet D-1641 salinity requirements. The location of the north Delta diversion facility is less vulnerable to salinity intrusion, a potential effect of sea level rise, and levee failure, in the future. By establishing an alternative diversion point for exports, there is added flexibility in operation of the SWP, which would improve SWP water supply reliability and provide the ability to optimize conditions to protect Delta water uses, including habitat conditions. As described below, the south Delta diversion would continue to be the primary diversion location, meaning DWR would prioritize diversions at that location over the north Delta diversions.

As described in the Chapter 3 section titled *Integration of North Delta Intakes with South Delta Facilities*, and summarized above, the north Delta intakes would be used to capture additional excess flows in the Sacramento River when the described operational criteria are met. The 1986 Agreement between the United States of America and the State of California for the Coordinated Operations of the Central Valley Project and the State Water Project provides definitions of terms to describe various conditions in the Delta, specifically balanced water conditions and excess water conditions. The term *balanced conditions* are periods when it is agreed, between the United States and California, that the volume of water comprised of releases from upstream reservoirs plus unregulated flow is approximately equal to the volume of water needed to meet the water supply of Sacramento Valley in-basin uses, plus exports. Water conditions that are beyond balanced conditions are *excess water conditions*, which are periods when it is agreed that releases from upstream reservoirs plus unregulated flow exceed Sacramento Valley in-basin uses, plus exports. These definitions, and the use of the term *excess*, do not suggest that water needed to maintain

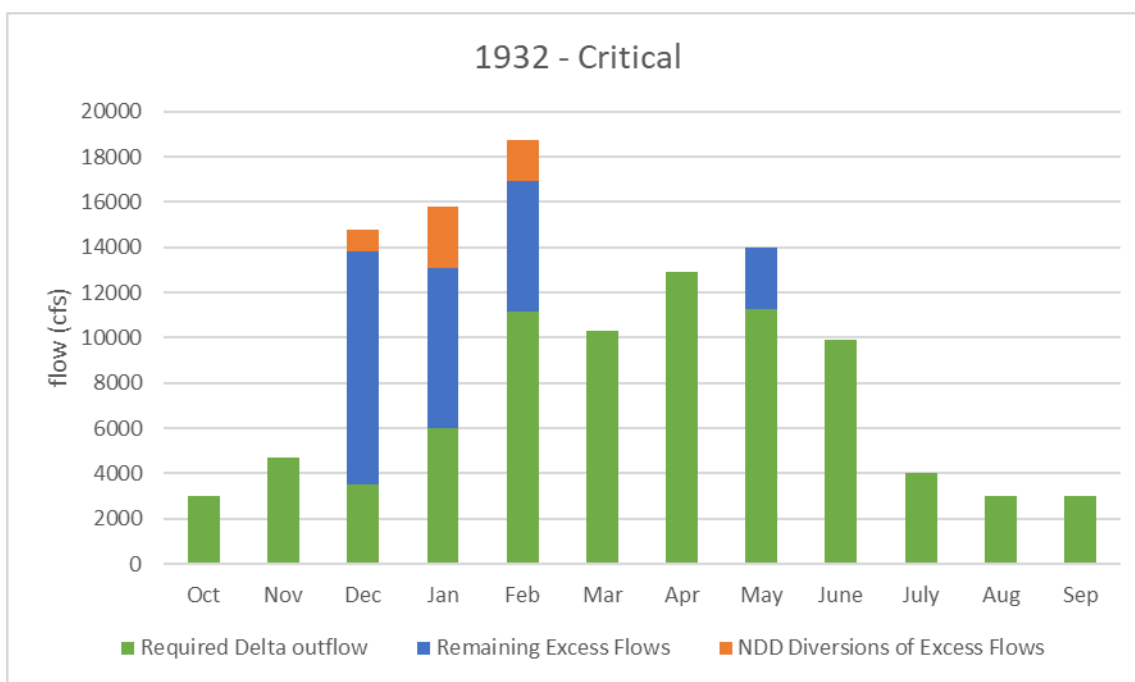
existing Delta ecological-river conditions (e.g., fish or fish habitat) or Delta water uses would be reduced or affected by new water supply diversions. By using the term *excess* to describe how and when the Delta Conveyance Project would operate, DWR is identifying conditions when existing water rights, contracts, and designated beneficial uses have been satisfied and the volume of water in the system is beyond the volume needed to meet these existing uses. In other words, DWR has constrained Delta Conveyance Project diversions during the winter and spring by including the criterion that limit operations to periods with excess water conditions. DWR used the definitions identified in the COA in Chapter 3, and these conditions are represented with modeling parameters in CalSim 3, as described in Appendix 5A, *Modeling Technical Appendix*. As described further below, operating to these conditions also means that operation of the Delta Conveyance Project would not include changes to the SWP or CVP operations upstream of the proposed north Delta intakes.

