Chapter 4
Response to Comment Tables

This chapter presents individual comments and responses in a tabular format organized by commenter type in numerical order by letter number. This chapter also provides a list of references cited in the responses to individual public comments.

4.1 Chapter 4 Organization

Response to comment tables in this chapter are provided in numeric order. Please refer to Chapter 2, "Indices of Commenters and Index of Primary Forms," which provides a list of the comment letter numbers and names and titles of commenters, when provided. Readers and commenters can use the indices in Chapter 2 to identify the letter number or comment numbers associated with the submissions and then find the comments and responses in the comment response tables in this chapter.

4.2 References

References cited in the individual comment responses are provided at the end of the response where the citation(s) occurs.

Letter Number	Comment Number	Comment	Response
1	1	Our office submits these comments on behalf of Byron-Bethany Irrigation District (BBID). BBID appreciates the opportunity to comment on the Department of Water Resources' (DWR) Draft Environmental Impact Report for the Long-Term Operation of the State Water Project in the Sacramento-San Joaquin Delta, Suisun Marsh, and Suisun Bay (DEIR). BBID hereby incorporates by reference and joins the San Luis & Delta Mendota Water Authority's (Authority) comments on the DEIR. BBID is a member agency of the Authority, and the Authority's comments represent BBID's interests as a Central Valley Project (CVP) contractor that may be impacted by the Long-Term Operation of the State Water Project in the Sacramento-San Joaquin Delta, Suisun Marsh, and Suisun Bay.	This information describes the structure or organization of the comment letter, the background of the organization or individual commenter, clarification on the submittal of the comment letter, or general introductory text. It is not a comment on the contents of the DEIR. DWR has reviewed all comments and will consider all comments in its decision-making process.
1	2	In addition to its CVP contracts, BBID holds two appropriative water rights: a pre- 1914 appropriative water right and a post-1914 appropriative water right. BBID's pre-1914 right is evinced by a Notice of Appropriation of Water that BBID's predecessor in interest perfected, entitling the diversion of water from a channel off of the west bank of Old River in the Delta (i.e., Italian Slough). In 1964, under a contract with DWR, BBID relocated its point of diversion to accommodate the construction of the State Water Project (SWP). BBID's point of diversion is now, and since 1964 has been, located within Clifton Court Forebay at the intake channel of the Banks Pumping Plant. BBID's post-1914 right authorizes diversion from "Wicklund Cut," an irrigation inlet off of Old River. Below, BBID provides additional comments on the DEIR in light of its appropriative water rights.	This information describes the structure or organization of the comment letter, the background of the organization (specifically water rights) or individual commenter, clarification on the submittal of the comment letter, or general introductory text. It is not a comment on the contents of the DEIR. DWR has reviewed all comments and will consider all comments in its decision-making process.
1	3	1. Water Supply Impacts to the Old River The Proposed Project (as defined in the DEIR) includes management of "Old and Middle River reverse flows based on species distribution, modeling, and risk analysis, with provisions for capturing storm flows." (DEIR, Executive Summary, p. ES-6.) DWR lists as an associated Action Goal or Objective to the Proposed Project "[i]mplement[ing] real-time Old and Middle River management to minimize entrainment and aquatic species loss during water operations at Banks Pumping Plant." (Ibid.) However, Chapter 4 of the DEIR, which describes Surface Water Hydrology impacts, represents that, as compared to baseline conditions, Old and Middle River flow will decrease by 248 cubic feet per second (cfs) in June during wet water years, and by 465 cfs in Above Normal, Below Normal, and Dry water years, as those terms are defined in the	Proposed long-term operations of the SWP would not reduce opportunities to divert water using existing water rights of more senior water rights holders. The Proposed Project would not change water right priorities. Furthermore, flows under the Proposed Project would generally remain similar to outflow under Baseline Conditions, with slight deviations, and would remain within the range of historical operations. Please see Section 4.3.3.3, "Old and Middle River Flow," in the FEIR for updated modeled flow volumes and further discussion.

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		DEIR. The DEIR concludes that these anticipated changes will fall within the range of historical SWP operations. Accordingly, on that basis, and that there will purportedly be no other substantial effects to surface water resources, DWR determined that the Proposed Project will not result in a significant impact to surface water hydrology and no mitigation is required. (DEIR, Chapter 4: Surface Water Hydrology, p. 4-15.) BBID [Byron Bethany Irrigation District] disagrees. BBID's post-1914 appropriative water right is senior to those supporting the SWP, by at least 10 and up to 40 years, depending on the SWP right. BBID's right entitles and authorizes it to divert up to 82.5 cfs from its point of diversion on Old River based on its senior priority date. The availability or non-availability of between 248 and 465 cfs of flow in Old River during Wet, Below Normal, and Dry water years is a significant impact to BBID, as well as to all other water right holders on Old River senior to the SWP. The impact of such availability or non-availability, especially during Below Normal and Dry water years, is exacerbated by the State Water Resources Control Board's (State Board) recent curtailments in the Delta. Indeed, Below Normal and Dry water years are those in which the State Board may seek to curtail based on purported availability of water. BBID requests that DWR reevaluate its impact determination with respect to Old River flows and develop mitigation to address BBID's concerns.	Please also see the section titled "Modeling of Drought Conditions" in Common Response 12, "Drought Conditions."
1	4	2. Cumulative Impacts with Respect to the Delta Conveyance Project The DEIR notes that DWR is required to consider impacts if "its effects are individually limited but cumulatively considerable," such that the incremental impacts are significant when considered in connection with past, current, and probable future projects. (DEIR, Chapter 10: Other CEQA Discussions, p. 10-1, citing Cal. Code Regs., tit. 14, § 15065(a)(3).) DWR provided a list of past, current, and reasonably foreseeable future projects and purported to consider whether the Proposed Project and those past, current, and future projects will contribute to potentially significant cumulative impacts to the following: surface water hydrology; surface water quality; aquatic biological resources; tribal cultural resources; environmental justice; and climate change resiliency and adaptation. The DEIR states that its analysis of the future projects is temporally limited to ten years because, at that time, DWR must comply with the California Environmental Quality Act as part of DWR's	Please see Common Response 1, "Scope of Analysis," regarding comments relating to expanding the scope of the analysis. Please see Common Response 6, "Other State Efforts," for a discussion of the relationship between the Proposed Project and the DCP. As described in the Common Response and Chapter 10, "Other CEQA Discussions," the DCP is separate from the Proposed Project with its own independent utility, geographic boundaries, and schedule. Section 10.1, "Cumulative Impacts," provides analyses of the cumulative impacts of the cumulative projects identified by DWR on the resources which the Proposed Project has the potential to contribute to potentially significant cumulative impacts, including surface water hydrology, surface water quality, aquatic biological resources, tribal

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		California Endangered Species Act compliance required for continued long-term operations of the SWP. One of the future projects listed in the DEIR is the Delta Conveyance Project (DCP). However, the DEIR does not indicate which components of the DCP it anticipates will be completed within the ten-year scope of its analysis, undermining stakeholders' ability to determine the degree to which the cumulative impacts of the DCP were evaluated in the DEIR. Moreover, DWR's cumulative impact analysis evaluates the potential for cumulative impacts in the aggregate, rather than specifically discussing the potential for cumulative impacts related to the DCP. This is concerning because the DCP has the potential to impact virtually every characteristic of the Delta's ecology and hydrology. BBID therefore requests that DWR provide detailed, individualized discussion of the potential for such cumulative impacts associated with the DCP to aid its review of the DEIR.	cultural resources, environmental justice, and climate change resiliency and adaptation. DWR selected the list of past, current, and reasonably foreseeable future projects identified in Table 10-1 after careful consideration, and some projects are included because they have completed environmental review or are otherwise reasonably foreseeable even though they may not be operational. As described in Section 10.1.3, "Scope of Cumulative Analysis") of the DEIR: "Additionally, the temporal context of each project shown in Table 10 1 was evaluated relative to the temporal context of the Proposed Project. The expected duration of the Proposed Project is 10 years. After 10 years, the California Department of Water Resources (DWR) will seek further California Endangered Species Act (CESA) compliance for continued long-term operations of the SWP. Therefore, the temporal scope of the cumulative analysis also is 10 years." Construction of the Delta Conveyance Project is anticipated to be complete in 2040. Therefore, the DCP operations would not occur at the same time as the proposed project and would not contribute to cumulative impacts to which the proposed project could contribute.
1	5	Should you have any questions about these comments, please do not hesitate to contact me.	This information describes the structure or organization of the comment letter, the background of the organization or individual commenter, clarification on the submittal of the comment letter, or general introductory text. It is not a comment on the contents of the DEIR. DWR has reviewed all comments and will consider all comments in its decision-making process.
2	1	We are providing combined comments on the Draft Environmental Impact Report (DEIR) for the Long-Term Operation of the State Water Project and the Notice of Preparation (NOP) for the State Water Project Operations and Maintenance Habitat Conservation Plan (HCP). The Delta Protection Commission (Commission) is a state agency charged with ensuring orderly and balanced conservation and development of Delta land resources and improved flood protection in the Primary Zone. The Commission performs planning work to further	This information describes the structure or organization of the comment letter, the background of the organization or individual commenter, clarification on the submittal of the comment letter, or general introductory text. It is not a comment on the contents of the DEIR. DWR has reviewed all comments and will consider all comments in its decision-making process.

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		the State's basic goals for the Delta which are to provide a more reliable water supply for California and protect, restore and enhance the Delta ecosystem "in a manner that protects and enhances the unique cultural, recreational, natural resource and agricultural values of the Delta as an evolving place" (Public Resources Code section 29702(a) and Water Code section 85054). It is also the policy of the State of California to reduce reliance on water exports from the Delta, as further discussed below (California Water Code Section 85021). The Commission is thus providing comments as a Delta stakeholder, with an interest in the best environmental outcomes for the Delta.	
2	2	The Separation of the Analysis of the Operational Impacts of the State Water Project and the Habitat Conservation Plan Is Piecemealing The DEIR for operations states that it will support the amendment or re-issuance of an incidental take permit (ITP) required under the California Endangered Species Act (CESA) (DWR 2024:2-1). The NOP for the HCP indicates it is intended to provide mitigation to support CESA mitigation requirements for the ITP (DWR 2024a:1). Piecemealing occurs in CEQA practice when a lead agency impermissibly separates environmental analysis of two projects that depend upon one another for completion and thus fails to analyze the "whole of an action" consistent with the definition of a CEQA project (14. Cal. Code of Regulations, Section 15378(a)). The Courts have provided the additional test that agencies must analyze the "reasonably foreseeable consequences" of a project (Laurel Heights Improvement Ass'n v. Univ. of California (47 C3d. 376, 396 [1988]). Typically piecemealing questions involve projects that have some degree of separation, but factually may be intertwined. Here the mitigation needed to support maintenance of the SWP is part and parcel of the operations of the SWP because a complex conveyance system cannot be operated without maintaining it. The HCP or equivalent mitigation thus meets the "reasonably foreseeable" test of Laurel Heights as a component of operations.	Please see Common Response 6, "Other State Efforts," for a piecemealing analysis for Proposed Project and the DFD Maintenance project HCP based on whether the Proposed Project has independent utility. In sum, the Proposed Project has independent utility and can properly proceed without the DFD Maintenance HCP project. This EIR evaluates the effects of operation of the SWP but does not evaluate every potential maintenance activity that could occur during SWP operations. The HCP is being prepared to allow for state and federal Endangered Species Act coverage for maintenance activities that could occur, but the details of which would not necessarily be known. Therefore, these activities are not part of seasonal SWP operations and are not evaluated in this EIR. Please see Common Response 4, "CEQA and CESA Legal Standards," and Common Response 3, "The CEQA Process," for further discussion of CEQA standards.
2	3	In addition, the mitigation the HCP will provide is necessary to meet the legal requirements of CESA permits needed for operations. CESA requires that all the impacts of take are "fully mitigated" (Cal. Fish & Game Code Section 2081(b)(2)). This requirement is separate from the duty to mitigate environmental impacts under CEQA. Because operations depend on maintenance and mitigation needed to meet the	Please see Response to Comment 2-2. Please see Common Response 6, "Other State Efforts," Common Response 4, "CEQA and CESA Legal Standards," Common Response 11, "Application of CESA Standards," and Common Response 9, "Relationship to the 2023 Biological Assessment and NEPA," regarding

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		fully mitigated standard for CESA, conveyance and the HCP are components of a single project. The error created by separation of these two documents exceeds a mere technicality. The scope of covered species for the HCP includes all the aquatic species analyzed in the operational EIR and a host of terrestrial species (DWR 2024a: Table 1). The operations DEIR specifically screens out terrestrial biological species from review (DWR 2024:3-1). By failing to analyze the environmental consequences of operations in combination with a vast HCP that is required to support operations DWR may be missing effects that will emerge when both elements of the project are analyzed together. In addition, DWR may be separating effects for terrestrial species from operations, by associating those effects only with the HCP and maintenance. The cumulative context also notably omits the HCP, while acknowledging other mitigation projects such as the Suisun Marsh Habitat Management, Preservation, and Restoration Plan (DWR 2024, Chapter 10). As stated, the geographic scope of the HCP is vast (DWR 2024: Figure 1). The area within which conservation actions may occur encompasses the equivalent of several California counties. Because the HCP area is so vast, and there are species for which conservation actions may occur that are not analyzed in the operational EIR, the effects of both mitigation and conveyance should be analyzed in one document to meet the intent of CEQA and provide a meaningful and full consideration of impacts.	piecemealing, CESA standards, and relationship with the ESA. DWR has submitted an application to CDFW to obtain an Incidental Take Permit for incidental take coverage of CESA-listed fish species that could occur as a result of SWP operations. The HCP would provide CESA coverage for maintenance activities only. Maintenance activities included as covered activities are not necessarily associated with annual seasonal operations of the SWP but could occur independently of seasonal SWP operations. For example, covered activities such as upland vegetation management, road maintenance and construction, animal abatement, and fire and security modernization are associated with SWP facilities, but not related to SWP operations. Maintenance of pumping plants and water storage facilities also would occur irrespective of SWP seasonal operations. Known annual maintenance activities that are associated with SWP operations such as annual outages at the Skinner Fish Facility and fish screen cleaning at the Barker Slough Pumping Plant are included in this EIR and were included in the ITP application submitted to CDFW in November 2023.
2	4	The Less Than Significant Conclusion for All Aquatic Species and White Sturgeon in Particular May Require Better Substantiation DWR concludes that impacts on all aquatic species affected by operations are less than significant (DWR 2024: Chapter 6). The California Fish & Game Commission recently designated white sturgeon (Acipenser transmontanus) as a candidate for listing (CDFW 2024). The petition for listing specifically identifies reduced Delta outflow as a contributing factor to the decline of the species (Baykeeper 2023:18-19). The DWR conclusion that impacts on white sturgeon are less than significant stands in contrast to the independent findings of the Fish & Game Commission (DWR 2024:6-212). Because reduced Delta outflow caused by conveyance is a major contributing factor to the decline of the species, we urge DWR to revisit the analysis of impacts and mitigation that may be required by the project.	The less than significant conclusions are supported by the quantitative analyses provided in the DEIR, e.g., for White Sturgeon (EIR, Section 6.4.7.1, "Delta SWP Facility Operations"), which show small relative differences between the Proposed Project and Baseline Conditions and therefore do not meet the criteria for significance (EIR, Section 6.3.1, "Threshold for Significance"). The comment provides no suggestions for better substantiation; DWR considers the best available science to have been used.

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2	5	Independent agency studies also show that key indicator species for Delta are in decline (SWRCB 2017: 3-96). These studies demonstrate that most Delta fish species respond positively specifically to increased Delta outflow with population rebounds occurring during wet years (SWRCB 2017, Figure 3.13-2, 3-99). The focus on avoiding entrainment neglects the significance of Delta outflow as a key component of a successful strategy to avoid take and to reverse the decline of Delta aquatic species (SWRCB 2017, Rosenfield pers. comm. 2024). This mitigation approach is also consistent with the state policy of reducing reliance on Delta water supplies for export. The California Water Code Section specifically states, "The policy of the State of California is to reduce reliance on the Delta in meeting California's future water supply needs through a statewide strategy of investing in improved regional supplies, conservation, and water use efficiency" (California Water Code Section 85021).	In addition to actions to limit the potential for entrainment, the Proposed Project includes flow-related actions such as described in Chapter 2, Sections 2.3.5, "Spring Delta Outflow," and 2.3.6, "Delta Smelt Summer-Fall Habitat." Cumulative effects illustrate additional flow-related action potential effects for the combination of the Proposed Project plus Central Valley Project (see Chapter 10, Section 10.1.6.1, "Water Supply, Water Management, and Water Quality Projects and Actions") Please also see Common Response 7, "Relationship to Healthy Rivers and Landscapes Program."
2	6	The Operations DEIR May Omit Actions Needed to Support CESA Authorization The "take" prohibitions of CESA apply to Candidate Species (Cal. Fish & Game Code Section 2085). Because white sturgeon is thus subject to take authorization and the fully mitigated standard of CESA, actions needed to meet the fully mitigated standard for take authorization, are independent of the CEQA duty to mitigate significant impacts. Put another way, even if the impact conclusion of less than significant is valid, mitigation needed to meet the fully mitigated standard is required, because CESA is a separate law from CEQA (Cal. Fish & Game Code Section 2081(b)(2)). Mitigation required by a project must be analyzed under CEQA (14 Cal. Code of Regulations Section 15126.4(a)(1)(D)). DWR provides three alternatives to the project, none of which consider increasing Delta outflow, which would directly ameliorate the conditions leading to the decline of white sturgeon (DWR 2024: Chapter 10).	Chapter 6, Section 6.4.8, "White Sturgeon," evaluated the impacts of all aspects of the Proposed Project and determined that impacts would be less than significant. The "less than significant" conclusion considers the studies and operational assessments of risks to White Sturgeon described in Section 2.3.4, "White Sturgeon Protection Measures," which were included as part of the Proposed Project in direct response to the July 2024 designation as a Threatened Candidate species under CESA. These White Sturgeon Protection Measures also serve as measures that allow DWR to meet the Fully Mitigate standard under CESA. Please also see Common Response 4, "CEQA and CESA Legal Standards," and Common Response 11, "Application of CESA Standards," regarding DWR's compliance with CEQA and CESA. Please also see Common Response 3, "The CEQA Process," for a discussion of alternatives.
2	7	The Separation of the HCP and the Operational Impact Analysis May be Inconsistent with Banning Ranch Conservancy v. City of Newport Beach In Banning Ranch Conservancy v. City of Newport Beach (2 Cal.5th 918 [2017]) the City of Newport Beach failed to integrate consideration of mitigation and alternatives to avoid resources regulated by the Coastal Commission with environmental analysis of a development project in	Please see Response to Comments 2-2 and 2-3.

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		the Coastal Zone). The city thus failed to satisfy the general requirement that local agencies integrate CEQA review with other planning and permitting requirements (Cal. Public Resources Code Section 21003(a)). The court observed that "Information highly relevant to the Coastal Commission's permitting function was suppressed. The public was deprived of a full understanding of the environmental issues raised by the Banning Ranch project proposal" (Banning Ranch, 942). California Public Resources Code Section 21003(a) applies to "local agencies" rather than state agencies; however, the Banning Ranch decision provides an example of how failure to integrate environmental review with permitting may materially impair the informational purpose of CEQA generally. CEQA also requires that agencies conduct environmental review efficiently, to further the goals of mitigating environmental impacts (Cal. Public Resources Code Section 21003(f)). By failing to integrate analysis of operations and the mitigation needed to support permitting of those operations (i.e. the HCP and any omitted actions needed to fully mitigate take) DWR may be missing environmental effects that will only be identified when both the conveyance and mitigation components of the project are considered together. These considerations are not speculative or technical. The scope of both the HCP and conveyance operations is vast. The failure to consider all components of the same action together thus avoids a robust analysis of a geographically large project of great significance to the Delta and the State of California.	
2	8	We Urge Department of Water Resources to Commit to Meeting the Requirements of California Constitution Article XIII D Section 4 The Delta is a fragile and complex mosaic of agricultural and natural uplands and waterways. The upland areas in the Delta frequently depend on levees and other complex flood control infrastructure for protection. These levees and other critical infrastructure are funded by county-level property taxes and special benefits assessed by reclamation districts and other special districts. Because agencies of the state and the United States exist at a level of authority that supersedes the Delta counties, there is always a risk with large public projects that special benefits assessments will not be paid. This issue is of such a magnitude that the California Constitution was amended to require that "Parcels within a district that are owned or used by any agency, the State of California or the United States shall not be exempt from assessment unless the agency can demonstrate by clear and convincing evidence	This comment does not raise an environmental issue relating to the Proposed Project or address the adequacy, accuracy, or completeness of the DEIR. DWR has reviewed all comments and will consider all comments in its decision-making process. Please see Chapter 2, Section 2.1.1, "Project Objectives," regarding the project's purpose and objectives, including DWR's continuing commitment to operate the State Water Project in compliance with all state and federal water quality and environmental laws.

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		that those publicly owned parcels in fact receive no special benefit" (California Constitution Article XIII D, Section 4). We urge DWR to make a commitment to meeting this standard in the environmental documentation for long-term operations and mitigation such as the HCP in particular.	
2	9	Please Consider the Impact of Habitat Conservation Plan Conservation Actions on Delta Agriculture and Ecosystems The Delta Protection Act (Cal. Public Resources Code Section 29700 et seq.) codifies the policies of the State of California to protect the sustainability of Delta agriculture and ecosystems. While DWR is not a "local government" within the meaning of the Delta Protection Act (i.e. subject to the land use authority of the Delta Protection Commission) the Delta Protection Act is a statement of policy regarding the goals of the State of California for the Delta. We thus encourage DWR to consider the impact of conservation actions on Delta agriculture and ecosystems relative to the current baseline.	Please see Common Response 6, "Other State Efforts," regarding comments relating to the State Water Project Delta Field Division Operations and Maintenance Habitat Conservation Plan. Chapter 2, "Project Description," of the DEIR provides a detailed description of the project components and objectives. Chapter 10, "Other CEQA Discussions," of the DEIR presents an analysis of the potential cumulative impacts to which the Proposed Project could contribute. Table 10-1of the DEIR includes a list of habitat improvement projects and actions considered in the cumulative impacts analysis for the Project, including the State Water Project Delta Field Division Operations and Maintenance Habitat Conservation Plan. These projects would have independent utility from the Proposed Project and would undergo separate environmental review.
2	10	We Encourage Department of Water Resources to Clarify the Project Description for the Habitat Conservation Plan In the NOP DWR states that "A new type of activity not specifically identified in the HCP might be covered under the HCP ITPs if DWR determines adequate take coverage remains available and if the activity has not already been considered but rejected for coverage" (DWR 2024a:8). The wording of this language suggests that currently undefined covered actions may subscribe to the HCP in the future only if take coverage remains. While this language is apparently innocuous, the geographic scale of the HCP suggests that the exact location and magnitude of all conservation actions is already potentially unclear for a project level of analysis. Because the geographic scope of the HCP is so large, future covered actions that are not currently defined may, if approved, drive the implementation of a significantly different scale or scope of conservation actions than are contemplated in the NOP or will be analyzed in the EIR for the HCP. The open-ended project scope and	This comment describes components of the Habitat Conservation Plan DEIR. Thus, the comment does not directly address the 2024 DEIR for the Long-Term Operation of the State Water Project. However, DWR has reviewed the comment's content and provided responses where it may still be applicable to the 2024 DEIR for the Long-Term Operations of the State Water Project. Here, the comments provided are not applicable, and therefore, no further response is provided. For information on how the proposed project in this EIR is separate and distinct from the State Water Project Delta Field Division Operations and Maintenance Habitat Conservation Plan, please see Common Response 6, "Other State Efforts."

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		undefined covered actions create an unstable project description for purposes of CEQA that deprives the public of the opportunity to review the full effect of the project. Please see Save our Capitol v. Department of General Services which illustrates the duty of lead agencies to fully disclose a stable project description (Save our Capitol v. Department of General Services, 87 Cal. App. 5th 655, 2023).	
2	11	We look forward to following the development of these two important documents that encompass analysis relevant to the Delta and its unique resources. If you have any questions feel free to contact me directly at [email redacted] or at [phone number redacted].	This information describes the structure or organization of the comment letter, the background of the organization or individual commenter, clarification on the submittal of the comment letter, or general introductory text. It is not a comment on the contents of the DEIR. DWR has reviewed all comments and will consider all comments in its decision-making process.
2	12	References Cited California Department of Fish & Game. Fish and Game Commission Approves White Sturgeon as a Candidate Species for Listing as Threatened. 2024. Sacramento, California. Available: Link to press release [https://wildlife.ca.gov/News/Archive/fish-and-game-commission-approves-white-sturgeon-as-a-candidate-species-for-listing-as-threatened] California Department of Water Resources (DWR). Long-Term Operations of the State Water Project, Draft Environmental Impact Report. 2024. Sacramento, California. California Department of Water Resources (DWR). Notice of Preparation: Environmental Impact Report for the State Water Project Delta Field Division Operations and Maintenance Habitat Conservation Plan. 2024a. Sacramento, California. Rosenfield, Jon. Senior Scientist, San Francisco Baykeeper. Conversation Regarding Delta Outflow and Ecosystem Health. 2024. San Francisco Baykeeper. A Petition to The State of California Fish and Game Commission to List the California White Sturgeon (Acipenser transmontanus) as Threatened Under the California Endangered Species Act. 2023. Oakland, California. State Water Resources Control Board (SWRCB). Scientific Basis Report in Support of New and Modified Requirements for Inflows from the Sacramento River and its Tributaries and Eastside Tributaries to the Delta, Delta Outflows, Cold Water Habitat, and Interior Delta Flows. 2017. Sacramento, California.	This is a list of the references cited in the comment letter. It is not a comment on the contents of the DEIR. DWR has reviewed all comments and will consider all comments in its decision-making process.

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3	1	The San Luis & Delta-Mendota Water Authority, Friant Water Authority, the Sacramento River Settlement Contractors, Glenn-Colusa Irrigation District, Reclamation District No. 108, Sutter Mutual Water Company, Natomas Central Mutual Water Company, the Tehama-Colusa Canal Authority, and Westlands Water District ("CVP Contractors") appreciate the opportunity to comment on the California Department of Water Resources ("DWR") Draft Environmental Impact Report for Long-Term Operations of the State Water Project ("Draft EIR"). The CVP Contractors all hold, or represent parties that hold, agreements with the United States Bureau of Reclamation ("Reclamation") that provide for water supply from the Central Valley Project ("CVP"). The CVP Contractors therefore share respective interests in the coordinated long-term operation of the CVP and State Water Project ("SWP"). The CVP Contractors appreciate the 21-day extension of the public comment period. We have carefully reviewed the Draft EIR and the modeling supporting the Draft EIR. We appreciate the efforts of DWR and Reclamation to better coordinate long-term operations and encourage DWR and Reclamation to continue their efforts to utilize adaptive management in project operations.	This information describes the structure or organization of the comment letter, the background of the organization or individual commenter, clarification on the submittal of the comment letter, or general introductory text. It is not a comment on the contents of the DEIR. DWR has reviewed all comments and will consider all comments in its decision-making process.
3	2	Although we understand that the modeling will continue to be refined, we are concerned that the Draft EIR does not allow for an adequate understanding of the Proposed Project or potential impacts of the same on CVP operations and water supply. We therefore offer the following comments: First, any analysis of the potential environmental effect of changes to SWP operations must analyze and disclose the effect those changes have on CVP operations. A Draft EIR must describe the project's significant environmental effects, identify mitigation measures to avoid or substantially reduce them, and briefly explain why potentially significant environmental impacts were found to be insignificant. (Pub. Res. Code, § 21100, subd. (b), (c); CEQA Guidelines § 15126.2.) The CVP and SWP operations are inextricable, and modifying the operation of one has the potential to impact the other. While acknowledging that the two are interconnected, the Draft EIR does not fully address whether or how changes to SWP operations included as part of the Proposed Project may affect future CVP operations, or the magnitude of any such effects, and modeling included in the Draft EIR creates confusion about proposed operations.	Please see Common Response 1, "Scope of Analysis," for a discussion of the Coordinated Operations Agreement (COA). As also explained in DEIR Appendix 2D, although the SWP and CVP coordinate operations, DWR and Reclamation independently decide how to operate the individual projects to best meet applicable requirements. The COA does not define what actions DWR or Reclamation will take in any given set of circumstances and DWR does not control CVP operations. DWR cannot reasonably foresee how Reclamation will respond to the proposed project. Please see Common Response 15, "Real-Time Operations," for further information. Appendix 3A, "Initial Study," and Chapter 4, "Surface Water Hydrology," provide discussion of changes to surface water hydrology resulting from implementation of the Proposed Project. These analyses show minor changes to hydrology could occur. However, these minor

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			changes would not be expected to significantly impact CVP Operations.
3	3	Although we understand that the modeling will continue to be refined, we are concerned that the Draft EIR does not allow for an adequate understanding of the Proposed Project or potential impacts of the same on CVP operations and water supply. We therefore offer the following comments: The project description creates additional confusion that should be addressed. The geographic scope in the Draft EIR's project description only focuses on part of the SWP, and therefore requires modification. (CEQA Guidelines, § 15378; County of Inyo v. City of Los Angeles (1977) 71 Cal.App.3d 185, 192-193.) The Draft EIR limits the geographical scope of the Proposed Project to omit assessing direct, reasonably foreseeable indirect, and cumulative impacts upstream of the confluence of the Feather and Sacramento Rivers at Verona and south of the Delta. (Draft EIR, at 2-2, 10-3.) This may have the effect of minimizing environmental impacts. For example, there may be reasonably foreseeable impacts upstream of Verona as DWR proposes to increase Delta inflows, which means water has to come from somewhere in the coordinated operations of Shasta and Oroville Dams. (Id. at 2-19.) Due to the CVP and SWP's shared responsibility for meeting certain regulatory standards, and the interconnected nature of their joint operations, providing more Delta inflow under the SWP Proposed Project could result in less water available for upstream CVP uses, including irrigation, municipal water supply, waterfowl and wildlife refuges, resulting in potentially significant environmental impacts to CVP contractors.	Please refer to Common Response 1, "Scope of Analysis," regarding how DWR determined the geographic scope of the analysis of the Proposed Project in the DEIR, which considered: (1) the geographic scope of SWP operations' influence (i.e., the "zone of influence"), particularly with respect to the operations affected by the Proposed Project; and (2) whether, in light of SWP and CVP coordinated operations, the Proposed Project would cause a reasonably foreseeable response by the U.S. Bureau of Reclamation that could result in changes in CVP operations outside the SWP zone of influence. DWR concluded that the analysis of flow-related impacts was appropriately focused on the SWP zone of influence (the Sacramento River below the confluence of the Feather River, the legal Delta, and the Suisun Marsh and Bay) and does not include areas that are affected only by CVP actions. Please also see Chapter 2, "Project Description," regarding coordinated operations of the SWP and CVP. Please see Common Response 9, "Relationship to the 2023 Biological Assessment and NEPA," for additional information on the federal processes that examine both the SWP and CVP operations.
3	4	Although we understand that the modeling will continue to be refined, we are concerned that the Draft EIR does not allow for an adequate understanding of the Proposed Project or potential impacts of the same on CVP operations and water supply. We therefore offer the following comments: The EIR should better explain how SWP operations will align with the CVP operations Reclamation If is proposing as part of the federal reinitiation of consultation on long-term operations of the CVP/SWP ("CVP/SWP LTO"), which is currently being analyzed in a parallel National Environmental Policy Act process. Reclamation's proposed action for Shasta Lake is to operate according to different bin types, which correspond to differing estimates of Shasta storage levels and	Please see Common Response 1, "Scope of Analysis," and Response to Comment 3-2 above. Please see Common Response 9, "Relationship to the 2023 Biological Assessment and NEPA," for a discussion of the separate NEPA process on the operation of the CVP and SWP. This EIR does not propose to operate the SWP based on the bin types as described by the comment (i.e., identified in the DEIS for Shasta Lake operations). DWR proposes to operate the SWP as described in Chapter 2, "Project Description," with the specific objective of storing, diverting, and conveying water in accordance with DWR's existing water rights to deliver water

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		hydrology [Footnote 1: Draft Environmental Impact Statement on the Long-Term Operations of the Central Valley Project and State Water Project, United States Bureau of Reclamation (July 2024). at 3-44-36.]. The EIR should describe how or if it will modify SWP project operations for each bin type, in order to provide information necessary for the members of the public to evaluate Project impacts. (County of Inyo, supra, 71 Cal.App.3d at 192-93.)	pursuant to water contracts and agreements up to full contract quantities and to optimize water supply and improve operational flexibility while protecting fish and wildlife based on the best available scientific information (See Section 2.1.1., "Project Objectives"). DWR has identified a governance structure in Section 2.3.22, "Governance," that describes the coordination between DWR and Reclamation and how operations-related decisions between the two agencies would be made in coordination with other state and federal regulatory agencies, and interested parties. The intent of this governance structure is to ensure collaboration, effectiveness, accountability, inclusiveness, and transparency in operations-related decision making. These principles are further intended to ensure that DWR and Reclamation will continue to operate the SWP and CVP in a coordinated manner that allows both agencies to meet their water supply and species protection obligations while complying with applicable regulatory requirements. Please see Common Response 15, "Real-Time Operations."
3	5	Although we understand that the modeling will continue to be refined, we are concerned that the Draft EIR does not allow for an adequate understanding of the Proposed Project or potential impacts of the same on CVP operations and water supply. We therefore offer the following comments: Additionally, the EIR should more clearly disclose and assess Project impacts on CVP operations. The current modeling included in the Draft EIR does not accurately reflect impacts to the CVP. For example: • The modeling of the Proposed Project includes changes in Old and Middle River management that are proposed for Reclamation as part of CVP/SWP LTO, but it does not include other actions such as changes in Shasta Lake operations due to the reinitiation of consultation on the CVP/SWP LTO. For example, Reclamation's CVP/SWP LTO modeling includes an "SRSC Pool" in Shasta operations and includes a COA adjustment, whereas the Draft ElR's model assumes water reductions for the Settlement Contractors and does not include any COA adjustment.	Please see the section titled "Geographic Scope," in Common Response 1, "Scope of Analysis." DWR considered whether the long-term operations of the SWP would result in changes in CVP operations outside the SWP zone of influence. As explained in Appendix 2D, "Geographic Scope of Project's Influence of Flow," DWR and Reclamation independently decide how to operate the SWP and CVP to meet applicable requirements. Please see the section titled "Treatment of Coordinated SWP/CVP Operations" in Common Response 1, "Scope of Analysis," for further discussion. Although the Proposed Project does not include CVP operations, it assumes operations of the CVP and SWP will continue to be coordinated. DWR has worked closely with Reclamation to ensure that CVP actions are modeled appropriately and consistently in the EIR, with exception to the COA adjustment, due to the model implementation excluding adjustments for other SWP

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		• The model uses historical hydrological conditions as the baseline to assess the Proposed Project's impacts; by contrast, Reclamation's proposed CVP/SWP LTO modeling uses climate-adjusted hydrology. The EIR should consider Proposed Project effects against reasonably foreseeable future hydrologic conditions, to better allow the public to assess environmental impacts the Proposed Project may have on present and future CVP operations. The cumulative impacts analysis does include some of the proposed CVP/SWP LTO actions, but there are inconsistencies in how these actions are modeled on the Sacramento, American, and Stanislaus Rivers.	obligations that may be called upon in critical conditions and warrant a COA adjustment. Please refer to Appendix 4G, "Cumulative Model Results," Attachment 1, "CalSim 3 Callouts," for more information on modeled assumptions in the Proposed Project + Cumulative scenario. To the extent the commenter noted that the CEQA and NEPA baselines are different, the CEQA baseline is statutorily defined and generally consists of the conditions that exist at the time of the Notice of Preparation. It is not the same as the "no action" alternative Reclamation analyzes in its EIS, which is a NEPA document governed by federal law. Please see Common Response 2, "CEQA Environmental Baseline," and Common Response 9, "Relationship to the 2023 Biological Assessment and NEPA," for further discussion. DWR recognized that, even though CEQA required a different baseline analysis than Reclamation's NEPA analysis, the public might be interested in having an opportunity to more closely compare the analyses in the documents. Thus, DWR voluntarily incorporated an additional modeling run for informational purposes that reflects Reclamation's "no action" alternative, CalSim Study 4, in Appendix 4E, "Operations Sensitivity to Climate Change, Temporary Urgency Change Petitions, and the Interim Operating Plan." Please also refer to Chapter 10, "Other CEQA Discussions," Section 10.1, "Cumulative Impacts," for discussion of long-term operations of the CVP. Please refer to Appendices 4F, "Cumulative Model Results," 4G, "Cumulative Model Results," and 4H, "Cumulative with Climate Change Model Results," for modeled results for the Proposed Project + Cumulative. For information regarding reasonably foreseeable future hydrologic conditions, please refer to Chapter 9, "Climate Change Resiliency and Adaption." Chapter 9 evaluates the Proposed Project and how climate change could influence the Proposed Project's ability to fulfill its intended purpose. Considerations related to climate change are also discussed and presented in Appendices

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			4D, "Climate Change Projections," 4E, "Operations Sensitivity to Climate Change, Temporary Urgency Change Petitions, and the Interim Operating Plan," 4H, "Cumulative with Climate Change Model Results," and 4I, "Operations Sensitivity to Drought Conditions".
3	6	Although we understand that the modeling will continue to be refined, we are concerned that the Draft EIR does not allow for an adequate understanding of the Proposed Project or potential impacts of the same on CVP operations and water supply. We therefore offer the following comments: Moreover, the Draft EIR does not adequately analyze or disclose impacts to surface water supplies and agricultural resources, despite admitting that the proposed project will alter existing hydrology and land use (Draft EIR, at 2-31-33), and such changes could result in impacts to resources dependent on upon hydrological conditions (Id. at 3-1-2). Changes to the physical environment---surface water supplies and agricultural resources---are environmental impacts that the Draft EIR should assess. (Pub. Res. Code,§§ 21002, 20160.5.)	Please see Response to Comment 3-5 and Common Response 1, "Scope of Analysis." Please refer to Appendix 3A, "Initial Study," Section 3A.3.10, "Hydrology and Water Quality," regarding discussion of surface water hydrology. Changes to surface water hydrology, by themselves, are not considered a significant impact based on the Initial Study. Agriculture and forestry resources as well as land use and planning were eliminated from detailed consideration in the DEIR because the Proposed Project would result in no impacts to these environmental topics. Please refer to Chapter 3, "Scope of Analysis," Section 3.2, "Issues Eliminated from Detailed Consideration in the DEIR," and Appendix 3A, "Initial Study," for more information. Please refer to Chapter 4, "Surface Water," Section 4.3.1, "Thresholds of Significance," for a description of factors, based on CEQA Guidelines, that would result in a potentially significant impact on surface water if any were to occur.
3	7	Although we understand that the modeling will continue to be refined, we are concerned that the Draft EIR does not allow for an adequate understanding of the Proposed Project or potential impacts of the same on CVP operations and water supply. We therefore offer the following comments: Lastly, the EIR should analyze and clearly disclose the cumulative effects on water supply and surface water resources that would result from the Proposed Project and Reclamation's proposed CVP/SWP LTO. (CEQA Guidelines, § 15355.) Similarly, the EIR should describe how it accounts for the difference in modeled operations of the Proposed Project and the CVP/SWP LTO due to the different baselines and assumptions in order to accurately inform the public of the cumulative impacts.	Please see Response to Comment 3-5 and Common Response 1, "Scope of Analysis." Analyses of the Proposed Project and Proposed Project + Cumulative have been updated to utilize the same baseline.

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		In sum, the description, analyses, and conclusions reported in the EIR must be updated to adequately assess and disclose the potential effect of the Proposed Project on CVP operations to permit a comprehensive assessment of the Proposed Project's effect on the CVP system and its water supplies as a whole.	
3	8	Although we understand that the modeling will continue to be refined, we are concerned that the Draft EIR does not allow for an adequate understanding of the Proposed Project or potential impacts of the same on CVP operations and water supply. We therefore offer the following comments: Second, the baseline used in the Draft EIR raises questions about the durability of the Proposed Project. Certain actions that "originated before or as part of the 2020 ITP for the Long-term Operation of the" SWP are included as part of the Proposed Project and its alternatives. (Draft EIR. P. 2-53.) However, DWR's approval of the 2020 Long-Term Operation of the California State Water Project and CDFW's approval of the 2020 ITP are the subject of pending legal challenges regarding changes to SWP operations made with unanalyzed effects on CVP operations. [Footnote 2: Seven coordinated cases are pending in Sacramento County Superior Court with the case name "CDWR Water Operation Cases," Case No. JCCP5117.] Where the Proposed Project includes the 2020 ITP as part of baseline conditions, the Proposed Project will arguably remain vulnerable to the same legal challenges presented against the 2020 ITP. The potential for a court to find the EIR analyzing the 2020 ITP inadequate creates significant legal uncertainty for future SWP operations.	This EIR has been prepared in accordance with CEQA. Please see Common Response 2, "CEQA Environmental Baseline," for a discussion of the CEQA Environmental Baseline and Treatment of Historical Conditions. Please also see Common Response 3, "The CEQA Process," and Common Response 9, "Relationship to the 2023 Biological Assessment and NEPA," regarding the required CEQA analysis. The actions retained in the Proposed Project from the 2020 ITP include: (1) continued evaluation of salmon survival, behavior, and developing tools to assess further actions to improve salmon survival; (2) funding research activities to investigate juvenile salmonid habitat use in the Delta, Cache Slough, and Suisun Marsh; and (3) implementing the Salmonid Habitat and Fish Passage Project in the Yolo Bypass in accordance with its Adaptive Management Program. These actions do not involve SWP operations directly and do not affect CVP operations because evaluation of salmon survival and habitat use in the Delta would not involve changing flows into, through, or out of the Delta. Further, the Salmonid Habitat and Fish Passage Project has undergone separate environmental review that concluded that potential impacts to CVP water supplies is less than significant (Bureau of Reclamation and California Department of Water Resources 2019) and the project is included in this EIR to continue to maintain the ability to adaptively manage the fish passage structure in the Yolo Bypass and maintain incidental take coverage under the California Endangered Species Act. References cited in this response:

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			Bureau of Reclamation and California Department of Water Resources. 2019. Yolo Bypass Salmonid Habitat Restoration and Fish Passage Project Environmental Impact Statement/Environmental Impact Report. May. Sacramento, CA.
3	9	Although we understand that the modeling will continue to be refined, we are concerned that the Draft EIR does not allow for an adequate understanding of the Proposed Project or potential impacts of the same on CVP operations and water supply. We therefore offer the following comments: Third, the EIR should accurately describe the "CVP Proposed Action" in the Project Description the effects analysis, and related modeling runs. As modeled, the Proposed Project assumes CVP operations under the 2021 court-imposed interim operations plan ("IOP"), whereas the 2024 IOP is set to expire when the Reclamation issues a new Record of Decision on CVP/SWP LTO, or on December 20, 2024, whichever occurs first. Additionally, given the coordinated nature of SWP and CVP operations, an adequate description of the "CVP Proposed Action" is necessary to accurately define the geographic area potentially affected and ensure an adequate evaluation of potential cumulative impacts as required under CEQA Guidelines section 15355.	Please refer to Response to Comment 3-3 regarding the geographic scope of analysis in the EIR and the analysis done for environmental compliance for California law versus federal law. Please also refer to Common Response 1, "Scope of Analysis," for discussion regarding coordinated SWP and CVP operations.
3	10	The Agencies thank DWR for the opportunity to present their comments and look forward to working with DWR as it moves forward in this process and to reviewing a revised EIR that addresses the important issues identified here. It is our hope that DWR will coordinate with the CVP Contractors and with Reclamation as it moves forward with its environmental analysis, to adequately address the comments identified above prior to approving the Proposed Project or an alternative.	This information describes the structure or organization of the comment letter, the background of the organization or individual commenter, clarification on the submittal of the comment letter, or general introductory text. It is not a comment on the contents of the DEIR. DWR has reviewed all comments and will consider all comments in its decision-making process.
4	1	The State Water Contractors (SWC) and its member agencies [Footnote 1: Alameda County Flood Control District Zone 7, Alameda County Water District, Antelope Valley---East Kem Water Agency, Casitas Municipal Water District, Central Coast Water Authority, City of Yuba City, Coachella Valley Water District, Crestline---Lake Arrowhead Water Agency, Desert Water Agency, Dudley Ridge Water District, Empire West Side Irrigation District, Kem County Water Agency, Kings County, Littlerock Creek Irrigation District, Metropolitan Water District of Southern California, Mojave Water Agency, Napa County Flood Control and Water Conservation District, Oak Flat Water District, Palmdale	This information describes the structure or organization of the comment letter, the background of the organization or individual commenter, clarification on the submittal of the comment letter, or general introductory text. It is not a comment on the contents of the DEIR. DWR has reviewed all comments and will consider all comments in its decision-making process.

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		Water District, San Bernardino Valley Municipal Water District, San Gabriel Valley Municipal Water District, San Gorgonio Pass Water Agency, San Luis Obispo County Flood Control and Water Conservation District, Santa Clara Valley Water District, Santa Clarita Valley Water Agency, Solano County Water Agency, and Tulare Lake Basin Water Storage District] are grateful for the opportunity to provide our comments on the Draft Environmental Impact Report (DEIR) for the Long-Term Operations (LTO) for the State Water Project (SWP). The SWC appreciates the Department of Water Resources' (DWR) commitment to the timely completion of the revised L TO operations with the inclusion of the Healthy Rivers and Landscapes (HRL) program. We further appreciate DWR's efforts to collaborate with the federal government and the SWC during the development of the LTO and the DEIR.	
4	2	While we agree that the current draft LTO is generally proceeding in a positive direction, we have several suggestions regarding the project description and the analysis in the DEIR, primarily in the areas of consistency between state and federal operations plans and in the application of best available science, which are two areas highlighted in our scoping letter. In our July 2023 scoping letter, the SWC [State Water Contractors] emphasized the importance of the LTO project purpose of delivering up to full contract quantities while fully complying with all state and federal laws, consistent with water supply contracts. More specifically, the SWC sought a LTO that is: 1. Consistent with the federal LTO Proposed Action for the operations within the study area of this DEIR; 2. Consistent with the Healthy Rivers and Landscapes program for implementing the Bay Delta Water Quality Control Plan update; and, 3. Based on the best available science. The SWC appreciates that the LTO Proposed Project and DEIR largely meet these goals and offers specific comments, as follows, to ensure that these goals are fully met. I. Entrainment protections at the SWP export facilities should reflect the population of the species and should be proportionate to the level of effect of SWP operations. The DEIR Proposed Project includes several enhancements to the fish entrainment protection measures in comparison to the 2020 Incidental Take Permit (ITP) that include, but are not limited to, the following:	DWR appreciates the comment. Regarding the suggestion that export restrictions for Longfin Smelt and Chinook Salmon should reflect the point in time when the 50 percent and/or 75 percent thresholds are met relative to overall population migration timing in a season, DWR considers the actions as proposed to be appropriate and notes that these actions are subject to adaptive management, as described in Appendix 2B, Attachment 2, Section 2B-2.2, "Adaptive Management Actions." Regarding the suggestion that the imposition of the weekly loss threshold for steelhead should take into account both cumulative salvage as of that point in time, as well as how far through the migratory season the week it occurs, the weekly loss threshold is intended to minimize disproportionate impacts to juvenile steelhead in the Delta in a given week. This approach was proposed due to the year-to-year variability in the timing of observed loss and limited monitoring data. Basing an approach on the period of the migratory season would benefit from an estimate of annual production and more robust monitoring. The proportionate effect of each project on species entrainment may benefit from, and to some degree may necessitate, enhanced monitoring and genetic evaluation to provide information on the origin and

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		• Use of monitoring data for the entire Bay-Delta in assessing the risk of entrainment to Longfin Smelt; • Utilization of the proportion of genetically confirmed Winter-run juvenile production estimate (JPE) rather than using the length-at-date approach to establish loss thresholds; • Reliance on habitat surrogates for delta smelt entrainment actions given the current monitoring efficiency and the acknowledgment of a lower risk of entrainment associated with the high flow offramps for early season protective actions. • Consideration of proportion of smelt present in the Cache Slough complex relative to the Delta wide distribution for triggering Barker Slough pumping plant diversion constraints. The SWC [State Water Contractors] supports using adaptive management operations so that entrainment protections are more specifically targeting listed species and the proportionate effect of the SWP. The entrainment protections should accurately reflect the species' population level and migration patterns each year. We support consideration of further operational refinements to account for the fact that triggering an annual threshold late in the season means that species loss has been low, and the risk of exceeding the annual thresholds is also low, so triggering export restrictions may not be necessary. Export restrictions based on salvage or loss triggers for Longfin Smelt and Winter-run Chinook salmon should reflect the point in time when the 50 percent and/or 75 percent thresholds are met relative to the overall population migration timing in a season. [Footnote 2: For example, if the 75 percent threshold is met at 90 percent of the time into the anticipated migration season, then greater restrictions should be offramped.] Likewise, the imposition of the weekly loss threshold for steelhead should take into account both cumulative salvage as of that point in time as well as how far through the migratory season the week it occurs. Similarly, the constraints at the Barker Slough intake should look at a better indicator than a single monitoring station to estimate the entrainment risk, and account for the anticipated improvements for Delta smelt because of ongoing restoration and supplementation activities implemented in its vicinity. We support funding for these efforts but also want to ensure that the SWP and its water contractors are not primarily responsible for studies that have broad applications and benefits and should, therefore, be	routing of salmonids being entrained. To the degree it can be determined and is feasible, the proportionate effect should be a component to consider for an alternative entrainment management approach, and as part of the development of new studies, in terms of scope and costs. Regarding the suggestions for Barker Slough intake constraints, the Proposed Project's Barker Slough Pumping Plant action for larval Delta Smelt utilizes a single station trigger that represents a percentage of catch across a suite of multiple stations in the north Delta (Chapter 2, Section 2.3.14.1, "Maximum Spring Diversions"). By utilizing this larger frame of reference to set the trigger, the proposed trigger would reflect the changing baseline of Delta Smelt abundance across the north Delta, being responsive to putative successes with supplementation and restoration efforts. Particle tracking models included in the EIR show that entrainment into Barker Slough is negligible from stations other than those identified as the primary trigger stations that are closest to Barker Slough, so the inclusion of additional primary trigger stations would not necessarily be representative of entrainment risk. Regarding funding and proportionate effects, DWR and Reclamation have increasingly, and will continue to work together to identify appropriate funding levels to offset impacts of the SWP and CVP, respectively. However, these implementation and funding considerations are beyond the scope of this CEQA document. Please see Common Response 4, "CEQA and CESA Legal Standards," regarding CESA's standard that minimization and mitigation measures be "roughly proportional" to the impact of the take on the species.

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		funded by all potential beneficiaries, including the Central Valley Project (CVP). To the extent that adaptive management studies are added to our permits, the SWC asks that the proportionate effect of SWP operations be the basis for determining if a new study is justified and for defining the scope and cost of the study. The SWC further asks that if adaptive management identifies an alternative entrainment management approach, the proportionate effect of the SWP on species entrainment be considered and the then-currently permitted level of take, before deciding to further amend the LTO plan.	
4	3	While we agree that the current draft LTO is generally proceeding in a positive direction, we have several suggestions regarding the project description and the analysis in the DEIR, primarily in the areas of consistency between state and federal operations plans and in the application of best available science, which are two areas highlighted in our scoping letter. In our July 2023 scoping letter, the SWC [State Water Contractors] emphasized the importance of the LTO project purpose of delivering up to full contract quantities while fully complying with all state and federal laws, consistent with water supply contracts. More specifically, the SWC sought a LTO that is: 1. Consistent with the federal LTO Proposed Action for the operations within the study area of this DEIR; 2. Consistent with the Healthy Rivers and Landscapes program for implementing the Bay Delta Water Quality Control Plan update; and, 3. Based on the best available science. The SWC appreciates that the LTO Proposed Project and DEIR largely meet these goals and offers specific comments, as follows, to ensure that these goals are fully met. II. Ongoing and completed mitigation should be counted toward any obligations under the new LTO ITP before more mitigation is adopted. Several mitigation measures, as outlined in the 2020 Incidental Take Permit (ITP) and the 2019 biological opinions, have either been successfully implemented or are currently in the process of implementation. These include, among others, the Georgiana Slough Nonphysical Barrier and thousands of acres of physical restoration projects that benefit the Delta Smelt and Longfin Smelt. The completed projects have improved the baseline and should, therefore, be considered when making a jeopardy determination. Further, since the ongoing operational actions and in-process mitigation obligations will	The comment states that the SWC and its member agencies have concerns about consistency between the state and federal operations and the use of best available science. The comment also notes that completed mitigation under the 2020 ITP and 2019 BiOps should count towards mitigation requirements under the new ITP, and that any additional minimization or mitigation should only be considered after ongoing minimization or mitigation is credited to the State Water Project. Since this EIR is a CEQA document and the analysis found no significant impacts as a result of the Proposed Project, no mitigation is required under CEQA. CESA, however, does require mitigation for impacts of take that will be carried over from the 2020 ITP. The actions retained from the 2020 ITP include: (1) continued evaluation of salmon survival, behavior, and developing tools to assess further actions to improve salmon survival; (2) funding research activities to investigate juvenile salmonid habitat use in the Delta, Cache Slough, and Suisun Marsh; and (3) implementing the Salmonid Habitat and Fish Passage Project in the Yolo Bypass in accordance with its Adaptive Management Program. These actions do not involve SWP operations directly and are included in the Proposed Project because they are being carried forward from the 2020 ITP. DWR has committed to completing these actions and is seeking continued CEQA coverage for them under this EIR. Please see Common Response 15, "Real-Time Operations," for further discussion of SWP operations.

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		continue to completion under the new LTO plan, those are mitigation and minimization measures that are relevant to the new LTO. The mitigation in the 2020 ITP was to cover a 10-year permit, but that permit only lasted four years. The scope and nature of any additional minimization or mitigation for the new LTO plan should be considered only after the ongoing obligations are fully credited to the SWP.	
4	4	While we agree that the current draft LTO is generally proceeding in a positive direction, we have several suggestions regarding the project description and the analysis in the DEIR, primarily in the areas of consistency between state and federal operations plans and in the application of best available science, which are two areas highlighted in our scoping letter. In our July 2023 scoping letter, the SWC [State Water Contractors] emphasized the importance of the LTO project purpose of delivering up to full contract quantities while fully complying with all state and federal laws, consistent with water supply contracts. More specifically, the SWC sought a LTO that is: 1. Consistent with the federal LTO Proposed Action for the operations within the study area of this DEIR; 2. Consistent with the Healthy Rivers and Landscapes program for implementing the Bay Delta Water Quality Control Plan update; and, 3. Based on the best available science. The SWC appreciates that the LTO Proposed Project and DEIR largely meet these goals and offers specific comments, as follows, to ensure that these goals are fully met. III. Summer-fall habitat actions should be reassessed in light of the latest scientific findings. The DEIR Proposed Project includes the Suisun Marsh Salinity Control Gate operations and fall X2 as part of the summer-fall habitat actions to support Delta Smelt habitat conditions. However, the analysis incorporated in the draft US Fish and Wildlife Service Biological Opinion (Draft FWS BiOp) indicates that the fall X2 action, despite its significant water cost, does not appear to provide benefits to Delta Smelt. In light of this finding, we strongly advocate for a collaborative effort between state and federal governments to establish a consistent approach toward evaluating the necessity of continuing this action as part of the adaptive management program. Furthermore, with respect to the statements in the Draft FWS BiOp concerning a potential summer outflow action, we maintain that the SWP and CVP are not exerting a detrimental impact on summer outflow.	DWR has included a robust Adaptive Management Program as part of the Proposed Project (see Section 2.3.18, "Adaptive Management," Appendix 2B, "Adaptive Management Program"). One of the Adaptive Management Actions included in the Adaptive Management Program is an action to evaluate the Summer-Fall Habitat Action for Delta Smelt (see Appendix 2B, Attachment 2, "Adaptive Management Actions and Programs") to determine the long-term efficacy and utility of continuing the action. DWR has moved this Adaptive Management Action from Bin 3 to Bin 1 in the FEIR to allow for immediate evaluation of the action. Further, DWR submitted an ITP amendment request to CDFW and filed an EIR Addendum to the 2020 FEIR with the State Clearinghouse to allow implementation of a modified action in 2024 to begin to monitor the effects of modifying the action in the long-term. DWR will continue to work with the US Bureau of Reclamation to remain fully aligned regarding all operational criteria, including the Summer-Fall Habitat Action for Delta Smelt.

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		On the contrary, research by Hutton and others demonstrates that the SWP and CVP provide higher summer outflow in comparison to pre-project conditions (Hutton et al. 2017, p. 2522). [Footnote 3: Hutton, P.H., Rath, J.S., Sujoy, B. R. 2017. Freshwater flow to the San Francisco Bay-Delta estuary over nine decades (Part 2), change attribution. Hydrological Processes, 31: 2516-2529.] Additionally, the habitat analysis in the Draft FWS BiOp reveals no discernible differences in the average predicted X2 position for the DEIR Proposed Project relative to the current operations during the Delta Smelt summer rearing period. Therefore, the DEIR Proposed Action does not appear to be adversely affecting summer habitat. Nevertheless, given the high water cost and the considerable uncertainty associated with the results of the Delta Smelt life cycle model pertaining to summer outflow, it may be prudent to conduct a well-defined and limited adaptive management study to test the hypotheses about increased food availability with a summer outflow action, provided fall X2 is off-ramped. The SWC does not believe the fall X2 action is warranted and would not support maintaining both fall X2 action and a summer adaptive management action. As it relates to a potential summer adaptive management action, the SWC believes that water temperature is a critical factor. Monitoring and studies have suggested that water temperatures have a strong influence on the survival of Delta Smelt in summer and fall. Since new outflow in the summer and fall cannot change water temperatures in the Delta, and Delta Smelt survival is temperature dependent, any potential adaptive management action should occur only when water temperatures could otherwise support Delta Smelt. Ultimately, it is imperative that the descriptions of the summer-fall habitat actions in the state and federal descriptions remain full consistent.	
4	5	While we agree that the current draft LTO is generally proceeding in a positive direction, we have several suggestions regarding the project description and the analysis in the DEIR, primarily in the areas of consistency between state and federal operations plans and in the application of best available science, which are two areas highlighted in our scoping letter. In our July 2023 scoping letter, the SWC [State Water Contractors] emphasized the importance of the LTO project purpose of delivering up to full contract quantities while fully complying with all	The comment references the scoping letter submitted by the SWC to DWR in July 2023, which provides valuable context, but does not raise a significant environmental issue associated with the DEIR. No further response is required to this portion of the comment. The remainder of the comment relates to Chapter 2, Section 2.3.5, "Spring Delta Outflow," Section 2.3.6.3, "One-Time Water Commitment for Delta Outflow," and

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		state and federal laws, consistent with water supply contracts. More specifically, the SWC sought a LTO that is: 1. Consistent with the federal LTO Proposed Action for the operations within the study area of this DEIR; 2. Consistent with the Healthy Rivers and Landscapes program for implementing the Bay Delta Water Quality Control Plan update; and, 3. Based on the best available science. The SWC appreciates that the LTO proposed Project and DEIR largely meet these goals and offers specific comments, as follows, to ensure that these goals are fully met. IV. Spring outlflow action should be consistent between the state and federal descriptions. The DEIR Proposed Project includes a clearly articulated commitment to spring outflow from the SWP, which aligns with the contribution proposed by DWR and the SWP contractors under the HLR [Healthy Rivers and Landscapes] program (DEIR section 2.3.5.1). Under early implementation, the DEIR Proposed Project provides for operating to flow volumes that are "equivalent" to the 2020 ITP [Incidental Take Permit] Condition 8.17, as detailed in DEIR section 2.3.5.2. We think that these "equivalent" volumes should be the same as those proposed in the Spring Outflow action (DEIR section 2.3.5.1), particularly if these volumes are adequate to fulfill the legal obligations under CESA. We urge DWR to ensure that the state and federal descriptions are fully consistent for the spring outflow action and federal biological opinions provided take coverage for fully implementing this action. As we understand the state LTO, DWR has agreed to implement the 100 AF [thousand acre-feet] summer flow action from the 2020 ITP in 2025 with no carry-over option to the subsequent year. First, we ask that the text in the description of the DEIR Proposed action be clarified to make clear that this is a one-time action. We also ask that it be clear that this water may spill, consistent with the current 2020 ITP. It should be noted that if it spills, it will still materialize as outflow. Further, we ask that it be included in the federal LTO so DWR will have federal Endangered Species Act coverage for the action. We request that the modeling and implementation of the DEIR Proposed Project reflect the priority of SWP water rights in the Delta. Any incidental benefits that junior water right holders may have received when SWP exports were constrained under 2020 ITP should not be maintained after the adoption of the new permit.	water rights representation in the modeling conducted for the Proposed Project. DWR developed the "Early Voluntary Agreement Implementation" criteria described in Section 2.3.5.2 in coordination with CDFW. As further described in Section 2.3.5.2, DWR will continue to coordinate with CDFW to develop a final operational plan that considers hydrology and accounting methods. DWR will also continue to coordinate with Reclamation to achieve consistent understanding and description of the spring outflow action. As described in Section 2.3.6.3, "One-Time Water Commitment for Delta Outflow," both the title of the section and the description of the action identify that it is a one-time water commitment. The full text of DWR's commitment is as follows: "In the event that CDFW opts to use this block of water in 2025, DWR has committed to deploying a one-time block of water in 2025 during the summer-fall period for Delta Smelt habitat under the new ITP. DWR will work with CDFW to determine how the block of water would be deployed to meet biological goals, as identified by the DCG." DWR has coordinated with CDFW on the One-Time Water Commitment for Delta Outflow. It will be subject to spill if 2025 is a Wet or Above Normal water year type, consistent with the 2020 ITP; however, the full 100 TAF will be maintained in Oroville Reservoir if WY 2025 is Below Normal. The comment further requests that DWR ensure that the state and federal descriptions of the spring outflow action are fully consistent. This portion of the comment is not a comment on the EIR and no further response is provided. Appendix 4A, Section 4A.2.2, "Proposed Project," identifies that the Proposed Project and associated modeling is generally consistent with existing water rights but does not explicitly model individual water rights, where multiple water right permits, which may

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			have different priorities, may be held by individual agencies. Appendix 4A, Attachment 2, "CalSim 3 Model Assumptions Callouts" provides a description of the SWP and other agencies and generally reflect the full face value of all water rights held by that agency that was assumed in the modeling. The SWP water rights representations in the CalSim 3 model generally reflect the priority of the SWP water rights as the same priority of the CVP. It should be noted that there are some junior [to SWP] water right permits included in other agencies water rights portfolio that have been aggregated together and assumed to be senior to the SWP.
4	6	While we agree that the current draft LTO is generally proceeding in a positive direction, we have several suggestions regarding the project description and the analysis in the DEIR, primarily in the areas of consistency between state and federal operations plans and in the application of best available science, which are two areas highlighted in our scoping letter. In our July 2023 scoping letter, the SWC [State Water Contractors] emphasized the importance of the LTO project purpose of delivering up to full contract quantities while fully complying with all state and federal laws, consistent with water supply contracts. More specifically, the SWC sought a LTO that is: 1. Consistent with the federal LTO Proposed Action for the operations within the study area of this DEIR; 2. Consistent with the Healthy Rivers and Landscapes program for implementing the Bay Delta Water Quality Control Plan update; and, 3. Based on the best available science. The SWC appreciates that the LTO Proposed Project and DEIR largely meet these goals and offers specific comments, as follows, to ensure that these goals are fully met. V. White sturgeon measures considered should be proportional to the SWP effects The SWC [State Water Contractors] acknowledges that recent classification of the White Sturgeon as a candidate under the California Endangered Species Act (CESA) necessitates take coverage for the operations of the SWP. However, our analysis of recent historical data, as articulated in our (June 6, 2024) letter to the California Fish and Game	DWR concurs that SWP south Delta entrainment loss is a relatively low proportion of the White Sturgeon population and has made estimates of percentage loss of similar magnitude as those provided in the comment in its level of take estimate for the White Sturgeon supplement to its LTO ITP Application (ICF 2024:6-9). Regarding the comment's suggestion that the White Sturgeon measure is disproportionate to SWP impact on the species, any measure identified through the risk assessment described in Section 2.3.4, "White Sturgeon Protection Measures," must be roughly proportional in extent to the impact of the SWP's take of White Sturgeon and supported by evidence pursuant to CESA. See Common Response 4, "CEQA and CESA Legal Standards," regarding the different mitigation and minimization measures required in CESA versus CEQA. For additional discussion of the application of CESA to the project in this EIR, see Common Response 11, "Application of CESA Standards." References cited in this response: ICF. 2024. Long-term Operations of the State Water Project Incidental Take Permit White Sturgeon Supplement (No. 2081-2023-054-00). July. (ICF 104469.0.014.01.). Sacramento, CA. Prepared for California Department of Water Resources, Sacramento, CA.

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		Commission (attached [Attachment 1]), does not substantiate the listing of the white sturgeon under CESA. Entrainment in the SWP export facilities is low. The recent 20-year average combined Central Valley Project and SWP total salvage was 80 White Sturgeon (Average 2003-2023, based on calendar-year), and many of these salvaged fish likely survived. The rate of survival of these fish during the salvage process is very good, particularly for larger fish like sturgeon. (See e.g., Buchanan et al. 2021). [Footnote 4: For example, if the 75 percent threshold is met at 90 percent of the time into the anticipated migration season, then greater restrictions should be offramped.] However, even if none of the salvaged sturgeon survived the salvage process, there was likely no population level effect. The best estimates of the adult population of White Sturgeon are about 20,000 pre-algal bloom. Even if half of them died in the 2023 red tide bloom in the Bay and all failed to survive SWP and CVP salvage and release program, which is highly unlikely, a net 80-100 per generation loss would be a net 0.8-1.0% impact at the population level of 10,000, which is very low. For context, CDFW's recent emergency fishery regulation for White Sturgeon provided several options for appropriate harvest rate: <3% (Blackburn et al. 2019); [Footnote 5: For example, if the 75 percent threshold is met at 90 percent of the time into the anticipated migration season, then greater restrictions should be offramped.] 5-10% (Beamesderfer and Farr 1997 [Footnote 6: For example, if the 75 percent threshold is met at 90 percent of the time into the anticipated migration season, then greater restrictions should be offramped.], [when no other sources of significant loss]); and White Sturgeon maximum harvest rates in Washington and Oregon, which is 3.8%. (CDFW 2023, p. pdf 55.) CDFW further reported that the estimated harvest rate from fishing from 2007-2015 ranged from 8-29% (mean 13.4%), and the average harvest rate from 2016-2021 was 8.1%. (CDFW 2023, p. pdf. 54.) For comparison, the harvest rate for the Sturgeon Study from 2009-2021 was 3.5%. All of these harvest rates are higher than the worst case 0.8-1.0% rate at the SWP and CVP export facilities. For these reasons, our review of recent observed data does not support any minimization measures that would mandate operational modifications at the SWP facilities beyond those proposed for other species. Based on the best available scientific information, the measure for the White Sturgeon, as included in the DEIR, is disproportionate in relation to the impact of the SWP on the species, and should not lead to	

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		any operational constraints. Ensuring this is also crucial for maintaining the consistency of the proposed project with the description of the federal LTO.	
4	7	VI. Transparent Governance and Decision-making. The DEIR Proposed Project should include an inclusive, transparent and well-documented decision-making for both real-time operations as well as for the adaptive management program. The SWC further seeks to participate in real-time operations and adaptive management decision-making, and would appreciate having that role reflected in the description of Governance.	Chapter 2, Section 2.3.22, "Governance," provides a description of the governance structure for the SWP and coordinated SWP and CVP operations, and the adaptive management program. The description of the governance structure and process for SWP and CVP operations indicates that "interested parties," and "the SWP and CVP contractors" would be included in the governance structure at various levels including the Delta Monitoring Workgroup and Adaptive Management Teams.
4	8	VII. Conclusion The SWC [State Water Contractors] appreciates DWR's efforts in completing the DEIR in a timely way while also making improvements to the 2020 ITP. We look forward to working with DWR staff to obtain the CESA permit that is fully consistent with federal biological opinions. If you have any questions, please do not hesitate to contact [name redacted] at [phone number redacted].	This is a concluding comment. Specific responses to the specific comments on the DEIR are provided herein. No additional response is required.
4	9	[ATTACHMENT 1: State Water Contractors and San Luis and Delta Mendota Water Authority joint comment letter to California Fish and Game Commission on White Sturgeon, June 6, 2024]	The commenter provided this attachment for reference purposes in support of their comments. Those comments are addressed in these responses to the commenter's letter. DWR has reviewed all comments and will consider all comments in its decision-making process.
4	10	[ATT 1:] On November 29, 2023, several environmental organizations petitioned the Fish and Game Commission ("Commission") to have the California White Sturgeon ("White Sturgeon") listed as threatened under state law ("Petition"). This letter is in response to that Petition. In summary: • The White Sturgeon population size has been stable for the last 14 years. • The Petition ignores several state and federal regulations that are already in place to provide current and ongoing protection for White Sturgeon.	The commenter provided this attachment for reference purposes in support of their comments. Those comments are addressed in these responses to the commenter's letter. DWR has reviewed all comments and will consider all comments in its decision-making process.

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		• The estimated White Sturgeon population size is nearly 7 times larger than the recovery criterion for Green Sturgeon identified in the NMFS 2018 Recovery Plan. • The Petition is flawed and does not rely on the best available science. The State Water Contractors (SWC) [Footnote 1: SWC member agencies: Alameda County Flood Control & Water Conservation District, Zone 7, Alameda County Water District, Antelope Valley-East Kem Water Agency, Casitas Municipal Water District, Castaic Lake Water Agency, Central Coast Water Authority, City of Yuba City, Coachella Valley Water District, County of Kings, Crestline-Lake Arrowhead Water Agency, Desert Water Agency, Dudley Ridge Water District, Empire, West Side Irrigation District, Kem County Water Agency, Littlerock Creek Irrigation District, Metropolitan Water District of Southern California, Mojave Water Agency, Napa County Flood Control and Water Conservation District, Oak Flat Water District, Palmdale Water District, San Bernardino Valley Municipal Water District. San Gabriel Valley Municipal Water District, San Gorgonio Pass Water Agency, San Luis Obispo County Flood Control and Water Conservation District, Santa Clara Valley Water District, Solano County Water Agency, and Tulare Lake Basin Water Storage District] and the San Luis & Delta Mendota Water Authority (SLDMWA) [Footnote 2: SLDMWA member agencies: Banta-Carbona Irrigation District, Broadview Water District, Byron Bethany Irrigation District, Central California Irrigation District, City of Tracy, Columbia Canal Company (a Friend), Del Puerto Water District, Eagle Field Water District, Firebaugh Canal Water District, Fresno Slough Water District, Grassland Water District, Henry Miller Reclamation District #2131, James Irrigation District, Laguna Water District, Mercy Springs Water District, Oro Loma Water District, Pacheco Water District, Panoche Water District, Patterson Irrigation District, Pleasant Valley Water District, Reclamation District 1606, San Benito County Water District, San Luis Water District, Santa Clara Valley Water District (Valley Water), Tranquility Irrigation District, Turner Island Water District, West Stanislaus Irrigation District, and Westlands Water District] are providing these comments on behalf of themselves and their member agencies who work together to provide water to more than 29 million California residents and 1.9 million acres of farmland throughout the state, as well as listed species and millions of waterfowl that depends upon nearly 200,000 acres of managed wetlands and other critical	

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		habitat within the largest contiguous wetland in the western United States.	
4	11	[ATT 1:] For reasons provided in this letter, the Petition is incomplete, lacks evidence, and therefore does not meet minimum standards for acceptance. The Commission should reject the Petition and thereby not add White Sturgeon to the list of candidate species. If the Commission ignores the incompleteness of the Petition and accepts the Petition, the Commission should acknowledge that there is no evidence before it that would support a finding that the operation of the State Water Project (SWP) and Central Valley Project (CVP) is a primary threat to White Sturgeon based on the information presented in this letter. Should the Commission accept the Petition, it should not list the White Sturgeon after the candidacy period, for there is no rationale for supporting such a decision. The Commission recently adopted emergency fishing regulations for White Sturgeon to bring commercial harvest down to sustainable levels, particularly in light of the recent red tide events. Commercial harvest far exceeded levels that are believed to be sustainable, being a recent historic harvest rate of 8-29.6% (2007-2015) [Footnote 3: California Fish and Game Commission, Finding of Emergency and Statement of Proposed Emergency Action, October 27, 2023, p. 1.] of the population when a harvest rate of 3-4% of the population is more in line with published literature and harvest practices of neighboring states. In doing so, the Commission has already taken the most reasonable action to protect the species, and it is an action that is already within the authority of the Commission. There are no actions beyond those already taken by the Commission that are necessary or appropriate for the protection of White Sturgeon. The Commission should allow time to determine if this recent action results in increased species abundance. Therefore, the Commission does not need to list White Sturgeon to continue to protect the species.	The commenter provided this attachment for reference purposes in support of their comments. Those comments are addressed in these responses to the commenter's letter. DWR has reviewed all comments and will consider all comments in its decision-making process.
4	12	[ATT 1:] 1. Petition Should Not be Accepted by the Commission As explained in the March 2024 California Department of Fish and Wildlife (CDFW) Petition Evaluation Report (Evaluation Report), the California Endangered Species Act (CESA) sets forth a two-step process for listing a species. First, the Commission determines whether the California Fish and Game Code § 2074.2 factors have been met and, if so, accepts the Petition. If the Petition is accepted, CDFW has 12 to 18	The commenter provided this attachment for reference purposes in support of their comments. Those comments are addressed in these responses to the commenter's letter. DWR has reviewed all comments and will consider all comments in its decision-making process.

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		months to produce a peer-reviewed report based on the best scientifically available information available to determine whether listing is warranted. The Commission will consider that report and other evidence in the record and make a final listing decision. The Petition fails the first step in this process, and it should not be accepted. The appropriate test for determining whether the Section 2074.2 factors have been met was articulated in the Center for Biological Diversity, which explained that: …the standard, at this threshold in the listing process, requires only that a substantial possibility of listing could be found by an objective, reasonable observer. (Center for Biological Diversity v. Fish and Game Commission (2018) 166 Cal. App. 4th 597, 610-611). An objective and reasonable observer would certainly require that evidence be the foundation of the Petition. There are numerous examples of missing evidence. Some examples are as follows: • The Petition states that "salvage has been episodically high" and cites salvage from 2023. (Petition, p. 20 ["while also recognizing that "high mortality in 2023 likely reflects relatively large cohort of YOY produced following record precipitation and runoff."]). The Petition provides no evidence of the relative effect of salvage on the population of White Sturgeon. Therefore, no evidence was provided as to the degree or immediacy of the effect. • The Petition provides evidence of potential future changes in flow but makes no attempt to provide evidence that would link the potential change in flow to a large and imminent threat to the species. For example, the Petition states that the proposed Delta Conveyance Project and the Sites Reservoir Project, as well as the State Water Resources Control Board staff's Proposed Action (55% of the unimpaired hydrograph) and the proposed Healthy Rivers and Landscapes program that are alternatives in the Water Quality Control Plan update, are all threats to White Sturgeon. (Petition, pp. 27-28). In fact, the California Environmental Quality Act compliance document for each of the proposed projects or actions considered potential effects on White Sturgeon, applying the known flow to year class strength statistical relationship and found that each of these projects or actions would either have little to no negative effect, or a positive effect, on species abundance. [Footnote 4: Final Delta Conveyance EIR,	

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		pp. 12-213 to 12-214; Final Sites Reservoir EIR/S, p. 11-275; and SWRCB Draft Staff Report, p. 7.6.2-38.] The Petition does not provide evidence that would link the flow changes proposed by Sites Reservoir and Delta Conveyance to project-related changes in species abundance, rather, it is assumed. (Petition, p. 27). As it relates to alternatives being considered in the Water Quality Control Plan update, the evidence provided in the Petition and the resulting concern is that these actions would not recover the species, and the cited studies are indicative of flows required for recovery. (Petition, p. 27). The Petition, of course, ignores evidence that the White Sturgeon adult population far exceeds the recovery standard for Green Sturgeon, a very similar species. (NMFS 2018). [Footnote 5: National Marine Fisheries Service. 2018. Recovery Plan for the Southern Distinct Population Segment of Northern American Green Sturgeon (Acipenser medirostris). West Coast region, California Central Valley Office, Sacramento. http://repository.library.noaa.gov/view/noaa/18695] Regardless, the test for whether the listing is warranted is whether there are imminent threats to the species and not whether proposed actions are providing enough benefit. • The Petition describes the "red tide" algal blooms that occurred in 2023 in the Bay and then observed that both Microcystis and White Sturgeon exist in the San Joaquin River. (Petition, p. 30-31). The Petition, however, contains no evidence that would link Microcystis in the San Joaquin River to any change in White Sturgeon abundance or survival. Therefore as it relates to the Delta, there is no evidence of any actual impact to White Sturgeon from Microcystis. • The Petition's data regarding historic abundance is incomplete. Representations of historic population data should not be accepted without the source data also being provided. For example, Petition Figure 3 illustrates data described as commercial harvest data from 1875-1889 but fails to provide the underlying raw data. It is impossible to assess the data on the basis of the graphs alone without simply assuming that the data are correctly presented. The cited source for Figure 3 is Skinner 1962, but neither the figure nor the source data is apparent in that publication, and the location of the reported harvest is unknown. In another example, Petition Figure 4 illustrates the CDFW data, but the age-1 data, in part of the original combined age-0 and age-1 dataset, was excluded. CDFW calculates the annual year-class index from catches of age-0 and age-1 sturgeon in	

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		systematic San Francisco Bay Study trawl surveys. The Petition lists annual year class indices based on catches of age-0 sturgeon, having removed the age-1 data for an unknown reason. There is a parallel Petition to list White Sturgeon filed by the same parties under federal law, but the corresponding figure showing age-0 sturgeon in that federal Petition does not match the corresponding Figure 4 in this state Petition. The reasons for the differences in the presentation of what appears to be the same dataset is not apparent. The data presented in the Petition cannot be verified, and the apparent inconsistencies are not understood. The information presented in the Petition is insufficient, not meeting the minimum required for the "may be warranted" determination, and therefore, the Petition should not be accepted by the Commission. The failure to rely on evidence is important and has real-world implications. For example, the Department of Water Resources would have to obtain new permits for the operation of the SWP and likely adopt significant mitigation during the candidacy period to meet the California Endangered Species Act section 2081 standard for obtaining "take" authorization.	
4	13	[ATT 1:] 2. Listing the White Sturgeon is Not Warranted The current regulatory framework is protective. The White Sturgeon is not appropriate for listing because the existing regulations that manage the Bay-Delta system are protective. The protectiveness of the existing regulations is evidenced by the stable population numbers over the last 14 years and because entrainment at the SWP and CVP water diversion facilities in the south Delta is low relative to species abundance. The Petition's description of alleged SWP and CVP caused changes in outflow is based on a flawed study; and in fact, the SWP and CVP have been supplementing summer outflows for decades compared to what occurred without the CVP and SWP. (Hutton et al. 2017, p. 2522). [Footnote 6: Hutton, P.H., Rath, J.S., Sujoy, B. R. 2017. Freshwater flow to the San Francisco Bay-Delta estuary over nine decades (Part 2), change attribution. Hydrological Processes, 31: 2516-2529.]	The commenter provided this attachment for reference purposes in support of their comments. Those comments are addressed in these responses to the commenter's letter. DWR has reviewed all comments and will consider all comments in its decision-making process.
4	14	[ATT 1:] a. White Sturgeon abundance has been stable for the last 14 years. As reported by CDFW, estimates of White Sturgeon abundance show that the population has been stable from approximately 2008 to 2022, with data for 2023 not yet available. This stable trend is consistent across	The commenter provided this attachment for reference purposes in support of their comments. Those comments are addressed in these responses to the commenter's letter. DWR has reviewed all comments

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		surveys. However, the Petition makes conclusions related to species abundance trends, making a comparison to the highest abundance time-period in more than 100 years, which occurred in the 1980s, and then denoting a downward trend. The White Sturgeon population crashed around 1900 due to commercial overfishing and peaked in the 1980s (see Figures 1-3 [Attachment 1, Exhibits 1, 2, and 3] below), which was an unusually wet time-period. (See Hutton et al. 2017, p. 2504, Fig. 4 [Attachment 1, Exhibit 4], denoting relative wetness of the 1980s). Therefore, any comparison of the White Sturgeon population to the highest abundance time-period would result in a downward trend. As far as determining whether current regulations are protective, it is the recent decade [Footnote 7: The 14-years mentioned in this letter represents the time-period of the 2008/09 and 2019 Biological Opinions and 2020 Incidental take Permit for SWP-CVP operations.] that would inform the question of the immediacy of threats rather than the 30 years since historic peak abundance. The current population is stable. White Sturgeon abundance has been stable for at least 14 years. • From 2007-2021, White Sturgeon abundance of 40-60 inch fish varied between 18,000 and 45,000 (See Fig. 1 [Attachment 1, Exhibit 1], below). The most recent CDFW five-year average abundance estimate (2017-2022) was approximately 33,000. (CDFW 2023, p. PDF 50). [Footnote 8: CDFW (California Department of Fish and Wildlife). 2023. Exhibit 9. Supporting Material for CDFW "White Sturgeon Emergency Regulation Recommendation" Powerpoint. Pages 35–64 in Staff, editor. Fish and Game Commission Staff Summary, October 11-12, 2023 Meeting. California Fish and Game Commission. Available from: https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=216457] • An index of relative abundance based on catch per unit effort in the trammel net survey follows a similar pattern to abundance estimates with relatively stable numbers since 2000. (Fig. 2 [Attachment 1, Exhibit 2], below). • Annual fishery harvest data from commercial passenger fishing vessels generally follows similar patterns to abundance estimates and net survey catch per unit effort. (CDFW 2023). Catch per unit effort has been relatively stable or increasing from 2000-2020. (See Fig.3 [Attachment 1, Exhibit 3], below). However, CDFW 2023 discounted this catch data as a relative measure of abundance because the catch per unit effort was not included in the estimate.	and will consider all comments in its decision-making process.

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		The adult numbers of White Sturgeon substantially exceed the recovery criteria of 3,000 adults identified in the Recovery Plan for the listed North American Green Sturgeon (NMFS 2018). The abundance of White Sturgeon adults was conservatively estimated to be an average of 20,000 between 2007-2011 based on age-specific population estimates in Gingras & DuBois (2013). [Footnote 9: Gingras, M., and J. Dubois. 2013. Monitoring progress toward a CVPIA recovery objective: estimating White Sturgeon abundance by age. IEP (Interagency Ecological Program for the San Francisco Estuary) Newsletter 26(4)6–9. https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentId=74161.] The Petition simply identified a reduction from historic highs in the population and concluded the species must be imperiled, without providing any evidence that the population is not self-sustaining. The Green Sturgeon recovery criteria was based on general principles of conservation biology [Footnote 10: NMFS 2018, p. 39 ["we developed the adult abundance criteria using the best available information from general principles in conservation biology relating population viability to abundance."]] which would be appropriately applied to White Sturgeon as well, with the result being that the White Sturgeon already far exceeds the adult population recovery criteria.	
4	15	[ATT 1, Exhibit 1: Graph showing abundance of white sturgeon]	The commenter provided this attachment for reference purposes in support of their comments. Those comments are addressed in these responses to the commenter's letter. DWR has reviewed all comments and will consider all comments in its decision-making process.
4	16	[ATT 1, Exhibit 2: Graph showing abundance of white sturgeon based on catch]	The commenter provided this attachment for reference purposes in support of their comments. Those comments are addressed in these responses to the commenter's letter. DWR has reviewed all comments and will consider all comments in its decision-making process.
4	17	[ATT 1, Exhibit 3: Graph showing catch of white sturgeon coming from commercial vessels]	The commenter provided this attachment for reference purposes in support of their comments. Those comments are addressed in these responses to the commenter's letter. DWR has reviewed all comments and will consider all comments in its decision-making process.

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4	18	[ATT 1:] b. Entrainment in the SWP and CVP export facilities is low. The Petition identified direct mortality resulting from entrainment at SWP and CVP water export facilities in the south Delta in a list of primary factors imperiling White Sturgeon (San Francisco Baykeeper et al., 2023). The Petition states, "it is clear that: (a) there is no reason to expect high survival of salvaged fish, (b) total mortality will be greater than the number of fish enumerated in salvage because of losses prior to the fish screens, and (c) salvage has been episodically high." (Petition, pp. 28-29). It is difficult to reconcile the very small numbers of White Sturgeon salvaged at the SWP Skinner Delta Fish Protective Facility with the listing petition assertion that direct mortality resulting from entrainment/salvage has a significant impact on White Sturgeon. The only evidence of significant salvage presented in the Petition was one data point, last year, which was a very wet year. (Id). In most years, the impact is practically zero. (See Fig. 4, [Attachment 1, Exhibit 4] below). Years of higher numbers closely follow strong White Sturgeon year classes as abundant small juveniles are vulnerable to entrainment. Numbers decline as White Sturgeon from strong year classes grow out of the vulnerable size range. The numbers of White Sturgeon in the salvage have declined substantially from historical levels in the 1980s, which is at least partially the result of the changes in regulations that manage the SWP and CVP export operations in the south Delta. The population-level impact of salvage is likely very low because the sturgeon salvaged are projected to comprise a very small percentage of the adult population. The recent 20-year average combined total salvage was 80 White Sturgeon. (Average of SWP-CVP salvage, 2003-2023, calendar year.) After salvage, these fish were trucked far away from the SWP and CVP facilities and released into the Delta. The rate of survival of these fish during the salvage process is very good, particularly for larger fish like sturgeon. As reported by Buchanan et al. 2021, [Footnote 11: Buchanan, R.A., Buttermore, E., Israel, J. 2021. Outmigration survival of a threatened steelhead population through a tidal estuary. Can. J. Fish. Aquat. Sci. 78: 1869-1886, p. 1883.] the rate of survival for larger fish like out-migrating steelhead was not statistically different between Old and Middle River where the SWP and CVP export facilities are located,	The commenter provided this attachment for reference purposes in support of their comments. Those comments are addressed in these responses to the commenter's letter. DWR has reviewed all comments and will consider all comments in its decision-making process.