The series of figures below demonstrate the application of the Delta Conveyance Project operations description and operational criteria for Alternative 5, as described in Chapter 3, during excess conditions. These figures demonstrate the operation of the north Delta intakes would occur during the defined excess conditions and that excess conditions can and do occur during dry and critically dry years. They also demonstrate that the north Delta intakes would not be operated continuously at full capacity (as claimed by comments). Figures CR3-2 and CR3-3 show that operation of the north Delta diversions in 1991 and 1932, respectively, were both critical water years that would have allowed limited use of the north Delta diversions as prescribed by the operational criteria described in Chapter 3 (section titled *New Operational Criteria for the Proposed North Delta Intakes* and section titled *Integration of North Delta Intakes with South Delta Facilities*). Although these two years were designated as critical water year types, hydrologic, regulatory, and operational conditions were met that allowed diversions to occur at the north Delta intakes in certain months, when conditions were in excess. These figures show when and how often diversions could occur during critical water year types and that the type, quantity, and volume of diversion in these years are limited but vary depending on monthly conditions. For example, in Figure CR3-2 the north Delta diversion is used during one month in the spring (March); in Figure CR3-3, the north Delta diversion is used in multiple months in the winter (December, January, and February). These diversion examples demonstrate the frequency and magnitude of diversions that could occur when excess flows occur after all other applicable Delta outflow requirements are met.



Note: Required outflow includes water to meet minimum required Delta outflows, X2, and salinity requirements, including carriage water for wheeling and transfers.

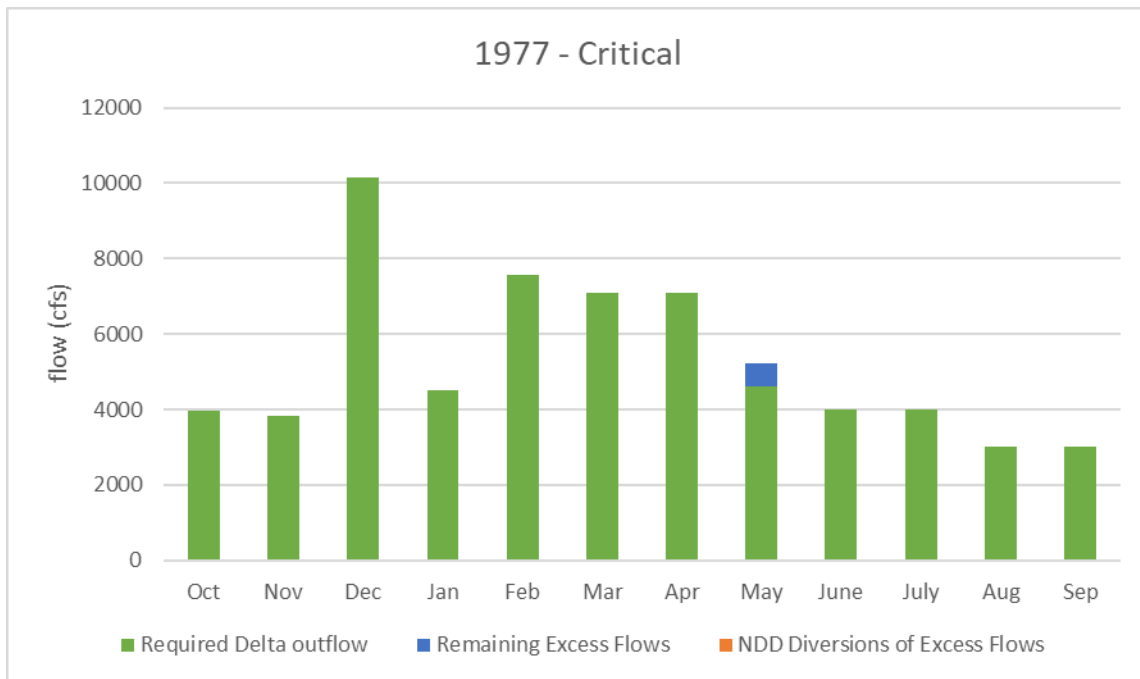
Figure CR3-2: 1991 – Critical Water Year Type and Operations of North Delta Diversions



Note: Required outflow includes water to meet minimum required Delta outflows, X2, and salinity, including carriage water for wheeling and transfers.

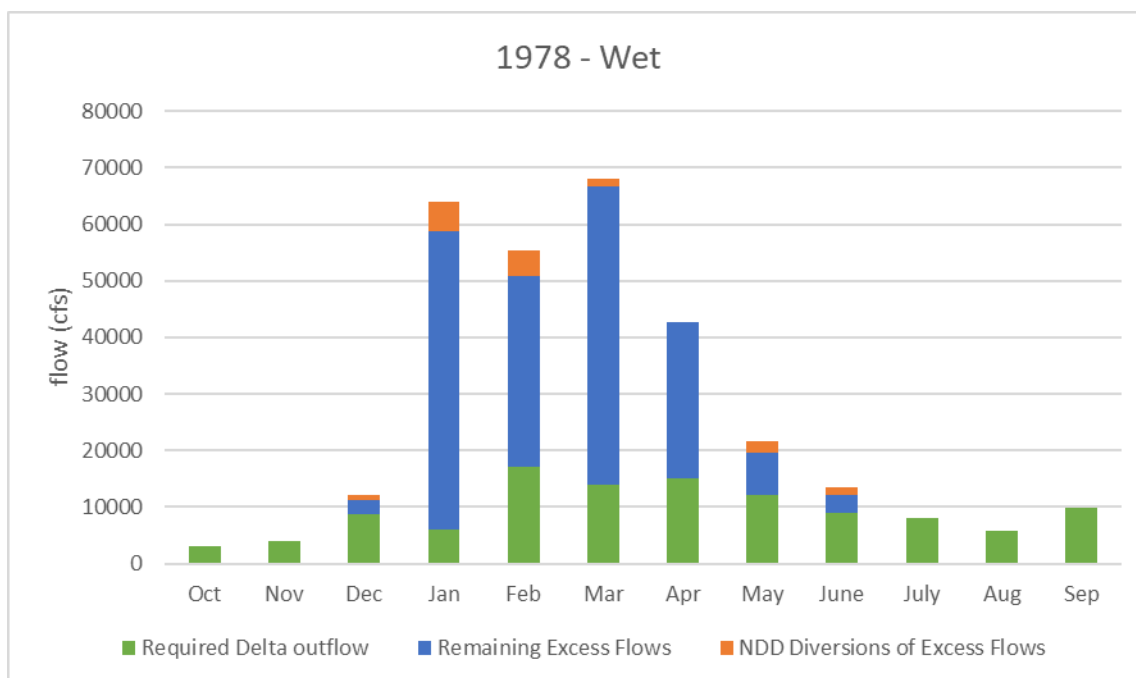
Figure CR3-3: 1932 – Critical Water Year Type and Operations of North Delta Diversions