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		and the San Joaquin River, indicating that salvaged White Sturgeon likely have very good survival in the salvage process. The best estimates of the adult population of White Sturgeon are about 20,000 pre-algal bloom. Even if half of them died in the 2023 red tide bloom and all failed to survive the SWP and CVP salvage and release program, which is highly unlikely, a net 80-100 per generation loss would be a net 0.8-1.0% impact at the population level of 10,000, which is very low. For context, CDFW's recent emergency fishery regulation for White Sturgeon provided several options for appropriate harvest rate: [less than] 3% (Blackburn et al. 2019 [Footnote 12: Blackburn, S. E., M. L. Gingras, J. DuBois, Z. J. Jackson, and M. C. Quist. 2019. Population Dynamics and Evaluation of Management Scenarios for White Sturgeon in the Sacramento–San Joaquin River Basin. North American Journal of Fisheries Management 39(5):896–912. https://doi.org/10.1002/nafm.10316]); 5-10% (Beamesderfer and Farr 1997, [Footnote 13: Beamesderfer, R., M. Simpson, G. Kopp, J. Inman, A. Fuller, D. Demko, and S. P. Cramer. 2004. Historical and current information on green sturgeon occurrence in the Sacramento and San Joaquin rivers and tributaries. State Water Contractors, Sacramento, CA. https://www.noaa.gov/sites/default/files/legacy/document/2020/Oct/07354626515.pdf] [when no other sources of significant loss]); and White Sturgeon maximum harvest rates in Washington and Oregon, which is 3.8%. (CDFW 2023, p. pdf 55.) CDFW further reported that the estimated harvest rate from fishing from 2007-2015 ranged from 8-29% (mean 13.4%), and the average harvest rate from 2016-2021 was 8.1%. [Footnote 14: In reporting this estimate, CDFW acknowledged that low tag estimates in 2018 and 2022 precluded harvest rate estimates.] (CDFW 2023, p. pdf. 54.) For comparison, the harvest rate for the Sturgeon Study from 2009-2021 was 3.5%. [Footnote 15: From 2009 to 2021 the average harvest rate during the study was 353.38. Assuming a population of 10,000, the harvest rate is 3.5%. A population of 10,000 was assumed in this calculation to provide a comparison to the worst case mortality estimate for SWP-CVP exports. https://wildlife.ca.gov/Conservation/Delta/Sturgeon-Study.] All of these harvest rates are higher than the worst case 0.8-1.0% rate at the SWP and CVP export facilities.	
4	19	[ATT 1, Exhibit 4: Graph showing salvage of white sturgeon at SWP and CVP facilities]	The commenter provided this attachment for reference purposes in support of their comments. Those comments are addressed in these responses to the

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			commenter's letter. DWR has reviewed all comments and will consider all comments in its decision-making process.
4	20	[ATT 1:] c. Trends in Species Survival are Driven by Wet Hydrology and Not SWP-CVP Operations. The SWC and SLDMWA acknowledge that there is an April-July Delta outflow-to-year class strength statistical relationship for White Sturgeon. Based on the shape of the relationship, this relationship is really driven by wet-year hydrology and not project operations. The trends in year-class strength match wet-year hydrology very closely. (See Fig. 5 [Attachment 1, Exhibit 5], below). The SWP and CVP cannot create wet years using reservoir releases or curtailing exports. The Reis et al. study cited in the Petition is flawed and cannot be relied on for the proposition that the SWP and CVP have been creating more drought years. In fact, the SWP and CVP are heavily regulated in April-May under three different regulatory frameworks by four different state and federal agencies and will continue to be so regulated into the foreseeable future. (See Figure 5b [Attachment 1, Exhibit 6] below, comparing exports to outflow). During summer months, particularly July and August, the SWP and CVP have been augmenting flows for decades.	The commenter provided this attachment for reference purposes in support of their comments. Those comments are addressed in these responses to the commenter's letter. DWR has reviewed all comments and will consider all comments in its decision-making process.
4	21	[ATT 1, Exhibit 5: Graph showing reproductive success for white sturgeon]	The commenter provided this attachment for reference purposes in support of their comments. Those comments are addressed in these responses to the commenter's letter. DWR has reviewed all comments and will consider all comments in its decision-making process.
4	22	[ATT 1, Exhibit 6: Graph showing historical SWP and CVP exports and Delta flows]	The commenter provided this attachment for reference purposes in support of their comments. Those comments are addressed in these responses to the commenter's letter. DWR has reviewed all comments and will consider all comments in its decision-making process.
4	23	[ATT 1:] i. The White Sturgeon year-class strength relationship is driven by the highest flow years. There is a statistical relationship between White Sturgeon year-class strength and Delta outflow in the months of April-July in the Sacramento River. (Fish 2010.) [Footnote 16: Fish, M. A. 2010. White Sturgeon Year-Class Index for the San Francisco Estuary and its Relation to Delta	The commenter provided this attachment for reference purposes in support of their comments. Those comments are addressed in these responses to the commenter's letter. DWR has reviewed all comments and will consider all comments in its decision-making process.

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		Outflow. IEP Newsletter 23(2):80–84. https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentId=26542] Since each month within the April-July time-period is also cross-correlated with the following and prior month, it is difficult to determine which months within that range are most important to the species; as the statistical relationship for the months between April-July, April-June, April-May, and May alone are all practically the same, with any minor differences not being statistically significant. The ability of within-year water management strategies to affect year-class strength is unclear, given the large volumes of discharge associated with successful recruitment. This pattern appears to be driven by wet water years. This is because the flow-year-class strength relationship is not linear. Depending on how it is calculated, the threshold for significant recruitment is approximately 50,000 cfs, when measured by water-year average delta outflow, and 40,000 cfs when measured by April-July Sacramento River flow. [Footnote 17: Sum of Sacramento River flow at Freeport and Yolo Bypass inflow to the Delta.] (See Figures 6 and 7 [Attachment 1, Exhibit 7]). The mechanisms for flow-related recruitment are not well understood, so the appropriate management action is unknown. The bottleneck occurs somewhere in the incubation, hatching, downstream dispersal, or early rearing stages between spring and late summer. Hypotheses for key factors have included the availability of suitable spawning habitat, which includes clean, rocky substrate and turbulence with resting areas nearby, higher predation during low flow conditions, dispersal into suboptimal habitats downstream, food availability during critical first feeding, or a combination thereof. (Coutant 2004 [Footnote 18: Coutant, C. C. 2004. A riparian habitat hypothesis for successful reproduction of white sturgeon. Reviews in Fisheries Science. 12:23-73]; Gadomski & Parsley 2005 [Footnote 19: Gadomski, D. M., and M. J. Parsley. 2005. Laboratory studies on the vulnerability of young white sturgeon to predation. North American Journal of Fisheries Management 25:667-674]; Hatten et al. 2018 [Footnote 20: Hatten, J. R., M. J. Parsley, T. R. Batt and R. L. Fosness. 2018. Substrate and flow characteristics associated with White Sturgeon recruitment in the Columbia River Basin. Heliyon. 2018 May 21;4(5):e00629. doi: 10.1016/j.heliyon.2018.e00629. PMID: 29872763; PMCID: PMC5986543]; Hildebrand et al. 1999 [Footnote 21: Hildebrand, L., C. McLeod and S. McKenzie. 1999. Status and management of white sturgeon in the Columbia River in British	

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		Columbia, Canada: an overview. Journal of Applied Ichthyology 15:164-172.], 2016 [Footnote 22: Hildebrand, L. R., A. D. Schreier, S. O. McAdam, M. J. Parsley, V. L. Paragamian and S. P. Young. 2016. Status of White Sturgeon (Acipenser transmontanus Richardson, 1863) throughout the species range, threats to survival, and prognosis for the future. Journal of Applied Ichthyology 32:261-312. https://doi.org/10.1111/jai.13243]; Kohlhorst 1980 [Footnote 23: Kohlhorst, D. W. 1980. Recent trends in White Sturgeon population in California's Sacramento-San Joaquin Estuary. California Fish and Game 66:210-219.]; Kohlhorst et al. 1991 [Footnote 24: Kohlhorst, D. W., L. W. Botsford, J. S. Brennan and G. M. Calliet. 1991. Aspects of the structure and dynamics of an exploited central California population of White Sturgeon (Acipenser transmontanus). Pages 277 to 293 in P. Williot, editor. Acipenser – Actes du premier colloque international sur l'esturgeon. Bordeaux 3-6 octobre 1989. CEMAGREF]; McAdam 2012 [Footnote 25: McAdam, D. S. O. 2012. Diagnosing causes of white sturgeon (Acipenser transmontanus) recruitment failure and the importance of substrate condition to yolksac larvae survival. Ph.D. Dissertation. University of British Columbia. Vancouver, B. C.], McAdam et al. 2008 [Footnote 26: McAdam, S., C. Williamson, and J. Vasquez. 2008. A conceptual model of white sturgeon recruitment failure in the Nechako River, Canada, based on hydraulic modeling and biological investigations. 7th International Symposium on Ecohydraulics, Jan 12-16, 2008, Concepcion, Chile]; McCabe & Tracy 1994 [Footnote 27: McCabe G. T., Jr., and C. A. Tracy. 1994. Spawning and early life history of white sturgeon, Acipenser transmontanus, in the lower Columbia River. Fishery Bulletin 92:760-772]; Miller & Beckman 1996 [Footnote 28: Miller, A. I., and L. G. Beckman. 1996. First record of predation on white sturgeon eggs by sympatric fishes. Transactions of the American Fisheries Society 125:338-340]; Paragamian et al. 2001 [Footnote 29: Paragamian, V. L., G. Kruse, and V. Wakkinen. 2001. Spawning habitat of Kootenai River white sturgeon, post-Libby Dam. North American Journal of Fisheries Management 21:22–33]; Paragamian & Wakkinen 2002 [Footnote 30: Paragamian, V. L., and V. D. Wakkinen. 2002. The effects of flow and temperature on the spawning of Kootenai River white sturgeon. Journal of Applied Icthyology 18:608-61]; Parsley & Beckman 1994 [Footnote 31: Parsley, M. J., and L. G. Beckman. 1994. White sturgeon spawning and rearing habitat in the lower Columbia River. North American Journal of Fisheries Management 14:812-827]; Parsley et al. 1993, 2002. [Footnote 32: Parsley, M. J., L. G.	

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		Beckman, and G. T. McCabe, Jr. 1993. Spawning and rearing habitat use by white sturgeons in the Columbia River downstream from McNary Dam. Transactions of the American Fisheries Society 122:217-227.]) Due to the shape of the flow-abundance relationship, it does not seem that additional flow in average or low water years can benefit these species. Regardless of the month or season of important outflow from April-July, SWP and CVP export operations are not negatively impacting outflow in these months. Existing and foreseeable regulations already limit SWP and CVP diversions in April and May, including in wet years. In April and May, SWP and CVP exports were limited by an export-to-inflow ratio export restriction contained in State Water Resources Control Board water right Decision 1641 (D-1641). In the existing 2020 Incidental Take Permit that regulates SWP exports, there is an additional inflow-to-export restriction from April to May. See Figure 5b. The proposed Long-Term Operations Plan (LTO) for the SWP and CVP also includes significant pumping restrictions in March-May, and June in some water-year types. At the same time, in the July-August time-period, the SWP and CVP have been supporting outflow for decades. (Hutton et al. 2017, p. 2522). [Footnote 33: Hutton, P.H., Rath, J.S., Sujoy, B. R. 2017. Freshwater flow to the San Francisco Bay-Delta estuary over nine decades (Part 2), change attribution. Hydrological Processes, 31: 2516-2529] The cause of changes in flow in spring and summer over nine decades was a mix of water project and non-water project diversions. (Id. At p. 2524). The existing and foreseeable regulations governing the CVP and SWP are protective in the spring, and CVP and SWP operations have been improving conditions in the summer.	
4	24	[ATT 1, Exhibit 7: Graphs showing Delta outflow and Sacramento River discharge 1980-2020]	The commenter provided this attachment for reference purposes in support of their comments. Those comments are addressed in these responses to the commenter's letter. DWR has reviewed all comments and will consider all comments in its decision-making process.
4	25	[ATT 1:] ii. Petition incorrectly represents changes in flow and attribution. The Petition makes several broad statements suggesting that large changes in outflow have occurred. (See, e.g., Petition section 6.2). Specifically, the Petition argues that the operation of the SWP and CVP	The commenter provided this attachment for reference purposes in support of their comments. Those comments are addressed in these responses to the commenter's letter. DWR has reviewed all comments

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		have caused wet and above-normal water years to be reclassified as below normal or drier. (Petition, p. 25). The Petition relies heavily on Reis et al. 2019 to support this conclusion and its conclusion that, "water diversion and storage reduce the frequency and quality of conditions that favor California White Sturgeon recruitment." (Petition, p. 25). The Reis et al. paper cannot be relied on for these conclusions as it uses unimpaired flow as a representation of without project hydrology in the valley. This is a mistake, as the unimpaired flow is a theoretical calculation of flow that does not account for water consumption by native plants or the historic spreading of water across the floodplains without levees that would have occurred in pre-development conditions. In fact, when evapotranspiration from native vegetation is considered, the pre-development outflow is similar to contemporary outflow. (Fox et al. 2015, [Footnote 34: Fox, P., Hutton, P. H., Howes, D. J., Draper, A. J., & Sears, L. (2015). Reconstructing the natural hydrology of the San Francisco Bay-Delta watershed. Hydrology and Earth System Sciences, 19, 4257–4274] as well as, Howes et al. 2015 [Footnote 35: Howes, D.J.; Fox, P.; Hutton, P.H. Evapotranspiration from Natural Vegetation in the Central Valley of California: Grass Reference-Based Vegetation Coefficients and the Dual Crop Coefficient Approach. J. Hydrol. Eng. 2015, 20, 04015004.]). The Reis et al. paper also attributes all changes in outflow to SWP and CVP exports, which is incorrect. In fact, outflow is a result of all of the diversions throughout the entire watershed, of which SWP and CVP south of Delta diversions are a portion. And finally, the Reis et al. paper should not be relied on for a comparison of the recent and historic occurrence of so-called low outflow years (or drought years) because of how that paper recalculated water-year type using artificial thresholds binning ranges of historic water years, which obscures the trends. (See description of this recalculation by Reis et al. 2019, p. 6). In short, the SWP and CVP cannot change the water-year type using project operations.	and will consider all comments in its decision-making process.
4	26	[ATT 1:] d. Sites Reservoir, Delta Conveyance Project, Water Quality Control Plan Update, and Voluntary Agreements will not impair species abundance. The Petition objects to Sites Reservoir and the Delta Conveyance Project because of water diversions proposed during wet water years, particularly in April and May. (Petition, p. 27-28). The Petition objects to	The commenter provided this attachment for reference purposes in support of their comments. Those comments are addressed in these responses to the commenter's letter. DWR has reviewed all comments and will consider all comments in its decision-making process.

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		the update to the Water Quality Control Plan because it concludes based on the opinion that the Proposed Action of 55% of the unimpaired hydrograph is not enough outflow. (Id.) The Petition objects to the Voluntary Agreements (Healthy Rivers and Landscapes Program or HR&L Program), which is a proposed implementation alternative for the update to the Bay-Delta Water Quality Control Plan, because the Petition says that the HR&L Program would reduce outflow. (Id). It should be noted that the Delta Conveyance Project and Sites Reservoir will be operating under the permit authority of the California Department of Fish and Wildlife and the United States Fish and Wildlife Service as those projects have sought and will continue to update, approvals for their respective operations plans and associated compliance with the California Environmental Quality Act and the National Environmental Policy Act, adopting mitigation when appropriate. These projects will also seek permit amendments and/or assignments from the State Water Resources Control Board, which already considers White Sturgeon to be part of its decision-making process. All of these state and federal agencies will be making decisions related to outflow for the protection of species and will be assessing the satisfaction of various legal requirements in the context of multiple species with species year-class strength-outflow relationships. As it relates to the Delta Conveyance Project, it is proposed to divert new flows only under excess flow conditions in the Delta, and the diversion will be subject to new proposed restrictions, including in wet years. [Footnote 36: Final DCP EIR, Section 3.16.1, pp. 3-142 to 3-144] Since the Delta Conveyance Project is a dual conveyance facility that will divert in coordination with existing SWP facilities, it is proposed to operate to any spring outflow requirements under the proposed update to the Long-Term Operations of SWP and CVP, including in above-normal water years. [Footnote 37: Draft Long-Term Operations of the State Water Project Facilities EIR, Section 2.3.5, pp. 2-31 to 2-33] The Sites Reservoir Project will have an Operational Agreement with the Department of Water Resources and the Bureau of Reclamation that will require that Sites Reservoir to not divert while the SWP and CVP are meeting Sacramento River inflow and outflow requirements, in addition to protective, operational criteria that are part of Sites Reservoir's operations plan. [Footnote 38: Final Sites Reservoir EIR, p. 2-80, Table 2-5.]	

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		The Petition also objects to the Water Board's Proposed Action as described in the Water Board's Draft Staff Report. The Petition, however, ignores the regulatory framework within which the Water Board will make a decision under state and federal law when it approves the Water Quality Control Plan update, which requires that the Water Board balance the protection of beneficial uses that include urban, agricultural, and environmental uses. The Petition simply asserts that more flow would be better. (Petition, p. 28). This is not evidence of injury to White Sturgeon. As part of the Water Board's consideration of the Water Quality Control Plan update, it will also be considering the HR&L Program[.] This program includes approximately 700,000 acre-feet of additional outflow, which is to be primarily provided in April and May. The Petition's citation to SWRCB 2023, Table G3a-10, shows a small reduction in wet year outflow. This change in wet water years is a result of reservoir refill, which is needed because stored water is released during drier water year types. To put this in context, wet water year conditions are when flooding occurs and represent the conditions that were the subject of the Governor's new legislation approving new Water Code §1242.1, which encourages water diversions to manage flood risk in wet years to such an extent that water rights are not necessary. It is during these flood risk conditions that reservoir refill is most appropriate. Regardless, the estimated decrease in outflow is quite small relative to the flows that exist during wet conditions.	
4	27	[ATT 1:] e. White Sturgeon distribution is broad, and its productivity is stable. The population is widely distributed in Sacramento-San Joaquin system habitats, including rivers, Delta, estuary, and marine waters. (CDFW 2024, Figure 1). [Footnote 39: CDFW (California Department of Fish and Wildlife). 2024. Report to the Fish and Game Commission. Evaluation of the petition from San Francisco Baykeeper, The Bay Institute, Restore the Delta, and California Sportfishing Protection Alliance to list White Sturgeon (Acipenser transmontanus) as threatened under the California Endangered Species Act. California Department of Fish and Wildlife, P.O. Box 944209, Sacramento CA 94244-2090. 19 pp. https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=221413&inline] Spawning habitat is distributed over 70 miles of the Sacramento River mainstem, and spawning also occurs at a second site in the San Joaquin River. Spawning likely occurs in every year such that significant recruitment may be	The commenter provided this attachment for reference purposes in support of their comments. Those comments are addressed in these responses to the commenter's letter. DWR has reviewed all comments and will consider all comments in its decision-making process.

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		produced in years of suitable environmental conditions. The population is characterized by a broad distribution of size classes representing multiple cohorts. (Fig. 8 [Attachment 1, Exhibit 7], below). Productivity, in the form of periodic strong year classes has been sufficient to sustain the current population level and has limited harvest in the recreational fishery. The population exhibits high levels of genetic diversity in comparison with other White Sturgeon populations throughout their range (Drauch Schreier et al. 2013). For all of these reasons, listing the White Sturgeon is not warranted.	
4	28	[ATT 1, Exhibit 7: Graphs showing distribution of white sturgeon sizes]	The commenter provided this attachment for reference purposes in support of their comments. Those comments are addressed in these responses to the commenter's letter. DWR has reviewed all comments and will consider all comments in its decision-making process.
4	29	[ATT 1:] The SWC and SLDMWA appreciate this opportunity to comment on the White Sturgeon Petition. If you have any questions, please contact [name] at [email redacted] or [name] at [email redacted].	This information describes the structure or organization of the comment letter, the background of the organization or individual commenter, clarification on the submittal of the comment letter, or general introductory text. It is not a comment on the contents of the DEIR. DWR has reviewed all comments and will consider all comments in its decision-making process.
5	1	Can you please provide me with the materials (powerpoint slides and anything else) from the Draft EIR hearing? Thank you!	This is not a comment on the contents of the DEIR. Requests for information were responded to in a timely manner within the comment period.
6	1	The report fails to adequately address the effect of the project on public trust interests of access to and use of navigable waters, their beds and bank below ordinary annual highwater mark and lands subject to annual flooding in an ordinary year from overflow; and, of access to and use of state (including local) agency owned land for fishing and formerly state-owned land transferred out after November 8, 1910. At this time: State Parks has closed state-owned islands subject to its administration without considering and avoiding interference with the public right to fish on state-owned land; other state and local land administrators have leased state[-owned] land subject to their administration to farmers who exclude the public desiring to fish from and on the land.	Please see Common Response 10, "Public Trust," for a response to these comments relating to the public trust law.

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		Under the public trust doctrine an agency considering making a decision which may affect a public trust interest, such as public access to and use of navigable [sic] waters including their beds and banks and lands subject to annual flooding, avoiding so far as feasible any adverse interference; and providing this consideration in a public manner facilitating public participation. So, what is the anticipated effect of this project on public access to and use of navigable waters including their temporarily dry beds and banks below ordinary high water mark and lands subject to flooding in an ordinary year from their overflow; and, what is the anticipated effect of this project on public access to and use of state (including local agency) agency owned lands for fishing; and on access to and use of formerly state-owned lands transferred out of state-ownership after November 8, 1910, for fishing?	
7	1	Please see the attached comments for your project. If you have any questions, please let me know.	This information describes the structure or organization of the comment letter, the This information describes the structure or organization of the comment letter, the background of the organization or individual commenter, clarification on the submittal of the comment letter, or general introductory text. It is not a comment on the contents of the DEIR. DWR has reviewed all comments and will consider all comments in its decision-making process.
7	2	COMMENTS TO REQUEST FOR REVIEW FOR THE DRAFT ENVIRONMENTAL IMPACT REPORT, LONG-TERM OPERATION OF THE STATE WATER PROJECT IN THE SACRAMENTO-SAN JOAQUIN DELTA, SUISUN MARSH, AND SUISUN BAY, SCH#2023060467, MULTIPLE COUNTIES Pursuant to the State Clearinghouse's 29 May 2024 request, the Central Valley Regional Water Quality Control Board (Central Valley Water Board) has reviewed the Request for Review for the Draft Environmental Impact Report for the Long-Term Operation of the State Water Project in the Sacramento-San Joaquin Delta, Suisun Marsh, and Suisun Bay, located in Multiple Counties (Alameda, Contra Costa, Sacramento, San Joaquin, Solano, Sutter, and Yolo). Our agency is delegated with the responsibility of protecting the quality of surface and groundwaters of the state; therefore our comments will address concerns surrounding those issues.	This information describes the structure or organization of the comment letter, the background of the organization or individual commenter (specifically the process for regional water quality control planning), clarification on the submittal of the comment letter, or general introductory text. It is not a comment on the contents of the DEIR. DWR has reviewed all comments and will consider all comments in its decision-making process.

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		I. Regulatory Setting Basin Plan The Central Valley Water Board is required to formulate and adopt Basin Plans for all areas within the Central Valley region under Section 13240 of the Porter-Cologne Water Quality Control Act. Each Basin Plan must contain water quality objectives to ensure the reasonable protection of beneficial uses, as well as a program of implementation for achieving water quality objectives with the Basin Plans. Federal regulations require each state to adopt water quality standards to protect the public health or welfare, enhance the quality of water and serve the purposes of the Clean Water Act. In California, the beneficial uses, water quality objectives, and the Antidegradation Policy are the State's water quality standards. Water quality standards are also contained in the National Toxics Rule, 40 CFR Section 131.36, and the California Toxics Rule, 40 CFR Section 131.38. The Basin Plan is subject to modification as necessary, considering applicable laws, policies, technologies, water quality conditions and priorities. The original Basin Plans were adopted in 1975, and have been updated and revised periodically as required, using Basin Plan amendments. Once the Central Valley Water Board has adopted a Basin Plan amendment in noticed public hearings, it must be approved by the State Water Resources Control Board (State Water Board), Office of Administrative Law (OAL) and in some cases, the United States Environmental Protection Agency (USEPA). Basin Plan amendments only become effective after they have been approved by the OAL and in some cases, the USEPA. Every three (3) years, a review of the Basin Plan is completed that assesses the appropriateness of existing standards and evaluates and prioritizes Basin Planning issues. For more information on the Water Quality Control Plan for the Sacramento and San Joaquin River Basins, please visit our website: http://www.waterboards.ca.gov/centralvalley/water_issues/basin_plans/	
7	3	Total Maximum Daily Load [TMDL] - Planning and Assessment To minimize sediment movement that could trigger algal blooms, the Central Valley Water Board recommends the project activities occur outside of the timeframe of June through September. Portions of the Delta, Suisun Bay, and Suisun Marsh are within the project area are currently on the Clean Water Act Section 303(d) List of Impaired Waters due to chlordane, DDT, diazinon, dieldrin, electrical conductivity, Group A pesticides, invasive species, mercury, PCBs, and	The scope of the DEIR for the Long-Term Operations of the State Water Project does not include activities that would involve sediment movement relative to baseline conditions. Furthermore, as described in Chapter 5, "Surface Water Quality," Sections 5.3.3.1, "Sacramento River From Feather River to Confluence," and 5.3.3.2, "Delta," the Proposed Project would result in little to no change in most water quality parameters based on the small modeled changes in upstream reservoir storage

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		toxicity. Central Valley Water Board staff recommends referencing the most current 303(d) list and requirements contained in existing TMDLs for the Delta, Suisun Bay, and Suisun Marsh within the EIR, discussing any potential short- and long-term effects of these pollutants from project activities or program level impacts, and discussing mitigation measures and/or best management practices to reduce potential effects.	and Sacramento River flow rates. Therefore, the Proposed Project would have little to no effect on chlordane, DDT, diazinon, dieldrin, Group A pesticides, invasive species, mercury, PCBs, and toxicity in the study area. As such, the assessment focused on effects to Delta electrical conductivity, chloride, and cyanobacteria harmful algal blooms (CHABs). Impacts to water quality were determined to be less than significant, therefore no mitigation is required.
7	4	Antidegradation Considerations All wastewater discharges must comply with the Antidegradation Policy (State Water Board Resolution 68-16) and the Antidegradation Implementation Policy contained in the Basin Plan. The Antidegradation Implementation Policy is available on page 74 at: https://www.waterboards.ca.gov/centralvalley/water_issues/basin_plans/sacsjr_201805.pdf In part it states: Any discharge of waste to high quality waters must apply best practicable treatment or control not only to prevent a condition of pollution or nuisance from occurring, but also to maintain the highest water quality possible consistent with the maximum benefit to the people of the State. This information must be presented as an analysis of the impacts and potential impacts of the discharge on water quality, as measured by background concentrations and applicable water quality objectives. The antidegradation analysis is a mandatory element in the National Pollutant Discharge Elimination System and land discharge Waste Discharge Requirements (WDRs) permitting processes. The environmental review document should evaluate potential impacts to both surface and groundwater quality.	The scope of the DEIR for the Long-Term Operations of the State Water Project does not include activities that would involve the discharge of wastewater. Therefore, DWR will not be seeking to obtain a National Pollutant Discharge Elimination System permit from the Central Valley Water Board and completing an antidegradation analysis is not applicable to the Proposed Project. Chapter 5 provides an assessment of impacts to surface water quality, which does address the potential for the Proposed Project to cause degradation that would result in an increased risk for adverse effects on beneficial uses. Groundwater levels and quality are affected by surface water hydrology, annual precipitation and its percolation, groundwater pumping, land uses, and surface water quality. As described in the Initial Study in Appendix 3A, the project would have no impact on groundwater recharge. Therefore, the Proposed Project also would have little to no impact on groundwater quality.
7	5	II. Permitting Requirements Construction Storm Water General Permit Dischargers whose project disturb one or more acres of soil or where projects disturb less than one acre but are part of a larger common plan of development that in total disturbs one or more acres, are required to obtain coverage under the General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities (Construction General Permit), Construction General Permit Order No. 2009-0009-DWQ. Construction activity subject to this permit includes	The scope of the DEIR for the Long-Term Operations of the State Water Project does not include construction related activities, therefore will not require a Construction Storm Water General Permit. Please see Common Response 1, "Scope of Analysis," and Chapter 2, "Project Description," for more information on the project objectives and scope.

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		clearing, grading, grubbing, disturbances to the ground, such as stockpiling, or excavation, but does not include regular maintenance activities performed to restore the original line, grade, or capacity of the facility. The Construction General Permit requires the development and implementation of a Storm Water Pollution Prevention Plan (SWPPP). For more information on the Construction General Permit, visit the State Water Resources Control Board website at: http://www.waterboards.ca.gov/water_issues/programs/stormwater/constpermits.shtml.	
7	6	Phase I and II Municipal Separate Storm Sewer System (MS4) Permits [Footnote 1: Municipal Permits = The Phase I Municipal Separate Storm Water System (MS4) Permit covers medium sized Municipalities (serving between 100,000 and 250,000 people) and large sized municipalities (serving over 250,000 people). The Phase II MS4 provides coverage for small municipalities, including non-traditional Small MS4s, which include military bases, public campuses, prisons and hospitals.] The Phase I and II MS4 permits require the Permittees reduce pollutants and runoff flows from new development and redevelopment using Best Management Practices (BMPs) to the maximum extent practicable (MEP). MS4 Permittees have their own development standards, also known as Low Impact Development (LID)/postconstruction standards that include a hydromodification component. The MS4 permits also require specific design concepts for LID/post-construction BMPs in the early stages of a project during the entitlement and CEQA process and the development plan review process. For more information on which Phase I MS4 Permit this project applies to, visit the Central Valley Water Board website at: http://www.waterboards.ca.gov/centralvalley/water_issues/storm_water/municipal_permits/ For more information on the Phase II MS4 permit and who it applies to, visit the State Water Resources Control Board at: http://www.waterboards.ca.gov/water_issues/programs/stormwater/phase_ii_municipal.shtml.	The scope of the DEIR for the Long-Term Operations of the State Water Project does not include new development or redevelopment related activities, therefore will not require Phase I and II Municipal Separate Storm Sewer System (MS4) Permits. Please see Common Response 1, "Scope of Analysis," and Chapter 2, "Project Description," for more information on the project objectives and scope.
7	7	Industrial Storm Water General Permit Storm water discharges associated with industrial sites must comply with the regulations contained in the Industrial Storm Water General Permit Order No. 2014- 0057-DWQ. For more information on the Industrial Storm Water General Permit, visit the Central Valley Water Board website at:	The scope of the DEIR for the Long-Term Operations of the State Water Project does not include facilities that would require an Industrial Storm Water General Permit. Please see Common Response 1, "Scope of Analysis," and Chapter 2, "Project Description," for more

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		http://www.waterboards.ca.gov/centralvalley/water_issues/storm_water/industrial_general_permits/index.shtml.	information on the project objectives, scope, and project facilities.
7	8	Clean Water Act Section 404 Permit If the project will involve the discharge of dredged or fill material in navigable waters or wetlands, a permit pursuant to Section 404 of the Clean Water Act may be needed from the United States Army Corps of Engineers (USACE). If a Section 404 permit is required by the USACE, the Central Valley Water Board will review the permit application to ensure that discharge will not violate water quality standards. If the project requires surface water drainage realignment, the applicant is advised to contact the Department of Fish and Game for information on Streambed Alteration Permit requirements. If you have any questions regarding the Clean Water Act Section 404 permits, please contact the Regulatory Division of the Sacramento District of USACE at (916) 557-5250.	Please see Chapter 2, Section 2.1.1, "Project Objectives," regarding the project's purpose and objectives, including DWR's continuing commitment to operate the State Water Project in compliance with all state and federal water quality and environmental laws. The scope of the EIR for the Long-Term Operations of the State Water Project does not include dredging or filling activities and therefore does not require a Clean Water Act Section 404 Permit. Please see Common Response 1, "Scope of Analysis," and Chapter 2, "Project Description," for more information on the project objectives and scope. Please see Response to Comment 7-9 as well.
7	9	Clean Water Act Section 401 Permit – Water Quality Certification If an USACE [United States Army Corps of Engineers] permit (e.g., Non-Reporting Nationwide Permit, Nationwide Permit, Letter of Permission, Individual Permit, Regional General Permit, Programmatic General Permit), or any other federal permit (e.g., Section 10 of the Rivers and Harbors Act or Section 9 from the United States Coast Guard), is required for this project due to the disturbance of waters of the United States (such as streams and wetlands), then a Water Quality Certification must be obtained from the Central Valley Water Board prior to initiation of project activities. There are no waivers for 401 Water Quality Certifications. For more information on the Water Quality Certification, visit the Central Valley Water Board website at: https://www.waterboards.ca.gov/centralvalley/water_issues/water_quality_certification/.	Please see Chapter 2, Section 2.1.1, "Project Objectives," regarding the project's purpose and objectives, including DWR's continuing commitment to operate the State Water Project in compliance with all state and federal water quality and environmental laws including the Bay Delta Water Quality Control Plan for the Sacramento and San Joaquin River basins. The Bay Delta Water Quality Control Plan is reviewed for compliance with the Water Code Section 13240 and federal Clean Water Act Section 303(c) (33 U.S.C. § 1313(c)) and acts as a regulatory reference for meeting the state and federal requirements for water quality control (40 CFR 131.20). The Proposed Project is not seeking additional permits from the U.S. Army Corps of Engineers.
7	10	Waste Discharge Requirements – Discharges to Waters of the State If USACE [United States Army Corps of Engineers] determines that only non-jurisdictional waters of the State (i.e., "nonfederal" waters of the State) are present in the proposed project area, the proposed project may require a Waste Discharge Requirement (WDR) permit to be issued by Central Valley Water Board. Under the California Porter-Cologne Water Quality Control Act, discharges to all waters of the State, including all wetlands and other waters of the State including, but not limited to, isolated wetlands, are subject to State regulation. For more information on the Waste Discharges to Surface Water NPDES Program and WDR	Please see Response to Comment 7-9. The scope of the EIR for the Long-Term Operations of the State Water Project does not include only non-jurisdictional waters of the State and therefore does not require a Waste Discharge Requirement. Please see Common Response 1, "Scope of Analysis," and Chapter 2, "Project Description," for more information on the project objectives and scope including the geographical scope.

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		processes, visit the Central Valley Water Board website at: https://www.waterboards.ca.gov/centralvalley/water_issues/waste_to_surface_water/. Projects involving excavation or fill activities impacting less than 0.2 acre or 400 linear feet of non-jurisdictional waters of the state and projects involving dredging activities impacting less than 50 cubic yards of non-jurisdictional waters of the state may be eligible for coverage under the State Water Resources Control Board Water Quality Order No. 2004-0004-DWQ (General Order 2004-0004). For more information on the General Order 2004-0004, visit the State Water Resources Control Board website at: https://www.waterboards.ca.gov/board_decisions/adopted_orders/water_quality/2004/wqo/wqo2004-0004.pdf	
7	11	Dewatering Permit If the proposed project includes construction or groundwater dewatering to be discharged to land, the proponent may apply for coverage under State Water Board General Water Quality Order (Low Threat General Order) 2003-0003 or the Central Valley Water Board's Waiver of Report of Waste Discharge and Waste Discharge Requirements (Low Threat Waiver) R5-2018-0085. Small temporary construction dewatering projects are projects that discharge groundwater to land from excavation activities or dewatering of underground utility vaults. Dischargers seeking coverage under the General Order or Waiver must file a Notice of Intent with the Central Valley Water Board prior to beginning discharge. For more information regarding the Low Threat General Order and the application process, visit the Central Valley Water Board website at: http://www.waterboards.ca.gov/board_decisions/adopted_orders/water_quality/2003/wqo/wqo2003-0003.pdf For more information regarding the Low Threat Waiver and the application process, visit the Central Valley Water Board website at: https://www.waterboards.ca.gov/centralvalley/board_decisions/adopted_orders/waivers/r5-2018-0085.pdf	Please see Response to Comment 7-9. The scope of the EIR for the Long-Term Operations of the State Water Project does not include any construction or ground disturbance activities and therefore does not require a Dewatering Permit (Low Threat Waiver). Please see Common Response 1, "Scope of Analysis," and Chapter 2, "Project Description," for more information on the project objectives and scope.
7	12	Limited Threat General NPDES Permit If the proposed project includes construction dewatering and it is necessary to discharge the groundwater to waters of the United States, the proposed project will require coverage under a National Pollutant Discharge Elimination System (NPDES) permit. Dewatering discharges are typically considered a low or limited threat to water quality and may	Please see Response to Comment 7-9. The scope of the EIR for the Long-Term Operations of the State Water Project does not include any construction dewatering activities and therefore does not require a Limited Threat General NPDES Permit. Please see Common Response 1, "Scope of Analysis," and Chapter 2, "Project

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		be covered under the General Order for Limited Threat Discharges to Surface Water (Limited Threat General Order). A complete Notice of Intent must be submitted to the Central Valley Water Board to obtain coverage under the Limited Threat General Order. For more information regarding the Limited Threat General Order and the application process, visit the Central Valley Water Board website at: https://www.waterboards.ca.gov/centralvalley/board_decisions/adopted_orders/general_orders/r5-2016-0076-01.pdf	Description," for more information on the project objectives and scope.
7	13	NPDES Permit If the proposed project discharges waste that could affect the quality of surface waters of the State, other than into a community sewer system, the proposed project will require coverage under a National Pollutant Discharge Elimination System (NPDES) permit. A complete Report of Waste Discharge must be submitted with the Central Valley Water Board to obtain a NPDES Permit. For more information regarding the NPDES Permit and the application process, visit the Central Valley Water Board website at: https://www.waterboards.ca.gov/centralvalley/help/permit/.	Please see Response to Comment 7-9. The scope of the EIR for the Long-Term Operations of the State Water Project does not include any waste discharging activities and therefore does not require a NPDES Permit. Please see Common Response 1, "Scope of Analysis," and Chapter 2, "Project Description," for more information on the project objectives and scope.
7	14	If you have questions regarding these comments, please contact me at [commenter phone number] or [commenter email].	This information describes the structure or organization of the comment letter, the background of the organization or individual commenter, clarification on the submittal of the comment letter, or general introductory text. It is not a comment on the contents of the DEIR. DWR has reviewed all comments and will consider all comments in its decision-making process.
8	1	Attached please find a 90-day comment deadline extension request from San Francisco Baykeeper, Friends of the River, Sierra Club California, Golden Gate Salmon, and Restore the Delta regarding the Draft Environmental Impact Report for the Long-Term Operation of the State Water Project in the Sacramento-San Joaquin Delta, Suisun Marsh, and Suisun Bay (SCH 2023060467). On May 29, 2024, the California Department of Water Resources ("DWR") published a Notice of Availability of the DEIR which set forth a forty-seven-day review period for the DEIR, to close on July 15, 2024.	CEQA provides that the public review period for a DEIR shall not be less than 30 days nor should it be longer than 60 days except under unusual circumstances (CEQA Guidelines § 15105(a)). Therefore, the DEIR was initially made available on May 29, 2024, for a 47-day public review period, ending July 15, 2024. In response to commenter requests, DWR extended the public review period by 21 days. On July 12, 2024 DWR announced the public review period would be extended by 21 days, ending August 5, 2024. As a result, the total public review period duration was 68 days. The total public review period duration exceeded the CEQA requirement and allowed sufficient time for reviewers

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			to submit meaningful comments on the DEIR. Additionally, DWR abided by the legal requirements for Public DEIR noticing.
8	2	I am writing on behalf of San Francisco Baykeeper, Friends of the River, Sierra Club California, Golden Gate Salmon, and Restore the Delta regarding the Draft Environmental Impact Report ("DEIR") for the Long-Term Operation of the State Water Project in the Sacramento-San Joaquin Delta, Suisun Marsh, and Suisun Bay ("State Water Project") (SCH 2023060467). On May 29, 2024, the California Department of Water Resources ("DWR") published a Notice of Availability of the DEIR which set forth a forty-seven-day review period for the DEIR, to close on July 15, 2024. Having reviewed the Notice, Baykeeper and the rest of the signatories to this letter request an extension of the DEIR comment deadline to ensure sufficient public participation and a complete administrative record. An extension of time for the comment deadline is appropriate because haste in reviewing and preparing comments on the extensive DEIR is not feasible, particularly in light of numerous concurrent proceedings in related water projects in which Baykeeper, the other signatories to this letter, and many other organizations are currently involved.	CEQA provides that the public review period for a DEIR shall not be less than 30 days nor should it be longer than 60 days except under unusual circumstances (CEQA Guidelines § 15105(a)). Therefore, the DEIR was initially made available on May 29, 2024, for a 47-day public review period, ending July 15, 2024. In response to commenter requests, DWR extended the public review period by 21 days. On July 12, 2024 DWR announced the public review period would be extended by 21 days, ending August 5, 2024. As a result, the total public review period duration was 68 days. The total public review period duration exceeded the CEQA requirement and allowed sufficient time for reviewers to submit meaningful comments on the DEIR.
8	3	First, the DEIR is enormous and complicated. The appendices to the DEIR include lengthy scientific reports, technical memoranda, plans, models, and other documents that each require a significant amount of time to properly review, understand, and respond to. The DEIR presents too much information for DWR to reasonably expect the public to fully respond within the provided review period of forty-seven days in a way that would adequately address parties' concerns with the project or provide a complete record.	DWR focused on presenting information throughout the EIR in plain language and in a clear and organized format with emphasis on information that is useful to the public, agencies, and decision makers (CEQA Guidelines § 15006(q)–(s)). DWR made every attempt to balance readability, the need for accurate and thorough technical analyses of the numerous complex issues involved for each resource potentially affected by the project, and responses to public and agency requests for information. Because of the highly technical and complex nature of the proposed project and alternatives, and given the importance of the Delta as a natural resource and its importance to the California water supply, the EIR necessarily includes a considerable amount of information to adequately analyze potential impacts pursuant to the requirements of CEQA. DWR acknowledges that CEQA Guidelines Section 15141

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			recommends that proposals of unusual scope or complexity should normally be less than 300 pages; however, the EIR and the record of the EIR exceeded this suggested length. Most large and complex projects, such as this, are technical and include not only the impact analyses contained in the EIR itself, but multiple technical reports, studies, and other background information needed to develop a baseline for analysis, methodologies, impacts discussion, mitigation, and other required elements of an EIR. Thus, while the EIR contains numerous volumes and appendices, this reflects the complexity of the project and project alternatives that are being considered for approval. Please refer to Response to Comment 8-2 regarding the duration of the comment period.
8	4	Second, overlap with concurrent adjudications and regulatory proceedings places unnecessary and material burdens on our groups and on other organizations. The Sites Reservoir Water Rights adjudication, in which we and other participants in State Water Project proceedings are involved, is ongoing, with case-in-chief evidence due on July 15. Baykeeper is also involved in another protest regarding a water rights application submitted by Santa Clara Valley Water District. Baykeeper filed documents with the court for that protest on Monday, June 24, and a slate of pretrial deadlines are scheduled to start later this summer. There are also ongoing federal regulatory proceedings that impact the Central Valley Project ("CVP"), the federal counterpart to the State Water Project, in which the signatories to this letter and other parties with significant interests in the State Water Project are actively participating. For example, on June 28, the US Fish and Wildlife Service will release a draft of its forthcoming Biological Opinion on coordinated operations of the CVP and State Water Project; Baykeeper and our partner organizations will also need to review that document and compare it to the SWP for consistency. All of these proceedings are part of intertwined interests and disputes over how water should be cared for, apportioned, and used in San Francisco Bay, the Delta, and throughout the watershed. We have legitimate and significant mission-related interests in the outcome of all these proceedings. Other non-profit organizations representing environmental, community, and public interests are similarly situated,	Please refer to Response to Comment 8-2 regarding the duration of the comment period.

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		having mission-related interests in several overlapping proceedings, including those mentioned above. At the same time, our groups and other interested parties have limited resources, budgets, staffing, and time. Proceeding with the limited forty-seven-day review period is prejudicial to these parties, who will be unable to properly engage with all these overlapping water rights proceedings.	
8	5	Third, On June 19, 2024, the California Fish and Game Commission approved the White Sturgeon as a candidate for listing under the California Endangered Species Act ("CESA"). Under CESA, this means the White Sturgeon will be protected until the Commission makes a final decision as to whether to list it. In light of this highly significant listing decision, it is imperative the details of the State Water Project are carefully evaluated in the particular context of impacts to the White Sturgeon. Given the need for this detailed evaluation, combined with the immense scale and complexity of the State Water Project, forty-seven days is inadequate to properly review the entire DEIR.	Please refer to Response to Comment 8-2 regarding the duration of the comment period. Chapter 6, Section 6.4.8, "White Sturgeon," provides a detailed analysis of impacts of Proposed Project on White Sturgeon using the best available scientific information.
8	6	Public participation is a key element of the CEQA process. (Cal. Code Regs. tit. 14 § 15201.) Meaningful public participation in agency decision-making allows the public to help agencies identify the full scope of environmental impacts associated with a proposed action, thereby furthering CEQA's goals of "tak[ing] all actions necessary to protect, rehabilitate, and enhance the environmental quality of the state" and "ensur[ing] that the long-term protection of the environment…shall be the guiding criterion in public decisions." (Pub. Resources Code § 21001.) If DWR does not extend the DEIR comment deadline, public participation will be limited and less meaningful, and the resulting record will be incomplete. To ensure a complete record, which properly addresses the public's concerns regarding the project's potential impacts and thereby allows DWR to make a fully informed decision on the project, DWR must allow an extension of time.	Please refer to Response to Comment 8-2 regarding the duration of the comment period.
8	7	Accordingly, Baykeeper, Friends of the River, Sierra Club, Golden Gate Salmon, and Restore the Delta respectfully request a ninety-day extension of the DEIR comment deadline for the State Water Project, which would allow us and other members of the public to properly review the DEIR, especially in the context of other ongoing regulatory processes on related matters (as described above), and provide DWR with comments that address the full scope of our concerns regarding the project.	Please refer to Response to Comment 8-2 regarding the duration of the comment period.

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9	1	Hope all is well. Requesting a copy of the slides from today's presentation on CA DWR Draft EIR for the water project in the Sacramento-San Joaquin Delta, Suisun Marsh, and Suisun Bay.	This is not a comment on the contents of the DEIR. Requests for information were responded to in a timely manner within the comment period.
10	1	Please find attached a comment letter and exhibits on DWR's DEIR. We would appreciate confirmation of receipt.	This information describes the structure or organization of the comment letter, the background of the organization or individual commenter, clarification on the submittal of the comment letter, or general introductory text. It is not a comment on the contents of the DEIR. DWR has reviewed all comments and will consider all comments in its decision-making process.
10	2	This letter provides comments of the California Water Impact Network (CWIN) on the May 2024 Draft Environmental Impact Report, entitled Long-Term Operations of the State Water Project. This DEIR purports to fulfill the California Environmental Quality Act (CEQA) requirements and to comply with other applicable laws (ES-2,3).	This information describes the structure or organization of the comment letter, the background of the organization or individual commenter, clarification on the submittal of the comment letter, or general introductory text. It is not a comment on the contents of the DEIR. DWR has reviewed all comments and will consider all comments in its decision-making process.
10	3	Although the DEIR claims environmental protection as a fundamental goal (ES-2,3), a close reading reveals the opposite intent. DWR uses every CEQA trick in the book to minimize and evade responsibility for the catastrophic environmental impacts of the State Water Project (SWP). They include providing no context for the baseline conditions, piecemealing the project relative to inter-related efforts, eliminating reasonable project alternatives, omitting reasonably foreseeable regulatory actions, narrowing the geographic scope of analysis, eliminating most of the resource analysis categories, and conducting insufficient analysis of the remaining impact categories, including tribal and environmental justice impacts. As a result, the DEIR not only fails multiple CEQA requirements. It is also an affront to tribes and environmental justice communities and useless as a basis for the public trust, water rights, and statutory compliance analysis required for regulatory requirements and review by responsible and trustee agencies.	Please see Common Response 3, "The CEQA Process," and Common Response 4, "CEQA and CESA Legal Standards," regarding the comments that state DWR generally failed to comply with CEQA. Please see Common Response 2, "CEQA Environmental Baseline," Common Response 3, "The CEQA Process," Common Response 7, "Relationship to Healthy Rivers and Landscapes Program," Common Response 6, "Other State Efforts," Common Response 1 "Scope of Analysis," Common Response 14, "Tribal Consultation," and Common Response 10, "Public Trust," regarding the statements that DWR does not address baseline conditions, is piecemealing the project relative to inter-related efforts, eliminated reasonable project alternatives, omitted reasonably foreseeable regulatory actions, narrowed the geographic scope of analysis, eliminated most of the resource analysis categories, and conducted insufficient analysis of the remaining impact categories, including tribal impacts. DWR addressed all resource categories identified in Appendix G of the CEQA Guidelines. Please see Appendix

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			3A, "Initial Study," for a discussion of resource categories identified in Appendix G of the CEQA Guidelines not addressed in Chapters 4 through 9 of the DEIR. Please see Chapter 8, "Environmental Justice," for an explanation of the analysis of potential impacts to environmental justice communities.
10	4	Moreover, DWR is playing a shell game by evading questions about operations in other analyses and minimizing operational impacts in this EIR, which purports to address the SWP's long-term operations. The SWP comprises geographically dispersed infrastructure, long-term contracts, multiple water rights, coordinated operations, and a complex regulatory environment. As DWR is aware, the Delta watershed which supplies the SWP, is heavily oversubscribed, a problem worsening with climate change. Yet DWR has manipulated its project definition and artificially segmented the SWP to evade accountability at every turn. When assessing its planned Delta Conveyance Project (DCP), DWR claims that operations are outside the scope. When defending its contract decisions, DWR portrays them as financial arrangements disconnected from the impacts of project operation under CEQA. Meanwhile, when seeking approval for outdated water rights and continued environmental degradation from excessive water diversions, DWR utilizes this EIR, claiming no responsibility for existing conditions ("baseline"), no immediate relationship to the DCP ("future conditions"), no responsibility for the public trust ("covered by CEQA"), no responsibility for environmental justice ("not required by CEQA"), and no need to analyze impacts from the entire system ("no new infrastructure" and "independent utility"). DWR's actions undermine CEQA, other relevant statutes, and case law, including state and federal endangered species protection acts, Fish and Game Code requirements, state constitutional provisions, and the public trust doctrine. If DWR does not revise its EIR to include a full accounting of environmental impacts, it will be in violation of legal frameworks designed to prevent the very environmental catastrophes DWR continues to perpetuate. To fulfill basic CEQA requirements, as described below, the DEIR must be completely revised and will require recirculation for further public comment. It must consider the full scope of environmental, tribal, and community impacts associated with SWP operations, and it must take a reasonable approach to alternatives analysis, anticipated regulatory	Please see Common Response 2, "CEQA Environmental Baseline," for a discussion of the CEQA Environmental Baseline and Treatment of Historical Conditions. Please also see Common Response 3, "The CEQA Process." The remainder of this comment does not raise environmental issues related to impacts discussed in the DEIR. DWR has reviewed all comments and will consider all comments in its decision-making process. DWR has provided additional context for many of the assertions in the comment in the form of Common Responses. Please see Common Response 1, "Scope of Analysis," for a discussion of the geographic scope of the Proposed Project analysis and coordinated operations. Please see Common Response 6, "Other State Efforts," for a discussion of the relationship of the Proposed Project to the Delta Conveyance Project. Please see Common Response 10, "Public Trust," for a discussion of Public Trust doctrine and DWR's obligations and consideration of the public trust doctrine. Please see Common Response 9, "Relationship to the 2023 Biological Assessments and NEPA," for a discussion of the Proposed Project's compliance with the federal Endangered Species Act. Please see Common Response 11, "Application of CESA Standards," for a discussion of how the California Endangered Species Act applies to the Proposed Project. In addition to Common Responses, DWR describes existing regulations, water contracts and water right settlement agreements in Chapter 2, "Project Description," Section 2.2, "Existing Regulations," Section

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		requirements, and public trust considerations. Californians deserve better.	2.1.4, "Description of Existing SWP Water Service Contracts," and Section 2.1.5, "SWP Settlement Agreements." Please see Chapter 7, "Tribal Cultural Resources," for a discussion of DWR's Tribal Consultation and analysis of impacts to Tribal Cultural Resources, and Chapter 8, "Environmental Justice," for an explanation of the analysis of potential impacts to environmental justice communities.
10	5	CEQA, its legislative intent language, and a large body of case law have established clear parameters for what constitutes an adequate environmental impact review. Lead agencies must seek to avoid harm, mitigate impacts when feasible, and "consider a reasonable range of potentially feasible alternatives that will foster informed decision making and public participation." [Footnote 1: 14 Cal. Code Regs, § 15126.6; see also Public Resources Code, Sections 21000-21006.] The "foremost principle" of CEQA is that "the Legislature intended the act 'to be interpreted in such manner as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language." [Footnote 2: Sierra Club v. County of Fresno (2018) 6 Ca.5th 502, 511 [quoting Laurel Heights Improvement Assn. v. Regents (1988) 47 Cal.3d 376, 405]. Decision-makers and the public cannot be deprived of "material necessary to informed decision-making and informed public participation." [Footnote 3: Id. At 520] Rather than allowing agency environmental review to stack the deck in one direction, CEQA requires an "interactive process of assessment of environmental impacts and responsive modification" designed to protect the environment. [Footnote 4: County of Inyo v. City of Los Angeles (VI)(1984) 160 Cal.App.3d 1178, 1183.] An "artificially narrow approach to project purposes and objectives lies outside the agency's discretion, because utilizing it would transform the assessment CEQA requires into an "empty formality." [Footnote 5: We Advocate Thorough Environmental Review v. County of Siskiyou (2022) 78 Cal.App.5th 68, 693.]. The project description must be "accurate, stable, and finite." [Footnote 6: Washoe Meadows Community v. Department of Parks & Recreation (2017) 17 Cal.App.5th 277, 286-288.] Assessment of the project's direct, indirect, and cumulative impacts must "set forth sufficient information to foster informed public participation and reasoned decision making." [Footnote 7: City of Long Beach v. City of Los Angeles (2018) 19 Cal.App.	This comment does not raise an environmental issue relating to the proposed project or address the adequacy, accuracy, or completeness of the DEIR. DWR has reviewed all comments and will consider all comments in its decision-making process. DWR has provided additional context for many of the assertions in the comment in the form of Common Responses. Please refer to Common Response 3, "The CEQA Process," and Common Response 4, "CEQA and CESA Legal Standards," regarding CEQA policy and legislative intent, including EIR requirements. Please see Chapters 4-9 and Appendix 3A, "Initial Study," regarding an analysis of environmental impacts on multiple environmental resources and Chapter 2, "Project Description," for information on species protection measures. Please refer to Common Response 3, "The CEQA Process," regarding feasible alternatives, and Chapter 11, "Alternatives to the Proposed Project," for detailed analysis of the proposed alternatives. Regarding the need for public participation, DWR conducted appropriate outreach and noticing to request public comment on the Notice of Preparation (NOP) and DEIR based on CEQA requirements and DWR Policy. DWR provided the NOP and DEIR to public libraries and county clerks in seven counties surrounding the project area, as well as multiple state agencies, elected officials, Tribes, and commenters on DWR's 2020 FEIR for Long-term Operation of the State Water Project.

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		5th 465, 488.] "Nonspecific and general" responses to comment may be deemed inadequate. [Footnote 8: Cleary v. County of Stanislaus (1981) 118 Cal.App.3d 348, 358.]	Please see Chapter 10, "Other CEQA Discussions," and Appendices 4F, 4G, and 4H for detailed discussion and analysis of the cumulative impacts of the Long-Term Operation of the State Water Project.
10	6	1. The DEIR fails to clearly and consistently analyze its relationship to DWR's 2020 FEIR for State Water Project Long-Term Operations. In its description of the project's purpose the DEIR describes the goal of obtaining a new Incidental Take Permit (ITP) from the state's Department of Fish and Wildlife (DFW) (ES-3,4). However, it does not explain and provides no meaningful analysis of how this EIR differs from the EIR DWR already produced in 2020 for long-term operations of the SWP (2020 EIR). [Footnote 9: See: See https://water.ca.gov/News/Public-Notices/2020/March-2020/Final-EIR-for-SWP-Operations, accessed June 19, 2024.] Furthermore, aside from the addition of white sturgeon, it is not clear how the new ITP would differ from the current ITP. This omission undermines one of the core tenets of CEQA, which is to allow for public consideration and input on the environmental impacts of a project. In this case, the project, a massive water storage and conveyance system, has been operating for decades under contracts that despite extensions, are neither indefinite nor infinite. Understanding the impacts of operational changes requires transparent and accurate analysis of impacts associated with current and continuing operations. Also, by definition, a long-term plan is meant to be durable (even if flexible) and must provide context necessary to evaluate its full impact over time. By failing to present a clear and complete description of why DWR is seeking an updated ITP, and how the new ITP would differ from the current ITP, DWR is doing a disservice to the legislature's articulated intent. [Footnote 10: 4 Cal. Code Regs, § 15126.6; see also Public Resources Code, Sections 21000-21006] Because of the overlap and similarity between the current EIR and the 2020 EIR DWR prepared for the prior iteration of this Project, CWIN hereby incorporates by reference the comments submitted by CWIN and other organizations on January 6, 2020, and January 27, 2020, attached here as Exhibits 1 [See ATT 1] and 2 [See ATT 2]. These comments must be specifically addressed in the context of the current EIR.	The comment requests explanation of the relationship to the FEIR for the Long-term Operation of the State Water Project, which was certified in 2020. The Proposed Project is a different project and the current CEQA analysis does not tier off of the 2020 FEIR. The Proposed Project includes updated operating criteria for the SWP facilities in the Delta, Suisun Marsh, and Suisun Bay. These criteria are described in Chapter 2, "Project Description," and supersede the operating criteria described in the 2020 FEIR. A transparent and accurate analysis of the Proposed Project based on the best available scientific information is provided in Chapters 4 through 9 of the EIR and in Appendix 3A, "Initial Study." An adaptive management program and governance structure that provides flexibility to the Proposed Project is described in Chapter 2, Section 2.3.18, "Adaptive Management," and Section 2.3.22, "Governance." The adaptive management program is further described in Appendix 2B, "Adaptive Management Program." Please see Common Response 3, "The CEQA Process," and Common Response 2, "CEQA Environmental Baseline," for additional information on the approach for considering the CEQA Proposed Project to "baseline conditions" in this EIR, including treatment of historical conditions. The comment incorporates by reference comments submitted by CWIN and other organizations on January 6, 2020, and January 27, 2020, on the 2019 DEIR for the long-term operation of the State Water Project. DWR fully responded to comments provided on the 2019 DEIR in the 2020 FEIR. As this response explains, the Proposed Project is not the same as what was analyzed and approved in 2020, and does not rely on the analysis in either the 2019 DEIR or 2020 FEIR. Because DWR is

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			proposing updated operating criteria and conducted a complete environmental analysis of those criteria, comments provided on the 2019 DEIR are not considered substantive comments raising significant environmental issues on the 2023 DEIR. Attempting to construe comments on a separate project and different analysis to the Proposed Project and current CEQA process would likely lead to misunderstanding and confusion. Therefore no specific responses to comments on the 2019 DEIR are provided.
10	7	2. The DEIR mistakenly presumes approval of the Voluntary Agreements. Table ES-1, which summarizes the proposed project elements, notes that Spring Delta Outflow action will be achieved through "Implement[ing] Voluntary Agreements …" (ES-6). However, Voluntary Agreements have not been approved by the State Water Resources Control Board (State Board) and have been sharply criticized in public comments still undergoing review, including those of CWIN attached as Exhibit 3 [ATT 3]. Furthermore, the Board's existing CEQA analysis of the Voluntary Agreements finds significant uncertainties and limited environmental mitigation potential relative to more protective regulatory options. DWR could have incorporated or referred to the Board's analysis in this DEIR but chose not to do so. This omission is contrary to the fundamental information disclosure requirements of CEQA, which requires lead agencies to evaluate reasonably foreseeable impacts. DWR's decision to not analyze the reasonably foreseeable impacts associated with a Board decision to impose unimpaired flow requirements via regulation is also a clear CEQA violation. The need for that missing analysis is further reinforced in omitted comments of the U.S. Environmental Protection Agency (EPA) on the State Board's Supplemental Environmental Document (SED) for Phase II of the Bay-Delta Plan, attached as Exhibit 4 [ATT 4]. Confirming again that "the best available science suggests that current flows are insufficient to protect public trust resources," EPA indicated that restoration of flow volumes is essential to protect the public against harmful algal blooms, and that "swift action is needed to address the imperiled state of the Delta and the species, communities, and economies that depend on this ecosystem for survival." Id., pp. 1-2. EPA also agreed with Board staff that "the best available science suggests that current flows are insufficient to protect public trust resources." Id., p. 6.	With respect to voluntary agreements, please see Common Response 7, "Relationship to Healthy Rivers and Landscapes Program," (HRLP, previously referred to as the Voluntary Agreements). To note, DWR included an alternate mechanism for Delta Outflow, "Early Voluntary Agreement Implementation," in the Proposed Project described in the EIR (Chapter 2, Section 2.3.5.2), in recognition that the SWRCB has not yet approved HRLP. With respect to the commenter's inference that DWR selectively analyzed White Sturgeon based on possible CESA protection, this is incorrect; as a California Species of Special Concern with potential to be affected by the proposed project, White Sturgeon would have been included in the DEIR regardless of potential CESA listing status, consistent with the prior LTO's EIR (California Department of Water Resources 2020). References cited in this response: California Department of Water Resources. 2020. Final Environmental Impact Report for Long-term Operation of the California State Water Project. State Clearinghouse No. 2019049121. March.

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		DWR's selective analysis is further demonstrated by its decision to include impacts to white sturgeon based on its assessment that white sturgeon may obtain protection under the California Endangered Species Act (CESA) in 2024 (ES-4). When the DEIR was published, the Department of Fish and Wildlife had not announced a decision on whether to provide protection to the white sturgeon under CESA.	
10	8	3. The DEIR does not contain adequate public trust analysis. DWR's Master Response 14 in its 2020 EIR on public trust offers a selective and misguided interpretation of case law. In its Response, DWR states: "[W]hat constitutes feasible protection for public trust resources is a determination made by the responsible state agency after balancing public trust and competing interests and considering its statutory authority and responsibilities." [Footnote 11: Master Response 14, II.1.14-2] DWR also cites a state appellate case as a basis for concluding that CEQA analysis can fulfill public trust considerations. [Footnote 12: Citizens for East Shore Parks v. Cal. State Lands Comm. (2011) 202 Cal.App.4th549, 576-577 (East Shore Parks).] However, a CEQA analysis does not necessarily satisfy an agency's duties under the public trust doctrine to (a) assess a project's impacts on trust resources and (b) mitigate or avoid those impacts when feasible. An analysis performed under CEQA may satisfy its public trust duties, but only if the agency actually fulfills its duties in that CEQA analysis. And an agency's conclusion that it has satisfied its trust duties in its CEQA analysis is not dispositive and is not granted any deference (unlike some of an agency's actions under CEQA). An agency's satisfaction of its trust duties is a factual question, subject to the ordinary standards of proof, not administrative mandamus. Indeed, by vesting lead agencies with discretion to define a project's purpose, a CEQA analysis can and often does diverge from what is required in a public trust analysis. Not only do public trust analyses have the "project goal" of mitigation or avoidance of impacts to trust resources when feasible, along with the potential balancing of competing trust and/or societal goals, but an agency's public trust duties are ongoing and not limited to the moment of an agency's project approval. If DWR certifies this EIR based on these erroneous claims, the state's trustee agencies (the State Water Board and the Department of Fish and Wildlife) should ignore this EIR entirely when conducting their public trust review and regulatory functions. By stating that DFW and the State	The portion of the comment referencing Master Response 14 of the 2020 FEIR on the Long-term Operation of the State Water Project is not a comment on this EIR and does not require further response. Please see Common Response 10, "Public Trust," for further discussion of DWR's consideration of the public trust. Chapter 2, Section 2.1.1, "Project Objectives," states that DWR's project objectives are to store, divert, and convey water in accordance with DWR's existing water rights to deliver water pursuant to water contracts and agreements up to full contract quantities and to optimize water supply and improve operational flexibility while protecting fish and wildlife based on the best available scientific information. Consistent with these objectives DWR's Proposed Project inherently includes the "project goal" of mitigation or avoidance of impacts and balancing competing societal goals by including updated operating criteria that maximize the ability to provide a safe and reliable water supply to millions of Californians while minimizing and avoiding impacts to fish and wildlife species, environmental justice communities, and Tribal Cultural Resources, while meeting Delta water quality objectives. Chapters 4 through 8 of the EIR provide detailed analyses of hydrology, water quality, aquatic resources, Tribal Cultural Resources, and environmental justice communities. Appendix 3A, "Initial Study," evaluates all other resources identified in Appendix G of the CEQA guidelines. These analyses show that DWR has considered potential effects to public trust resources.

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		Water Board may use this EIR in their decision-making processes (ES-4, 1-1), DWR misstates the law while attempting to have its cake and eat it, too. But if an EIR fails to provide information relevant to a public trust analysis, like this EIR, it cannot serve as a basis for regulatory decisions by trustee agencies that must uphold the public trust regardless of a subordinate agency's conclusions.	Please see Common Response 10, "Public Trust," for discussion of DWR's consideration of the public trust.
10	9	4. The DEIR omits necessary context in its description of baseline conditions. Another problematic response relates to the issue of the baseline under CEQA. While CEQA allows for lead agencies to treat existing conditions as the baseline for impact analysis, that does not absolve them of the need to account for all reasonably foreseeable decisions that could substantially alter the project in the near-term. DWR chose to include the potential listing of the white sturgeon under CSEA but elected not to include the potential for regulatory flow requirements from the State Water Board as part of the Board's update to the Bay-Delta Plan. However, the Board's potential actions in that proceeding are both reasonably foreseeable (the SED was issued in September 2023) and directly relevant to the long-term operations of the SWP. Indeed, the DEIR acknowledges the direct relevance of State Water Board actions on water rights permits (1-1) and potential approval of voluntary agreements (ES-6), demonstrating that DWR understands the Board's upcoming actions matter greatly to how it operates the SWP. In addition, continued harmful operations amplify the damage from the environmentally destructive baseline. As DWR acknowledges in the DEIR, current conditions in the Bay-Delta watershed are highly degraded. (ES-13). Indeed, the extent of the degradation is well documented in the State Water Board's Scientific Basis Report utilized in the Board's SED. Nevertheless, DWR relies upon CEQA's "baseline" conditions guidance (and case law) to avoid analyzing how its project would exacerbate the damage. This is both contrary to CEQA's intent and more broadly problematic.	Please see Common Response 2, "CEQA Environmental Baseline," and Common Response 3, "The CEQA Process" for additional information on the approach for considering the CEQA Proposed Project utilizing "baseline conditions" in this EIR. Please also see Common Response 7, "Relationship to Healthy Rivers and Landscapes Program," regarding the Proposed Project's relationship to the Healthy Rivers and Landscapes Program (previously referred to as volunteer agreements) which has not yet been approved by the State Water Resources Control Board.
10	10	First, as the SED documents, fish species suffer most during extended and severe dry (and increasingly hot) years. The way that the SWP (and the CVP) operate leaves inadequate end-of-water-year (September) storage to effectively mitigate massive fish mortality in a subsequent dry water year (and even less so in multiple dry years). As a result, gubernatorially declared drought emergencies become opportunities for	The EIR has been prepared in accordance with CEQA and adequately discloses the scope, severity, and magnitude of potential impacts for the environmental resources analyzed in this EIR. With respect to reservoir operations, please see Common Response 1, "Scope of Analysis." Additionally, releases from Oroville Reservoir

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		DWR to get waivers from the existing (and inadequate) environmental flow requirements through Temporary Urgency Change Petitions (TUCPs). Fish are then deprived of cold water flows resulting in massive die offs. This background is critical to evaluating the impacts of future operational decisions. However, within DWR's CEQA analysis, it is simply part of the "baseline" and therefore not relevant.	do not influence Delta water temperatures and water temperature targets in the Low Flow Channel of the Feather River are in place to maintain cold water spawning and rearing habitat for Chinook Salmon and steelhead. With respect to drought conditions, please see Common Response 12, "Drought Conditions." Although droughts will occur in the future, they are not predictable and the timing, number, severity, and duration cannot be identified and analyzed. As such, it is not possible to identify specific operating criteria that reduce the need for TUCPs. Indeed, requests for TUCPs are only available to DWR and Reclamation as part of the regulatory process. In addition, whether a TUCP will be issued and what the specific terms may be is not predictable nor subject to DWR discretion because drought conditions are unpredictable. DWR included the Drought Toolkit and DRY Team as part of the Proposed Project with the specific intent of using the actions described in the Drought Toolkit as needed in coordination with other state and federal water management and resource agencies. Please see Common Response 2, "CEQA Environmental Baseline," for discussion of the project's baseline.
10	11	Second, a project of the SWP's size and scope requires a "baseline" that provides context on underlying trends affecting its operations. In this instance, the long-term reduction in demand from SWP contractors, coupled with a statutory mandate to reduce reliance on the Delta, are relevant not only to the "baseline" but also to a meaningful alternatives analysis. Just because DWR wants to maximize SWP deliveries ("DWR is seeking to optimize water supply …," ES-3) does not mean that DWR can ignore the ongoing changes in demand for SWP deliveries. Moreover, the "baseline" should specifically address DWR's compliance with the 2009 Delta Reform Act, which is directly relevant to potential mitigation measures and regulatory actions by the Department of Fish and Wildlife and the State Water Board. A more fully articulated "baseline" would demonstrate the need for a project alternative that substantively reduces SWP deliveries. That alternative would have significant environmental benefits relative to the alternatives analyzed in the DEIR.	Please see Common Response 2, "CEQA Environmental Baseline" for more information on what the Proposed Project baseline includes. See Appendix 4A, "Model Assumptions," Attachment 1, "Model Assumptions," for a comprehensive discussion on assumptions for the baseline conditions. Please see Chapter 11, Section 11.2, "Range of Alternatives Considered," and Common Response 3, "The CEQA Process," for a discussion on the range of alternatives considered and the development of alternatives. Table 11-1 in Chapter 11 includes several alternatives considered but not analyzed further, including alternatives that propose reducing exports or stopping exports. DWR considered these alternatives

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		However, while DWR identified reduced deliveries as an Area of Controversy (ES-14), it elected omission instead of honest assessment, which is the epitome of an "prejudicial abuse of discretion." Third, as noted above, it is reasonably foreseeable that the current regulatory requirements will change. While the DEIR anticipates approval of voluntary agreements, regulatory flows could be mandated instead. The DEIR contains no analysis of how operational compliance with the State Water Board staff proposal in the SED (55% unimpaired flow) would affect environmental quality. Analysis of "reasonably foreseeable" impacts is a CEQA requirement that DWR has failed to fulfill in the DEIR. Furthermore, DWR's obfuscation is the most cynical approach to important environmental policy decisions. It advances a "death by 1,000 cuts" rubric whereby each individual modification is found to be less-than-significant, while cumulatively the continued operation of the SWP contributes to destruction, calamity, and extinction. It is also self-fulfilling. Once environmental "baseline" conditions are sufficiently degraded, there are no impacts left to mitigate. While this CEQA "loophole" may be nominally defensible, it does not extend to other legal requirements that allow governmental decision makers to look backwards. Both the California Endangered Species Act (CESA) and the public trust doctrine explicitly contemplate decisions based on evolving standards and conditions. [Footnote 13: Fish & Game Code, § 2081, subd. (c) and National Audubon Society v. Superior Court 1983 33 Cal.3d 420, 446.] Thus, while DWR may choose to hide behind CEQA, it's intransigence cannot serve as the basis for regulatory decisions.	infeasible because they do not allow DWR to store, divert, and convey water in accordance with DWR's existing water rights to deliver water pursuant to water contracts and agreements up to full contract quantities, including areas that rely on SWP supplies to meet basic human health and safety when water supply is scarce. Please see Common Response 5, "Delta Reform Act," for more information on DWR's compliance with the Delta Reform Act. Please see Common Response 7, "Relationship to the Healthy Rivers and Landscapes Program," for more information on the treatment of Voluntary Agreements and the Water Quality Control Plan Update. Please see Common Response 10, "Public Trust," for the Proposed Project's consideration of the public trust.
10	12	5. DWR's selected geographic scope also runs contrary to CEQA. The DEIR claims that the geographic scope for analysis consists of the legal Delta where the SWP's main conveyance infrastructure is located (2-2,3). DWR states that since the proposed project does not involve new infrastructure, is limited to operations within the Delta, and is intended to acquire a regulatory approval for fish in the Delta, its geographic scope is appropriate (1-1, 2-1 through 2-9). However, the SWP operates across a much larger geography (2-1, 2-9 through 2-14). The long-term operations of the SWP could impact the 27 million people it serves in multiple ways. They include economic impacts, public health impacts, and climate change adaptation impacts. The cost and availability of SWP water affects usage patterns,	The EIR has been prepared in compliance with CEQA and evaluates the full range of potential impacts that may result from the Proposed Project and its alternatives. Please refer to Chapter 3, "Scope of Analysis," Appendix 2D, "Geographic Scope of Project's Influence on Flow," and Common Response 1, "Scope of Analysis," regarding how DWR determined the geographic scope of the analysis of the Proposed Project in the DEIR, which considered: (1) the geographic scope of SWP operations' influence (i.e., the "zone of influence"), particularly with respect to the operations affected by the Proposed

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		investments in conservation and alternate water supply sources, agricultural production in Kern County, and housing and business development. If the DCP is built, it will change the economics and usage patterns. If the State Water Board adopts regulations for unimpaired flow standards, it will change the economics and usage patterns. By narrowing the geographic scope, the DEIR sidesteps these important evaluations that are required under CEQA. Additionally, the long-term operations of the SWP will have long-term impacts on environmental resources far beyond the legal Delta. The watershed of the rivers that feed the Delta is vast. Flows down those rivers are managed to meet multiple priorities, including diversions from the Delta. Fish that successfully navigate through the Delta may face higher or lower mortality depending on upstream flows and temperature. The interconnected nature of the watershed is why the State Water Board's SED assesses impacts in a comprehensive manner. This DEIR must do the same. CEQA is clear that the full range of a project's environmental impacts must be analyzed. Here, that range extends through the entire watershed.	Project; and (2) whether, in light of SWP and CVP coordinated operations, the Proposed Project would cause a reasonably foreseeable response by the U.S. Bureau of Reclamation that could result in changes in CVP operations outside the SWP zone of influence. DWR concluded that the analysis of flow-related impacts was appropriately focused on the SWP zone of influence (the Sacramento River below the confluence of the Feather River, the legal Delta, and the Suisun Marsh and Bay) and does not include areas that are affected only by CVP actions. Please also see Chapter 2, "Project Description," regarding coordinated operations of the SWP and CVP. The Delta Conveyance Project is appropriately considered in Chapter 10, "Other CEQA Discussions," and further discussed in Common Response 6, "Other State Efforts." Please also refer to Common Response 3, "The CEQA Process," for discussion on the alternative analysis under CEQA.
10	13	6. The DEIR fails to provide a stable, consistent, and accurate definition of the project under review. CEQA requires that an EIR include an accurate project description and fully disclose and fairly evaluate the nature and objective of a project. [Footnote 14: San Joaquin Raptor Rescue Center v. County of Merced (2007) 149 Cal.App.4th 646, 655.] An EIR must contain a "sufficient degree of analysis to provide decision-makers with information which enables them to make a decision which intelligently takes account of environmental consequences." [Footnote 15: CEQA Guidelines, § 15151] A "curtailed, enigmatic or unstable definition of the project" is an error of law which "draws a red herring across the path of public input. [Footnote 16: County of Inyo v. City of Los Angeles (1977) 71 Cal.App.3d 185, 199 [Inyo III]] DWR asserts that the Proposed Project "would continue DWR's ongoing, long-term SWP operations consistent with applicable laws, contractual obligations, and agreements. DWR proposes long-term operations of the SWP that will allow DWR to continue to store, divert, and convey water, in accordance with its existing water rights, to deliver water pursuant to water contracts and agreements up to full contract quantities." (DEIR,	DWR has removed the water rights time extension from this EIR. Please see Common Response 13, "Water Rights Time Extension." Please see Response to Comment 10-3 regarding CEQA analysis.

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		ES-3, emphasis added). Yet at the same time that it portrays itself as merely continuing the status quo, DWR disingenuously assumes the current EIR can also support future discretionary actions by the State Board to grant water rights approvals it has never secured. DWR thus assumes that the State Board can utilize this EIR as a "responsible agency" to inform some future "discretionary approval process and consideration to issue a water rights time extension for DWR's Feather River/ Delta water right permits 16478, 16479, 16481, 16482, 16477, and 16480 to allow long-term operations consistent with the diversion rates and quantities evaluated in this EIR." Id.	
10	14	DWR's unstable, shifting, and inconsistent assumptions about the Project under review fail the reality test on at least two levels. First, as described and documented in a pending complaint and petition brought by CWIN and others in Fresno Superior Court (Exhibit 5) [ATT 5] and CWIN's pending protest against DWR's change petition for the DCP (Exhibit 6) [ATT 6], DWR has long since failed to meet the conditions of the water rights permits on which it relies. DWR's SWP permits required completion of construction of specific diversion projects by December 1, 1980, and the application of water allotted under the permits to full beneficial use by December 1, 1990. Under extensions DWR petitioned for and received, these Permits required DWR to complete construction, such as that now sought for a conveyance, by December 31, 2000 [Term 6], and put the water allocated to DWR under the permits (10,350 cubic feet per second) to full beneficial use no later than December 31, 2009 [Term 7].	The proposed project is adequately described in Chapter 2, "Project Description." Please see Chapter 2, Section 2.1.1, "Project Objectives," for a description of DWR's continuing commitment to operate the State Water Project in compliance with all contractual obligations and state and federal water quality and environmental laws. The Delta Conveyance Project is appropriately considered in Chapter 10, "Other CEQA Discussions." Please also see Common Response 6, "Other State Efforts." The pending complaint and petition brought by CWIN about the change in point of diversion for the Delta Conveyance Project is outside the scope of the EIR.
10	15	Due to DWR's long-acknowledged failure to meet the last approved deadlines and the Board's inaction following protests to DWR's last-filed petition to extend, DWR's water rights permits have a formidable "cold storage" problem that is also the subject of pending litigation. Enabling DWR to keep its permitted water rights in such "cold storage" is not only unlawful, but harmful to the public trust and the public interest. [Footnote 17: See California Trout, Inc. v. State Water Resources Control Board (1989) 207 Cal.App.3d 585, 618] In its last Petition to Permit Time Extension, filed with the Board on December 31, 2009, DWR recognized it had not and could not meet the already-extended deadline for full beneficial uses in its water rights permits. DWR sought, but never received, another extension through 2015. In 2010, CWIN, among	Please see Response to Comment 10-13 referencing Common Response 13, "Water Rights Time Extension." To the extent the comment is referring to the proposed project, see Chapters 4 through 9 for detailed impact assessments on Surface Water Hydrology, Surface Water Quality, Aquatic Biological Resources, Tribal Cultural Resources, Environmental Justice, and Climate Change. See also Common Response 10, "Public Trust."

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		others, filed still-unresolved protests opposing any further time extension for DWR. Protestants raised these objections, among others: • DWR failed to exercise the required due diligence. (Wat. Code, §§ 1395, 1396, 1397; 23 CCR §§ 840, 844.) • A further extension beyond the 2000 deadline for construction and the 2009 deadline for full beneficial use could adversely affect other water rights and violate Delta protection laws (Wat. Code, § 12200-12205.) • DWR failed to explain how much water can be put to a beneficial use. • DWR failed to state the maximum amounts of water it had annually directly diverted and diverted to storage under each water right. • DWR's own actions led to its failure to timely put water to beneficial use. (Cal. Code Regs., tit. 23, §§ 840, 844.) • DWR's requested extension would harm the public trust and not be in the public interest. (Wat. Code, §§ 1243; 1243.5.) • DWR did not comply with the California Environmental Quality Act. DWR's requested extension of time would violate permit conditions and numerous other legal requirements, such as the federal Clean Water Act, Porter-Cologne Water Quality Control Act, Fish and Game Code section 5937, multiple provisions of the Water Code, and article X, section 2 of the California Constitution.	
10	16	The DEIR's second failure of the reality test is its perpetuation of the long-debunked fiction that the SWP is capable of reliably delivering up to the "full contract quantities" referenced in Table A of the SWP contracts. As the courts have long since recognized, the SWP's "huge gap" between contract allocation amounts and the half or less that can be reliably delivered risks reliance on "paper water," worth "little more than a wish and a prayer." [Footnote18: Planning and Conservation League v. Department of Water Resources (2000) 83 Cal.App.3d 892, 909, 914-915.] DWR has never placed in beneficial use the amounts DWR references in its project definition. As reflected in DWR's own historical records and numerous other reports, the SWP, which was never fully built as envisioned, is incapable of reliably supplying anything close to "full contract quantities," without even accounting for further future reductions related to climate change. The DEIR's magical thinking about future SWP deliveries also ignores chronic and unresolved problems with oversubscription in the Delta watershed. The State Board's recent SED, for example, recognizes that	The EIR has been prepared in accordance with CEQA and adequately discloses the scope, severity, and magnitude of potential impacts for the environmental resources analyzed in this EIR. Please see Common Response 2, "CEQA Environmental Baseline," for a description of how existing conditions are addressed through the CEQA process. Additionally, please see Chapter 2, Section 2.1.1, "Project Objectives," for a description of DWR's continuing commitment to operate the State Water Project in compliance with all applicable laws, contractual obligations, and agreements. Please also see Chapter 6, "Aquatic Biological Resources," for discussion of the Proposed Project's effects on aquatic biological resources.

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		"average regulatory minimum Delta outflows are only about 5 MAF [million acre-feet], or about a third of current average outflows and less than 20 percent of average unimpaired outflows. Existing regulatory minimum Delta outflows would not be protective of the ecosystem, and without additional instream flow protections, existing flows may be reduced in the future, particularly with climate change and additional water development absent additional minimum instream flow requirements that ensure flows are preserved in stream when needed for the reasonable protection of fish and wildlife." (SED 1-9.)	
10	17	7. The DEIR's decision to piecemeal the project is contrary to CEQA and not in the public interest. Given the nature of this project, there is no justification for analyzing it in isolation from its contractual, planned infrastructure, economic, and regulatory components. Because the SWP is operated within a complex web of regulatory, operational, and contractual parameters, operational modifications must be analyzed within that larger context. Furthermore, this is an analysis intended to inform long-term operations. A common understanding of the phrase "long-term" for a water delivery project means years (or decades). Thus, the claim that the impacts can be evaluated in isolation from other planned projects, and while a major regulatory proceeding is underway, is unfounded. Moreover, the fact that the DEIR finds no significant impacts illustrates the deliberate piecemealing at play. There is no independent utility to analyzing a project whose scope is so narrowly defined and whose operation is artificially delinked from sweeping proposed infrastructure and policy changes. Meaningful mitigation measures could only issue from a comprehensive review. DWR released its prior FEIR for SWP long-term operations on March 31, 2020. [Footnote 19: See https://water.ca.gov/News/Public-Notices/2020/March-2020/Final-EIR-for-SWP-Operations, accessed June 19, 2024.] There are many similarities between the prior long-term operations project and the current project, which makes DWR's responses to comments raised in the prior CEQA analysis instructive. In its FEIR Master Response to comments (Master Response 8: Other State Efforts), DWR stated: "The public interest would not be served if DWR ignored the independent nature of long-term SWP operations and attempted to prepare a single, comprehensive EIR that attempted to treat all aspects	Please refer to Common Response 1, "Scope of Analysis," regarding the how the Proposed Project assumes continued implementation of the Coordinated Operations Agreement (and 2018 COA Addendum) and identifies operations that are applicable to the SWP, not to the CVP. DWR considered whether the long-term operations of the SWP would result in a reasonably foreseeable response by Reclamation that could result in changes in CVP operations that would cause environmental impacts outside the SWP zone of influence. As explained in Appendix 2D, "Geographic Scope of Project's Influence on Flow," although the SWP and CVP coordinate operations, DWR and Reclamation independently decide how to operate the individual projects to best meet applicable requirements. See also Common Response 15, "Real-Time Operations." Please also see Chapter 2, "Project Description," for information about the existing regulatory setting for the SWP. Operations of the CVP are beyond the scope of this EIR. As stated in Response to Comments 10-6, 10-11, and 10-12, the description of the proposed project is adequate. Please refer to Common Response 6, "Other State Efforts," for further information on DWR's analysis that the Proposed Project is not improperly piecemealed. Please refer to Common Response 7, "Relationship to Healthy Rivers and Landscapes Program" (previously referred to as Voluntary Agreements), for additional

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		of wide range of related activities as a single project. The scale of the document would be impractical, and opportunities to look at alternatives to component parts of the massive project would be lost. Commenters would likely be overwhelmed with technical detail." On the contrary, however, the State Water Board's SED [Footnote 20: See: https://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/staff_report.html, accessed June 28, 2024.] for Phase II of the Bay-Delta Plan runs over 6,000 pages, contains voluminous technical detail, and multiple alternatives. It serves the public interest by describing the scientific, legal, and technical details relevant to understanding environmental impacts in a complex watershed. Moreover, it addresses component parts of the plan, including non-flow management measures such as temperature controls and habitat restoration, varying climatic conditions (e.g., severe droughts), and regulatory and voluntary compliance measures. The Board received over 400 separate comments on the SED, demonstrating that meaningful input was possible despite the high level of technical detail. Given the complexity of California's water systems, DWR's claims regarding the public interest ring hollow.	information on how the Proposed Project considered the Healthy Rivers and Landscapes Program.
10	18	8. The DEIR does not adequately analyze environmental justice impacts. The DEIR's environmental justice chapter contains recitations of federal and state environmental justice guidelines while emphasizing that CEQA does not require environmental justice analysis (8-1). It then discusses the demographic and socioeconomic data of populations in the counties within and adjacent to the legal Delta and provides a cursory analysis of why the proposed project would not impact disadvantaged communities based on scoping on environmental justice impact area from the Initial Study (8-7). This approach contains major flaws and omissions. First, it does not attempt to evaluate environmental justice impacts to communities that utilize the Bay-Delta watershed for recreation, sustenance, and commerce. As has been documented elsewhere, including in comments submitted to the State Water Board, Delta environmental justice communities are adversely affected by water diversions by the SWP (and other projects), including through reduced fish availability and harmful algal blooms. [Footnote 21: See: https://www.restorethedelta.org/wp-content/uploads/2024-01-19-DTEC-Comments-on-Phase-II-Draft-Staff Report-and-SED.pdf, accessed June 28, 2024.]	The EIR provides analysis of the environmental resources raised by the comment. Please refer to Chapter 8, "Environmental Justice," Chapter 5, "Surface Water Quality," Appendix 3A, "Initial Study," Section 3.18, "Recreation," Chapter 6, "Aquatic Biological Resources," and Chapter 11, "Alternatives to the Proposed Project" for the analysis of the environmental impacts on the environmental resources mentioned in the comment. Please refer to Chapter 8, "Environmental Justice," Section 8.3.1, "Thresholds of Significance," for a description of the methods used to conduct the environmental justice analysis in the DEIR. Because an environmental justice analysis is not a requirement of CEQA, the methodology in the DEIR to examine impacts of the proposed project and its alternatives on environmental justice communities applies NEPA guidance to address state legislation, executive orders, and policies that instruct state agencies to consider the impacts of their actions on environmental justice communities. The NEPA methodology used in the DEIR

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		Second, it does not account for impacts to environmental justice communities served by the SWP. Many households in those communities are already struggling to pay for drinking water, and SWP operational and infrastructure decisions that increase contract costs directly impact water bills. Moreover, by excluding these communities and a reduced deliveries alternative, the DEIR avoids assessing how they might benefit from a healthier ecosystem.	generally follows guidance provided in the White House Council on Environmental Quality (CEQ) Environmental Justice Guidance Under the National Environmental Policy Act in 1997 (CEQ Guidance; Council on Environmental Quality 1997). The DEIR identifies the minority and low-income populations in the study area based on data from the U.S. Census Bureau (see Section 8.2, "Background"). As part of the environmental review process, DWR's analysis uses federal environmental justice guidelines. Please refer to Section 3.18, "Recreation," in Appendix 3A, "Initial Study," for analysis regarding impacts to recreation. The Initial Study concludes that the proposed long-term operation of the SWP would not include construction activities that could affect recreation experiences by impairing access, generating noise, or creating negative visual effects and would, therefore, not affect environmental justice communities. Further, the proposed long-term operation of the SWP would only modify surface water hydrology to a limited extent that would remain within the range of historical operations. These changes would not result in a notable difference in water surface elevation or flows in the Sacramento River downstream from the Feather River confluence. Hydrodynamic conditions in the Delta would not be altered by the proposed long-term operation of the SWP in a manner that would reduce existing recreational opportunities. Therefore, the proposed long-term operation of the SWP would not affect water-based recreational opportunities, including fishing, swimming, and boating, from occurring in the lower Sacramento River or the Delta. Please refer to Chapter 5, "Surface Water Quality," which discusses water temperature and Cyanobacteria Harmful Algal Blooms and concludes that the Proposed Project would not affect water temperature, channel turbulence and mixing, residence time, nutrients, water clarity, or salinity that would create conditions more

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			conducive to cyanobacteria harmful algae blooms (CHAB). Please refer to Chapter 6, "Aquatic Biological Resources," for discussion of impacts to recreationally and commercially important fish species. The best available scientific information was used to analyze the Proposed Project's impacts to recreationally and commercially important fish species, which were found to be less than significant. Therefore, the Proposed Project's impacts to fish availability for recreational or subsistence fishing in environmental justice communities would also be less than significant. Please refer to Chapter 11, "Alternatives to the Proposed Project," Section 11.2.1, "Alternatives Considered but Not Analyzed Further," for discussion regarding reduced deliveries alternatives. Such alternatives would not meet the Project Objectives and may not be feasible because some areas rely on SWP supplies to meet basic human health and safety needs during periods of low water availability. Regarding involvement of environmental justice communities; DWR included notification to environmental justice organizations during the public comment period for the EIR to include several environmental advocacy and environmental justice organizations. References cited in this response: Council on Environmental Quality. 1997. Environmental Justice: Guidance under the National Environmental Policy Act. Washington, DC. Available: Available: https://www.epa.gov/environmentaljustice/ceq-environmental-justice-guidance-under-national-environmental-policy-act.
10	19	9. The Tribal Cultural Resources section omits tangible impacts to Tribes. As extensively documented in a Civil Rights Act complaint submitted to USEPA, tribes whose ways of life are deeply connected to the health of the entire watershed, have suffered and continue to experience harm	The EIR provides an impact analysis of environmental resources raised by the comment. Please refer to Common Response 14, "Tribal Consultation," regarding impacts to Tribes from the Proposed Project. Information presented in the resource chapters (Surface

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		from exclusionary water laws and the ecosystem destruction created by the operation of the SWP and other water diversion and conveyance projects. [Footnote 22: See: https://www.restorethedelta.org/wp-content/uploads/2022-12-16-Bay-Delta-Complaint-and-Petition.pdf, accessed June 28, 2024.] Hence, the DEIR's inappropriate narrowing of the project's geographic scope excludes analysis of upstream impacts to tribes. Those impacts include loss of fish species and insufficient flows for ceremonies and other activities. Also, while the DEIR appropriately discusses the importance of the Delta as a Tribal Cultural Landscape (7-8,9), it finds no significant impacts (7-13,14). This finding is based on the DEIR's overall conclusion that the proposed SWP operational changes would not have any significant environmental impacts. As is the case elsewhere in the DEIR, the missing analytical step is DWR's refusal to address how the continued operation of the SWP consistent with historical operations is the impact. The fact that the proposed project contains no new physical infrastructure is irrelevant. The damage will largely come from future diversions; meaningful mitigation measures under DWR's control would come from a reduced deliveries alternative that was not included in the DEIR.	Water Quality, Surface Water Hydrology, etc.) was summarized and provided to the Tribes for consideration through the Tribal Consultation process. Upon receiving a summary of the information, Tribes did not identify or express concerns for impacts to culturally important waterways or fish species. Please refer to Common Response 2, "CEQA Environmental Baseline," regarding the baseline for the Proposed Project. Please refer to Common Response 3, "The CEQA Process," regarding alternatives included in the EIR.
10	20	Conclusion DWR's choice to conduct a narrow and minimalist CEQA analysis under the guise of agency discretion and selective reading of case law contravenes both CEQA's intent and DWR's additional legal and public interest responsibilities. In the DEIR, DWR has selected a limited project scope, provided no context for the baseline conditions, omitted analysis of inter-related actions, eliminated reasonable project alternatives, eliminated 18 resource topics, omitted reasonably foreseeable regulatory actions, denied responsibility for conducting public trust analysis, and claimed that its analysis has independent utility. Unsurprisingly, the DEIR finds no significant environmental impacts, and no basis for mitigation measures. Nevertheless, DWR expects the state's regulatory agencies (DFW and the State Water Board) to rely on this EIR when making decisions regarding acceptable fish mortality, flows, and water rights permits. They should not. In fact, should DWR finalize and certify the EIR without substantive revisions, the regulatory agencies should not consider it at all.	This is a concluding comment. Specific responses to the specific comments on the DEIR are provided herein. No additional response is required.
10	21	[ATT 1:] Dear Assistant Director Mellon and Department of Water Resources:	This comment is introductory text. It is not a comment on the contents or the DEIR. DWR has reviewed all

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		By this letter our public interest organizations comment, pursuant to the California Environmental Quality Act (CEQA), on the Department of Water Resources (DWR) Draft Environmental Impact Report (Draft EIR) for Long-Term Operation of the State Water Project (SWP.) [Footnote 1: AquAlliance, California Water Impact Network, California Sportfishing Protection Alliance, Center for Biological Diversity, Environmental Water Caucus, Planning and Conservation League, Restore the Delta, and Sierra Club California join in this letter.] Our public interest organizations object to approval of the project and object to certification of a Final EIR for the project.	comments and will consider all comments in its decision-making process.
10	22	[ATT 1:] Our Table of Contents is on the next page: Introduction 3 Alternatives Reducing Reliance on the Delta are Required by the Delta Reform Act 4 Public Trust Doctrine Analysis Will be of Critical Importance in Doing the Quantification Work Required by the Delta Reform Act 5 DWR Must Prepare and Recirculate a new Draft EIR Including the Required Range of Reasonable Alternatives in order to Proceed in the Manner Required by CEQA 6 A New Draft EIR Must be Prepared and Recirculated for Public Review and Comment for DWR to perform CEQA-Required Full Environmental Disclosure 8 Absence of Quantification 8 Failure to Disclose and Analyze DWR's Delta Water Tunnel Project 9 This Draft EIR Process Must be Integrated with DWR's Other Related Processes 12 DWR Must Not Segment Environmental Analysis 13 DWR Must Analyze the Impacts of Providing Water to the Entire Project 13 DWR Must Accurately Evaluate Cumulative Environmental Impacts 14 DWR Must Disclose and Evaluate Project Growth-Inducing Impacts 17 DWR Must Disclose and Analyze the Significant Adverse Environmental Impacts of the Project 17 DWR Must Evaluate the Reality that DWR's Federal Partner is Committed to Maximizing Exports Regardless of the Environmental Consequences 19 DWR Must Evaluate SWP Long-Term Operations in light of Climate Change 21	This comment is introductory text. It is not a comment on the contents or the DEIR. DWR has reviewed all comments and will consider all comments in its decision-making process.