For further clarification of the operation of the Delta Conveyance Project, Figures CR3-4 and CR3-5 show 1977, a designated critical water year type year with no diversions, and 1978, a designated wet water year type with diversions, respectively. In 1977, the Delta outflow requirements were met, but there were no excess flows except in May. In May, no diversion of excess flows was allowed at the north Delta diversion according to the operational criteria described in Chapter 3 and as modeled in CalSim 3. However, in 1978, diversions were allowed during most winter months and into the summer. Operations in 1978 met all bypass flow and Delta outflow requirements, as well as the operational criteria described in Chapter 3.



Note: Required outflow includes water to meet minimum required Delta outflows, X2, and salinity, including carriage water for wheeling and transfers.

Figure CR3-4: 1977 – Critical Water Year Type and Operations of North Delta Diversions



Note: Required outflow includes water to meet minimum required Delta outflows, X2, and salinity, including carriage water for wheeling and transfers.

Figure CR3-5: 1978 – Wet Water Year Type and Operations of North Delta Diversions

These series of figures also demonstrate that there may be sufficient water in the river to divert at different times within each water year type and across all water year types, including critical years. The operational criteria that specify bypass flows that must remain in the Sacramento River (as described in the section titled *Operational Criteria* in this Common Response) should reduce concerns from some commenters that the Sacramento River or Delta channels streamflow would run dry or be substantially reduced by operation of the project. Additionally, the stringent environmental statutes in place today, including ESA/CESA and Bay-Delta WQCP flow and water quality objectives would not allow operation of the project to impair beneficial uses of the Delta rivers and channels including the Sacramento River. The EIR analyses provide evidence that the Delta Conveyance Project operations as described and modeled in the EIR would not substantially affect flows (including reverse flows), nor result in significant impacts on water quality, or fish and aquatic resources with appropriate mitigation measures incorporated, as necessary.

Use of North Delta Diversions Priority and Limits

Comments claimed DWR has more discretion over the use of the north Delta diversion than described in the EIR or evaluated in the modeled representation of the project alternatives. Comments conflated operations of the proposed project in conjunction with the existing south Delta facilities to capture excess flows with the description of when DWR may decide to shift between the south Delta diversions and the north Delta diversions during the summer and fall, mainly to manage salinity in the Delta, or during a limited set of other circumstances. Comments also suggested that the operations description did not accurately describe how carriage water savings associated with operation of the project would be stored or used and/or claimed the amount of water transfers that could occur with the project would change.

The Delta Conveyance Project's facilities, including water intakes and pumping plants, would be operated in accordance with permits issued by USFWS, NMFS, CDFW, and the State Water Board, among other agencies under all export scenarios, with the potential exception of emergencies. The project would be permitted to operate with regulatory protections, including river water levels and flow, that would be determined based upon how much water is actually available in the system, the presence of threatened fish species, and water quality standards. The uses of proposed north Delta intakes are listed first and then described in subsections.

- To primarily capture and divert high flows during excess conditions by operating the north Delta intakes based on operational criteria, hydrologic conditions, and regulatory requirements as described in Chapter 3 sections titled *New Operational Criteria for the Proposed North Delta Intakes*, *Key Existing Delta Operations Criteria*, *Integration of North Delta Intakes with South Delta Facilities*, and *Delta Conveyance Project Preliminary Proposed Operations Criteria*, and in this Common Response in the section titled *Dual Conveyance: Integration of the Delta Conveyance Project with SWP*.
- To manage water quality conditions when salinity in the southern Delta affects SWP operations by operating to seasonally shift to use the north Delta intakes based on operational criteria as described in Chapter 3 sections titled *Integration of North Delta Intakes with South Delta Facilities* and *Use of North Delta Intakes for Wheeling* and in this Common Response in the section titled *Carriage Water and Seasonal Shifting*.
- To improve conditions for sensitive aquatic species in the southern Delta by operating to seasonally shift to use the north Delta intakes based on operational criteria, hydrologic conditions, and regulatory requirements as described in Chapter 3 sections titled *Delta Conveyance Project Preliminary Proposed Operations Criteria*, *Real-Time Operational Decision-Making Process*, and *Adaptive Management and Monitoring Program*.
- To maintain the proposed north Delta intakes and existing infrastructure by operating and testing pumps based on required maintenance flows as described in Chapter 3 sections titled *Intake Maintenance Activities* and *Pump Maintenance Activities*.
- To support and maintain the SWP during south Delta facility outages or during emergency conditions involving the south Delta facilities by operating the north Delta intakes based on operational criteria, hydrologic conditions, and regulatory requirements.

Diversions and Excess Flows

The existing south Delta diversion would be prioritized by DWR, and diversions would first occur from the south Delta (Chapter 3 and section titled *Dual Conveyance: Integration of the Delta Conveyance Project with SWP* in this Common Response). When regulatory conditions allow and hydrologic conditions are suitable, and diversions from the south Delta facilities have reached their permitted capacity, the Delta Conveyance Project would divert using the proposed north Delta diversion facilities. The operation of the project gives the state the opportunity to capture high flows during periods of excess flows, up to what is permitted under the existing DWR water rights. Diversions at the proposed north Delta intakes would mostly occur in the winter and spring, when the conditions described above are most likely to occur. Figures CR3-2 through CR3-5 demonstrate this primary use of the north Delta intakes.

Carriage Water and Seasonal Shifting

The north Delta diversions would improve the flexibility of SWP operations to meet water quality requirements during late spring through early fall. In Chapter 3, DWR primarily defined seasonal shifting in the section titled *Integration of North Delta Intakes with South Delta Facilities*. The seasonal shifting from diversions in the south Delta to the north Delta is primarily determined by salinity conditions in the southern Delta during the summer and fall seasons. During the summer and fall, DWR could shift a portion of the SWP diversions from the south Delta to the north Delta to help manage water quality in the Delta, while meeting operational criteria. This shifting from use of south Delta diversions to north Delta diversions could occur when salinity levels in the southern Delta reduce opportunities to divert SWP water supply.

CalSim 3 simulates this shifting operation (from south to north) and estimates how the SWP would use the north Delta diversions to improve operational efficiency when salinity conditions at Jersey Point to Rock Slough are controlling. Therefore, model assumptions and results reasonably reflect the range of operational discretion DWR may use during seasonal shifting in the summer and fall. The project description and model are a reasonable representation of how the project would be operated by DWR. Please see Common Response 9 for the specific details of how the model represents the seasonal shifting.

Seasonal shifting of diversions from the south Delta facilities to the proposed north Delta intakes would reduce the need for carriage water releases from upstream reservoirs to reduce salinity levels in the southern Delta near export facilities because diversions from the proposed north Delta intakes would not require carriage water releases from upstream reservoirs in the way currently needed for south Delta diversions during the summer and fall seasons. During these periods when the proposed north Delta intakes are operating, carriage water savings would occur that could be exported or stored in upstream reservoirs for future use. Decisions regarding export or storage of saved carriage water would meet all regulatory and contractual requirements.

Other Circumstances

There are other circumstances in which DWR would use the north Delta intakes, beyond those related to the primary use of diverting water during excess conditions or occasional seasonal shifting related to water quality. Operation of the north Delta intakes would occur under the other following circumstances as conditions allow, as described in Chapter 3 or as the need to do so is identified: improving conditions of aquatic species, regular maintenance, and emergency use.

Use of the north Delta intakes to improve conditions for sensitive aquatic species in the southern Delta could occur when reducing south Delta exports at Clifton Court Forebay would benefit sensitive fish species in the south Delta without causing fish effects at the proposed north Delta intakes. In this circumstance, use of proposed north Delta intakes would result in further reduction in south Delta SWP exports beyond the reduction that would otherwise have occurred based on the permitted south Delta regulatory criteria. For example, if the south Delta criteria allow 3,500-cfs SWP exports at Clifton Court Forebay and if there is a circumstance that would be beneficial to sensitive aquatic protection to instead divert a portion of the exports from the proposed north Delta intakes, then SWP exports at south Delta export facilities would be less than 3,500 cfs, and the remaining allowable exports would be diverted from the north Delta. This procedure, which could be used under limited circumstances (and decisions to shift would be in coordination with regulatory agencies), would provide increased flexibility to meet water supply and aquatic species needs. Chapter 3 section titled *Integration of North Delta Intakes with South Delta Facilities* has been

refined to provide more clarity in the Final EIR. These project description revisions clarify operations that were already identified in the CalSim 3 model and reflected in the modeling results and impact analyses. Therefore, these revisions do not result in any changes to impact severity, impact significance conclusions, or mitigation measures disclosed in the EIR. Chapter 3 specifically provides more details regarding the limits on the operation of the north Delta diversions when combined south Delta exports of the SWP and CVP are less than 3,000 cfs during the late spring, summer, and fall.

Maintenance diversions at the proposed north Delta intakes may be necessary throughout the year to perform routine maintenance and testing of the main water supply pumps at the South Delta Pumping Plant (Alternatives 1, 2a, 2b, 2c, 3, 4a, 4b, and 4c) or at the Bethany Reservoir Pumping Plant (Alternative 5 only) (Chapter 3 sections titled *Intake Maintenance Activities* and *Pump Maintenance Activities*). Coincident with the pump maintenance flows, these flows would also be used to test and exercise the intake radial gates to ensure proper gate operation to prevent dropping the water levels in the system. Maintenance flows may also be necessary to fill the sedimentation basin and tunnel system in anticipation of system operations (prior to high water diversion events) or to potentially circulate some water through the sedimentation ponds for vector control.