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		DWR Must Disclose and Assess the future Reduction in Claimed Needs for SWP Exports as a result of New Technologies and Curtailed Exports 22 DWR Must Include an Accurate, Stable, and Finite Project Description 24 DWR's Draft EIR Substitutes Argument, Speculation, and Unsubstantiated Opinion for Substantial Evidence 25 Conclusion	
10	23	[ATT 1:] SWP operations have numerous and enormous environmental impacts on California's rivers and the San Francisco Bay-Delta estuary (Delta.) "The SWP includes water, power, and conveyance systems, moving an annual average of 2.9 million acre-feet of water." (Draft EIR 2-1.) [Footnote 2: In each citation to the Draft EIR, the first number refers to the section of the document and the second number refers to the page number within the section.] DWR released the Draft EIR for public review on November 21, 2019. The Draft EIR "was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded." (CEQA Guidelines, § 15088.5(a)(4.) [Footnote 3: The CEQA Guidelines are codified at 14 Code Cal. Regs, § 15000 et seq.] DWR must, therefore, prepare a new Draft EIR. "A feasible project alternative" "considerably different from others previously analyzed would clearly lessen the significant environmental impacts of the project, but the project's proponents decline to adopt it." (CEQA Guidelines, § 15088.5(a)(3.) Reducing exports has always been an obvious alternative that would increase needed freshwater flows through the Delta. Moreover, reducing reliance on the Delta is required by the Delta Reform Act. The project instead increases reliance on the Delta. Again, a new Draft EIR is required. "A new significant environmental impact would result from the project" and "A substantial increase in the severity of an environmental impact would result" from the project. (CEQA Guidelines, § 15088.5 (a) (1) and (2.) Though the project would have many severe adverse environmental impacts, the Draft EIR claims it would have none. As just one example, the danger posed to people by the worsening algal blooms in the Delta is not even mentioned in the Draft EIR. Yet again, a new Draft EIR is required.	The Exhibit 1 Attachment is dated January 6, 2020. This comment describes components of the 2020 Long-Term Operations of the State Water Project DEIR. Thus, the comment does not directly address the 2024 DEIR for the Long-Term Operation of the State Water Project. However, DWR has reviewed the comment's content and provided responses where it may still be applicable to the 2024 DEIR for the Long-Term Operations of the State Water Project. Here, the comments provided are not applicable, and therefore, no further response is required. Please see Common Responses 2, "Environmental Baseline," 3, "The CEQA Process," and 5, "Delta Reform Act." Please also see FEIR Section 5.1.4.2, "Cyanobacteria Harmful Algal Blooms."

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		The astonishing number and seriousness of the omissions and deficiencies in the Draft EIR were avoidable. Our organizations advised DWR what was necessary in order to comply with CEQA in our May 28, 2019, comment letter on the Notice of Preparation (NOP) and scoping. Preparation and recirculation of a new, adequate Draft EIR for public review and comment is required by CEQA, including CEQA Guidelines § 15088.5(a.) [Footnote 4: Cases involving water issues and requiring recirculation of environmental documents under CEQA include Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova (2007) 40 Cal.4th 412, 447-449 and Gray v. County of Madera (2008) 167 Cal.App.4th 1099, 1120.]	
10	24	[ATT 1:] Alternatives Reducing Reliance on the Delta are Required by the Delta Reform Act The Sacramento-San Joaquin Delta Reform Act of 2009 (Delta Reform Act) is codified at Water Code § 85000 et seq. Water Code section 85021 establishes the policy of the State of California "to reduce reliance on the Delta in meeting California's future water supply needs through a statewide strategy of investing in improved regional supplies, conservation, and water use efficiency." The Delta Reform Act establishes coequal goals meaning, "the two goals of providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem." (Water Code §85054.) The Sacramento River and San Joaquin River watersheds remaining flows, flow into the Delta prior to portions being diverted for export to regions south of the Delta by SWP and federal Central Valley Project (CVP) operations. "The sustainability of California's water resources depends on the environmental health of the Sacramento-San Joaquin Delta." (Draft EIR 1-1.) "Reclamation and DWR propose to use the Sacramento River, San Joaquin River, and Delta channels to transport water to export pumping plants located in the South Delta." (Draft EIR 3-30.) "DWR, in coordination with Reclamation, proposes to operate the SWP in a manner that maximizes exports while minimizing direct and indirect impacts on state and federally listed fish species. " (Draft EIR 3-18.) DWR admits "the Proposed Project has the potential to increase average annual water supply yields, . . ." (Draft EIR 1-10.) Other versions of the admission include "the Proposed Project would increase the potential delivery of water from the Delta, . . . (Draft EIR 4-324, also 4-	The Exhibit 1 Attachment is dated January 6, 2020. This comment describes components of the 2019 Long-Term Operations of the State Water Project DEIR. Thus, the comment does not directly address the 2024 DEIR for the Long-Term Operation of the State Water Project. However, DWR has reviewed the comment's content and provided responses to the extent portions might still be applicable to the 2024 DEIR for the Long-Term Operations of the State Water Project. Please see Response 10-11 regarding a reduced exports alternative. Please see Common Response 5, "Delta Reform Act," for information on the Proposed Project's compliance with the Delta Reform Act. Please see Chapter 2, Section 2.1.1, "Project Objectives," for a description of DWR's continuing commitment to operate the State Water Project in compliance with all applicable laws, contractual obligations, and agreements.

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		322, 323.) DWR admits, "Increasing or decreasing SWP or CVP exports can achieve changes to Delta outflow immediately." (Draft EIR 3-12.) "The Proposed Project would continue DWR's ongoing, long-term SWP operations consistent with applicable laws, contractual obligations, and agreements. DWR proposes long-term operation of the SWP that will allow DWR to continue to store, divert, and convey water, in accordance with its existing water rights, to deliver water pursuant to water contracts and agreements up to full contract quantities. DWR is seeking to optimize water supply and improve operational flexibility while protecting fish and wildlife." (Draft EIR 1-3; also 3-1.) A central issue in a legally sufficient Draft EIR would be consideration of the trade-offs between delivery of full contract quantities, and reduction of deliveries in order to improve water quantities and quality in California's rivers and the Delta. DWR virtually ignores the Delta Reform Act, simply mentioning it in two sentences. (Draft EIR 4-105.) Yet DWR admits under the heading "areas of controversy" that "Issues raised by the public and other agencies [in comments on the Notice of Preparation (NOP) and scoping] include: Alternatives that incorporate actions to reduce demand for water from the Delta." (Draft EIR 1-10.) A new Draft EIR must be prepared and recirculated for public review and comment because the document fails to comply with State policy established by the Delta Reform Act by failing to include alternatives that would reduce reliance on the Delta.	
10	25	[ATT 1:] Public Trust Doctrine Analysis Will be of Critical Importance in Doing the Quantification Work Required by the Delta Reform Act. The Delta Reform Act (Water Code § 85023) mandates, the longstanding constitutional principle of reasonable use and the public trust doctrine shall be the foundation of state water management policy and are particularly important and applicable to the Delta. The California Natural Resources Agency, CalEPA, and the California Department of Food & Agriculture released the Draft Water Resilience Portfolio (Draft Portfolio) on Friday afternoon, January 3, 2020. The Draft Portfolio admits, Improved understanding is needed about the amount of water that must stay in rivers and streams to protect fish, wildlife, habitat, and water quality, and further actions are needed to support the availability of water for these needs.	See Responses 10-6 and 10-24 regarding re-submitted comments. See Common Response 5, "Delta Reform Act," and Common Response 10, "Public Trust," for information on the Proposed Project's compliance with both laws.

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		Drastic loss of fish and wildlife habitat makes it important to restore and connect habitat where feasible. (Draft Portfolio 13.) [Footnote 5: The number in citations to the Draft Portfolio refers to the page number cited.] Moreover, the projected statewide water needs of California fish, wildlife, and natural ecosystems have not been quantified, given the diversity of the state's river systems and evolving understanding of both the biological needs of species and future climate-driven conditions. However, it is clear that each river system requires adequate season-by-season water flow to protect the natural functions fish and wildlife need. Such flows also support healthy water quality and temperatures and should be complemented by adequate habitat and removal of invasive species to enable fish and wildlife to thrive. (Draft Portfolio 15.) Public Trust Doctrine analysis is of critical importance here. A real public trust analysis of the 26 rivers of the Delta watershed needs to be done in performing the quantification work required to make informed, rational decisions about SWP Long-Term operations. Having a real public trust analysis that includes all non-market public trust resources, including clean water, healthy flowing rivers, healthy abundant fish, and recreational opportunities, is also critical information for an alternatives analysis.	
10	26	[ATT 1:] DWR Must Prepare and Recirculate a new Draft EIR Including the Required Range of Reasonable Alternatives in order to Proceed in the Manner Required by CEQA "Evaluation of project alternatives and mitigation measures is 'the core of an EIR.'" (Banning Ranch Conservancy v. City of Newport Beach (2017) 2 Cal.5th 918, 937.) An EIR must "describe a range of reasonable alternatives to the project . . . which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives." CEQA Guidelines § 15126.6(a). "[T]he discussion of alternatives shall focus on alternatives to the project or its location which are capable of avoiding or substantially lessening any significant effects of the project, even if these alternatives would impede to some degree the attainment of the project objectives, or would be more costly." § 15126.6(b). Section 5 of the Draft EIR sets forth the discussion of alternatives including the "no project alternative," and four additional alternatives.	See Response 10-6 and 10-24 regarding re-submitted comments. Please see Chapter 11, Section 11.2, "Range of Alternatives Considered," and Common Response 3, "The CEQA Process," for a discussion on the range of alternatives considered and the development of alternatives. Also, see Response 10-11 regarding alternatives that would reduce exports. See Common Response 5, "Delta Reform Act," for information on the Proposed Project's compliance with the Delta Reform Act. The minor modifications included in the Project's FEIR do not change conclusions or impact determinations identified in the analysis and recirculation is not required.

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		No alternatives are included that would reduce reliance on the Delta as required by the State policy established by the Delta Reform Act. No alternatives are included that would increase freshwater flows through the Delta and protect California's rivers by reducing exports. The Draft EIR instead simply starts and ends with a given being to maximize exports. No "hard look" is taken at trade-offs between maintaining or increasing exports as opposed to reducing exports to protect the Delta and California's rivers. The founders of our nation and our State created governments of laws not rulers. Whether California Executive Branch officers wish to consider real alternatives to the proposed SWP Long-Term operations project, is not the standard. The standard is set by CEQA, the Delta Reform Act, and the public trust doctrine. Such alternatives, including ones reducing exports, must be included and considered in a new Draft EIR to be recirculated for public review and comment. Real alternatives must be included in the new Draft EIR to be prepared and recirculated, including alternatives that would increase freshwater flows through the Delta and improve Delta water quality by reducing SWP exports. For example, the Governor's Executive Order N-10-19 (April 29, 2019) calls for a water resilience portfolio that will do such things as "embrace innovation and new technologies" and "incorporate successful approaches from other parts of the world." Implementing such modern water measures would reduce the claimed need for SWP exports and thus improve water quality in California's rivers and the Delta.	
10	27	[ATT 1:] As an example of such alternatives, our organizations presented A Sustainable Water Plan for California (Environmental Water Caucus, May 2015) attached to our May 28, 2019 comment letter on the NOP and scoping that is part of DWR's Record. By way of brief summary, the Sustainable Water Plan alternative includes reducing exports out of the Delta to 3,000,000 acre-feet, or other variants on that quantity. Also included are: spending funds on such modern water measures as water conservation, water recycling, groundwater treatment and desalination and agricultural water conservation including conversion to drip irrigation in export areas, annual crops in export areas that can be fallowed in drought years, and staged removal from production of drainage-impaired lands in export areas that worsen water quality by such consequences as selenium discharge.	See Responses 10-6, 10-11, 10-24, and 10-26. Crafting a Sustainable Water Plan for California was considered but not analyzed further because it would not allow DWR to store, divert, and convey water in accordance with DWR's existing water rights to deliver water pursuant to water contracts and agreements up to full contract quantities to meet human health and safety requirements. To the extent this comment states background information, no response is required.

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10	28	[ATT 1:] The Ninth Circuit Court of Appeals reversed a district court decision denying environmental plaintiffs' summary judgment because the challenged environmental document issued by the Bureau of Reclamation under NEPA (National Environmental Policy Act), "did not give full and meaningful consideration to the alternative of a reduction in maximum water quantities." (Pacific Coast Federation of Fishermen's Assn's v. U.S. Dept. of the Interior, 655 Fed.Appx. 595, 2016 WL 3974183*3 (9th. Cir., No. 14-15514, July 25, 2016) (Not selected for publication).) "Reclamation's decision not to give full and meaningful consideration to the alternative of a reduction in maximum interim contract water quantities was an abuse of discretion and the agency did not adequately explain why it eliminated this alternative from detailed study." (Id. at *2.) Reclamation's "reasoning in large part reflects a policy decision to promote the economic security of agricultural users, rather than an explanation of why reducing maximum contract quantities was so infeasible as to preclude study of its environmental impacts." (Id. at *3.) The requirement under NEPA, also true under CEQA, to consider the alternative of reducing exports to increase flows through the Delta is so obvious that the Ninth Circuit's decision was not selected for publication because no new legal analysis was required to reach the decision. The decision pertained to interim two-year contract renewals. If the alternative of reducing exports must be considered during renewal of two-year interim contracts, it most assuredly must be considered during the course of DWR's EIR on Long-Term operations of the SWP. Alternatives reducing exports must be considered pursuant to CEQA and under the mandates of the Delta Reform Act. (Water Code § 85000 et seq). Again, the Delta Reform Act establishes the policy of the State of California "to reduce reliance on the Delta in meeting California's future water supply needs through a statewide strategy of investing in improved regional supplies, conservation, and water use efficiency." (Water Code § 85021.) DWR must comply with CEQA, by developing and including real alternatives in a new Draft EIR recirculated for public review and comment, which would improve Delta and river water quantities and quality by reducing SWP exports. (CEQA Guidelines § 15088.5(a)(3.)	See Responses 10-11 regarding reduced exports alternatives, 10-6 and 10-24 regarding comments previously submitted, and 10-26 regarding the development of alternatives and the Delta Reform Act. Please also see Common Response 9, "Relationship to the 2023 BA and NEPA," distinguishing NEPA and CEQA. To the extent this comment states background information, no response is required.

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10	29	[ATT 1:] A New Draft EIR must be Prepared and Recirculated for Public Review and Comment for DWR to perform CEQA-Required Full Environmental Disclosure Absence of Quantification "'While foreseeing the unforeseeable is not possible, an agency must use its best efforts to find out and disclose all that it reasonably can.' (Guidelines, § 15144.)" (Banning Ranch Conservancy, 2 Cal.5th 918, 938). A primary goal of CEQA is "transparency in environmental decision-making." (Save Tara v. City of West Hollywood (2008) 45 Cal.4th 116, 136.) "CEQA requires full environmental disclosure." (Communities for a Better Environment v. City of Richmond (2010) 184 Cal.App.4th 70, 88.) As explained above, the Draft EIR simply takes maximizing exports and deliveries up to full contract quantities as givens. There is no real quantification of real water available for export and the adverse environmental impacts of maximizing exports. The Water Resilience Portfolio referenced above, would require the subject agencies to "first inventory and assess" eight subjects, including, "Existing demand for water on a statewide and regional basis and available water supply to address this demand." (Executive Order N-10-19 2a.) Other required subjects include "projected water needs in coming decades for communities, economy and environment" (2c), and "anticipated impacts of climate change to our water systems, . . . (2d.) We understood the State plan had been to release the Draft Portfolio around the end of 2019. Sierra Club California, requested extension of the public comment period on the Draft EIR of at least one month, to afford the public the opportunity to comment on the Draft EIR informed by the information expected in the Portfolio. (Letter request, December 17, 2019.) That request was denied. DWR has failed to provide water availability and demand information in the Draft EIR. DWR has refused to extend the public comment period to allow the public to have the benefit of the information provided in the Portfolio. Again, the State agencies released the Draft Portfolio on Friday afternoon, January 3, 2020. That was 1/2 business day before comments were due on this Draft EIR on Monday, January 6, 2020. The State agencies have denied the public reasonable time to review the Draft Portfolio before closure of the public comment period on this Draft EIR. DWR has violated its full	To the extent this comment is on the 2020 LTO EIR, it is not a comment on the contents of this EIR or the corresponding CEQA public process. Please see Response 10-6 regarding comments incorporated from the 2019 DEIR. Please see Response 10-11 regarding exports and alternatives examined. Regarding comment section related to the 'Water Resilience Portfolio,' it is not the subject of this EIR. A large portion of the activities identified in the Water Resilience Portfolio are outside the geographic scope of this Project but, to the extent it is applicable, the Proposed Project and analysis in this EIR are consistent with it.The public review period provided for the DEIR satisfies CEQA requirements. Recirculation is not required.

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		environmental disclosure duties and has failed to use its best efforts to find out and disclose all that it reasonably can.	
10	30	[ATT 1:] Failure to Disclose and Analyze DWR's Delta Water Tunnel Project There is more. The Draft EIR in addition to its omissions also misleads and amounts to environmental concealment. The Draft EIR does not even mention the ongoing Delta Water Tunnel project. The Tunnel would worsen the existing crisis in the Delta by diverting massive quantities of freshwater upstream from the Delta. The flows diverted upstream would no longer provide any benefits by first flowing through the already impaired Delta. In fact, there is an ongoing Delta Conveyance Design and Construction Authority (DCDCA) process (Delta Water Tunnel process) involving DWR, the Metropolitan Water District of Southern California (MWD) and several other exporters. Pursuant to the Delta Water Tunnel process, over $300 million is being spent between May 2019 and June 2022 on engineering, fieldwork, property access, property acquisition, and power, roads, and utilities for the previously selected Water Tunnel alignment. Under the previous Administration, an amended and restated joint exercise of powers Agreement was entered into between DWR and several SWP contractors including MWD making up the DCDCA on October 26, 2018. The DCDCA had been created by a Joint Powers Agreements including MWD and several other export contractors on May 14, 2018. The Amendment No. 1, amended and restated Joint Exercise of Powers Agreement of June, 2019, defines in Section 2(a), "Conveyance Project," For the purposes of the Planning Phase, "Conveyance Project" shall mean the planning, environmental documentation, permitting, and other preconstruction activities associated with the evaluation and development of a proposal and, as appropriate, alternatives for new Delta water conveyance facilities to be owned and operated by DWR, that would convey water from the Sacramento River north of the Delta directly to the existing SWP and, potentially, CVP pumping plants located in the south Delta. Amendment No. 1 included a revised exhibit B, the Planning Budget and Schedule. That shows expenditures of $348,100,000 from May 2019 through June 2022. That includes $173,200,000 for engineering,	The Exhibit 1 Attachment is dated January 6, 2020. This comment describes components of the 2019 Long-Term Operations of the State Water Project DEIR. Thus, the comment does not directly address the 2024 DEIR for the Long-Term Operation of the State Water Project. However, DWR has reviewed the comment's content and provided responses where it may still be applicable to the 2024 DEIR for the Long-Term Operations of the State Water Project. Please see Common Response 6, "Other State Efforts," for a discussion of the relationship to the Delta Conveyance Plan. Otherwise, the comments provided are not applicable, and therefore, no further response is provided.

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		$56,000,000 for field work, $19,900,000 for property access and acquisition services, and $30,600,000 for power, roads, and utilities. We understand that geotechnical work began at 19 sites in San Joaquin, Sacramento, and Contra Costa counties on June 10, 2019, including borehole drilling 150-200 feet down, to the depths of the previously proposed Delta Tunnels. There is still more. The SWP Contract Amendment negotiation process defines the Delta Conveyance Facility (DCF) as, Delta Conveyance Facility (DCF) shall mean those facilities of the State Water Project consisting of a water diversion intake structure, or structures, located on the Sacramento River in the northern Delta and connected by facilities to Banks Pumping Plant in the southern Delta with a single tunnel that will, in whole or in part, serve the purposes of this AIP. DWR refers to this process as "the Contract Negotiations Concerning Water Supply Contract Cost and Benefit Allocation of Delta Conveyance Facilities of the State Water Project." (DWR Preface to Sixth Offer, December 20, 2019.) (A copy of DWR's Preface and Sixth Offer is attached.) The "First Offer" submitted by the State Water Contractors to DWR on July 24, 2019, calls for the negotiation process to result in an Agreement-in-Principle (AIP.) The Contractors proposed that the AIP include a definition of the proposed new conveyance project, meaning Delta Water Tunnel, to include (First Offer, p. 5), Project objectives Capacity General configuration (alignment, number of intakes, tunnels, pump stations, etc.) (First Offer, p. 5.) DWR's Sixth Offer of December 20, 2019, says "It is the Department's continued belief that a Delta conveyance facility is in the best interests of the state, the PWAs [public water agencies], and the Delta." (DWR's Preface, p.1 of 1, December 20, 2019.) The Sixth Offer recites, this Agreement in Principle is by and between the undersigned State Water Project Public Water Agencies and the State of California by and through the Department of Water Resources for the purpose of providing a mechanism for amending the State Water Project Water Supply Contracts that will address cost and benefit allocation of Delta Conveyance Facilities of the State Water Project with an assumed State Water Project capacity of 6000 cubic feet per second. (DWR's Sixth Offer, p.2, December 20, 2019)(Emphasis added.)	

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		DWR's Sixth Offer includes the definition, Delta Conveyance Facility (DCF) shall mean those facilities of the State Water Project consisting of a water diversion intake structure, or structures, located on the Sacramento River and connected by facilities to Banks Pumping Plant in the southern Delta with a single tunnel that will serve the water supply purposes of the State Water Project. (DWR's Sixth Offer, p.3, December 20, 2019.) The previous Bay-Delta Conservation Plan (BDCP)/Water Fix project does not exist as the approval was rescinded by DWR on May 2, 2019. There is no EIR for the previous project because certification of the previous EIR was set aside by DWR on May 2, 2019. The claimed purpose for DWR's single Tunnel project is to improve SWP water export conveyance and deliveries. The Tunnel will be a SWP facility. Since SWP Long Term operations are the reason for DWR's single Tunnel project, omitting the Delta Tunnel process from the Draft EIR, renders it "so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded." (CEQA Guidelines, § 15088.5(a)(4.) The Draft EIR includes affirmative misrepresentations, The Proposed Project would not include any of the following: • New construction of water facilities, infrastructure, or other land disturbance Construction of new facilities or modification to existing facilities that could increase the capacity of the SWP (Draft EIR 4-321.)	
10	31	[ATT 1:] The truth is that DWR is in the process right now of planning the Delta Water Tunnel project for the very purpose of maximizing SWP water exports. The truth is that DWR is continuing its ongoing negotiations with water exporters over the cost and benefit allocation of Delta Conveyance Facilities of the SWP, meaning the Delta Water Tunnel. The truth is that the Proposed Project does include construction of the Delta Water Tunnel project. The Draft EIR says, "Reclamation and DWR propose to use the Sacramento River, San Joaquin River, and Delta channels to transport water to export pumping plants located in the South Delta." (Draft EIR 3-30.) That is false. The truth is that DWR proposes to develop, construct, and use an enormous, more than 30 miles long, underground Tunnel to transport water to export pumping plants located in the South Delta.	See Response 10-30. For additional information on how the Delta Conveyance Project is treated in this EIR, see Common Response 6, "Other State Efforts."

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		DWR's deception includes omitting the Delta Water Tunnel project from its list of more than 40 cumulative water supply, management, and quality projects and actions in the Draft EIR. (Draft EIR, Table 4. 6-1a, List, following page 4-294.) There is still more. The just released Draft Portfolio admits, the Administration is advancing a single-tunnel conveyance project under the Delta, . . . The project is undergoing environmental review and includes significant public engagement to design a project to limit Delta impacts and provide local benefits. (Draft Portfolio 16, also 7, 22 proposal 19.1, 113, unnumbered online page 143.) The Draft EIR provides the opposite of CEQA-required full environmental disclosure. The Draft EIR instead provides concealment, deception, and misrepresentations.	
10	32	[ATT 1:] This Draft EIR Process Must be Integrated with DWR's Other Related Processes CEQA Guidelines § 15124(d)(1)(c) requires that the EIR project description include "A list of related environmental review and consultation requirements required by federal, state, or local laws, regulations, or policies." The second sentence in that subsection goes on to require, "To the fullest extent possible, the lead agency should integrate CEQA review with these related environmental review and consultation requirements." (Emphasis added.) CEQA's policy is to conduct integrated review. (Banning Ranch Conservancy v. City of Newport Beach (2017) 2 Cal.5th 918, 939, 942.) Moreover, "Lead agencies in particular must take a comprehensive view in an EIR." (Banning Ranch Conservancy, 2 Cal.5th 918, 939, citing Public Resources Code § 21002.1(d).) As shown above, instead of integrated CEQA review, key environmental review processes are going ahead separately, each in its silo. With one hand, DWR is proceeding to plan the design of the Delta Water Tunnel. With another hand, DWR is negotiating cost allocations with the water exporters for the Delta Water Tunnel. With an extra hand, DWR issued the subject Draft EIR that conceals instead of reveals the Delta Water Tunnel project and its causal relationship with SWP Long-Term operations. This "silo" approach is puzzling given that the just released Draft Portfolio emphasizes that addressing new challenges such as climate change requires reflection, innovation, communication, and	See Response 10-30. To the extent this is applicable to the 2024 EIR, see Common Response 6, "Other State Efforts," regarding related projects and a piecemealing analysis.

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		coordination. "This cannot take place in silos but must be integrated within and across regions." (Draft Portfolio 25.)(Emphasis added.) To proceed in the manner required by CEQA, DWR must prepare a new, honest Draft EIR and recirculate it for public review and comment. An accurate water availability and needs analysis, quantification, and disclosure and analysis of the Delta Water Tunnel project and its causal relationship with SWP Long-Term operations must be central focuses of the new Draft EIR. DWR Must Not Segment Environmental Analysis Guidelines § 15378(a) in pertinent part defines a "project" to be: 'Project' means the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, and that is any of the following . . . (Emphasis added.) Guidelines § 15378(c) adds that: The term 'project' refers to the activity which is being approved and which may be subject to several discretionary approvals by government agencies. The term 'project' does not mean each separate governmental approval. (Emphasis added.) CEQA prohibits the piecemealing or segmentation of environmental analysis. A lead agency must not piecemeal the analysis of several smaller projects that are part of a larger project. Piecemealing is prohibited in order to ensure "that environmental considerations not become submerged by chopping a large project into many little ones, each with a potential impact on the environment, which cumulatively may have disastrous consequences." (Burbank-Glendale-Pasadena Airport Authority v. Hensler (1991) 233 Cal.App.3d 577, 592.) DWR and the exporters are designing the construction and operations of a Tunnel project in the absence of any CEQA compliance whatsoever. They are likewise negotiating an agreement in principle for the specific project. The Draft EIR on Long-Term SWP operations conceals rather than reveals and analyzes those ongoing DWR activities. Instead of dealing with the whole of the action as required by CEQA, these processes are all being done separately and segmented from each other. DWR is failing to proceed in the manner required by CEQA. DWR must prepare a new Draft EIR and recirculate it for public review and comment in order to correct these deficiencies.	

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10	33	[ATT 1:] DWR Must Analyze the Impacts of providing Water to the Entire Project Pursuant to CEQA an EIR, must assume that all phases of the project will eventually be built and will need water, and must analyze, to the extent reasonably possible, the impacts of providing water to the entire proposed project. (Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova (2007) 40 Cal.4th 412, 431.) Moreover, The future water supplies identified and analyzed must bear a likelihood of actually proving available; speculative sources and unrealistic allocations ("paper water") are insufficient bases for decision-making under CEQA. (Vineyard Area Citizens, 40 Cal.4th 412, 432.) The inventory and assessment and water resilience portfolio required by the Governor's Executive Order are also the type of information required by CEQA to be in an EIR. There is no such information in the Draft EIR and therefore no foundation for determining SWP Long-Term operations. Consequently, a new Draft EIR and recirculation are necessary.	The case law referenced in the comment—Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova (2007) 40 Cal.4th 412—pertains to the lack of a secondary analysis of the availability of water supplies for a new master planned community, which would create a substantial new demand for potable water supplies. Unlike the Vineyard case, the Proposed Project does not involve or require a determination as to whether SWP water supplies will be adequate to meet the future needs of new housing developments. Rather, as stated in DEIR Chapter 2, "Project Description," the Proposed Project includes operation of existing SWP facilities, modifications to ongoing programs being implemented as part of SWP operations, improvements to specific activities that would enhance protection of special-status fish species, and commitments to support ongoing studies and research on these special-status species to improve the basis of knowledge and management of these species. As stated in DEIR Chapter 2, DWR is requesting an ITP that would provide discretion in operational decision-making to comply with the terms of its existing water supply and settlement contracts (which include maximum deliveries under the terms of these contracts), and other legal obligations. While the analysis in this EIS is consistent with the water resilience portfolio to the extent it is applicable, he water resilience portfolio is not the subject of this EIR and much of the content in the portfolio is outside the Proposed Project's geographic scope and project objectives. Recirculation of the DEIR is not required. Please see Common Response 6, "Other State Efforts," for information on the Delta Conveyance Project. See Chapter 10, "Other CEQA Discussions," Section 10.2 of the FEIR for a discussion of growth-inducing impacts.
10	34	[ATT 1:] DWR Must Accurately Evaluate Cumulative Environmental Impacts The Draft EIR concludes "the Proposed Project would have no impacts on aesthetics, agricultural resources, air quality, terrestrial biological	The DEIR has been properly prepared in accordance with the physical conditions that existed at the time the NOP was published on June 16, 2023, and as modeled based on CalSim 3. DWR operates the SWP in

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		resources, cultural resources, energy, geology and soils, greenhouse gas emissions, hazards and hazardous materials, land-use and planning, mineral resources, noise, population and housing, public services, recreation, transportation, tribal cultural resources, utilities and service systems, and wild fire; and therefore, it would not contribute to potential cumulative impacts on these resource topics." (Draft EIR 4-294.) This conclusory error will be addressed later. The Draft EIR then states, "Thus, the cumulative impacts analysis in this DEIR is limited to the potential of the project to contribute to potentially significant cumulative impacts related to the topics of hydrology, surface water quality, aquatic resources and tribal cultural resources." (Draft EIR 4-294.) The Draft EIR concludes, "the contribution of the Proposed Project to Delta water quality would not be cumulatively considerable" because "DWR operates the SWP in accordance with obligations under D-1641." (Draft EIR 4-308.) (Emphasis added.) The Draft EIR reaches the same conclusion, that the cumulative impact of the Proposed Project is less than significant as to aquatic biological resources, again, because of the existing regulatory framework. (Draft EIR 4-316, 317.) The plan for the Project is to "Comply with D-1641 and USACE Permit 2100" "Existing Regulatory Requirements." (Draft EIR 1-5, Table 1-1 a; also, 3-15, Table 3-3a.) The "Action Goal or Objective" is "Continue to comply with existing limits and permit requirements to protect water quality for the beneficial uses of fish and wildlife, agriculture and urban uses." (Draft EIR 1-5, Table 1-1 a; also, 3-15, Table 3-3a.) The Water Quality Control Plan for the San Francisco Bay-San Joaquin - Sacramento Delta Estuary (WQCP) (Water Rights Decision 1641, D-1641) was adopted in 1995, and amended without substantive changes in 2006. The Water Board is in the process of a periodic update of the WQCP, which is occurring in phases. The statement in the Water Board February 11, 2016 Ruling (on DWR's Petition for a point of diversion change, p.4) reflecting reality is that: "The appropriate Delta flow criteria will be more stringent than petitioners' current obligations and may well be more stringent than petitioners' preferred project." D-1641 is now a quarter century out of date. In September 2016, the Water Board determined that under its new flow proposal for the San Joaquin River and its tributaries it would be necessary to "decrease the	accordance with its water rights permits, which are issued by the State Water Resources Control Board. In preparation of the DEIR, DWR is not required to speculate as to the potential future changes that may or may not be made to existing water rights permits or to the Basin Plans. As noted in the State CEQA Guidelines Section 15145, "If, after thorough investigation, a Lead Agency finds that a particular impact is too speculative for evaluation, the agency should note its conclusion and terminate discussion of the impact." Please see Common Response 7, "Relationship to Healthy Rivers and Landscaped," explaining that the is separate and independent from the Water Quality Control Plan Update. No changes to the DEIR's cumulative analysis are required.

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		quantity of surface water available for diversion for other uses compared to the current condition (water supply effect)." (Evaluation of San Joaquin River Flow and Southern Delta Water Quality Objectives and implementation, Executive Summary at (ES) -21). As the Board pointed out: "The Bay-Delta is in ecological crisis. Fish species have not shown signs of recovery since adoption of the 1995 Bay-Delta Plan objectives intended to protect fish and wildlife." (Id. at ES -1). [Footnote 6: Also in September 2016, The Bay Institute published its report, San Francisco Bay: The Freshwater-Starved Estuary. Basically, water taken from the rivers is reducing water flowing from the rivers feeding the estuary so that the estuary--the Sacramento-San Joaquin River Delta, Suisun Marsh, and the bay-- ecosystem is collapsing.]	
10	35	[ATT 1:] In October 2017, the Water Board found that: "it is widely recognized that the Bay-Delta ecosystem is in a state of crisis." (Final Scientific Basis Report in Support of New and Modified Requirements for Inflows from the Sacramento River and its Tributaries and Eastside Tributaries to the Delta, Delta Outflows, Cold Water Habitat, and Interior Delta Flows, at 1-4). The water management infrastructure including the Central Valley Project (CVP) and State Water Project (SWP) "have been accompanied by significant declines in nearly all species of native fish, as well as other native and nonnative species dependent on the aquatic ecosystem. Fish species have continued to experience precipitous declines since last major update and implementation of the Bay-Delta Plan in 1995 that was intended to halt and reverse the aquatic species declines occurring at that time. In the early 2000s, scientists noted a steep and lasting decline in population abundance of several native estuarine fish species that has continued and worsened during the recent drought. Simultaneously, natural production of all runs of Central Valley salmon and steelhead remains near all-time low levels." (Id.). According to the Water Board, the best available science indicates that existing "requirements are insufficient to protect fish and wildlife." (Id. at 1 – 5). The Draft EIR admits, on December 12, 2018, through State Water Board Resolution No. 2018-0059, the State Water Board adopted the Bay-Delta Plan amendments establishing the lower San Joaquin River flow objectives and revised Southern Delta salinity objectives. However, the SWRCB did not assign responsibility to any water right holders to meet these new and revised objectives. In addition, the amendments are being legally challenged and have not yet been implemented through a water	See Responses 10-30 and 10-34. Please also see Common Response 2, "CEQA Environmental Baseline," regarding historical water operations.

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		rights decision. The SWRCB continues to work on proposed amendments for the Sacramento River, its tributaries and the Delta. (Draft EIR 4-108, 109.) The just released Draft Portfolio admits, State and federal laws enacted to protect against reduced river flows and loss of habitat have been unevenly applied and only partially successful.… As ecological stressors mount, existing approaches to protecting fish and wildlife must be modernized to protect and restore natural systems that support our state's celebrated biodiversity. (Draft Portfolio 12.) The Draft Portfolio also admits, of course water diversions have significant adverse environmental impacts, Over the last 200 years, human engineering to capture and divert flows has altered the natural functions of most major rivers in the state. . . . These changes have impaired our overall resilience as a state and impacted fish and wildlife, threatening the existence of several native fish species including distinct runs of salmon and steelhead. Reduced stream flows, increased temperatures, lack of habitat, and proliferation of invasive species have impacted many fish species across the state. Native fish and wildlife evolved to cope with drought, and dry periods are increasingly stressful given reduced habitat and river flow in recent decades. . . . Pollution compounds the stress. Many species are declining, and the number of fish species considered highly vulnerable to extinction rose from nine in 1975 to 31 species today. (Draft Portfolio 12.) It is unreasonable to conclude that SWP Long-Term operations complying with the outdated and insufficient standards in D-1641 will not result in cumulatively considerable adverse impacts on Delta water quality and aquatic biological resources.	
10	36	[ATT 1:] Again, also, the Draft EIR fails to reveal and evaluate the impacts of the cumulative Delta Water Tunnel project which is a result of SWP Long-Term operations. An EIR must discuss a related project when "it [is] reasonable and practical to include the project and…without [its] inclusion, the severity and significance of the cumulative impacts" could not be adequately stated. Gray v. County of Madera (2008) 167 Cal. App. 4th 1099, 1127. An "EIR must contain facts and analysis, not just the bare conclusions of the agency." Gray, 167 Cal. App. 4th at 1109. EIRs require detail for a very commonsense reason. Without a complete	See Response 10-30.