Proposed north Delta intakes could also be used during unplanned south Delta facility outages and in emergency situations in which the south Delta facilities cannot be used because of seawater intrusion related to a natural disaster, seismic damage of levees, or unsuitable south Delta conditions from climate change induced sea level rise. Operating proposed north Delta intakes under these conditions would be infrequent and limited to the duration of the emergency. Without special dispensation, Delta Conveyance Project operations would still be required to operate under federal and state regulations (e.g., Biological Opinions, Fish & Game Code § 2081(b), State Water Resources Control Board Decision D-1641) and project operating criteria in the event of an emergency situation (e.g., levee failure). Any deviations from project operating criteria would have to be approved by the applicable regulatory agencies. DWR anticipates emergency circumstances to be temporally and spatially limited (i.e., occur relatively infrequently or on an unplanned or on an unforeseen basis). As such, they are not quantitatively modeled, and CEQA does not require DWR to speculate when these limited circumstances may occur or the unknowable circumstances in which they might occur for the purposes of quantitatively evaluating impacts.

Operational Criteria

Multiple comments suggested confusion over the operational criteria described in Chapter 3 or asserted the Delta Conveyance Project would not operate to meet the operational criteria described. Comments also asserted the description of operational criteria was vague, confusing, or was otherwise not adequate to evaluate potentially significant environmental impacts.

The features of alternatives, including new operational criteria, were conceptually developed and refined over time to maximize the achievement of the objectives. This process is described in Appendix 3A. The evaluations of multiple operational criteria to support preparation of the Draft EIR included decreases in diversions and/or increases in bypass flows. In developing operational criteria for the Delta Conveyance Project, DWR conducted sensitivity analyses based on criteria developed for prior efforts (i.e., BDCP/California WaterFix), as well as alternative criteria (e.g., based on salmon flow-survival relationships). DWR did not analyze an absence of operational criteria in the EIR (i.e., operation of the facility at full capacity at all times) because that would be inconsistent with the objectives of the project, would be infeasible given the regulatory environment and

requirements pursuant to the ESA or the Bay-Delta WQCP, and would likely result in significant impacts on sensitive species. Furthermore, CEQA does not require an agency to assume in its environmental analysis project operations that will not, or are unlikely, to occur.¹⁵ Potential effects when the north Delta intakes are diverting at the capacities allowed by each alternative, as informed by the proposed operational criteria and environmental conditions, are captured in the hydrologic modeling, and are thus considered in the impact analysis. Please refer to discussion in this Common Response in the sections titled *Dual Conveyance: Integration of the Delta Conveyance Project with SWP and Use of North Delta Diversions Priority and Limitations*.

Ultimately, the operational criteria described in Chapter 3, and clarified in this Common Response, were selected based on several lines of evidence: (1) operational criteria were based on information developed through prior (e.g., BDCP/California WaterFix) and current agency efforts in consideration of sensitive species and consistent with best available science; (2) operational criteria were developed to support the Delta Conveyance Project objectives; and (3) sensitivity runs using alternative criteria indicated generally similar levels of potential effects to species. DWR provided detailed criteria in Chapter 3 in tables titled Delta Conveyance Project Preliminary Proposed Operations Criteria and Proposed North Delta Diversion Bypass Flow and Pulse Protection Requirements. Overall, the operational criteria described in Chapter 3 are dynamic and are adjusted depending on a broad range of hydrology. This allows an evaluation of a broad range of potential operations-related impacts in the EIR. Paired with analysis of variation across the range of intake capacities, the EIR provides further information about the differences in operations between alternatives.

DWR did not find substantial evidence to support modification of the proposed criteria described in Chapter 3 for separate EIR alternatives analyses because through-Delta survival estimates, for example, with alternative operational criteria were not greatly different than with the proposed criteria. The proposed operational criteria limit the potential for negative effects to aquatic species of concern, and mitigation measures in Chapter 12, including habitat restoration described in the EIR, are provided to mitigate the impacts associated with operating alternatives to less-than-significant levels. Alternative operational criteria that would meet project objectives and would not have the potential to reduce the significant and unavoidable impacts identified in EIR would not be considered as viable. For this reason, they are not required to be considered as alternatives in the EIR. (CEQA Guidelines, § 15126.6(f) [“The alternatives shall be limited to ones that would avoid or substantially lessen any of the significant effects of the project”].) In addition, as further described below, the Delta Conveyance Project would be operated consistent with existing and/or any future Delta regulatory criteria (e.g., spring outflow for longfin smelt) to continue to provide protections to listed species identified through other environmental compliance processes. As part of the evaluation, DWR also evaluated recent biological and flow data to assess Wilkins Slough flows as a surrogate for fish migration past the north Delta diversion intakes and worked with fish and wildlife agencies prior to the release of the Draft EIR. Through-Delta survival estimates with alternative Wilkins Slough criteria were not greatly different than the proposed criteria. Through mechanisms provided in the project description in Chapter 3 (i.e., adaptive management and OAMMP), DWR, in coordination with the fish and wildlife agencies, would continue to evaluate biological and/or hydrological information both before and during project operations. This would inform potential

¹⁵ *E. Oakland Stadium All. v. City of Oakland* (2023) 89 Cal. App. 5th 1226, 1252 [rejecting challenge to emergency generator use assumptions in an EIR and holding that CEQA did not require the lead agency to use an air district’s generally applicable use assumptions nor a worst-case assumption; rather it was required to make a reasonable estimate of likely annual use of the generators at the project site].

refinements of the operational criteria described in Chapter 3, thereby reducing areas of uncertainty prior to and during operations (for more information see the section titled *Operations Adaptive Management and Monitoring Plan and Real-Time Decision Making* in this Common Response).