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		understanding of a project, decision-makers cannot determine whether it would make sense. The omission of the Delta Water Tunnel project renders the Draft EIR so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment on direct, indirect, and cumulative environmental impacts of the project are precluded.	
10	37	[ATT 1:] DWR Must Disclose and Evaluate Project Growth-Inducing Impacts The Draft EIR concludes "the Proposed Project is not growth-inducing and would not induce secondary impacts of growth." (Draft EIR 4-326.) Nothing could be further from the truth. It is the Long-Term operation of the SWP that is the reason for DWR's ongoing processes to develop and approve the Delta Water Tunnel project. A new Draft EIR and recirculation are required in order to fully and accurately disclose and evaluate the growth inducing impacts of SWP Long-Term operation and the Delta Water Tunnel project.	Chapter 10, "Other CEQA Discussions," Section 10.2 acknowledges that the potential increase in future project deliveries might be linked to future growth, as increased water deliveries could be used for urban growth in areas dependent on this water supply. However, the analysis demonstrates that availability of water is only one of many factors that land use agencies consider when making decisions about growth, and that historical fluctuations in South of Delta water deliveries has not had an appreciable effect on population growth in the South of Delta service areas. Based on the absence of a discernable link between SWP water deliveries and population growth based on historical data, long-term operations of the SWP is not anticipated to result in a direct or indirect increase in population. Please also see Response to Comment 10-30, above.
10	38	[ATT 1:] DWR Must Disclose and Analyze the Significant Adverse Environmental Impacts of the Project The SWP moves "an annual average of 2.9 million acre-feet of water." (Draft EIR 2-1.) DWR is pursuing the Delta Water Tunnel project to facilitate SWP Long-Term operations. Yet the Draft EIR concludes "the proposed project does not result in significant effects, . . ." (Draft EIR 5-1; also, 4-294, 308, 316, 317) (Emphasis added.) The conclusions in the Draft EIR are not supported by substantial evidence. They are simply based on speculation and argument. Just as compliance with the quarter century old D-1641 does not mean the project will not have significant adverse cumulative environmental impacts; the same is true with respect to direct and indirect impacts of the project. In addition, as shown above, DWR's Delta Water Tunnel project is underway and is intended to facilitate SWP Long-Term operations. The Tunnel would cause numerous adverse environmental impacts including reducing freshwater flows through the already	The fact that DWR is separately considering the Delta Conveyance Project does not serve as evidence that the Proposed Project would have significant environmental impacts. As described in DEIR Chapter 2, "Project Description," the Proposed Project consists of continued operation of a specific set of existing infrastructure and programs and a new ITP for special-status fish species. Please see Common Response 6, "Other State Efforts," for an additional discussion of the Proposed Project's relationship to other State efforts. Common Response 4, "CEQA and CESA Legal Standards," discusses the standard of review required under CEQA. The DEIR is a good faith effort to achieve the required analysis, and to provide DWR, the Lead Agency, and the public with sufficient information about the project, its potential environmental effects, and the ways which

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		impaired Delta as a result of a new, large upstream diversion for the Tunnel. The Draft EIR admits "estimated changes to Delta outflow could affect the surface water quality or aquatic resources, . . ." (Draft EIR 4-14.) The Draft EIR obscures, in the process of admitting, the Delta is already impaired, not meeting water quality standards, including the pollutants chlorpyrifos and diazinon, DO, mercury and methylmercury, pathogens, pesticides, organochlorine pesticides, salt and boron, and selenium. (Draft EIR 4-104.)	those effects can be minimized, whether through mitigation measures or project alternatives, so that DWR can make an informed and reasoned decision on whether to approve the project. The Porter Cologne Water Quality Control Act requires the RWQCBs to prepare and periodically update basin plans. In accordance with Section 13050(f) of the Porter-Cologne Act, the basin plans must identify beneficial uses of water, adopt water quality objectives to protect the beneficial uses, and develop implementation programs for achieving the objectives. Water quality criteria in the basin plans also must be developed in accordance with the federal Clean Water Act. Existing impairments to the Delta are addressed in the applicable regional Basin Plans, and DWR is required to operate the SWP in compliance with water rights permits issued by the SWRCB, which take into account the impairments and water quality objectives of the regional Basin Plans (See DEIR Chapter 5, "Surface Water Quality"). The DEIR identifies designated beneficial uses, total maximum daily loads, impaired waterbodies, and water quality constituents that could be affected by the project and concludes that water quality impacts with implementation of the long-term operations of the SWP would be less than significant. No changes to the DEIR are required.
10	39	[ATT 1:] Again, the just-released Draft Portfolio admits the obvious; reducing river flows by diversions adversely impacts fish species. (Draft Portfolio 12, 13.) As an example of an adverse impact, the Draft EIR contains a brief two paragraph discussion of environmental toxins, confined to exposure of Delta Smelt to toxins including toxic blue-green cyanobacteria (Microcystis.) (Draft EIR 5-101, 102.) The Draft EIR ignores the danger to people. On September 1, 2019, Bay City News Service reported, A buildup of blue-green algae (cyanobacteria), commonly called an algae bloom, along the Sacramento-San Joaquin River Delta has prompted a safety warning from Contra Costa Environmental Health Services.	The Proposed Project includes operation of existing SWP facilities, modifications to ongoing programs being implemented as part of SWP operations, improvements to specific activities that would enhance protection of special-status fish species, and commitments to support ongoing studies and research on these special-status species to improve the basis of knowledge and management of these species. See Chapter 2, "Project Description," in the EIR. The water resilience portfolio is not the subject of this EIR.

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		The department is advising people out for holiday weekend recreation on the Delta that contact with blooms can make people and pets very sick. Cyanobacteria create a green, blue-green, white or brown coloring on the surface of slow-moving waterways. Advisory notices have been posted at the kayak launch and around the fishing dock at Big Break Regional Shoreline in Oakley after cyanobacteria was detected in the water. It warns users to stay out of the water, and do not touch algae scum in the water or on the shore, do not use the water for drinking, cleaning or cooking; do not let pets or livestock enter or drink the water; and do not eat fish or shellfish from the water. A caution advisory has also been posted near the boat ramp around the mouth of Mormon Slough by the California State Water Resources Control Board. Stockton urban waterways are stagnant and thick with algal scum and toxins. Algae blooms are regularly found from Stockton to Discovery Bay with smaller ones becoming visible in sloughs between the cities. Increasing or even maintaining exports combined with climate change will reduce freshwater flows and increase the buildup of these dangerous algal blooms. According to the EPA (https://www.epa.gov › nutrient pollution › harmful-algal-blooms), Harmful algal blooms can: • Produce extremely dangerous toxins that can sicken or kill people and animals • Create dead zones in the water • Raise treatment costs for drinking water • Hurt industries that depend on clean water According to the Draft Portfolio, "A warmer climate provides optimal conditions for worsening harmful algal blooms, which can force the closure of beaches, rivers, and lakes due to health risks for people and pets." (Draft Portfolio 13.) Moreover, "Waterways are becoming increasingly prone to harmful algal blooms and low dissolved oxygen levels. (Draft Portfolio 13.) We incorporate by reference the written comments submitted by Restore the Delta (submitted January 6, 2020.) Those comments go into	Chapter 5, "Surface Water Quality," analyzed Cyanobacteria Harmful Algal Blooms (CHABs), with an emphasis on microsystis, and found that the Proposed Project would not substantially change any of the five drivers of CHABs in the Delta. The Proposed Project would have negligible, if any, effects on the frequency and magnitude of CHABs in the Delta relative to Baseline Conditions. The full analysis on CHABs can be found in Chapter 5, Sections "Cyanobacteria Harmful Algal Blooms," See Response 10-38 for an explanation of the Porter Cologne Water Quality Control Act.

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		much greater detail on several important subjects including water quality, harmful algal blooms, and climate change. DWR must prepare and recirculate a new Draft EIR to accurately and honestly disclose and evaluate the numerous, serious adverse environmental impacts caused by increasing or even maintaining current SWP export levels. Producing or increasing dangerous toxins that can kill or sicken people, create dead zones in the water, and raise treatment costs for drinking water are examples of the serious adverse environmental impacts caused or worsened by SWP Long-Term operations. These serious impacts are ignored in the Draft EIR.	
10	40	[ATT 1:] DWR Must Evaluate the Reality that DWR's Federal Partner is Committed to Maximizing Exports Regardless of the Environmental Consequences In the real world, the governing political landscape has changed. As has been said as to other issues, "hope is not a plan." Until recently, the hope was that federal and state agencies would act in good faith to work together to protect water quality while operating the SWP in the case of the State, and the Central Valley Project (CVP) in the case of the U.S. Bureau of Reclamation. "DWR operates the SWP in coordination with the CVP, under the Coordinated Operation Agreement (COA) between the federal government and the State of California (authorized by Public Law 99-546)." (Draft EIR 1-3.) There is no longer any basis for such hope with respect to the federal government. It is a critically important issue when two partners in an operation, in this case the State, and the federal executive branch, are in foundational and fundamental disagreement. Former Secretary of the Interior Ryan Zinke issued his August 17, 2018, memorandum to his staff on the subject "California Water Infrastructure." The Memorandum stated, within 15 days, the Assistant Secretaries "shall jointly develop and provide to the Office of the Deputy Secretary an initial plan of action that must contain options for: maximizing water supply deliveries; . ." That same memorandum included a directive to develop a plan of action for "preparing legislative and litigation measures that may be taken to maximize water supply deliveries to people; . ." On October 19, 2018, the president issued the Presidential Memorandum on Promoting the Reliable Supply and Delivery of Water in the West. (83 Fed.Reg. 53961, October 25, 2018.) The Presidential Memorandum in Section 2(a)(ii) ordered the Secretary of the Interior	See Response 10-30. Please also see Common Response 7, "Relationship to Healthy Rivers and Landscapes," and Common Response 9, "Relationship to the 2023 BA and NEPA."

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		and the Secretary of Commerce to within 30 days designate one official to, identify regulations and procedures that potentially burden the [California water infrastructure] project and develop a proposed plan, for consideration by the Secretaries, to appropriately suspend, revise, or rescind any regulations or procedures that unduly burden the project beyond the degree necessary to protect the public interest or otherwise comply with the law. For purposes of this memorandum, 'burden' means to unnecessarily obstruct, delay, curtail, impede, or otherwise impose significant costs on the permitting, utilization, transmission, delivery, or supply of water resources and infrastructure. On March 28, 2019, the federal government brought two lawsuits against the Water Board seeking to divert more water for the CVP, challenging the Water Board's new flow requirements set forth in the Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta estuary. [Footnote 7: One federal lawsuit seeks a writ of mandate in state court, the Superior Court, County of Sacramento, while the other federal lawsuit seeks declaratory and injunctive relief in federal court, in the Eastern District of California.] The Draft EIR mentions that the Water Board's "amendments are being legally challenged" but fails to disclose that one of the challengers is the federal government. (Draft EIR 4-107, 108.)	
10	41	[ATT 1:] The Draft EIR fails to include significant new information. It states "When the new USFWS [United States Fish and Wildlife Service] and NMFS [National Marine Fisheries Service] Biological Opinions are issued, they will include incidental take statements (ITS) for Delta Smelt, Winter-run Chinook Salmon, Spring-run Chinook Salmon, Green Sturgeon, and steelhead. DWR will comply with the ITS in accordance with federal law in addition to state requirements." (Draft EIR 3-14.) In fact, the new federal biological opinions have already been issued. They were issued back on October 21, 2019. On July 1, 2019, NMFS biologists had concluded in a 1123-page biological opinion that Reclamation's plan would likely jeopardize listed salmon and steelhead, along with Southern Resident killer whales, and would be likely to destroy or adversely modify critical habitat, all in violation of the federal Endangered Species Act. [Footnote 8: The July 2019 biological opinion is available at: https://www.documentcloud.org/documents/6311822-NMFSJeopardy-Biop-2019-OCR.html.] The federal government subsequently replaced the biologists with political appointees, and the October 21, 2019 NMFS biological opinion concluded Reclamation's plan	See Response 10-30. Please also see Common Response 9, "Relationship to 2023 BA and NEPA."

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		was not likely to jeopardize the continued existence of the subject species or destroy or adversely modify their critical habitats. Also on October 21, 2019, the USFWS issued a biological opinion concluding Reclamation's plan was not likely to jeopardize the continued existence of Delta Smelt or destroy or modify its critical habitat. Several public interest organizations filed a complaint on December 2, 2019, in the United States District Court for the Northern District of California seeking to set aside the October 2019 biological opinions as being unlawful under the Administrative Procedure Act and the Endangered Species Act. The suit is entitled Pacific Coast Federation of Fishermen's Associations et al. v. Wilbur Ross et al., Case No. 19-cv-07897. [Footnote 9: The facts in this and the preceding paragraph are taken from the filed complaint.] According to the Sacramento Bee, "Gov. Gavin Newsom's administration said Thursday [November 21, 2019] it will sue the Trump Administration over its efforts to push more water through the Sacramento-San Joaquin Delta, saying the federal plan would harm the sprawling estuary and the fragile fish populations that live there." (Ryan Sabalow, Newsom says California will sue Trump over Delta water, endangered fish, Sacramento Bee, November 21, 2019.) The federal government now claims it can override California environmental protection laws and Water Board water allocations and protections. The new federal policy is to maximize water exports regardless of the environmental damage and California's water policies. The Draft EIR gives no hint of the new federal policies contrary to California's laws and policies. DWR must, pursuant to CEQA, disclose and analyze the fight that the federal government is now waging against the efforts of California state government to protect water quality. Long-Term SWP operations cannot be evaluated or determined in a vacuum from the federal efforts to maximize project exports. The Court noted in Banning Ranch Conservancy v. City of Newport Beach (2017) 2 Cal.5th 918, 941 that the governmental actions not only conflicted with CEQA obligations, "but also ignored the practical reality. . . ." The integrity of the process of decision under CEQA is to be ensured "by precluding stubborn problems or serious criticism from being swept under the rug . . . (Banning Ranch Conservancy, 2 Cal.5th 918, 940-41.) Again, CEQA is a full environmental disclosure statute. DWR must	

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		disclose and analyze the likely impacts of the new federal policies and how Long-Term SWP operations can be modified to prevent or mitigate the adverse impacts of the new federal policies to maximize exports. For example, increasing or maintaining instead of reducing SWP exports will further worsen water quality and watershed degradation given the new federal policies to maximize exports as well as reduced runoff and increasing salinity intrusion due to climate change. The new federal policies to maximize exports are a practical reality that cannot be covered up by the State in making decisions regarding Long-Term SWP operations and whether to develop a Water Tunnel project.	
10	42	[ATT 1:] DWR Must Evaluate SWP Long-Term Operations in light of Climate Change The Draft EIR evades the impacts of climate change in one page plus part of one sentence. (Draft EIR 4-3, 4.) The discussion includes misleading statements, saying that "The Proposed Project is not expected to exacerbate any hazards, such as flood potential, because River flows and SWP pumping would remain within historical operating range. Thus, no further climate change analysis is required for this EIR." (Draft EIR 4-3.) "No additional analysis or discussion of impacts of climate change on the environmental resources addressed in the DEIR is warranted." (Draft EIR 4-4.) In fact, the already impaired Delta is facing a quadruple whammy. There will be decreasing watershed runoff as a result of decreased snowfall due to climate change. That will reduce freshwater flows through the Delta. "Rising winter temperatures will reduce mountain snowpack in the Sierra Nevada and Cascade ranges by 65% on average by the end of the century, increasing flashy winter run off and flood risks while reducing spring and summer stream flow." (Draft Portfolio 14.) Rising sea levels caused by climate change will result in greater salinity intrusion further into the Delta. "San Francisco Bay and the Sacramento-San Joaquin Delta will face salinity intrusion as sea level rises. (Draft Portfolio 14.) "Although the Delta is not one of the state's ten major hydrologic regions, it plays a complex role in the water resilience of California and faces particularly acute climate risks." (Draft Portfolio 110.) The new federal policy to maximize exports will further decrease freshwater flows. DWR's Delta Water Tunnel will further reduce freshwater flows through the Delta. That means that maintaining or	This comment describes comments submitted on the 2019 DEIR for the Long-Term Operation of the State Water Project. Thus, the comment does not directly address the 2024 DEIR for the Long-Term Operation of the State Water Project and DWR is not required to respond to comments on projects that are no longer being pursued. However, DWR has reviewed the comment's content and provided responses where it may still be applicable to the 2024 DEIR for the Long-Term Operation of the State Water Project. The following response is provided for those elements of the comment that might be applicable to the 2024 DEIR for the Long-Term Operation of the State Water Project. See Chapter 9, "Climate Change Resiliency and Adaptation," which evaluates Long-Term Operations of the State Water Project facilities in the Sacramento–San Joaquin Delta, Suisun Marsh, and Suisun Bay (Proposed Project) and how climate change could influence the ability of the Project to fulfill its intended purpose. The evaluation of model results on key locations shows the influence of climate change, and the chapter analysis describes the impact of the Proposed Project to exacerbate or mitigate these effects. Assumptions and further detail on the modeling scenarios are found in Appendix 4A, "Model Assumptions," and Appendix 4D, "Climate Sensitivity." Please also see Common Response 8, "Climate Change."

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		increasing SWP exports will further exacerbate the Delta's poor freshwater flows and water quality. These issues need to be dealt with in a, new, recirculated Draft EIR to allow informed development and consideration of alternatives responsive to the problems. That will include reducing exports to by that way increase freshwater flows through the Delta to compensate for declining watershed runoff and worsening salinity intrusion.	
10	43	[ATT 1:] DWR Must Disclose and Assess the future Reduction in Claimed Needs for SWP Exports as a result of New Technologies and Curtailed Exports The refusal of DWR to extend the public comment period so the public would be informed by the Draft Portfolio appears deliberate. Paragraph 3 of Executive Order N-10-19 requires that the portfolio established by the State agencies embody seven principles including, "Utilize natural infrastructure such as forests and floodplains" (3(b); "Embrace innovation and new technologies" (3(c); and "Incorporate successful approaches from other parts of the world." (3)(e.)" That type of information would be invaluable in lessening the future claimed need for water exports from the Delta. We understand, for example, the City of Los Angeles has a plan to reduce its imported water supply by 50% by the year 2025. According to Water Replenishment District President John Allen, "Water recycling is the wave of the future." (Release, August 22, 2019.) "SB 606 and AB 1660 [signed into law May 31, 2018] emphasize efficiency and stretching existing water supplies in our cities and on farms." (State Water Resources Control Board fact sheet.) The Draft Portfolio informs, More efficient use of water by communities and agriculture has stretched water supplies to meet demands, especially on urban landscapes. Diverse water supply sources and reuse of water have helped many communities effectively weather drought. (Draft Portfolio 12.) Many Southern California water districts are building regional self-sufficiency but do not expect to be able to feasibly replace all water supply diverted from the Delta over the next couple of decades. (Draft Portfolio 113.)(Emphasis added.) Moreover, the most cost-effective, environmentally beneficial way to stretch water supplies is through better water use efficiency and eliminating water waste. . . . Recycled water is a sustainable, nearly drought-proof supply when used efficiently, and the total volume of	This comment describes comments submitted on the 2019 DEIR for the Long-Term Operation of the State Water Project. Thus, the comment does not directly address the 2024 DEIR for the Long-Term Operation of the State Water Project and DWR is not required to respond to comments on projects that are no longer being pursued. However, DWR has reviewed the comment's content and provided responses where it may still be applicable to the 2024 DEIR for the Long-Term Operation of the State Water Project. The following response is provided for those elements of the comment that might be applicable to the 2024 DEIR for the Long-Term Operation of the State Water Project. The comment concerns regarding the Draft Portfolio (Water Resiliency Portfolio) are noted; however, these comments do not pertain to the analysis contained in the DEIR. With regards to the comment that "the DEIR appears deliberately calculated to omit information and analysis that would be essential to an informed evaluation of the trade-offs between increasing or maintaining exports or instead finally beginning to reduce exports," the Proposed Project consists of multiple elements that characterize future operations of SWP facilities, modify ongoing programs being implemented as part of SWP operations, improve specific activities that would enhance protection of special-status fish species, or support ongoing studies and research on these special-status species to improve the basis of knowledge and management of these species. Implementation of these elements is intended to continue operation of the SWP

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		water California recycles today could triple in the next decade. (Draft Portfolio 17.) Water exports will be reduced. "The trade-off to manage salinity could reduce the amount of water available to support an ecosystem already under stress and for export from the Delta. Exports could be naturally curtailed by about 10% under mid-century climate projections, and by about 25% by 2100." (Draft Portfolio 111.) By 2050 the amount of water used by agriculture is expected to decline, and decline the most in the San Joaquin and Tulare Lake regions. (Draft Portfolio unnumbered page, page 58 online.) Utilizing natural infrastructure would mean continuing to use the Sacramento River and Delta channels for conveying water as opposed to diverting large river flows into an expensive underground Tunnel. In the absence of any meaningful discussion of utilization of natural infrastructure, embracing innovation, and incorporating successful approaches from other parts of the world, the Draft EIR appears deliberately calculated to simply justify increasing or maintaining the existing levels of exports. The Draft EIR appears deliberately calculated to omit information and analysis that would be essential to an informed evaluation of the trade-offs between increasing or maintaining exports or instead finally beginning to reduce exports. As is true on every critical issue, the November 21, 2019 Draft EIR is so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded.	while minimizing and fully mitigating the take of listed species consistent with CESA requirements.
10	44	[ATT 1:] DWR Must Include an Accurate, Stable, and Finite Project Description Pursuant to CEQA, [a]n accurate, stable and finite project description is the sine qua non [indispensable requirement] of an informative and legally sufficient EIR. However, a curtailed, and enigmatic or unstable project description draws a red herring across the path of public input. Only through an accurate view of the project, may the public and interested parties and public agencies balance the proposed project's benefits against its environmental cost, consider appropriate mitigation measures, assess the advantages of terminating the proposal and properly weigh other alternatives. (San Joaquin Raptor Rescue Center v. County of Merced (2007) 149 Cal.App.4th 645, 654 (Internal citations omitted.)	This comment describes comments submitted on the 2019 DEIR for the Long-Term Operation of the State Water Project, see Response to Comment 10-6. Thus, the comment does not directly address the 2024 DEIR for the Long-Term Operation of the State Water Project and DWR is not required to respond to comments on projects that are no longer being pursued. However, DWR has reviewed the comment's content and provided responses where it may still be applicable to the 2024 DEIR for the Long-Term Operation of the State Water Project. The following response is provided for those elements of the comment that might be applicable to the 2024 DEIR for the Long-Term Operation of the State Water Project.

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		The Draft EIR, instead of providing the required accurate project description, uses such vague phrases as "operational flexibility" and "adaptive management" as a substitute for the legally required detail and quantification of the actual impacts of SWP Long-Term operations on the environment. (Draft EIR 1-2.) The State and the federal government are in essence partners in operating the SWP and CVP and in creating new project facilities. The federal government has recently changed policies to maximize exports regardless of the consequences. The Governor recently threatened a lawsuit against the federal government as a result. The "Conveyance Project" is defined to include conveying water in addition to SWP pumping plants, to "potentially, CVP pumping plants located in the south Delta." The existing Draft EIR failed to disclose and evaluate the new federal policies to maximize exports. It also failed to disclose and evaluate DWR's Delta Water Tunnel project. These types of omissions look deliberate. The law, here CEQA, requires sounding the environmental alarm bell in Draft EIRs over serious issues. The Draft EIR project description is inaccurate, unstable, and not finite.	Common Response 4, "CEQA and CESA Legal Standards," discusses the standard of review required under CEQA. The DEIR is a good faith effort to achieve the required analysis, and to provide DWR, the Lead Agency, and the public with sufficient information about the project, its potential environmental effects, and the ways which those effects can be minimized, whether through mitigation measures or project alternatives, so that DWR can make an informed and reasoned decision on whether to approve the project (Pub. Resources Code, § 21061; CEQA Guidelines, § 15003). Common Response 1, "Scope of the Analysis," describes the relation between the SWP and CVP as enabled through the COA. DWR will continue to operate the SWP in accordance with all applicable regulatory requirements, including Delta water quality limits, and within the terms and conditions contained in its water rights permits and licenses issued by the SWRCB. Please also see Common Response 6, "Other State Efforts," regarding the treatment of the Delta Conveyance Project, and Common Response 3, "The CEQA Process."
10	45	[ATT 1:] There are adverse environmental impacts from SWP exports, which would increase with a Water Tunnel, on other resources as well as endangered fish species, including Delta agriculture, freshwater flows, water supply, water quality, fisheries, growth-inducement, and cumulative impacts. The State's EIR must also assess the impacts of Long-Term SWP operations under the public trust doctrine. Moreover, it is time also to evaluate SWP exports "through the Human Right to Water and environmental justice lenses to ensure that environmental justice communities are being included and treated as partners in water decision-making." (The Fate of the Delta: Impacts of Proposed Water Projects and Plans on Delta Environmental Justice Communities) (at p. 94) (Restore the Delta, September 17, 2018.) For example, the Delta includes large environmental justice communities adversely impacted by SWP exports. The Fate of the Delta document is a comprehensive and current explanation of Delta water issues. You can click on the report title, above, and get to this resource document.	Please see Common Response 6, "Other State Efforts," for a discussion of the relationship between the Proposed Project and the DCP. As described in the Common Response and Chapter 10, "Other CEQA Discussions," the DCP is separate from the Proposed Project with its own independent utility, geographic boundaries, and schedule. Section 10.1, "Cumulative Impacts," provides analyses of the cumulative impacts of the cumulative projects identified by DWR on the resources which the Proposed Project has the potential to contribute to potentially significant cumulative impacts, including surface water hydrology, surface water quality, aquatic biological resources, tribal cultural resources, environmental justice, and climate change resiliency and adaptation. Please see Common Response 10, "Public Trust," regarding comments that relate to the public trust law.

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		A new, recirculated Draft EIR must present the case for stricter standards including reduction in SWP exports to increase freshwater flows, not just compliance with outdated D-1641.	The commenter expresses their opinion that there should be changes in SWP exports. Please see Common Response 2, "CEQA Environmental Baseline," regarding the structure of the analyses and the comparison of the Proposed Project to the baseline. As noted in Common Response 2, environmental problems that already exist are part of the baseline conditions, and the EIR analyzes whether changes to those conditions caused by a proposed project are considered significant under CEQA. Consideration of changes to the SWP exports would be a policy question and not related to the assessment of the environmental impacts of the Proposed Project under CEQA. For comments related to environmental justice, see Chapter 8, "Environmental Justice," of the EIR which found the project would have no impacts to environmental justice communities because the long-term operation of the SWP would not involve construction of new facilities or modification of existing facilities or changes in land use. Appendix 3A, "Initial Study," found no impacts on potential environmental justice issue areas including (agriculture) conversion of Prime Farmland, Unique Farmland, or Farmland of Statewide Importance to non-agricultural use; (air quality) exposure of sensitive receptors to substantial pollutant concentrations or emissions (such as those leading to odors) adversely affecting a substantial number of people; (hazards) the routine transport, use, or disposal of hazardous materials, or creating a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment; and (noise) generating substantial temporary or permanent increase in ambient noise levels or excessive groundborne vibration in the vicinity of the Proposed Project in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies. Further, impacts on surface water quality and aquatic

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			biological resources were considered less than significant because of minor changes in hydrology. The minor modifications included in the Project's FEIR do not change conclusions or impact determinations identified in the analysis and recirculation is not required.
10	46	[ATT 1:] DWR's Draft EIR Substitutes Argument, Speculation, and Unsubstantiated Opinion for Substantial Evidence CEQA Guidelines § 15384(b) defines "substantial evidence" as including "facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts." "Argument, speculation, unsubstantiated opinion or narrative, evidence which is clearly erroneous or inaccurate, . . . does not constitute substantial evidence." (§ 15384(a.) The word uncertain or one of its derivatives is used almost 200 times throughout the Draft EIR. The Draft EIR recites, "Project environmental commitments include facility operations, facility and habitat improvement actions, funding for studies that reduce uncertainty about SWP effects on Delta fishes, and an adaptive management framework that, individually and collectively are intended to minimize the effects of the Proposed Project and improve conditions for Delta fishes." (Draft EIR 5-3.) Over and over again, impacts are uncertain or highly uncertain with respect to fish species. [Footnote 10: A few examples include Draft EIR 3-50, 4-6, 4-116, 117, 120, 121, 132, 134, 145, 215, 5-38, 100.] The repeated reference to uncertainties is a deliberate device to avoid admitting the truth; the project will have numerous, significant, adverse environmental impacts. DWR has failed to use its best efforts to find out and disclose all that it reasonably can. The Draft EIR throughout substitutes speculation for substantial evidence, in reaching the clearly erroneous conclusion that SWP Long-Term operations have no significant adverse environmental impacts, and no significant cumulative impacts.	This comment describes comments submitted on the 2019 DEIR for the Long-Term Operation of the State Water Project. Thus, the comment does not directly address the 2024 DEIR for the Long-Term Operation of the State Water Project and DWR is not required to respond to comments on projects that are no longer being pursued. However, DWR has reviewed the comment's content and provided responses where it may still be applicable to the 2024 DEIR for the Long-Term Operation of the State Water Project. The following response is provided for those elements of the comment that are applicable to the 2024 DEIR for the Long-Term Operation of the State Water Project. See Common Response 3, "The CEQA Process," for more information on the CEQA process and alternative development. See also Common Response 4, "CEQA and CESA Legal Standards." The CEQA Guidelines require a lead agency to identify and analyze the possible impacts of a project on the environment and consider option to avoid or mitigate the significant effects of the project (CEQA Guidelines Section 15204). It is not uncommon for experts in a particular environmental subject matter to dispute the conclusions reached by the experts whose studies were used in drafting the EIR where different conclusions can reasonably be drawn from a single pool of information. (CEQA Guidelines Section 15151; Greenebaum v. City of Los Angeles [1984] 153 Cal. App. 3d 391, 413.) The EIR must be adequate, complete, and a good faith effort at full disclosure (CEQA Guidelines Section 15151). The DEIR for long term operations of the SWP provides an adequate, complete, and good faith effort at full disclosure of the physical environmental

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			impacts and the conclusions are based upon substantial evidence in light of the whole record. Development of the Proposed Project description and analysis of the potential environmental impacts utilized a wide range of relevant data, literature, and tools. DWR used the best available scientific information to produce analyses of the effects of the Proposed Project, drawing on a number of scientific and engineering disciplines that include geology, hydrology, biology, ecology, chemistry, engineering, and climatology. The data, models, and literature are publicly available, and the methodologies used to apply these tools and information are described in the analyses in DEIR Chapters 4 through 9 and the associated appendices. The data and information sources utilized to evaluate the Proposed Project are cited in the EIR and also listed in the bibliographies provided at the end of the EIR and each accompanying appendix. The data, models, literature, and analyses have been subjected to review either as part of the customary practices of scientific publication or as part of legal and regulatory processes. The modeling conducted for the EIR is based on reasonable assumptions and appropriate, widely accepted modeling tools. Despite the application of a sound scientific approach used by DWR to draw conclusions in the DEIR, all scientific inquiry contains a certain level of uncertainty, especially when dealing with complex hydrological and biological systems such as the Delta. Field sampling techniques and the use of mathematical models to simulate biological phenomenon are but two areas where error and imprecision exist and influence conclusions and decision-making. These are inherent in all scientific investigations and impact assessments. Statements of uncertainty, infrequent or not, should not be confused with deliberate attempts to hide the truth. Furthermore, DWR notes that the quoted language in this comment refers to commitments to fund studies to reduce uncertainty by developing additional data.

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10	47	[ATT 1:] The Draft EIR issued November 21, 2019, is so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment have been precluded. Consequently, DWR must prepare and recirculate a new Draft EIR in order to proceed in the manner required by CEQA. (CEQA Guidelines, § 15088.5(a.)	This comment describes comments submitted on the 2019 DEIR for the Long-Term Operation of the State Water Project. Thus, the comment does not directly address the 2024 DEIR for the Long-Term Operation of the State Water Project and DWR is not required to respond to comments on projects that are no longer being pursued. However, DWR has reviewed the comment's content and provided responses where it may still be applicable to the 2024 DEIR for the Long-Term Operation of the State Water Project. Here, the comments provided are not applicable, and therefore, no further response is provided.
10	48	[ATT 1:] Contacts for this comment letter are Conner Everts, Facilitator, Environmental Water Caucus (310) 804-6615 or connere@gmail.com, or Robert Wright, Counsel, Sierra Club California (916) 557-1104 or bwrightatty@gmail.com. We would do our best to answer any questions you may have.	This is contact information. No additional response is required.
10	49	[ATT 2:] By this letter our public interest organizations supplement the written comments we, Sierra Club California, AquAlliance, California Water Impact Network, California Sportfishing Protection Alliance, Center for Biological Diversity, Environmental Water Caucus, Planning and Conservation League, and Restore the Delta, submitted on January 6, 2020, on the project. These supplemental comments, like our January 6 comments, are submitted pursuant to the California Environmental Quality Act (CEQA), on the Department of Water Resources' (DWR) Draft Environmental Impact Report (Draft EIR) for Long-Term Operation of the State Water Project (SWP.)	This comment describes comments submitted on the 2019 DEIR for the Long-Term Operation of the State Water Project. Thus, the comment does not directly address the 2024 DEIR for the Long-Term Operation of the State Water Project and DWR is not required to respond to comments on projects that are no longer being pursued. However, DWR has reviewed the comment's content and provided responses where it may still be applicable to the 2024 DEIR for the Long-Term Operation of the State Water Project. Here, the comments provided are not applicable, and therefore, no further response is provided.
10	50	[ATT 2:] There is significant new information requiring preparation of a new Draft EIR for the project, and recirculation, that DWR did not disclose until after the public comment period closed on the Draft EIR on January 6, 2020. Recirculation of a new Draft EIR is required by CEQA, including CEQA Guidelines § 15088.5(a.) [Footnote 1: The CEQA Guidelines are codified at 14 Code Cal. Regs, § 15000 et seq.] The new information is the Notice of Preparation [NOP] of Environmental Impact Report for the Delta Conveyance Project, and its	This comment describes comments submitted on the 2019 DEIR for the Long-Term Operation of the State Water Project. Thus, the comment does not directly address the 2024 DEIR for the Long-Term Operation of the State Water Project and DWR is not required to respond to comments on projects that are no longer being pursued. However, DWR has reviewed the comment's content and provided responses where it

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		content, published by DWR on January 15, 2020. A copy of the NOP is attached. Our January 6 comment letter explained DWR's failure to perform CEQA required full environmental disclosure. (January 6 letter, pp. 9-12.) The Draft EIR did not even mention, let alone analyze, the ongoing Delta Water Tunnel project. (Id.) The just released NOP adds yet more undeniable fact to the undeniable fact that the ongoing Delta Water Tunnel project, now called the "Delta Conveyance Project" in the NOP, is part and parcel of ongoing SWP Long-Term Operation. DWR explains in the NOP, Here, as the CEQA lead agency, DWR's underlying, or fundamental, purpose in proposing the [Tunnel] project is to develop new diversion and conveyance facilities in the Delta necessary to restore and protect the reliability of State Water Project (SWP) water deliveries and, potentially, Central Valley Project (CVP) water deliveries south of the Delta, consistent with the State's Water Resilience Portfolio. (NOP 2) (Emphasis added.) [Footnote 2: The number in each cite to the NOP refers to the NOP page number.] DWR states the [Tunnel] project objectives of making "physical improvements to the SWP Delta conveyance system" include, minimizing "the potential for public health and safety impacts from reduced quantity and quality of SWP water deliveries" and, "To protect the ability of the SWP, and potentially the CVP, to deliver water when hydrologic conditions result in the availability of sufficient amounts, . . ." (NOP 2) (Emphasis added.) The proposed project "would add to the existing SWP infrastructure." (NOP 2.) (Emphasis added.) DWR states the [Tunnel] project may involve modifications to SWP "water supply contracts to incorporate the Delta Conveyance Project." (NOP 6.) DWR states the probable significant environmental effects of the [Tunnel] project may include, Water Supply: changes in water deliveries. Surface Water: changes in river flows in the Delta. Water Quality: changes to water quality constituents and/or concentrations from operation of facilities. Fish and Aquatic Resources: effects to fish and aquatic resources from construction and operation of the water conveyance facilities.	may still be applicable to the 2024 DEIR for the Long-Term Operation of the State Water Project. The following response is provided for those elements of the comment that are applicable to the 2024 DEIR for the Long-Term Operation of the State Water Project. See Common Response 6, "Other State Efforts," for information on the Delta Conveyance Project.

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		Public Health: changes to surface water could potentially increase concerns about mosquito-borne diseases [and 19 additional impacts not quoted here] (NOP 9-10.) The Draft EIR made the astonishing and wrong claim that the SWP Long-Term Operation project would have no cumulative or direct significant environmental effects. (January 6 letter, 14-17, 17-19.) The NOP, however, admits the project including the Delta Conveyance Project would probably have at least 24 significant environmental effects. (NOP 9-10.) DWR was able to determine that without even preparing an initial study. (NOP 9.) There would be new significant environmental impacts resulting from the project when correctly defined to include the Delta Conveyance Facility, requiring recirculation. (CEQA Guidelines § 15088.5 (a)(1.) Correct definition of the project substantially increases the severity of many environmental impacts, requiring recirculation. (CEQA Guidelines § 15088.5 (a)(2.) A feasible project alternative including reduction of exports to eliminate the claimed need for a Delta Conveyance Project, requires recirculation. (CEQA Guidelines § 15088.5 (a)(3.) Omission of the Delta Conveyance Project from the Draft EIR, rendered it so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded. Recirculation is required. (CEQA Guidelines § 150885. (a)(4.) Moreover, the omission was deliberate. DWR, as explained in our January 6 comment letter (letter, 9-12), was actively engaged in at least two ongoing Delta Tunnel processes before the November 21, 2019, issuance of the subject Draft EIR, and before the January 6, 2020, close of the public comment period. The NOP was issued January 15 a mere seven business days after the comment period closed on the subject Draft EIR.	
10	51	[ATT 2:] To shorten this letter and avoid repetition, we refer to pertinent portions of our January 6 comment letter. DWR's January 15, 2020, NOP on the Delta Conveyance -Project, is additional undeniable fact showing the following CEQA violations will occur if DWR fails to prepare and recirculate a new, accurate Draft EIR on SWP Long-Term Operation: • Failure to include the required range of reasonable alternatives. (January 6, letter 6-8);	This comment repeats what was commented in Attachment 1. See also Response to Comment 10-6. Specific responses to the specific comments on the DEIR are provided herein. No additional response is required.

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		• Failure to perform CEQA-required full environmental disclosure (January 6 letter 9-12); • Failure to integrate environmental reviews (January 6 letter 12-13); • Segmentation/piecemealing environmental analysis (January 6 letter 13); • Failure to analyze impacts of providing water to the entire project (January 6 letter 13-14); • Failure to accurately evaluate cumulative environmental impacts (January 6 letter 14-17); • Failure to disclose and evaluate project growth-inducing impacts (January 6 letter 17); • Failure to disclose and analyze the significant adverse environmental impacts of the project (January 6 letter 17-19); • Failure to evaluate SWP Long-Term Operation in light of climate change (January 6 letter 21-22); • Failure to disclose and assess the future reduction in claimed needs for SWP exports as a result of new technologies and curtailment of exports (January 6 letter 22-23); Failure to include an accurate, stable, and finite project description (January 6 letter 24-25.)	
10	52	[ATT 2:] Conclusion The NOP DWR issued January 15, 2020, adds to the undeniable fact that preparation of a new Draft EIR on SWP Long-Term Operation, and recirculation, are required by CEQA, including CEQA Guidelines § 15088.5(a.)	See Response 10-51.
10	53	[ATT 2:] Contacts for this comment letter are Conner Everts, Facilitator, Environmental Water Caucus (310) 804-6615 or connere@gmail.com, or Robert Wright, Counsel, Sierra Club California (916) 557-1104 or bwrightatty@gmail.com. We would do our best to answer any questions you may have.	This is contact information. No additional response is required.
10	54	[Attachment 3: California Water Impact Network Comment Letter to the State Water Resources Control Board on the Sacramento/Delta Draft Staff Report, dated January 18, 2024.]	The commenter provided this attachment for reference purposes in support of their comments. Those comments are addressed in these responses to the commenter's letter. DWR has reviewed all comments and will consider all comments in its decision-making process.

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10	55	[Attachment 4: U.S. Environmental Protection Agency's Comment Letter to State Water Resources Control Board on the 2023 Sacramento/Delta Draft Staff Report dated January 19, 2024.]	The commenter provided this attachment for reference purposes in support of their comments. Those comments are addressed in these responses to the commenter's letter. DWR has reviewed all comments and will consider all comments in its decision-making process.
10	56	[Attachment 5: Complaint and Petition Brought by CWIIN and Others in Fresno Superior Court Against DWR's Change for Petition for DCP.]	The commenter provided this attachment for reference purposes in support of their comments. Those comments are addressed in these responses to the commenter's letter. DWR has reviewed all comments and will consider all comments in its decision-making process.
11	1	On Tuesday, April 2, 2024, staff from City of Fairfield and Solano County Water Agency presented to City Council on the harmful effects to local water supplies if the draft Bay-Delta Plan for revised operation of the State Water Project were implemented. The presentation underscored the viability of an alternative approach referred to as the Voluntary Agreements, which not only aligns with the State's conservation objectives but also preserves a path for sustainable economic growth in Solano County. As a Fairfield resident and civil engineer with over 40 years of experience on infrastructure projects across the Western U.S. (including 15 years on water resource projects in California), I write to express my support for the Voluntary Agreements, specifically the Healthy Rivers and Landscapes Proposal. This Proposal offers a more pragmatic solution compared to the unimpaired flow regime outlined in the draft Bay Delta Plan EIR. The Healthy Rivers and Landscape Proposal would ensure the preservation of Lake Berryessa as a vital source of water for Solano County while also supporting improved flows and habitat in the Bay Delta. While I support and acknowledge the importance of maintaining adequate water flows within our watershed, it is imperative that any regulatory framework considers and safeguards all beneficial uses of our water resources. The Voluntary Agreements through the Healthy Rivers and Landscapes Program provides a practical implementation pathway for an updated Bay-Delta Plan while avoiding devastating reductions to Solano County water supplies.	Please refer to Common Response 7, "Relationship to Healthy Rivers and Landscapes Program" (previously referred to as Voluntary Agreements), regarding the various operational scenarios analyzed in the EIR, some of which include Healthy Rivers and Landscapes Program flows as components of the Delta Outflow action. Recognizing that the SWRCB has not yet approved HRLP, DWR included an alternate mechanism for Delta Outflow, "Early Voluntary Agreement Implementation," in the Proposed Project described in the EIR (Chapter 2, Section 2.3.5.2).

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		Please consider adoption of the Health Rivers and Landscapes Program as the best alternative for meeting the objectives of the Bay Delta Plan Update.	
12	1	The California Department of Fish and Wildlife (CDFW) received a Notice of Availability of a DEIR from the Department of Water Resources for the Project pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines [Footnote 1: CEQA is codified in the California Public Resources Code in section 21000 et seq. The "CEQA Guidelines" are found in Title 14 of the California Code of Regulations, commencing with section 15000]. CDFW previously submitted comments in response to the Notice of Preparation of the DEIR on July 14, 2023, as a part of an earlier phase of Project development. Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish and wildlife. Likewise, we appreciate the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may be required to carry out or approve through the exercise of its own regulatory authority under the Fish and Game Code.	This information describes the structure or organization of the comment letter, the background of the organization or individual commenter, clarification on the submittal of the comment letter, or general introductory text. It is not a comment on the contents of the DEIR. DWR has reviewed all comments and will consider all comments in its decision-making process.
12	2	CDFW ROLE: CDFW is California's Trustee Agency for fish and wildlife resources and holds those resources in trust by statute for all the people of the State. (Fish & G. Code, §§ 711.7, subd. (a) & 1802; Pub. Resources Code, § 21070; CEQA Guidelines § 15386, subd. (a).) CDFW, in its trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species. (Id., § 1802.) Similarly, for purposes of CEQA, CDFW is charged by law to provide, as available, biological expertise during public agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources.	This information describes the structure or organization of the comment letter, the background of the organization or individual commenter, clarification on the submittal of the comment letter, or general introductory text. It is not a comment on the contents of the DEIR. DWR has reviewed all comments and will consider all comments in its decision-making process.
12	3	CDFW ROLE: CDFW is also submitting comments as a Responsible Agency under CEQA. (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381.) CDFW expects that it may need to exercise regulatory authority as provided by the Fish and Game Code. Likewise, to the extent implementation of the Project as proposed may result in "take" as defined by State law of any species protected under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.), the project proponent may seek related take authorization as provided by the Fish and Game Code.	This information describes the structure or organization of the comment letter, the background of the organization or individual commenter, clarification on the submittal of the comment letter, or general introductory text. It is not a comment on the contents of the DEIR. DWR has reviewed all comments and will consider all comments in its decision-making process.

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12	4	CDFW ROLE: CDFW notes that on November 1, 2023, DWR submitted an Incidental Take Permit (ITP) application seeking authorization to take Delta Smelt, Longfin Smelt, and Winter-run and Spring-run Chinook Salmon as a result of long-term operations (LTO) of the State Water Project (SWP). On August 2, 2024, DWR submitted a supplemental request to add White Sturgeon as a Covered Species. CDFW is currently processing the application and this supplemental request. Some aspects of the Project Description and proposed minimization and mitigation measures in the application differ from what was presented as the Proposed Project in the DEIR, for example: (1) the DEIR does not include Chinook Salmon mitigation while the LTO ITP application carries forward the existing 2020 SWP ITP (No. 2081-2019-066-00) obligation to provide funding for Chinook Salmon habitat restoration actions (Condition of Approval 9.21 – Mitigation for Impacts Associated with Project Operations); (2) implementation of the SWP-facilitated Voluntary Agreements are modeled differently between the two documents, specifically in that the LTO ITP application assumes flows generated by land fallowing would be deployed in March, while the DEIR varies its application across March, April, and May, based on water year type. CDFW looks forward to continuing its coordination with DWR as a Responsible Agency and pursuant to its CESA obligations.	Much of the information in this comment describes the California Endangered Species Act compliance process DWR conducted, which is not a comment on the EIR. Common Response 11, "Application of CESA Standards," describes the process further. The Chinook Salmon mitigation described in the comment was included in the ITP application Project Description to comply with the CESA requirement to fully mitigate impacts on CESA-listed species. The analyses included in Chapter 6 of the EIR, Sections 6.4.3 through 6.4.5 describe the impacts of the Proposed Project on Chinook Salmon. These analyses identified impacts that were considered less than significant based on the Thresholds of Significance described in Section 6.3 of the EIR. Therefore, no mitigation was required under CEQA. Please see Common Response 11, "Application of CESA Standards," Common Response 4, "CEQA and CESA Legal Standards," and Common Response 3, "The CEQA Process," for more information on the CEQA process followed. The comment also indicates that the description in the ITP application of implementation of the Voluntary Agreement flows generated by land fallowing differs from that action described in the DEIR Project Description. In response, DWR has included an analysis of the impacts of the Voluntary Agreement land fallowing flows as described in the ITP application in newly added Appendix 6D, "Biological Results for Sensitivity Scenarios." For further discussion, please refer to Common Response 7, "Relationship to Healthy Rivers and Landscapes Program" (previously referred to as Voluntary Agreements)
12	5	PROJECT DESCRIPTION SUMMARY Proponent: Department of Water Resources (DWR) Objective: As stated in the DEIR, the California State Water Project (SWP) is a multi-purpose water storage and delivery system that extends more than 700 miles. The SWP is operated to provide for the primary purposes of water supply delivery and flood control, and it	This is a summary of the information provided in the Notice of Availability. It is not a comment on the contents of the DEIR. DWR has reviewed all comments and will consider all comments in its decision-making process.

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		provides additional benefits including power generation, recreation, and environmental stewardship. DWR is seeking approval of long-term operations of the SWP facilities in the Delta, Suisun Marsh, and Suisun Bay to continue to provide water supply for agricultural, municipal, and industrial uses, along with the additional benefits to recreation and the environment in compliance with all applicable laws and regulations, including contractual obligations. Location: The Project area for purposes of CEQA encompasses SWP water diversion, storage, and conveyance facilities and SWP service areas throughout the State (Figure 1) [Exhibit 1]. This includes the Sacramento River from the Feather River confluence to the Delta, waters of the Delta, Suisun Marsh, and Suisun Bay, and the facilities in the Delta, Suisun Marsh, and Suisun Bay including the Harvey O. Banks Pumping Plant, John E. Skinner Delta Fish Protective Facility, Clifton Court Forebay, Barker Slough Pumping Plant, Suisun Marsh Salinity Control Gates, Roaring River Distribution System, Morrow Island Distribution System, the Goodyear Slough Outfall Gates, South Delta Temporary Barriers, and San Luis Reservoir.	
12	6	[Exhibit 1] Figure 1: Locations of facilities relevant to Project operations in the Delta, Suisun Marsh, and Suisun Bay. Figure taken from the Project Description of the DEIR p. 2-3.	This is a summary of the information provided in the Notice of Availability. It is not a comment on the contents of the DEIR. DWR has reviewed all comments and will consider all comments in its decision-making process.
12	7	Timeframe: The Project describes ongoing and long-term operations of the SWP through 2034.	This is a summary of the information provided in the Notice of Availability. It is not a comment on the contents of the DEIR. DWR has reviewed all comments and will consider all comments in its decision-making process.
12	8	CDFW offers the comments and recommendations below to assist DWR in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources. Based on the potential for the Project to have significant impacts on biological resources, CDFW concludes that an Environmental Impact Report is appropriate for the Project. Based on review of the DEIR, CDFW would like to emphasize the importance of several key components for consideration in the EIR's disclosure and analysis of impacts, and identification and description of	Comment includes introductory text, no response required.

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		mitigation measures. Such considerations will also be important for the development of DWR's LTO ITP[.]	
12	9	[CDFW COMMENTS AND RECOMMENDATIONS] Less than Significant Without Mitigation Determination With respect to impacts to aquatic biological resources generally, the DEIR states at page 6-248, "[N]o mitigation is necessary because the Proposed Project would not have significant impacts on aquatic biological resources." However, the aquatic biological resource impacts analyses show incremental negative impacts to Bay-Delta native species and the Bay-Delta ecosystem under DWR's Proposed Project. Specifically, in comparison to existing conditions, the DEIR identifies increased modeled impacts to winter-run and spring-run Chinook Salmon using the Salvage-Density Method (Appendix 6B) that shows increased entrainment into the south Delta export facilities in April and/or May of all water year types and increased entrainment from February through May of wet water years [Footnote 2: Increased entrainment for other native salmonids is also documented in the DEIR to have similar patterns across water year types.] The Salvage-Density Method also shows increased entrainment of juvenile White Sturgeon into the south Delta export facilities in April or May of all water years except critical years, when historical loss was zero. Additionally, analyses in the DEIR anticipate more negative OMR flows in the spring for the Proposed Project, resulting in increased entrainment impacts for Delta Smelt and Longfin Smelt. CDFW is unclear how DWR determined no mitigation was needed in the DEIR to offset these additional impacts especially in consideration of current population declines of Delta native species and cumulative impacts associated with joint operations of the CVP and SWP. Given that DWR's significance conclusions in part rely on the deployment of SWP-facilitated Voluntary Agreement flows (i.e., spring Delta outflows from land fallowing and south Delta export restrictions), CDFW recommends that the EIR consider the potential for any impacts based on changes in the timing of flow deployment consistent with modeling provided to support the LTO ITP application. To facilitate the EIR's role as an informational document, CDFW recommends further explanation on how actions including habitat restoration, SWP-facilitated Voluntary Agreement flows, and Delta Smelt supplementation serve to offset impacts such as increased entrainment in the SWP's Delta facilities.	Significance to fish and aquatic resources was judged in relation to the threshold of significance conditions described in Section 6.3, "Threshold of Significance and Approach to Impact Assessment," in consideration of not only modeling results but also proposed operational criteria and other aspects of the Proposed Project. Each species' impact discussion concluded with a significance conclusion in consideration of the information preceding the significance conclusion for each action within the Proposed Project. In the case of Delta Smelt, for example, Section 6.4.1.11, "Significance of Impacts," on Delta Smelt, describes the potential for impacts from changes in entrainment and summer outflow but notes that these would likely result in a relatively small percentage change to population numbers, with supplementation more than offsetting potential negative effects because supplementation would result in a severalfold increase in population size. With respect to timing of SWP-facilitated Voluntary Agreement flows, additional analyses have been provided in the FEIR per the comment's suggestion. See Response to Comment 12-4. As further information, refer to Common Response 1, "Scope of Analysis," regarding the how the Proposed Project assumes continued implementation of the Coordinated Operations Agreement (and 2018 COA Addendum) and identifies operations that are applicable to the SWP, not to the CVP

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12	10	[CDFW COMMENTS AND RECOMMENDATIONS] Spring Delta Outflow CalSim 3 and associated biological modeling for the Proposed Project provided in the DEIR includes a spring Delta outflow component that incorporates SWP contributions toward the Voluntary Agreements in lieu of existing spring outflow provided by the 2020 SWP ITP Condition of Approval 8.17 (Export Curtailment for Spring Outflow) and Condition of Approval 8.19 (Additional 100 TAF for Delta Outflow; designed for deployment in either spring, summer, or fall months). SWP contributions to the Voluntary Agreements are proposed through a combination of SWP export reductions in the south Delta and land fallowing programs on the Feather and Sacramento rivers. The Proposed Project described in the LTO ITP application also includes an alternative approach, characterized as Early Voluntary Agreement Implementation, to implement spring Delta outflow through continued implementation of the existing 2020 SWP ITP Condition of Approval 8.17 (without Condition of Approval 8.19); however, no CalSim 3 or biological modeling were provided in the DEIR to analyze this alternative approach to the Proposed Project. To provide consistency between the EIR with the analysis DWR provided for the LTO ITP application, CDFW requests that the EIR incorporate modeling results for the alternative approach to spring Delta outflow that includes long-term implementation of Condition of Approval 8.17. Additionally, the CalSim 3 and associated biological modeling for SWP's contributions toward the Voluntary Agreements do not align with the modeling provided to CDFW to support the LTO ITP application. The DEIR, Appendix 4, Attachment 1 states that land fallowing will provide 50 TAF of inflow in above normal, below normal, and dry water year types between March and May with volumes distributed across months dependent on water year type. In response to CDFW's request, DWR modeled land fallowing as providing an increase in 50 TAF of inflow in March of above normal, below normal, and dry water years. Table 11-1 of the DEIR states that the alternative provided to CDFW would not optimize water supply or improve operational flexibility and therefore was not analyzed further in the DEIR. To provide consistency between the EIR and modeling provided to CDFW to support the LTO ITP application, CDFW requests that the EIR incorporate modeling results for March deployment of the 50 TAF inflow block provided from Feather River or Sacramento River land fallowing.	Detailed CalSim 3 and DSM2 (stage only) modeling results for the requested runs have been added to the EIR and are provided in Appendix 4F, "CDFW-requested Results."

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12	11	[CDFW COMMENTS AND RECOMMENDATIONS] Impacts of Proposed Project As stated above, the DEIR concludes that impacts of the Proposed Project operations are less than significant without mitigation to all aquatic CESA-listed species. However, important biological modeling and analyses typically utilized to assess the impacts of the Proposed Project on these species were not included in the DEIR. Notably, CDFW has requested, and DWR provided, the following analyses to support its processing of the LTO ITP application, and recommends that DWR provide them as part of the EIR, as well: (1) The DEIR does not include Salvage-Density Method results for SWP and CVP facilities separately. This analysis is needed to analyze Proposed Project impacts to salmonids and White Sturgeon. Additionally, combined historical natural-origin and hatchery-origin loss of winter-run and spring-run Chinook Salmon should be provided as inputs to the Salvage-Density Method to fully account for Proposed Project impacts on CESA-listed winter-run and spring-run Chinook Salmon, which include natural and hatchery populations.	CVP facility results are provided in the context of cumulative results in Chapter 10, "Other CEQA Discussions" (see Section 10.1.6.1, "Water Supply, Water Management, and Water Quality Projects and Actions"). Additional analyses for hatchery-origin winter-run and spring-run Chinook Salmon have been provided in the FEIR per the comment's suggestion; see the discussion of "Salvage-Density Method" in Sections 6.4.3.1 and 6.4.3.2 for winter-run and spring-run Chinook Salmon, respectively.
12	12	[CDFW COMMENTS AND RECOMMENDATIONS] Impacts of Proposed Project As stated above, the DEIR concludes that impacts of the Proposed Project operations are less than significant without mitigation to all aquatic CESA-listed species. However, important biological modeling and analyses typically utilized to assess the impacts of the Proposed Project on these species were not included in the DEIR. Notably, CDFW has requested, and DWR provided, the following analyses to support its processing of the LTO ITP application, and recommends that DWR provide them as part of the EIR, as well: (2) The DEIR does not include a juvenile Chinook Salmon Delta junction analysis (i.e., STARS, ECO-PTM). This analysis is necessary to better understand how the Proposed Project, with associated SWP-facilitated Voluntary Agreement implementation, may impact juvenile Chinook Salmon route selection through the Delta. In addition, CDFW requests that the EIR include median daily travel time of juvenile Chinook Salmon through the Delta as modeled by STARS to better understand how the Proposed Project may impact juvenile Chinook Salmon exposure time in the Delta.	Additional analyses for junction routing have been provided in the FEIR per the comment's suggestion; please see cross-reference in the "Survival, Travel Time, and Routing Analysis (Based on Perry et al. 2018)" discussion within Section 6.4.3.1 to the location of the new information provided in Appendix 6B. Travel time was not available in the version of code for STARS used in the analysis but survival from STARS essentially integrates the effects of travel time in the survival estimates.

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12	13	[CDFW COMMENTS AND RECOMMENDATIONS] Impacts of Proposed Project As stated above, the DEIR concludes that impacts of the Proposed Project operations are less than significant without mitigation to all aquatic CESA-listed species. However, important biological modeling and analyses typically utilized to assess the impacts of the Proposed Project on these species were not included in the DEIR. Notably, CDFW has requested, and DWR provided, the following analyses to support its processing of the LTO ITP application, and recommends that DWR provide them as part of the EIR, as well: (3) The DEIR does not include model documentation or results from the Interactive Object-Oriented Salmon Simulation (IOS), Oncorhynchus Bayesian Analysis (OBAN), or the Winter-Run Life Cycle Model (WRLCM). These results are necessary to inform the magnitude of potential population-level impacts on CESA-listed winter-run Chinook Salmon from Proposed Project operations.	In response to CDFW's request in support of the ITP application, DWR noted that the OBAN model was not included in the ITP application; therefore, there were no results to provide. DWR provided CDFW with the Delta-related portion of the IOS model, i.e., the Delta Passage Model, as included in the EIR. Focus on this component of the model was felt appropriate because the Proposed Project is focused on Delta operations and the Delta Passage Model provides population-level context to assess impacts. Winter-Run Life Cycle Model results provided to CDFW did not pertain to scenarios representative of the Proposed Project and therefore were not included in the EIR. However, one of the scenarios modeled with IOS, OBAN, and the Winter-Run Life Cycle Model related to the NEPA Draft Environmental Impact Statement for the Long-Term Operations of the Central Valley Project and State Water Project has relevance to the cumulative effects of the Proposed Project and reference to these has been added to Chapter 10, Section 10.1.6.1, "Water Supply, Water Management, and Water Quality Projects and Actions." For discussion on the NEPA process, See Common Response 9, "2023 Biological Assessment and NEPA."
12	14	The DEIR does not consider the Proposed Project's ability to exacerbate cyanobacterial harmful algal bloom (cHAB) formations in the Bay-Delta as a result of SWP exports from the Barker Slough Pumping Plant and south Delta (e.g., reduced outflow). CDFW requests the EIR include a cHAB analysis that evaluates the following five factors that provide favorable conditions for cHABs: 1) increased water temperatures, (2) decreased channel velocities and associated turbulence and water mixing, (3) increased hydraulic residence time, (4) increased water column irradiance due to greater water clarity, and (5) changes in nutrient availability.	The EIR includes evaluation of cyanobacterial harmful algal blooms in the "Cyanobacteria Harmful Algal Blooms" section of Section 5.3.3.2, "Delta," including consideration of the five factors mentioned in the comment.
12	15	Through-Delta juvenile Chinook Salmon survival modeling (i.e., Delta Passage Model, STARS) provided in the DEIR assumes the Georgiana Slough Salmonid Migratory Barrier will be in operation under both the Baseline Conditions and Proposed Project from mid-November through April. Modeling assumptions for the Georgiana Slough Salmonid	The text in Chapter 2 has been revised per the comment to include the Georgiana Slough Salmonid Migratory Barrier consistent with the timeframe of the EIR.

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		Migratory Barrier included a 50% efficiency scenario and a 67% efficiency scenario for reducing juvenile Chinook Salmon entry into the Georgiana Slough. The Project Description only commits DWR to installing and operating the Georgiana Slough Salmonid Migratory Barrier through 2030; therefore, there is a gap in the impacts analyzed in the DEIR for long-term operations of the SWP beyond 2030 when barrier efficiency would be reduced to 0%. CDFW requests DWR commit in the EIR to long-term operations of the Georgiana Slough Salmonid Migratory Barrier consistent with the timeframe of the EIR.	
12	16	ENVIRONMENTAL DATA CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database which may be used to make subsequent or supplemental environmental determinations. (Pub. Resources Code, § 21003, subd. (e).) Accordingly, please report any special status species and natural communities detected during Project surveys to the California Natural Diversity Database (CNDDB). The CNNDB field survey form can be filled out and submitted online at the following link: https://wildlife.ca.gov/Data/CNDDB/Submitting-Data. The types of information reported to CNDDB can be found at the following link: https://www.wildlife.ca.gov/Data/CNDDB/Plants-and-Animals.	DWR will continue to report special status and natural communities detections to the CNDDB, in compliance with Pub. Resources Code, § 21003, subd. (e).
12	17	ENVIRONMENTAL DOCUMENT FILING FEES The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of environmental document filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the environmental document filing fee is required in order for the underlying project approval to be operative, vested, and final. (Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089.)	DWR will complete the required CDFW filing fees for the Project upon completion of the FEIR, in compliance with Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089.
12	18	CONCLUSION CDFW appreciates the opportunity to comment on the DEIR to assist DWR in identifying and mitigating Project impacts on biological resources. Questions regarding this letter or further coordination should be directed to [commenter name], Environmental Program Manager, at [commenter phone number], or [commenter email].	This is a concluding comment. Specific responses to the specific comments on the DEIR are provided herein. No additional response is required.

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13	1	Thank you for including California Department of Transportation in the review process for Department of Water Resources. Please see attached comment letter from District 3, 4, and 10. Please provide our office with copies of any further actions regarding this proposal. We would appreciate the opportunity to review and comment on any changes related to this development. Should you have questions please contact me, Local Development Review Coordinator at HQ, by phone [phone number redacted] or via email at [email redacted].	This information describes the structure or organization of the comment letter, the background of the organization or individual commenter, clarification on the submittal of the comment letter, or general introductory text. It is not a comment on the contents of the DIR. DWR has reviewed all comments and will consider all comments in its decision-making process.
13	2	Long-Term Operation of the State Water Project in the Sacramento-San Joaquin Delta, Suisun Marsh, and Suisun Bay Thank you for including the California Department of Transportation (Caltrans) in the review process for the project referenced above. We reviewed this local development for impacts to the State Highway System (SHS) in keeping with our mission, vision, and goals, which includes addressing equity, climate change, and safety, and is outlined in our statewide plans such as the California Transportation Plan, Caltrans Strategic Plan, and Climate Action Plan for Transportation Infrastructure.	This information describes the structure or organization of the comment letter, the background of the organization or individual commenter, clarification on the submittal of the comment letter, or general introductory text. It is not a comment on the contents of the DEIR. DWR has reviewed all comments and will consider all comments in its decision-making process.
13	3	The California Department of Water Resources (DWR) is seeking approval of long-term operations of the SWP facilities in the Delta, Suisun Marsh, and Suisun Bay to continue to provide water supply for agricultural, municipal, and industrial uses, along with the additional benefits to recreation and the environment in compliance with all applicable laws and regulations, including contractual obligations. SWP operations will be coordinated with DWR's implementation of the Voluntary Agreements, an alternative implementation approach for satisfying the revised State Water Resources Control Board's Bay-Delta Water Quality Control Plan, including satisfying legal obligations under both endangered species laws and the Voluntary Agreements should the Voluntary Agreements be adopted by the State Water Resources Control Board. Considering other ongoing regulatory processes, the project will provide a framework for future projects involving SWP operations to come online. The EIR will evaluate potential impacts associated with long-term operations of the SWP including:	This comment is quoted text from the Notice of Availability for the DEIR. This is not a comment on the contents of the DEIR.

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		• Updated operating criteria, including operations of SWP facilities in the Delta such as pumps, the Suisun Marsh Salinity Control Gates, and the North Bay Aqueduct. • Measures that may be adopted to avoid, minimize, or mitigate impacts to listed species resulting from SWP long-term operations. No new infrastructure facilities are included in the proposed project and long-term SWP operations would not change DWR's water rights or impact the water rights of any other legal user of water.	
13	4	The project is expected to affect Caltrans Districts 3, 4 and 10. Based on the Notice of Preparation of a Draft Environmental Impact Report (EIR) package, Caltrans has the following requests and recommendations: Please clarify how this project relates to the Delta Conveyance Project, if at all.	Please see Common Response 6, "Other State Efforts," for a discussion of the relationship of the Proposed Project to the Delta Conveyance Project. The Proposed Project is independent from the Delta Conveyance Project (DCP). The Proposed Project includes updated operating criteria for the SWP facilities in the Delta, Suisun Marsh, and Suisun Bay and does not address construction or operation of the DCP. DWR requested a permit duration of ten years for the Incidental Take Permit being sought for the long-term operation of the State Water Project. The DCP is not anticipated to be completed until 2040. The DCP has undergone separate environmental review and is seeking separate permits under the state and federal endangered species acts to construct and operate the tunnel and associated facilities. For the purposes of this EIR, the DCP is included on the cumulative project list and potential impacts associated with implementing both the DCP and the Long-term Operations of the State Water Project are qualitatively evaluated in the cumulative analysis discussions provided in Chapter 10, "Other CEQA Discussions."
13	5	The project is expected to affect Caltrans Districts 3, 4 and 10. Based on the Notice of Preparation of a Draft Environmental Impact Report (EIR) package, Caltrans has the following requests and recommendations: Planning - Local Development Review In addition, we provide the following comments applicable in all three affected Caltrans Districts:	This information describes the CalTrans Districts potentially affected by the Proposed Project. No response is required for this portion of the comment. As identified in Appendix 3A, "Initial Study," Section 3.A.3.17, "Transportation and Traffic," the Project would not involve construction of new or modification of existing SWP facilities that would result in impacts to roadways, resulting in no impact on Sate Highways.

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		1. The lead agency should work with Caltrans to repair any damage to the State Highway caused by construction traffic and to prepare a traffic management plan to maintain safe and efficient traffic operations.	
13	6	The project is expected to affect Caltrans Districts 3, 4 and 10. Based on the Notice of Preparation of a Draft Environmental Impact Report (EIR) package, Caltrans has the following requests and recommendations: 2. In "Executive Summary ES3", the summary of the proposed project actions outlined in this section could benefit from additional clarity on the proposed elements as compared to existing/baseline activities. This summary should clearly identify (perhaps with another column in the table) what the changes from existing activities or agreements would be. CEQA guidelines section 15125 outline information regarding the need for a lead agency to describe existing conditions so that a reader may better interpret the significance of proposed actions in comparison.	Regarding a comparison of the Proposed Project to Baseline conditions, please refer to resource Chapters 4-9 where a comprehensive analysis of the Proposed Projects compared to baseline conditions is discussed. Appendix 4A, "Model Assumptions," describes the assumptions included in the CalSim 3 modeling used to characterize actions included in both the Baseline Conditions and the Proposed Project.
13	7	The project is expected to affect Caltrans Districts 3, 4 and 10. Based on the Notice of Preparation of a Draft Environmental Impact Report (EIR) package, Caltrans has the following requests and recommendations: 3. In Chapter 9, "Climate Change Resiliency and Adaptation", the DEIR appears to dismiss need to evaluate GHG [greenhouse gas] emissions by stating in the initial study that no new facilities will be built, not existing facilities be altered, therefore no impact related to GHG emissions is expected. This is inconsistent with the energy section of the document which outlines the GHG emissions associated with energy consumption ("Operation of SWP is responsible for approx. 99 percent of all GHG emissions by DWR"). GHG emissions evaluations are subsumed in the Energy Analysis and are not evaluated with respect to determining the significance related to projected GHG emissions of continued operational activities in the appropriate CEQA context.	Chapter 9, "Climate Change Resiliency and Adaptation," focuses on the climate projections and impacts which have the potential to affect the operations of the SWP into the future. As such, this EIR evaluated the potential for GHG emissions to change through Appendix 3A, "Initial Study." The commentor suggests there are discrepancies within the Energy and Greenhouse Gas (GHG) Emissions sections of the Initial Study. The Initial Study located in Appendix 3A, analyzes Energy in Section 3A.3.6, "SWP Energy Reduction and Efficiency Efforts," which notes, "operation of SWP is responsible for 99 percent of all GHG emissions," and most of these emissions come from non-hydropower electricity used by the pumping plants to move water from the Delta to other parts of the state." Additionally, the section describes how this is consistent with DWR's Climate Action Plan and details DWR would be required to reduce emissions and includes references to Section 3A.3.8, "Greenhouse Gas Emissions," which evaluates the potential for SWP operations to increase GHG emissions from the SWP power supply portfolio that constitutes about 98 percent of all GHG emissions from DWR operational activities, with the addition of maintenance, and business practices estimates

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			constituting a 0.5 percent of GHG emissions each for a total estimate of GHG emissions at 99 percent. Both of these chapters in the initial study describe the SWP power portfolio consistently. Further, the analyses in Section 3A.3.8.2, "Discussion," within the GHG Emissions provides an evaluation of GHG emissions using the CEQA Checklist Items for GHG Emissions under the Proposed Project, compared to Baseline Conditions (i.e., existing conditions), which is an appropriate analysis under CEQA. Because SWP operations associated with the Delta export facilities are similar under the Proposed Project and Baseline Conditions (i.e., the Proposed Project increases exports by approximately 2 percent compared to Baseline Conditions – see Chapter 4, "Surface Water Hydrology," Section 4.3.4, "Comparison of SWP Banks Pumping Plant Exports") and DWR is committed to remaining in compliance with CAP goals established by DWR, the Initial Study appropriately concludes that no impact would on the generation of GHG emissions would occur. Chapter 9, "Climate Change Resiliency and Adaption," was updated as shown below in Comment 13-8, to reflect the additional text to clarify the location of where GHG emissions were analyzed related to energy emissions.
13	8	The project is expected to affect Caltrans Districts 3, 4 and 10. Based on the Notice of Preparation of a Draft Environmental Impact Report (EIR) package, Caltrans has the following requests and recommendations: 4. We recommend that the connection to the GHG [greenhouse gas] emissions related to energy usage be clearly stated in Chapter 9 of the DEIR by summarizing the more in-depth evaluation in the energy chapter of the Initial Study (Appendix 3A).	Changes in Chapter 9, "Climate Change Resiliency and Adaptation," have been made that describes the connection to GHG emissions related to energy usage.
13	9	The project is expected to affect Caltrans Districts 3, 4 and 10. Based on the Notice of Preparation of a Draft Environmental Impact Report (EIR) package, Caltrans has the following requests and recommendations: 5. The DWR Climate Action Plan (CAP) was updated in 2024 and we recommend reflecting this information in the DEIR. Additionally, the DEIR should indicate how the outlined project activities for continued	DWR's Climate Action Plan Phase III (VA) and Phase III (AP) were updated in February 2019 and June 2020, respectively. However, changes in Chapter 9, "Climate Change Resiliency and Adaptation," have been made to ensure the latest draft California Natural Resource

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		efforts of the SWP are consistent with the CAP. Please indicate what GHG [greenhouse gas] emission reduction activities are going to be implemented with the project to demonstrate consistency (see CEQA guidelines section 15183.5).	Agency's Draft California Climate Adaptation Strategy, published in May 2024, is represented. Section 15183.5 of the CEQA Guidelines does not require a Lead Agency to include specific activities as part of a Proposed Project to show compliance with GHG reduction activities. Section 15183.5 states that public agencies may choose to analyze and mitigate significant GHG emissions in a plan for the reduction of GHG emissions or similar document. The Proposed Project would have no impact on GHG emissions, as described in Section 3A.3.8.2, "Discussion" of the Initial Study (Appendix 3A of the EIR) and Response to Comment 13-7. Therefore, no additional information is needed in the EIR.
13	10	The project is expected to affect Caltrans Districts 3, 4 and 10. Based on the Notice of Preparation of a Draft Environmental Impact Report (EIR) package, Caltrans has the following requests and recommendations: 6. Regarding the Resilience and Adaptation evaluation of the continued activities of the SWP, page 9-2 states the hydrologic conditions were evaluated using a 30-year climate period. It would be valuable to state the reasoning for selecting this period and how it relates to the long-term operation of the SWP.	Changes in Chapter 9, "Climate Change Resiliency and Adaptation," have been made to clarify why a 30-year period was chosen to evaluate future hydrologic conditions. Specifically, averages over a 30-year period of record ensure that any intra- and inter-annual variability is smoothed to capture long-term climate trends that are projected in this time period. Please also refer to Appendix 4D, Part 1, "Climate Change Projections Development," for additional discussion and rationale for selection of the Climate Change assumptions used in the CalSim 3 modeling.
13	11	The project is expected to affect Caltrans Districts 3, 4 and 10. Based on the Notice of Preparation of a Draft Environmental Impact Report (EIR) package, Caltrans has the following requests and recommendations: 7. Pages 9-13 include a description of the 2018 Sea Level Rise guidance. OPC [Ocean Protection Council] has issued the 2024 update which does not include the H++ scenario. We suggest revising this section to reflect the updated (2024) version of the State SLR guidance.	Changes in Chapter 9, "Climate Change Resiliency and Adaptation," have been made to reflect the latest 2024 California Sea Level Rise Guidance.
13	12	The project is expected to affect Caltrans Districts 3, 4 and 10. Based on the Notice of Preparation of a Draft Environmental Impact Report (EIR) package, Caltrans has the following requests and recommendations: 8. On Page 9-29, Table 9-6, all tables that indicate baseline proposed future climate conditions should indicate the time period directly on the table for reference.	Tables in Chapter 9, "Climate Change Resiliency and Adaptation," have been updated to indicate that the "Current climate" represents the midpoint between 1981-2010 and "future climate" represents the midpoint between 2008-2037.

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			Please See Appendix 4D Part 1, "Climate Change Projections Development," for additional discussion of the Climate Change assumptions used in the CalSim 3 modeling.
13	13	The project is expected to affect Caltrans Districts 3, 4 and 10. Based on the Notice of Preparation of a Draft Environmental Impact Report (EIR) package, Caltrans has the following requests and recommendations: 9. Overall, the climate change evaluation is a very technical document that would be challenging for the average member of the public to discern what changes could be expected to occur with the information regarding project climate scenarios represent. We suggest including a section in table 9-2 to describe potentially necessary actions/ adaptation measures that would result from the identified impacts of climate projections within the study area.	Describing potential actions and adaptation measures that would result from the identified impacts of climate projections within the study area are not within the scope of this EIR and no further response is required. A summary of climate change impacts on the long-term operations of the SWP is included in Common Response 8, "Climate Change."
13	14	District 3 Collaboration Please be advised that as part of the Delta Conveyance project, there is a realignment of a portion of State Route (SR) 160 in Sacramento County (Caltrans District 3), from approximately 2.1 miles south of the I-5/Hood Franklin interchange, up to approximately 1.7 mile south of the same interchange. Through our Project Management team, we are coordinating with the Department of Water Resources on the realignment. Our collaboration will remain ongoing through construction.	The comment provided is not applicable to the DEIR for the Long-Term Operations of the State Water Project, and therefore, no further response is required.
13	15	Please keep Caltrans District 4 informed about the various climate stressors and ongoing adaptation and resilience initiatives as they are developed and implemented at this project location. The wide geographical scale warrants integral partnerships with all stakeholders who have interest on and near the Bay and Delta. Caltrans District 4 is particularly interested in engaging with these partners for regional collaboration, to find multi-benefit solutions that protect vulnerable shorelines, communities, infrastructure, and the environment. District 4 would like to work in tandem with our sister districts in Sacramento (District 3) and San Joaquin (District 10) in future climate adaptation and resiliency discussion. For any questions and concerns within District 4's geographical boundaries, please reach out to the Caltrans Bay Area Climate Change Planning Coordinators at [email redacted] and [email redacted].	This is a concluding comment. No additional response is required.

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13	16	Encroachment Permits Any project or work, including access modification and drainage work, that takes place along or within the State's ROW [right-of-way] requires an encroachment permit issued by Caltrans. To apply, a completed encroachment permit application, environmental documentation, and five sets of plans clearly indicating State ROW must be submitted to Encroachment Permits Offices as indicated below: For encroachments within District 3: California Department of Transportation District 3, Office of Permits 703 B Street Marysville, CA 95901 D3encpermit@dot.ca.gov For encroachments within District 4: California Department of Transportation District 4, Office of Permits 111 Grand Avenue, 6th Floor MS 5E P. O. Box 23660 Oakland, CA 94623-0660 D4Permits@dot.ca.gov For encroachments within District 10: California Department of Transportation District 10, Office of Permits 1976 E. Charter Way/MLK Jr Blvd (95205) P. O. Box 2048 Stockton, CA 95201 d10.permits@dot.ca.gov It is important to note that some encroachments may be deemed as "complex." In these situations, there may be aspects to the encroachment that involve processes that take longer than the 20 to 30 days we are typically required to respond within. To avoid any unnecessary delays resulting from a complex encroachment, please apply the attached Form TR 0416, Applicant's Checklist to Determine Applicable Review Process, also referred to as our QMAP. In the checklist, items marked as "False" would be expected to result in a complex encroachment. Complex encroachments are managed through Caltrans project managers instead of our Encroachment Permits offices.	The scope of the DEIR for the Long-Term Operations of the State Water Project does not include any construction dewatering activities including access modification or drainage work that takes place along or within the State's ROW and therefore does not require an Encroachment Permit. Please see Common Response 1, "Scope of Analysis," and Chapter 2, "Project Description," for more information on the project objectives and scope.

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13	17	Please provide our [Caltrans] offices with copies of any further actions regarding this project. We would appreciate the opportunity to review and comment on any changes related to this or tiered projects. The Caltrans Local Development Review branches can be contacted as follows: Headquarters: Janki Patel, Branch Chief, Local Development Review [phone number redacted] [email redacted] District 3: Gary Arnold, Branch Chief, Local Development Review [phone number redacted] [email redacted] District 4: Yunsheng Luo, Branch Chief, Local Development Review [phone number redacted] [email redacted] District 10: Thomas Dumas, Branch Chief, Local Development Review [phone number redacted] [email redacted]	This is not a comment on the contents of the DEIR. Per the request, the commenter's contact information has been added to the project email list for updates on the project.
13	18	If you have any questions regarding these comments or require additional information, please contact Janki Patel, LDR Branch Chief.	This is not a comment on the contents of the DEIR. Per the request, the commenter's contact information has been added to the project email list for updates on the project.
14	1	These comments on the California Department of Water Resources' ("DWR") Draft Environmental Impact Report ("DEIR") for Long-Term Operation of the State Water Project in the Sacramento-San Joaquin Delta, Suisun Marsh, and Suisun Bay are submitted on behalf of Local Agencies of the North Delta ("LAND") [Footnote 1: LAND is a coalition comprised of reclamation, water and levee maintenance districts in the northern geographic area of the Delta. Some of these agencies provide both water delivery and drainage services, while others only provide drainage services. These districts also assist in the maintenance of the levees that provide flood protection to homes and farms.	This information describes the structure or organization of the comment letter, the background of the organization or individual commenter, clarification on the submittal of the comment letter, or general introductory text. It is not a comment on the contents of the DEIR. DWR has reviewed all comments and will consider all comments in its decision-making process.
14	2	LAND [Local Agencies of the North Delta] is concerned about the many potentially significant impacts on the environment associated with the	The commenter expresses concern about the impacts of the DCP. Please see Common Response 6, "Other State

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		project, especially as they relate to the Delta Conveyance Project ("Delta Tunnel"). (DEIR, p. 10-4.) The Delta Tunnel is not a "climate adaptation strategy" as claimed in the DEIR. Rather, it is an extremely inflexible and costly infrastructure project that would not prepare the state for changes in hydrologic conditions in the future.	Efforts," for a discussion of the relationship between the Proposed Project and the DCP. As described in the Common Response and Chapter 10, "Other CEQA Discussions," the DCP is separate from the Proposed Project with its own independent utility, geographic boundaries, and schedule.
14	3	In addition, the analysis in the DEIR is insufficient to support a decision by the State Water Resources Control Board, as a responsible agency, on a "water rights time extension for DWR's Feather River / Delta water right permits 16478, 16479, 16481, 16482, 16477, and 16480 to allow long-term operations consistent with the diversion rates and quantities evaluated in this EIR." (DEIR, p. ES-3) Importantly, baseline conditions do not include diversion of the face value of these water rights permits in the Northern Delta, and DWR's actions attempt to place water rights in "cold storage" in violation of state law. To the extent the DEIR relies on the EIR prepared for the Delta Tunnel project, that reliance is misplaced, as that EIR is also inadequate and is currently under review in court.	DWR has removed the water rights time extension from this EIR. Please see Common Response 13, "Water Rights Time Extensions." No further response is required.
14	4	Thank you for considering these comments.	This is a concluding comment. Specific responses to the specific comments on the DEIR are provided herein. No additional responses is required.
15	1	The DEIR is legally deficient and sadly reflects an unlawful effort by the State through its Department of Water Resources to circumvent the law to foster exports of water which is not surplus to the present and future water needs in the counties and watersheds of origin. The DEIR fails to present or incorporate the limitations on the water rights for the CVP and SWP and the public official fiduciary duties as trustees of the public trust thereby failing to set forth an honest and good faith analysis of impacts and alternatives. As the California Water Plan provided the SWP and CVP were planned to meet all obligations in a reoccurrence of a series of dry years such as occurred in 1929 through 1934. The DEIR treats such a reoccurrence or similar event as a "stressed water supply condition" which cannot and was not modeled. In Appendix 4A-8.2.3 Extreme Conditions the DEIR provides: "In actual future operations, as has always been the case in the past, the project operators would work in real time to satisfy legal and contractual obligations given then current conditions and hydrologic constraints."	As described in Chapter 3, "Scope of Analysis," the EIR appropriately considers diversions based on contracts and water rights in the hydrologic modeling used for the analysis of potential impacts. In addition, Appendix 4A, "Model Assumptions," Attachment 1, "CalSim 3 Assumptions and Baseline Conditions," describe the regulatory standards that are include in the in the modeling, including regulations that limit exports and require water to be used for environmental purposes, such as CVPIA. Therefore, the analytical tools used in the EIR are reasonable and represent a good-faith effort to understand and disclose potential impacts of the proposed project. Please also refer to Common Response 3, "The CEQA Process," regarding the scope and reasonable range of alternatives evaluated in the EIR. Please also refer to Common Response 8, "Climate Change," regarding the consideration of climate change and potential future impacts associated with the

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			proposed project. In addition, refer to Common Response 15, "Real Time Operations," for additional discussion regarding operational decisions.
15	2	Missing is the priority for satisfying legal obligations over contractual obligations and the differing resulting environmental impacts extending over multiple years. The legal obligations include conditions upon which the water rights for the delivery of the contracted supply are based. The contracts include recognition of such conditions. The reliance on collaboration of the conflicted parties (State operator and State regulator) with no recognition of legal priorities is clearly not consistent with law and fiduciary protection of the public trust. Such was apparently not always the practice of the past. See Bulletin 160-83 (Exhibit 10) [attachment 10] discussed below. It is apparent that the SWP decision not to diligently pursue the planned development of the 5 MAF of surplus water from the North Coast by the year 2000 resulted in a huge shortage of supply and likely changed the practice of operating to meet legal requirements in priority to contracted supply.	The Proposed Project aims to continue DWR's ongoing, Long-Term State Water Project Operations consistent with applicable laws, contractual obligations, and agreements. Refer to Common Response 4, "CEQA and CESA Legal Standards," Common Response 15, "Real-time Operations," and Common Response 1, "Scope of Analysis." Please also refer to Common Response 10, "Public Trust," for more detailed information on the background and Proposed Project consideration of the Public Trust.
15	3	It appears that, except in wet periods, there may be no surplus water for lawful export from the from the Delta. The DEIR analysis must extend over multiple years anticipating that future years may be dry. Exports in year one may preclude meeting water quality standards in year six. Without ample carryover storage, the prohibition of exports of water needed to supply needs for development in the counties and watersheds of origin, will be violated. As explained in the USBR Water Supply and Yield Study dated March 2008 (Exhibit 8) [Attachment 8] discussed below the SWP and CVP operation during the 1987- 1992 did not reduce deliveries until 2 to 4 years into the drought thereby diminishing carry over storage to critical levels.	This Environmental Impact Report for the Long-Term Operations of the State Water Project will extend for the duration of the Proposed Project's Incidental Take Permit, which DWR requested to be 10 years. DWR and Reclamation developed the Drought Relief Year (DRY) Team and a Drought Toolkit as part of the Proposed Project and in coordination with CDFW, NMFS, USFWS, and SWRCB. As described in Chapter 2, "Project Description," Section 2.3.20, the DRY Team will meet monthly to discuss if any actions that can either mitigate or avoid drought conditions throughout the Central Valley should be pursued. Please see Appendix 2A, Attachment 6, "Drought Toolkit," for a comprehensive discussion of the background, purpose, and actions included in the drought toolkit. Please also see Chapter 2, Section 2.1.1, "Project Objectives," for a description of DWR's continuing commitment to operate the State Water Project in compliance with all state and federal water quality and

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			environmental laws. Please refer to Response to Comment 15-31 regarding area of origin.
15	4	The DEIR provides: "The Proposed Project would continue DWR's ongoing, long-term SWP operations consistent with applicable laws, contractual obligations, and agreements. DWR proposes longterm operations of the SWP that will allow DWR to continue to store, divert, and convey water, in accordance with its existing water rights, to deliver water pursuant to water contracts and agreements up to full contract quantities. DWR is seeking to optimize water supply and improve operational flexibility while protecting fish and wildlife." (Executive summary ES-3)	This information quotes the contents of the EIR. It is not a comment on the contents of the DEIR. DWR has reviewed all comments and will consider all comments in its decision-making process.
15	5	DWR'S ONGOING SWP OPERATIONS HAVE NOT BEEN CONSISTENT WITH APPLICABLE LAWS OR IN ACCORDANCE WITH ITS EXISTING WATER RIGHTS DWR's predetermination to circumvent the obligation to provide salinity control for the Delta and disregard the promises and law to limit exports to water which is truly surplus to the present and future needs within the counties and watersheds of origin is clear. The plan to isolate the Sacramento River flow from the Delta Pool, the excessive transfer and export of water to areas outside the counties and watersheds of origin and the use of emergency authority to curtail vested senior water rights while at the same time facilitating exports of water from the Delta all reflect the bad faith incorporated in the DEIR process. The problem to be addressed is the huge deficiency in the ability of the CVP and SWP to supply water to meet senior obligations and supply surplus water to meet even permanent demand for contractors during a series of dry years. The failure of the CVP and SWP to carryout the plans for water development while facilitating development of desert and arid areas for urban and agricultural use thereby increasing permanent demand has been deliberate and irresponsible. Diverting and exporting water needed for present and future beneficial uses, including fish and wildlife, in the Sacramento-San Joaquin Delta Watershed to facilitate urban development including golf courses, lakes and swimming pools in the desert and the planting of permanent crops on arid lands is contrary to law and not sustainable. The planning for the CVP and SWP recognized the limitation of the hydrology of the Delta watershed to provide sufficient water to meet needs within the watershed and provide surplus water for export particularly during a	This comment does not raise an issue associated with the contents or analyses included this DEIR on the Long-term Operations of the State Water Project. Please see Common Response 1, "Scope of Analysis," and Appendix 2D, "Geographic Scope," for a description of the scope of the project and the analysis. Please see Chapter 2, Section 2.1.1, "Project Objectives," regarding the project's purpose and objectives, including DWR's continuing commitment to operate the State Water Project in compliance with all state and federal water quality and environmental laws. Please see Response to Comment 15-31 regarding the "area of origin." Refer to Common Response 10, "Public Trust," and Common Response 4, "CEQA and CESA Legal Standards," for more information on the Proposed Project consideration of public trust and CEQA legal standards. DWR has reviewed all general comments and will consider these comments as part of the decision-making process.

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		series of dry years such as occurred in 1929 through 1934. See Exhibit 1. The plan, promises and law were not to deprive the Delta and other areas of origin of the first right to water but to continue to develop surplus water at contractor expense to meet increasing needs within the areas of origin and the growing needs of export contractors. It was expected starting in 1990 there would be a need for surplus water from the North Coast to be supplied to the Delta so that by the year 2000 the annual amount would be 5 MAF. See Exhibit 2 [attachment 2] pages 11 and 13. It was expected that desalination would eventually become competitive with traditional water development and some of the planned development would be replaced by desalination. The 5 MAF were never developed and there is no plan to develop such supply. Substantial reduction of demand and diversions for exports from the Delta Watershed is an Alternative that can't be avoided.	
15	6	THE FAILURE OF THE CVP AND SWP TO DEVELOP SUFFICIENT SURFACE WATER AND TO CURTAIL EXPORT DEMAND TO MATCH REAL SUPPLY DOES NOT JUSTIFY ABANDONMENT OF THE DELTA OR THE PRIORITY FOR MEETING THE PRESENT AND FUTURE NEEDS, INCLUDING FISH AND WILDLIFE NEEDS IN THE COUNTIES AND WATERSHEDS OF ORIGIN IT IS THE DIVERSION FOR EXPORT THAT MUST BE CURTAILED The promises and law reflect the clear intent to limit project exports to water which is surplus to the present and future needs of the Delta and other areas of origin. Whether more water is needed for salinity control or adequate Delta water supply due to sea level rise, climate change or levee failure there will be less water available for export. As conditions change so as to induce greater salinity intrusion greater amounts of water will be needed for flushing flows to protect the Delta and less will be available for other purposes. The failure of the Projects to develop the 5 MAF from the North Coast or other projects will result in substantially less and in some periods no water for export. There are lawful alternatives excluded from the DEIR that could help but the DEIR preferred plan to abandon the Delta to facilitate exports is not compliant with law. The law is clear. In the June 1969 Memorandum Report titled The Delta And The State Water Project (Exhibit 3) [attachment 3]. DWR listed the then applicable protections for the Delta as follows:	Please also see Chapter 2, Section 2.1.1, "Project Objectives," for a description of DWR's continuing commitment to operate the State Water Project in compliance with all state and federal water quality and environmental laws. Please refer to Response to Comment 15-31 regarding area of origin. The comment refers to exports by the SWP and CVP. Please note that the project is the long-term operations of the SWP and does not include CVP operations. See Common Response 1, "Scope of Analysis," for further information regarding the treatment of coordinated SWP and CVP operations in the EIR. Please see further Common Response 5, "Delta Reform Act," for more information on DWR's compliance with the Delta Reform Act.