The proposed operational criteria are designed to comply with regulatory requirements for water quality, fish protection, etc., regardless of project conveyance capacity. The EIR adequately described and evaluated a reasonable set of operational criteria to which the project would operate. As described in the EIR, the amount of water DWR can pump from the north Delta intakes would be determined by the proposed operating criteria and would be set by federal and state regulating agencies, ESA compliance, and project design (Chapter 1 section titled *Intended Uses of this Final EIR and Agency Roles and Responsibilities* and Chapter 3 section titled *Intake Operations and Maintenance*). Operations for the project would be consistent with the operational criteria set by USFWS (2019) and NMFS (2019) BiOps, 2020 CESA Incidental Take Permit, and D-1641 (or future regulatory requirements in effect at the time of project operations), subject to adjustments made pursuant to the adaptive management process (Chapter 3 section titled *Intake Operations and Maintenance*). In addition to permitting constraints on daily operations of the SWP, DWR must maintain proper performance, bypass flows, and approach and sweeping velocities across fish screens to protect endangered and threatened fish species present within the north Delta facilities area. The intake fish screen performance requirements drive the overall size of the intake structure on the riverbank and have been numbered and sized to permit water to flow through the screens within a predetermined flow regime set by CDFW and NMFS fish screen criteria (Delta Conveyance Design and Construction Authority 2022d). Please refer to the Chapter 3 section titled *Cylindrical Tee Fish Screens* for more information about screen conceptual design and function.

Operations Adaptive Management and Monitoring Plan and Real-Time Decision Making

As described in the Chapter 3 section titled *Adaptive Management and Monitoring Program*, the OAMMP is designed to address areas of scientific uncertainty associated with potential operational effects on listed fish. The OAMMP identifies objectives, study metrics and thresholds for triggering adaptive management responses, and a governance process for implementation. Also described in Chapter 3 is real-time monitoring for intake near-field and far-field fish effects. Please see Common Response 1 regarding the use of and description of adaptive management in the EIR.

The OAMMP is currently being developed in coordination with fisheries agencies and as part of the permitting processes separate from the CEQA planning process. The OAMMP is not included in the EIR as a mitigation measure to reduce potentially significant impacts disclosed in Chapter 12. The inclusion of the OAMMP and real-time decision making in the project description is consistent with CEQA's requirement for a stable and adequate project description because these are established procedures used in SWP management that would occur on an on-going basis consistent with current water diversion facility operations practice. DWR describes in the EIR that the studies identified through the OAMMP process are intended to inform real-time decision making. The OAMMP will address operational uncertainties and inform the operation and adaptive management of the future north Delta diversion facilities. The OAMMP describes the adaptive management process that will be used to inform studies targeting areas of uncertainty using a scientific approach and modify select operations and design elements of the north Delta diversion facilities to minimize effects on listed fish species, as necessary. Adaptive management allows the best available science to be incorporated into management decisions and actions in the future and to address uncertainties associated with those actions. While the EIR impact analyses, as required by CEQA, use the best

available science at the time of preparation of the EIR, adaptive management allows and ensures best available science continues to be used. Specifically, adaptive management provides a means to evaluate the effectiveness of management actions in achieving biological resources objectives by comparing the outcomes to predicted responses and providing the scientific basis for continuing or modifying the action or implementing an alternative action. It is important to note that potential refinements to operational criteria, as informed by the OAMMP process, are designed to occur if project effects and impacts exceed what was analyzed and disclosed in the permitting documents.

The decisions made as part of the real-time decision making would be consistent with the operational criteria described in Chapter 3 and modeled by CalSim 3. Real-time operations would not include any new or different operational criteria than those described in the project description and analyzed within the EIR. Real-time operations are not a mitigation measure, but rather a facet of system operations recognizing there are real-time decisions made during the daily operation of the SWP. DWR acknowledges additional operational considerations are possible based on fish data at the time operational decision making is occurring (i.e., when the north Delta diversion exists and can be operated). The EIR describes the process by which monitoring and real-time operations would be used under an adaptive management framework, including use of the OAMMP described above, to ensure operations of the north Delta diversions minimize effects to aquatic resources as intended or refine operations criteria accordingly, if necessary. An example of real-time operations could be how the north Delta diversion would operate within the 3-day bypass flow averaging period to further minimize potential effects. The impact analysis provides sufficient text and modeled detail about the use of the 3-day bypass flow averaging period to analyze and disclose potential impacts of the project on fish and aquatic resources even with the acknowledgement that bypass flows may be modified in the future based on data gained through the OAMMP.

Upstream Reservoir Operations and Storage

Many comments claimed the SWP would be reoperated upstream to satisfy diversions that DWR would make at the north Delta diversion. For example, comments asserted that Oroville and Folsom would be operated to maximize, utilize, or otherwise allow operation of the north Delta diversions. Comments asserted upstream reservoirs on other rivers (e.g., Shasta and Trinity) would also be reoperated. For information regarding the selection of the study area(s) in the EIR, please refer to Common Response 1.

DWR would not change operations of upstream storage reservoirs. Text in the Chapter 3 section titled *Integration of North Delta Intakes with South Delta Facilities* has been clarified to specifically identify that DWR would not increase storage withdrawal for exports under most circumstances, even as the Delta Conveyance Project would provide additional export capacity. Stored water resulting from more efficient system operation (e.g., less water required to meet the same water quality standards) could either remain in storage or be exported. This clarifying text reflects the modeling assumptions used for impact analyses and therefore is an accurate depiction of how the Delta Conveyance Project would be operated. It is important to note that the project is an SWP project and not a CVP project. As such, DWR does not have authority to change operations of CVP facilities and does not plan to seek changes in regulations on CVP operations. However, as described in Chapter 3, Alternatives 2a and 4a include sufficient capacity to provide water conveyance capacity for the CVP in coordination with the U.S. Department of the Interior Bureau of Reclamation (Reclamation) (recognizing that Reclamation is currently not a project participant).

Historical SWP operations are based on SWP policy and limit release of upstream stored water in all but the wettest of years. Under the SWP policy, the first portion of stored water is used to meet regulatory and contractual obligations, the second portion of stored water is carried over into the following year for future obligations, and the remaining portion of stored water is managed for contractor deliveries. The Delta Conveyance Project modeling is consistent with this SWP policy of prioritizing adequate carryover storage in Lake Oroville for meeting following-year obligations over discretionary contractor deliveries. Overall, SWP operational strategy is increased reliance on unstored flows and decreased reliance on stored water. The project would provide increased opportunities to capture excess flows as a substitute for stored water for maintaining delivery reliability. The operations of the north Delta diversions do not require reoperation of Shasta, Trinity, or Folsom Reservoirs or any San Joaquin River and tributary water storage facilities.

In addition to the SWP policy and historical operations described above, evidence contained in the EIR in multiple chapters and appendices demonstrates limited or no modifications to upstream storage under project conditions. The Delta Conveyance Project is not increasing deliveries (or exports) out of storage, as has been demonstrated through the use of modeling results contained in the EIR.

Water Rights, Contracts, and Use of Water

A number of comments were received indicating the Delta Conveyance Project would adversely affect other users of water, water rights, and contracts. As identified in the Executive Summary and Chapter 6, *Water Supply*, the project alternatives do not include any actions that would modify water deliveries to non-SWP and non-CVP water rights holders, including in-Delta water rights holders. The State Water Board, not DWR, is responsible for decisions relating to water rights. DWR holds water rights approved by the State Water Board but does not have the power or authority to issue water rights to others. Additionally, the project does not seek any new water rights nor include any regulatory actions that would affect water rights. Importantly, all water exported by the SWP and DWR is the subject of the existing water rights of DWR. Exports do not come at the expense of other water rights holders. The project and its alternatives analyzed in the EIR include the use of water from existing SWP or voluntary water transfers from other water rights holders only. The project and its alternatives do not reduce the protections for other water right holders. Furthermore, the project would not affect upstream water rights. The project does not increase the volume of water to which DWR holds water rights or increase the volume of water for use as allowed under its contracts. Please see Common Response 8 regarding water rights and State Water Board authorities. The project does not propose any changes to rules governing transactions between contractors and individual agricultural producers. Furthermore, the project does not propose any changes to the guidelines by which water deliveries are allocated among those entities receiving water from the SWP.

The project does not make determinations regarding how water conveyed through the project, California Aqueduct, or other water conveyance facilities is put to a designated beneficial use, whether that use be municipal and industrial, agricultural, or for the purposes of fish and wildlife beneficial uses (Common Response 8 provides more information regarding designated beneficial uses). End water users make the decisions regarding the use of the water based on service area requirements. For example, water users currently make, and will continue to make, economic decisions about crop plantings in light of the amounts of water that may be received. Chapter 31, *Growth Inducement*, describes that there would be no growth-inducing effects in the service areas

associated with stabilized water deliveries for several reasons, including improving supply reliability and restoring amounts agencies previously received; restoring average contract deliveries that have been affected because of regulatory rules, which could be used to supplement or reduce groundwater use; and having no strong discernable link between water deliveries and rate of population growth.

Water Transfers

Comments suggested that the potential for increased water transfers through north Delta diversions should have been analyzed as a project element because of the additional diversion capacity provided by the new intake facilities. As described in the Chapter 3 section titled *Use of North Delta Intakes for Wheeling*, because DWR's jurisdiction is limited to water transfers involving the Delta export facilities of the SWP, it has limited involvement in the statewide water transfer market, and the Delta Conveyance Project is not proposed specifically to accommodate water transfers. Appendix 3H, *Non-Project Water Transfer Analysis for Delta Conveyance*, analyzes post-processed CalSim 3 results for the purposes of describing the system capacity for transfers with the project in place, as well as implementation of carriage water associated with potential transfers. These results are compared to other transfer information, including regulatory limitations, water supply limitations, and historical water transfers to identify available export capacity for non-project water transfers. This analysis considered whether existing export facilities storage currently limits water transfers and found that, even though the project may add additional export capacity, it is unlikely to increase the amount of water transfers because the current export capacity is not fully utilized.

Commenters also considered whether there could be impacts from using available capacity in the north Delta diversion to move transfer water that would otherwise have been conveyed through the south Delta facilities. Carriage water requirements in the Delta would maintain similar water quality conditions, which would avoid potential in-Delta impacts related to water quality and fisheries. A discussion of the use of carriage water and water quality requirements is now included in Appendix 3H. This information is then incorporated into the methods section of Chapter 9, *Water Quality*, and Chapter 12, describing why impacts on these resources would not occur.

Dry Conditions and Temporary Urgency Change Petitions

Comments suggested that DWR must not use TUCPs, which, if the State Water Board approves them, result in Temporary Urgency Change Orders (TUCOs), in order to operate the Delta Conveyance Project, that the Delta Conveyance Project would increase TUCPs, or that the operations of the Delta Conveyance Project under dry or critically dry years and the possibilities of TUCPs should have been described or quantitatively evaluated in the EIR. Commenters also asserted that DWR must stop TUCPs and that DWR should not use TUCPs to operate the SWP.

The State Water Board considers TUCPs in a quasi-adjudicatory process. It may grant, deny, or conditionally grant a TUCP. If it grants a TUCP, with or without conditions, it issues a TUCO. This type of petition, if approved, can be used to temporarily modify the terms and conditions in a post-1914 water right permit or license. TUCOs can provide approval of changes lasting up to 180 days, though the changes may be renewed. TUCPs and TUCOs are customized for each unique set of infrequent and extreme hydrologic circumstances. TUCOs authorize modifications to existing water rights that are limited in scope and time required to meet an urgent exceptional need in the public interest. To obtain a TUCO, a TUCP is required to demonstrate to the State Water Board that the change can be made without unreasonable effect upon fish, wildlife, other instream beneficial uses,

1 and without injuring other legal users of water. Based on the information provided by the petitioner,
2 the State Water Board must be able to make the following findings in order to issue a TUCO: (1) the
3 applicant has an urgent need for the change; (2) the proposed change will not cause injury to any
4 lawful water user; (3) the proposed change is in the public interest; and (4) the proposed change
5 will not result in an unreasonable effect on fish, wildlife, or other instream resources. Because of the
6 findings the State Water Board must make, TUCPs are subject to a comprehensive examination of
7 potential environmental impacts in consultation with CDFW. The public is also given opportunities
8 to voice objections, which the State Water Board considers. Should unforeseeable and extreme
9 circumstances cause a need for DWR to submit a TUCP once the north Delta diversions are in place,
10 the process outlined above, including a comprehensive examination of potential environmental
11 impacts in consultation with CDFW, would take place, because that is the requirement of the TUCP
12 process. TUCPs were submitted by DWR and Reclamation in the past to the State Water Board to
13 allow management of reservoir releases in a pattern that conserves upstream storage for fish and
14 wildlife protection and Delta salinity control while providing critical water supply needs. There have
15 been a total of five TUCPs filed over the past decade (2014, 2015, 2021, 2022, and 2023). Of these
16 five filed TUCPs, the State Water Board issued a TUCO to approve four and the one in 2021 that was
17 filed was withdrawn prior to State Water Board approval in 2022.

18 TUCPs are only filed and TUCOs issued under unique and very extreme circumstances, and as such,
19 neither their frequency nor scope is foreseeable. DWR does not resort to TUCPs as part of normal
20 operations of the SWP. TUCPs are not part of the project, operational criteria, or operations for the
21 Delta Conveyance Project. Because they have been used, for example, in response to past extreme
22 droughts, does not mean they must be included in proposed operations of the Delta Conveyance
23 Project. Thus, TUCPs fall outside the scope of CEQA requirements for this EIR. The TUCP submission
24 and review process, as part of the water rights, as described above, is entirely distinct from the Delta
25 Conveyance Project CEQA process as it serves different purposes. Comment assertions that the use
26 of TUCPs is reasonably foreseeable to occur due to operations of the project are inaccurate and
27 unsubstantiated. It is not anticipated that project operations would lead to an increase in frequency
28 of the use of TUCPs, nor is it supported by the impact analyses. The primary reason for a petitioner
29 to submit a TUCP is a lack of sufficient stored water to meet all obligations, including public health
30 and safety. Under these conditions, DWR would likely divert limited SWP supplies. As described in
31 Chapter 3 and as modeled, during dry conditions, the first 3,000 cfs of water diverted would be from
32 the south Delta facilities, and the north Delta diversions would typically not operate. In addition, the
33 Delta Conveyance Project is not increasing deliveries (or exports) out of storage, and modeling
34 results show that operation of the project would cause limited or no changes to upstream reservoir
35 operations. For all of these reasons, the Delta Conveyance Project is not anticipated to increase the
36 frequency of TUCPs or TUCOs. Rather, the operational flexibility afforded by the Delta Conveyance
37 Project may reduce the necessity to request a modification of the operations of the SWP through the
38 TUCP process because of the increased ability to meet water quality standards with the Delta
39 Conveyance Project in place. The Delta Conveyance Project would be operated pursuant to operating
40 criteria described in the Chapter 3 section titled *Intake Operations and Maintenance*. The majority of
41 TUCPs are needed based on drought conditions. The operation of the Delta Conveyance Project
42 would allow the diversion of water during high flow periods to storage south of the Delta for later
43 use during dry periods (see section above titled *Operations Description*). Therefore, increased
44 storage during these times is expected to increase compliance with water quality objectives and
45 reduce the need for TUCPs.

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