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		"Protection is based upon the fundamental law of riparian and appropriative water rights, the County of Origin Act, the Area of Origin Law (sometimes referred to as the Watershed Protection Act), the Delta Protection Act, and the Bums Porter Act." The Sacramento- San Joaquin Delta Reform Act of 2009 added additional protections.	
15	7	THE COUNTY OF ORIGIN ACT The SWP water rights are appropriations of water by way of assignment of State filed applications. The water to be diverted, stored and rediverted is the same water that is subject to prior vested riparian and pre-1914 water rights, numerous post 1914 permits and licenses including permits of the federal CVP and obligations required by State and Federal statutes. Much of the water needed to meet present and future needs within the Delta watershed, the needs for development in the counties of origin and the needs outside such areas but within the scope of Water Code 11460 is not subject to definitive quantification. Hydrology is variable, forecasting is difficult and water system operation compliance with regulatory requirements is uncertain. Compliance with priorities is greatly dependent upon the good faith actions of public officials, as trustees of the public trust who operate and regulate the water system. The SWRCB erims database shows 727 entries just for the Sacrament River. Permits and licenses for the U.S. Bureau of Reclamation total 56,892,973.5 acre feet. SWRCB applications total 52,598,000.0 acre feet.	This text in this comment is introducing the County of Origin Act as it relates to the State Water Project and therefore this introductory part of the comment does not require a response. Please see Response to Comment 15-31 for additional discussion of Area of Origin issues. Please refer to Common Response 10, "Public Trust," for more detailed information on the background and Proposed Project consideration of the Public Trust.
15	8	The SWP and CVP have coordinated their operations and have been unable to provide sufficient water to meet water quality standards if there are multiple dry years. The long-term operation seeks to deliver water pursuant to water contracts and agreements up to full contract quantities. It is not in the best public interest for the SWP to continue to divert water for urban and permanent crop development in arid and desert areas which is not surplus to the present and future needs including Fish and Wildlife needs in the counties and watersheds of origin. What is clear is that the coordinated water plan for California planned for the SWP and CVP development of millions of acre feet of additional surplus water from the Delta watershed and North Coast of California. 5 MAF of supplemental water in the Delta was to come from the North Coast by the year 2000. Such has not occurred. What is also clear is that the SWP and CVP have not met the water quality standards	The Proposed Project aims to continue DWR's ongoing, Long-Term State Water Project Operations consistent with applicable laws, contractual obligations, and agreements. The Proposed Project will allow DWR to continue to store, divert, and convey water, in accordance with its existing water rights, to deliver water pursuant to water contracts and agreements up to full contract quantities. Please refer to Common Response 10, "Public Trust," and Common Response 13, "Water Rights Time Extensions." Please see Response to Comment 15-31 regarding portion of comment on Area of Origin.

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		which are conditions of their permits and such action was sanctioned through the grant of temporary urgency changes and exercise of emergency powers. If the SWP and CVP have sufficient water to comply but were allowed to circumvent the requirements then there is an apparent violation of law and breach of the public trust that should not be repeated. If the Project water supply is insufficient, it is not in the best public interest to permit a continuation of the non-compliant diversions for export. Without substantial additional SWP and CVP development projects, water must be recaptured from the SWP and CVP which is currently delivered to SWP and CVP contractors, including export contractors. Committed water, such as that needed for future development of the watersheds and counties of origin, including the Delta, should not be allowed to be diverted as firm supply for permanent demand. As addressed further below the reservation of water for county and area of origin development is not secured with already developed water held in storage for future appropriation but is a paper water commitment to be fulfilled with water recaptured from junior appropriations. Such recapture will likely require future applications for appropriative rights.	
15	9	The SWRCB improperly imposes Term 91 on appropriations for uses within the counties and areas of origin to preclude diversions for such uses when releases are made by the SWP or CVP to meet Bay Delta Water Quality Objectives and exports are continued. (See Exhibit 4 [attachment 4] March 15, 2022 letter to SWRCB rewater availability methodology used for curtailment.) Without correction of the Term 91 obstruction there is no basis for a finding that the proposed long-term operation will not directly or indirectly (by transfer, change or otherwise) or facilitate exports to deprive the counties and watersheds of origin of water for their development. It is not responsible for Trustees of the Public Trust to facilitate urban development and permanent crops in arid and desert areas without the ability to assure that a firm supply can be provided without violating the priority rights of others, regulatory requirements and protection of the public trust. The long-term operation continues diversions from the Sacramento River, Feather River and other locations which are in some of the most critical Salmon spawning areas in the Delta watershed. The long-term operation will impact water and flow in areas including water from the Trinity River and other areas that are part of the sacred cultural	The comments related to the SWRCB and Term 91 are beyond the scope of the proposed project and the associated CEQA analysis. The EIR appropriately considers existing water rights and regulatory requirements set by the SWRCB (See Chapter 4, "Surface Water Hydrology," and Appendix 4A, "Modeling Assumptions"). As described in Common Response 10, "Public Trust," this EIR provides sufficient analyses for DWR, as lead agency, to meaningfully consider impacts on public trust resources and to make an informed decision on the proposed project. The analysis in this EIR demonstrates that the Proposed Project would have no significant impacts. Comments related to the San Luis Drain are beyond the scope of the proposed project and associated CEQA analysis. As described in Chapter 2, "Project Description," the project seeks to continue the operation of the State Water Project. Suggestions for alternatives that would eliminate water exports from the Delta would not meet

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		concerns of Native Americans. There is no substantial evidence to show that the continued export of water from the Delta is limited to water that is surplus to the current and future senior needs within the protected watershed areas, needs within the counties and the needs for compliance with SWP and CVP regulatory, mitigation and enhancement obligations. The proposed continued operation water is in great part intended to directly or indirectly facilitate exports of water from the Delta watershed including diversion to areas which add to the degradation of San Joaquin River water quality. The long-recognized need for a Valley Drain with an outlet to the ocean (See Exhibit 5 [attachment 5] San Luis Act) has been ignored as is the continuing impact of selenium on fish. (See Exhibit 6 [attachment 6] Lifetime Chronicles of Selenium Exposure linked to Deformities in Imperiled Migratory Fish 2-24-2020). Continued and proposed exports to serve land on the westside of the San Joaquin Valley without a solution to the drainage and selenium problems does not best serve the public interest.	most of the project objectives and therefore need not be considered. Please refer to Common Response 3, "The CEQA Process," regarding DWR's consideration of alternatives pursuant to CEQA. Refer to Common Response 1, "Scope of Analysis," for further information regarding geographic Scope and discussion of coordinated operations with the CVP. In addition, Tribal Resources were considered in DEIR Chapter 7.
15	10	The quantity and extent of senior rights and obligations remains to be determined and the availability of surplus water in the Delta Watershed is uncertain. The evidence is clear that already developed surplus water to meet water quality objectives, fish protection and desired firm supply for exports in dry years is not available. The State use of emergency powers to circumvent water quality standards, the imposition of measures to curtail senior water rights and limit diversions, the change in the statutory definition of drought emergency (Water Code 1058.5 2. Stats. 1914, c.3) and the concern for climate change all support the need for analysis of foreseeable changes. Updated Bay Delta Water Quality Objectives and Standards, outcome of the due diligence waiver and extension of the permits for the SWP and CVP and a plan to assure full compliance with water right priorities, statutory rights, improved water quality standards, regulatory measures and fulfilment of affirmative obligations of the SWP and CVP in all years including reoccurrences of drought conditions such as in 1929-1934, 1987-1992 and the more recent droughts are foreseeable. Meeting such requirements should be a precondition and affirmative obligation for all diversions of project and transfer water exported for use outside the Delta watershed by the CVP, the SWP, or any other party. Protection of the public trust and determination of the best public interest demands that	This comment does not address any specific concerns regarding the adequacy, accuracy, or completeness of the impact analysis provided in the EIR. DWR has reviewed all comments and will consider all comments in its decision-making process. This comment addresses a number of concerns related to water rights, water supply, emergency water management actions, climate change, water quality, habitat, enforcement of regulations, and tribal water needs. The concerns raised by the commenter are addressed in Chapter 2, "Project Description"; Resource Chapters 4-9 and Appendix 3A, "Initial Study." Attachment 6 of Appendix 2A addresses when and why drought actions are used and needed. Please also see Chapter 2, Section 2.1.1, "Project Objectives," for a description of DWR's continuing commitment to operate the State Water Project in compliance with all state and federal water quality and environmental laws. Please also refer to Common Response 13, "Water Rights Time Extension," to the extent the comment is addressing water rights extension that was mentioned in the DEIR.

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		public officials as trustees require that the proposed long-term operation clearly shows that there is surplus flood and stormwater that can be appropriated in compliance with law and without harm to others. Although perfect quantification is not possible a more cautious regulatory approach based on a reasonable level of quantification of present and future senior demands is necessary. Creation of new permanent demand for a supply which already cannot be firmly provided does not protect the public interest. Imposition of conditions are just words on paper unless enforced. Without real availability of water supply, enforcement cannot be effective. Compliance with existing water quality standards will require more water than is currently provided and improved standards will add to the demand. The needs in the watersheds and counties are increasing due to increasing development. There is a need for water to restore non sustainable groundwater basins. Environmental needs especially for fish will require more water. Protection for the cultural needs of Native Americans will require more water and perhaps reduction in flow from the Trinity River into the Sacramento River. Water for flushing and dilution of contaminants to mitigate the degradation of water quality and protect the health and safety including that of the disadvantaged will require more water. The warming of the climate will require more water to sustain beneficial use. The deficiencies in the SWP and CVP will require more water or entitlements will have to be reduced to match available supply. Land fallowing, surface water transfers with ground water substitution, irrigation restrictions and creation of habitat will negatively impact development in the counties and watersheds of origin. Payments to owners does not compensate for the losses to related service businesses, local economy and local taxes. Such direct or indirect extraction of water from the counties will facilitate greater exports at the expense of development in the counties of origin and is a violation of the SWP and CVP water right permits. The adverse impact is substantial and the result of the proposed long-term operations.	
15	11	The Draft State Water Project Delivery Capability Report 2023 dated May 2024 shows that while SWP water entitlement contracts remain at 4.133 MAP the Long-term Average Existing delivery is 2.238 MAF with delivery capability in a single dry year as low as 186 TAF. (See Exhibit 7 [ATT 7] The Draft State Water Project Delivery Capability Report 2023 dated May 2024).	This comment does not raise a significant environmental issue associated with the 2024 SWP LTO. Please see Common Response 12, "Drought Conditions," and refer to Appendix 4I, "Operations Sensitivity to Drought Conditions," Section 4I.1, "Preface," for further discussion. DWR has reviewed all comments and will

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		The United States Bureau of Reclamation Water Supply and Yield Study dated March 2008 (Exhibit 8) [ATT 8] provides: that current statewide demands exceed supplies by 2.3 MAP in average years and 4.2 MAP in dry years; and in the future (2030) statewide demands exceed supplies by 4.9 MAF in average years and 6.1 MAP in dry years. The study also shows that SWP and CVP deliveries were not constrained to anticipate consecutive dry years during the 1987-1992 drought. The study provides: "Although the drought lasted several years, neither the State or the federal water project imposed significant delivery deficiencies during the first 3 years of the drought. When carryover storage was diminished by several dry years without replenishment, deliveries were sharply curtailed for meeting basic needs the following year." (See Exhibit 8 [ATT 8] excerpts USBR Water Supply and Yield Study March 2008." The SWRCB has not required and DWR has not met the existing permit and license requirements for which the DWR has an obligation. A plan for meeting such requirements was required to be prepared and submitted prior to January 1, 2006. (See Water Code 138.10). In response DWR submitted what was titled "Description of Department of Water Resources Compliance with State Water Resources Board Water Right Decision 1641 dated January 2006. (See Exhibit 9) [ATT 9] The report focused on means for improving compliance including reducing compliance requirements by degrading south Delta standards particularly at Brandt Bridge but did not include a plan to achieve compliance. In any event Temporary Urgency Changes to the standards have been substituted for compliance. Meeting the D-1641 requirements will require more water. If standards are improved even more water will be required. Without substantial new surplus water development reduction in exports is required and the adverse impacts need analysis.	consider all comments in its decision-making process. No further response is required.
15	12	It is apparent that operations of the SWP and CVP, without regard to meeting the D 1641 standards in a series of dry years like 1929-1934, was and is deliberate. Limited water supply and a preference for export water deliveries appear to be the driving factors. The violation of the permit conditions of the SWP and CVP is clear. In DWR Bulletin 160-83 it is explained: "The thrust in California water development over the past few decades has been to increase water supplies to match needs, and in many areas, to increase the dependability of supplies. Much attention has been given	The comment does not raise an environmental issue relating to the proposed project or address the adequacy, accuracy, or completeness of the DEIR. The comment provides background information and then requests the State Water Resources Control Board to correlate "the present and future real surplus water availability with the quantity of water in State filed applications for water within the public trust" which seems to relate to the inclusion of DWR's water right extensions in the DEIR. DWR has removed the water

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		to this by the SWP and the CVP, which were designed to withstand reoccurrence of the 1928-1934 drought. Projects, facilities, and programs of other agencies have built-in-risks. But uncertainty regarding the capability of increasing developed supplies over the next several decades may justify and in fact may require taking greater risks in delivering water to customers." (See Exhibit 10 excerpts DWR Bulletin 160-83) It appears that the risk has been shifted onto noncompliance with regulatory requirements and senior water rights rather than customers (contractors) of the projects. It does not appear that the SWRCB has correlated the present and future real surplus water availability with the quantity of water in State filed applications for water within the public trust. Such correlation should be verified and set forth before any continued diversion for exports pursuant to the SWP and CVP assignments or release of State filings is allowed.	rights time extension from this FEIR. Please see Common Response 13, "Water Rights Time Extensions." No further response is required.
15	13	RELEASE OR ASSIGNMENT OF STATE FILED APPLICATIONS IS SUBJECT TO NUMEROUS LIMITATIONS INTENDED TO PROTECT THE AREAS OF ORIGIN AND PUBLIC TRUST The State administration of appropriative water rights commenced with enactment of the "Water Commission Act" Stats. 1913 c. 586 (Approved by Voters effective December 19, 1914). The State Water Commission was created to regulate the future appropriation of water. In such act the legislature defined the unappropriated water over which the State would administer appropriation as: "all waters flowing in any river, stream, canyon, ravine or other natural channel, excepting so far as such waters have been or are being applied to useful and beneficial purpose upon, or in so far as such waters are or may be reasonably needed for useful, and beneficial purposes upon lands riparian thereto, or otherwise appropriated, is and are declared to be public waters of the State of California and subject to appropriation in accordance with the provisions of this act." (emphasis added) (Stats. 1913 c 586, section 11) (See Water Code 1201 and Stats.1943, c.368) Such exception of the water for beneficial use on riparian lands and prior appropriation recognizes the public interest and public trust need for priority protection of the present and future uses within the watersheds and counties from which water would be exported. Absent a	Please see Chapter 2, Section 2.1.1, "Project Objectives," for a description of DWR's continuing commitment to operate the State Water Project in compliance with all state and federal water quality and environmental laws. Please refer to Common Response 10, "Public Trust," for the Proposed Project's consideration of the Public Trust.

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		special circumstance, such water is not unappropriated, not subject to state allocation and not included within the permits of the SWP and CVP.	
15	14	In 1917 , section 15 of the Water Commission Act was amended to provide that the commission shall allow "the appropriation for beneficial purposes of unappropriated water unless, in the opinion of the said commission, such appropriation would be detrimental to the public welfare." (Stats. 1917, c. 133 , p. 194.) In 1921 , section 15 was amended to require the commission to allow the appropriation of unappropriated water "under such terms and conditions as in the judgment of the commission will best develop, conserve and utilize in the public interest the water sought to be appropriated . ... The commission shall reject an application when in its judgment the proposed appropriation would not best conserve the public interest." (Stats . 1921, c. 329, p. 443 ; now Wat. Code,§§ 1253, 1255.) By way of the Stats. 1927 c. 286 the state Department of Finance was" directed and authorized, pursuant to the provisions of the Water Commission Act and the rules and regulations of the division of water rights of the department of public works, to make and file an application or applications for any water or the use thereof which in the judgment of the state department of finance is or may be required in the development and completion of the whole or any part of a general or coordinated plan looking towards the development, utilization or conservation of the water resources of the state." Such filings were to be made within nine months after July 29, 1927. (Note: subsequent statutes extended filing deadlines to specific dates.) The general or coordinated plan for water in California evolved through the adoption a series of statutes. Funding was provided to the Department of Finance and other state Departments to develop a General or coordinated plan. (Stats. 1927, c. 286) By way of Stats. 1929, c. 832 an appropriation was made for the State Department of Public Works to develop preliminary plans in furtherance of a coordinated plan for the conservation, development and utilization of the water resources of California. Such effort was to be in cooperation with the government of the United States of America or in cooperation with political subdivisions of the State of California.	This comment provides background information for comments elsewhere in the comment letter. Specific responses to the specific comments on the DEIR are provided herein. The comment does not raise an environmental issue relating to the proposed project or address the adequacy, accuracy, or completeness of the DEIR. DWR has reviewed all comments and will consider all comments in its decision-making process.

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		The plan prepared by way of Stats . 1929, c. 832 was approved together with the Central Valley Project Act of 1933. (Stats. 1941, c. 1185). On August 5, 1933, the Governor approved Stats. 1933, c. 1042 authorizing the Central Valley Project and creating a Water Project Authority for the State of California. The Act was subjected to referendum at the December 19, 1933, election and became law. The Act authorized the coordinated plan which was then called the Central Valley Project and the Act the "Central Valley Water Project Act of 1933. The Central Valley Project included a dam, reservoir and other facilities on the Sacramento River at or near Kennett which are collectively referred to as Shasta Dam or "Shasta". Shasta was "to be used primarily for improvement of navigation on the Sacramento River to Red Bluff, for increasing flood protection in the Sacramento Valley, for salinity control in the Sacramento-San Joaquin Delta and for storage and stabilization of the water supply of the Sacramento River for irrigation and domestic water use, and secondarily for the generation of electric energy and other beneficial uses." (Stats. 1933, c. 1042, p. 2645) (See also Water Code 11207 and 11208, Stats. 1943, c. 370, p. 1896). Friant Dam and other facilities were also specifically included in the project.	
15	15	The Act (Stats. 1933, c. 1042) included special provisions for protection of areas of origin and areas immediately adjacent thereto which are in addition to the protection previously provided for counties of origin. SEC. 11. of the Act starting at page 2650 provides: "SEC. 11. In the construction and operation by the authority of any project under the provisions of this act, no watershed or area wherein water originates, or any area immediately adjacent thereto which can conveniently be supplied with water therefrom, shall be deprived by the authority directly or indirectly of the prior right to all of said water reasonably required to adequately supply the beneficial needs of said watershed, area or any of the inhabitants or property owners therein. In no other way than by purchase or otherwise as in this act provided shall said water rights as herein defined, of said watershed, area or the inhabitants be impaired or curtailed by the authority, ..." (See Stats. 1933, c. 1042, p. 2650 and 2651) Note: (See also below: Water Code 10504, 10505 and 11460, Stats. 1943, c. 370, p. 3410) (The related sections of the Water Code are commonly referred to as the County of Origin Act and Watershed Protection Act) The federal government took over the Central Valley Project as a project	The commenter cited these sources for reference purposes in support of their substantive comments. These sources are often directly quoted and this specific comment does not include interpretation, assertions, or other commentary. DWR addressed the substantive comments in the responses to the commenter's letter herein.

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		to provide jobs and its construction began in 1935. (DWR History of State Water Project) Stats. 1941, c. 1185 adopted the plan transported to the legislature pursuant to Stats. 1929 c. 832 as the coordinated plan for the conservation, development and utilization of the water resources of the State and confirmed that the Central Valley Project Act of 1933 provisions are not repealed and prevail if there is any inconsistency. Stats. 1943, c. 368 was an Act to establish the California Water Code thereby consolidating and revising the law relating to water. The Stats. 1943, c. 370 adopted the coordinated plan to be known as the" State Water Plan". The Act also established, what is now Water Code 1240 requiring continuing beneficial use of appropriated water. Stats. 1943, c. 370 was "An act to add Division 6 to the Water Code, relating to the conservation, development and utilization of the water resources of the State, including provisions relating to the State Water Plan, the Central Valley Project, the San Luis Rey Water Authority, the Colorado River Board, and to repeal certain acts specified herein." Included in the Act were Water Code sections 10500, 10504 and 10505. Water Code Section 10500 provides: "The department shall make and file applications for any water which in its judgement is or may be required in the devolpment and completion of the whole or any part of a general or coordinated plan looking toward the development, utilization, or conservation of the water resources of the state. Any application filed pursuant to this part shall be made and filed pursuant to Part 2 (commencing with Section 1200) of Division 2 of this code and the rules and regulations of the State Water Resources Control Board relating to the appropriation of water insofar as applicable thereto. Applications filed pursuant to this part shall have priority, as of the date of filing, over any application made and filed subsequent thereto. The statutory requirements of Part 2 (commencing at Section 1200) of Division 2 relating to diligence shall not apply to applications filed under this part except as otherwise provided in Section 10504."	
15	16	"The department shall make and file applications for any water which in its judgment is or may be required in the development and completion of the whole or any part of a general or coordinated plan looking toward the	This comment is a quote from Water Code Section 10500. Specific responses to the specific comments on the DEIR are provided herein. No additional response is required.

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		development, utilization, or conservation of the waterresources of the state. Any application filed pursuant to this part shall be made and filed pursuant to Part 2 (commencing with Section 1200) of Division 2 of this code and the rules and regulations of the State Water Resources Control Board relating to the appropriation of water insofar as applicable thereto. Applications filed pursuant to this part shall have priority, as of the date of filing, over any application made and filed subsequent thereto. The statutory requirements of Part 2 (commencing at Section 1200) of Division 2 relating to diligence shall not apply to applications filed under this part except as otherwise provided in Section 10504."	
15	17	As stated in WC 10504, it must be determined that a release from priority, or an assignment, is not in conflict with water quality objectives established pursuant to law or the general or coordinated plan. The failure to meet Delta water quality standards, which are consistently exceeded in dry periods, and violation of the water plan prohibition of export of water which is not truly surplus to the needs within the Delta and other areas of origin must be part of the public interest related analysis considered by the public officials as trustees of the public trust. This section further provides that an assignee of an application, or any portion thereof, is subject to all of the requirements of diligence. The exception in Water Code Section 10500 confirms that diligence does apply to appropriations covered by Section 10504. The SWP and CVP have since 1990 and certainly since 2000 failed to diligently develop the 5 MAF needed from the North Coast. See Exhibit 2. Water Code Section 10505 provides: ''No priority under this part shall be released nor assignment made of any application that will, in the judgment of the board, deprive the county in which the water covered by the application originates of any such water necessary for the development of the county." Water code section 10505.5, Stats. 1969, c. 1359 provides: "Every application heretofore or hereafter made and filed pursuant to Section 10500, and held by the State Water Resources Control Board, shall be amended to provide, and any permit hereafter issued pursuant to such an application, and any license issued pursuant to such a permit, shall provide, that the application, permit, or license shall not authorize the use of any water outside of the county of origin which is necessary	The first part of this comment is duplicated from Comment 15-16. See Response to Comment 15-16. For the remainder of the comment, see Response to Comment 15-14.

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		for the development of the county." The Stats. 1943, c. 693 addressed diligence extension by Department of finance "for the purpose not in conflict with such general or coordinated plan; and provided further, that no such priority be released, or assignment made of any such appropriation that will in the judgment of the State Department of Finance deprive the county in which such appropriated water originates, of any such water necessary for the development of such county." The Stats. 1945, c. 1514 (State Water Resources Act of 1945) created the State Water Resources Board and prescribed powers and duties including those of the Department of Public Works including authorizing cooperation with the United States relating to flood water and their control. As to continued study of water and flood control projects the Act provided: "In studying water development projects, full consideration shall be given to all beneficial uses of the State's water resources, including irrigation, generation of electric energy, municipal and industrial consumption of water and power, repulsion of salt water, preservation and development of fish and wildlife resources, and recreational facilities, but not excluding other beneficial uses of water, in order that recommendations may be made as to the feasibility of such projects and for the method of financing feasible projects." The Stats. 1947, c. 1541 provided funding for studies, plans etc. relative to State Water Resources Act of 1945. The Stats. 1953, c. 1522 directed Department of Finance to file applications for water with a deadline of priority of October 1, 1955 subject to legislative extension. The Stats . 1955 c. 1248 directed Department of Finance to file applications for general or coordinated plan with a priority deadline of October 1, 1959 subject to legislative extension. By way of the Stats. 1957, c. 1932 the legislature created the Department of Water Resources, adopted the "State Water Plan", directed the DWR to make and file applications for water with a priority date of October 1, 1959 subject to legislative extension. The act also created the State Water Rights Board. By way of the Stats.1959, c. 1766 the legislature adopted Water Code 12200 et seq. Commonly referred to as the Delta Protection Act of 1959. Also adopted was Water Code 12220 defining the boundaries of the Delta.	

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		Stats. 1959, c. 1769 and 1770 continued direction to DWR to file applications for water with a priority deadline of October 1, 1963 subject to legislative extension. Stats. 1959, c. 2101 required that State 10500 applications be transferred to the California Water Commission. Stats. 1965, c. 989 required State 10500 filings be transferred to the State Water Rights Board. Stats. 1967, c. 284 required State 10500 filings be transferred to the State Water Resources Control Board, that the priority deadline is October 1, 1967 subject to Legislative extension, and that Water Code Section 10504 is amended to provide as follows: "All applications made and filed pursuant to Section 10500 shall be transferred to the State Water Resources Control Board and held by the Board for the purposes of this part. The board may release from priority or assign any portion of any application filed under this part when the release or assignment is for the purpose of develo pment not in conflict with such general or coordinated plan or with water quality objectives established pursuant to law. The assignee of any such application whether heretofore or hereafter assigned, is subject to all the requirements of diligence as provided in Part 2 (commencing with 1200) of Division 2 of this code. "Assignee" as used herein includes, but is not limited to, state agencies, commissions and departments, and the United States of America or any of its departments or agencies." DWR Bulletin No. 3, The California Water Plan dated May, 1957 is the general or coordinated plan referenced in the limitations on assignment and release of priority for State filed applications. The plan provides: "Summarized, the foregoing concepts define The California Water Plan as comprehensive pattern, with broad flexibility and susceptible of orderly and progressive development as needed, under which the forecast ultimate requirements for water by individuals and agencies for all purposes in all parts of the State can be met. Water is not to be taken away from people who will need it; rather, it is proposed to supply the needs in areas of deficiency by transfer only of excess or surplus water from areas of abundance." (emphasis added) (See Exhibit 11 [attachment 11] The California Water Plan DWR Bulletin No. 3 May 1957 excerpts pages 7 and 38)	

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15	18	THE CORNERSTONE OF CALIFORNIA WATER PLANNING AND LAW IS THAT ONLY WATER WHICH IS SURPLUS TO THE PRESENT AND FUTURE NEEDS WITHIN THE AREAS Of ABUNDANCE SHALL BE EXPORTED TO AREAS OF DEFICIENCY "In all planning for water resource development, first and prime consideration was given to the requirements, both present and future, for all water uses in areas of origin, before a determination was made of the surplus waters that might be available for exportation to areas of deficient supply." (See Exhibit 11 [attachment 11] The California Water Plan DWR Bulletin No. 3 May 1957, excerpts pages 7 and 38) There are two major elements of the California Water Plan which include major exports from the Delta Watershed. The federal Central Valley Project now Central Valley Project (CVP) funded and constructed by the US Bureau of Reclamation and the State Water Resources Development System /Feather River Project now State Water Project (SWP) planned to be entirely funded by State Contractors and constructed by the State. To ensure that present and future water needs in the areas from which water for export was to be diverted special statutory protections were provided. Water Code Section 10505 provides: "10505. Restrictions on release or assignment No priority under this part shall be released nor assignment made of any application that will, in the judgment of the board, deprive the county in which the water covered by the application originates of any such water necessary for the development of the county." (See Stats.1943, c. 370) Water code section 10505.5 provides: "10505.5. Territorial restrictions on use Every application heretofore or hereafter made and filed pursuant to Section 10500, and held by the State Water Resources Control Board, shall be amended to provide, and any permit hereafter issued pursuant to such a permit, shall provide, that the application, permit, or license shall not authorize the use of any water outside of the county of origin which is necessary for the development of the county." (See Stats.1969, c. 1359) (Water Code 10505)	Much of this comment is background information. The last paragraph suggests using water from fallowing, water transfers, water rights acquisitions, habitat restoration, etc. for exports rather than the counties or watersheds of origin. DWR will continue to operate the State Water Project in compliance with all state and federal water rights and public trust laws. To the extent this comment addresses area of origin, see Response to Comment 15-31.

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		The proposed long-term operation plan is clearly intended to violate or circumvent the protection intended by WC 10505.5. The proposed long-term plan is to use the CVP and SWP in collaboration with other State and federal agencies and departments including among others the Resources Agency, the State Water Resources Control Board and the Governor's office to directly or indirectly extract water from the counties and watersheds of origin including the Delta to deliver water to outside areas up to full contract amounts. Such extraction removes water that is necessary for development and in many cases reduces development. Fallowing ground, water transfers, changes of places of use , acquisition of water rights and acquisition ofland for habitat are examples where water for development can be reduced to increase the use of water outside the county of origin.	
15	19	WATERSHED PROTECTION ACT- AREA OF ORIGIN ACT Water Code section 11460 was intended to be a key part of the protection for the areas from which water could be exported. "11460. Prior right to watershed water In the construction and operation by the department of any project under the provisions of this part a watershed or area wherein water originates, or an area immediately adjacent thereto which can conveniently be supplied with water therefrom, shall not be deprived by the department directly or indirectly of the prior right to all of the water reasonably required to adequately supply the beneficial needs of the watershed, area, or any of the inhabitants or property owners therein." (Added by Stats. 1943, c. 370, p. 1896. Amended by Stats. 1957, c. 1932, p. 3410, section 296.) Confirmation of the intent is reflected in the 84th Congress, 2D Session House Document No. 416, Part One Authorizing Documents 1956 at Pages 797-799 as follows: "My Dear Mr. Engle: In response to your request to Mr. Carr, we have assembled excerpts from various statements by Bureau and Department officials relating to the subject of diversion of water from the Sacramento Valley to the San Joaquin Valley through the operation of the Central Valley Project. A factual review of available water supplies over a period of more than 40 years of record and the estimates of future water requirements made by State and Federal agencies makes it clear that there is no reason for concern about the problem at this time.	This information describes various background information regarding water laws and congressional documents in support of comments on the DEIR. DWR has reviewed all comments and will consider all comments in its decision-making process.

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		For convenience, a summary of certain policy statements made by Bureau of Reclamation and Department of the Interior officials follows below. These excerpts are in the following paragraphs: On February 20, 1942, in announcing the capacity for the Delta-Mendota Canal, Commissioner John C. Page said, as a part of his Washington D.C., press release: "The capacity of 4,600 cubic feet per second was approved, with the understanding that the quantity in excess of basic requirements mainly for replacement at Mendota Pool, will not be used to serve new lands in the San Joaquin Valley if the water is necessary for development in the Sacramento Valley below Shasta Dam and in the counties of origin of such waters." On July 18, 1944, Regional Director Charles E. Carey wrote a letter to Mr. Harry Barnes, chairman of a committee of the Irrigation Districts Association of California. In that letter, speaking on the Bureau's recognition and respect for State laws, he said: "They [Bureau officials] are proud of the historic fact that the reclamation program includes as one of its basic tenets that the irrigation development in the West by the Federal Government under the Federal reclamation laws is carried forward in conformity with State water laws." On February 17, 1945, a more direct answer was made to the question of diversion of water in a letter by Acting Regional Director R. C. Calland, of the Bureau, to the Joint Committee on Rivers and Flood Control of the California State Legislature. The committee had asked the question, "What is your policy in connection with the amount of water that can be diverted from one watershed to another in proposed diversions?" In stating the Bureau's policy, Mr. Calland quoted section 11460 of the State water code, which is sometimes referred to as the county of origin act, and then he said: "As viewed by the Bureau, it is the intent of the statute that no water shall be diverted from any watershed which is or will be needed for beneficial uses within that watershed. The Bureau of Reclamation, in its studies for water resources development in the Central Valley, consistently has given full recognition to the policy expressed in this statute by the legislature and the people. The Bureau has attempted to estimate in these studies, and will continue to do so in future studies, what the present and future needs of each watershed will be. The Bureau will not divert from any watershed any water which is needed to	

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		satisfy the existing or potential needs within that watershed. For example, no water will be diverted which will be needed for the full development of all of the irrigable lands within the watershed, nor would there be water needed for municipal and industrial purposes or future maintenance of fish and wildlife resources." On February 12, 1948, Acting Commissioner Wesley R. Nelson sent a letter to Representative Clarence F. Lea, in which he said: "You asked whether section 10505 of the California Water Code, also sometimes referred to as the county of origin law, would be applicable to the Department of the Interior, Bureau of Reclamation. The answer to this question is: No, except insofar as the Bureau of Reclamation has taken or may take assignments of applications which have been filed for the appropriation of water under the California Statutes of 1927, chapter 286, in which assignments reservations have been made in favor of the county of origin. The policy of the Department of the Interior, Bureau of Reclamation, is evidenced in its proposed report on a Comprehensive Plan for Water Resources Development-Central Valley Basin, Calif., wherein the Department of the Interior takes the position that "In addition to respecting all existing water rights, the Bureau has complied with California's 'county of origin' legislation, which requires that water shall be reserved for the presently unirrigated lands of the areas in which the water originates, to the end that only surplus water will be exported elsewhere." On March 1, 1948, Regional Director Richard L. Boke wrote to Mr. A. L. Burkholder, secretary of the Live Oak Subordinate Grange No. 494, Live Oak, Calif., on the same subject, and said: "I can agree fully with the statement in your letter that it would be grossly unjust to 'take water from the watersheds of one region to supply another region until all present and all possible future needs of the first region have been fully determined and completely and adequately provided for.' That is established Bureau of Reclamation policy and, I believe, it is consistent with the water laws of the State of California under which we must operate." On May 17, 1948, Assistant Secretary of the Interior William E. Warne wrote a letter to Representative Lea on the same subject, in which he said: "The excess water made available by Shasta Reservoir would go first to such Sacramento Valley lands as now have no rights to water."	

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		Assistant Secretary Warne went to say, in the same letter: "As you know, the Sacramento Valley water rights are protected by: (1) Reclamation law which recognizes State water law and rights thereunder; (2) the State's counties of origin act, which is recognized by the Bureau in principle; and (3) the fact that Bureau filings on water are subject to State approval. I can assure you that the Bureau will detennine the amounts of water required in the Sacramento Valley drainage basin to the best of its ability so that only surplus waters would be exported to the San Joaquin. We are proceeding toward a determination and settlement of Sacramento Valley waters which will fully protect the rights of present users; we are determining the water needs of the Sacramento Valley; and it will be the Bureau's policy to export from that valley only such waters as are in excess of its needs." On October 12, 1948, Secretary of the Interior Krug substantiated former statements of policy in a speech given at Oroville, Calif. Secretary Krug said, with respect to diversion of water: "Let me state, clearly and finally, the Interior Department is fully and completely committed to the policy that no water which is needed in the Sacramento Valley will be sent out of it." He added: "There is no intent on the part of the Bureau of Reclamation ever to divert from the Sacramento Valley a single acre-foot of water which might be used in the valley now or later." The California Water Resources Development Bond Act provides in Water Code Section 12931 that the Sacramento-San Joaquin Delta shall be deemed to be within the watershed of the Sacramento River. Exhibit 12 is a copy of the 1960 ballot argument in favor of the California Water Resources Development Bond Act which spawned the State Water Project (SWP). Of particular note are the following representations: ''No area will be deprived of water to meet the needs of another nor will any area be asked to pay for water delivered to another." "Under this Act the water rights of Northern California will remain securely protected." "A much-needed drainage system and water supply will be provided in the San Joaquin Valley."	

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15	20	THE DELTA PROTECTION ACT The Delta Protection Act of 1959 (Wat. Code, § 12200 et seq.) requires that the water needs of the Delta be given priority over exports by the SWP and CVP. In DWR's December 1960 Bulletin No. 76 Report to the Legislature (Exhibit 2 page 12) DWR interpreted the Act to provide: "In 1959 the State Legislature directed that water shall not be diverted from the Delta for use elsewhere unless adequate supplies for the Delta are first provided." The Delta Protection Act of 1959 requires the SWP and CVP to provide salinity control and "an adequate water supply in the Delta sufficient to maintain and expand agriculture, industry, urban and recreational development in the Delta area as set forth in Section 12220, Chapter 2, of this part, and to provide a common source of fresh water for export to areas of water deficiency . ... "(Wat.Code,§ 12201; see also, Wat. Code,§ 12202.) In 1959 fishing was the predominant recreational use of the Delta. Since the commencement of SWP operation in the late 1960's, fish populations in the Delta have plummeted. The Delta water quality objectives define what is adequate salinity control and an adequate supply. In 1978 the SWRCB in D-1485 (See Exhibit 13) at page 9 concluded: "The Delta Protection Act accords first priority to satisfaction of vested rights and public interest needs for water in the Delta and relegates to lesser priority all exports of water from the Delta to other areas for any purpose." At page 13 the SWRCB provided: "To provide full mitigation of project impacts on all fishery species now would require the virtual shutting down of the project export pumps." The SWRCB also concluded in D-1485 at page 14 that: "Full protection of Suisun Marsh now could be accomplished only by requiring up to 2 million acre feet of fresh water outflow in dry and critical years in addition to that required to meet other standards." In 2000 the SWRCB in D-1641 (Revised) (Exhibit 14 pages 181-184), the SWRCB imposed the obligation on the Projects to maintain numerous salinity standards throughout the Delta for the purposes of protecting the following beneficial uses: (1) municipal and industrial; (2) agricultural; and (3) fish and wildlife. The agricultural standards, for example, consist of salinity standards at various locations within the "western," "interior" and "southern" Delta, as well as at the Projects'	This information describes various background information regarding water laws and congressional documents for support of comments on the DEIR. DWR has reviewed all comments and will consider all comments in its decision-making process.

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		export intakes in the southern Delta. Those standards were first established in the SWRCB 's 1995 WQCP and then subsequently implemented in D-1641. As explained in the "Racanelli Decision," United States v. State Water Resources Control Bd. (1986) 182 Cal.App.3d 82, 116: "In its water quality role of setting the level of water quality protection, the Board's task is not to protect water rights, but to protect 'beneficial uses."' (Emphasis added.) A. SWP and CVP Obligations Include Protection and Enhancement of Water Quality in the Legal Delta The purpose of the "salinity control" obligation imposed on the SWP and CVP was clearly to prevent the salinity intrusion into the Delta such as occurred in September of 1931. The obligation clearly followed and was intended to also mitigate induced salinity intrusion caused by: ship channel construction, lower Delta flood control channel enlargement, export pumping and other Project impacts including those from Project inducement of upstream water use. The purpose was also to enhance Delta water quality to avoid the detriment from previously experienced droughts. Water Code section 12202 provides: "Among the functions to be provided by the State Water Resources Development System, in coordination with the activities of the United States in providing salinity control for the Delta through operation of the Federal Central Valley Project, shall be the provision of salinity control and an adequate water supply for the users of water in the Sacramento-San Joaquin Delta. If it is determined to be in the public interest to provide a substitute water supply to the users in said Delta in lieu of that which would be provided as a result of salinity control no added financial burden shall be placed upon said Delta water users solely by virtue of such substitution. Delivery of said substitute water supply shall be subject to the provisions of Section 10505 and Sections 11460 to 11463, inclusive, of this code." (Emphasis Added.) The contract between DWR and the North Delta Water Agency "for the Assurance of a Dependable Water Supply of Suitable Quality," dated January 28, 1981 (Exhibit 15), provides: "(d) The construction and operation of the FCVP and SWP at times have changed and will further change the regimen of rivers tributary to the	

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		Sacramento-San Joaquin Delta (Delta) and the regimen of the Delta channels from unregulated flow to regulated flow. This regulation at times improves the quality of water in the Delta and at times diminishes the quality from that which would exist in the absence of the FCVP and SWP. The regulation at times also alters the elevation of water in some Delta channels .... " "(f) The general welfare, as well as the rights and requirements of the water users in the Delta, require that there be maintained in the Delta an adequate supply of good quality water for agricultural, municipal and industrial uses." "(g) The law of the State of California requires protection of the areas within which water originates and the watersheds in which water is developed. The Delta is such an area and within such a watershed. Part 4.5 of Division 6 of the California Water Code affords a first priority to provision of salinity control and maintenance of an adequate water supply in the Delta for reasonable and beneficial uses of water and relegates to lesser priority all exports of water from the Delta to other areas for any purpose." As explained in United States v. State Water Resources Control Bd. (1986) 182 Cal.App.3d 82: "In 1959, when the SWP was authorized, the Legislature enacted the Delta Protection Act. (§§ 12200-12220.) The Legislature recognized the unique water problems in the Delta, particularly 'salinity intrusion,' which mandates the need for such special legislation 'for the protection, conservation, development, control and use of the waters in the Delta for the public good.' (§ 12200.) The act prohibits project exports from the Delta of water necessary to provide water to which the Delta users are 'entitled' and water which is needed for salinity control and an adequate supply for Delta users.(§§ 12202, 12203, 12204.) But the crucial question left unanswered by the protective legislation is exactly what level of salinity control the projects must provide. As noted, the Board concluded that the projects are responsible only for maintaining that level of salinity which would exist in the Delta had the projects never been constructed, the so-called 'without project' level. The board declared that if the Delta water users desire a higher level of protection (a greater amount of outflow water), they can purchase such 'enhancement water' from the projects." (Id. pp. 139-140, emphasis added.)	

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		The court did not agree with the SWRCB' s position. The court concluded: "Whatever final conclusion is to be drawn from Antioch regarding the nature and extent of common law riparian rights to salinity control, existing constitutional and legislative authorities encompass the Board's obligation to protect the quality of the Delta waters from saltwater intrusion. As mentioned above, the water quality legislation unmistakably requires the Board to formulate water quality standards to provide salinity control to 'ensure the reasonable protection of beneficial uses' (§ 13241), a statutory classification earlier noted as wide ran gin g (§ 13050, subd. (0). Though there can be no doubt concerning the Board's authority to take action to protect the consumptive uses (agricultural, industrial and municipal) in the Delta, its approach to that task was seriously flawed by equating its water quality planning function with protection of existing water rights. " (Id . pp. 117 & 118, emphasis added.) As the court further explains: "Thus, the Board's authority in setting water quality standards is not limited to the protection of water rights but extends to the protection of all beneficial us es from degradation of water quality, even if the resulting level of water quality exceeds that provided by water rights." (Id. p. 141, emphasis in original.) The court confirmed that providing salinity control in the Delta was also a major purpose of the Projects: "Salinity control in the Delta was unquestionably contemplated by state and federal authorities as one of the purposes to be fulfilled by the statewide water projects: . ... " (Id. p. 128.) In furtherance of the determination that protection of the Delta has priority over Project Contractors, including exports from the Delta, the court further explains: "Thus, both substantively and conceptually, the contractors cannot justify any reasonable expectation of a certain or guaranteed water supply for delivery." (Id. p. 148.) The trial court in the above case determined that there is no obligation on the part of Delta water users to pay for the incidental benefit from the Projects' provision of salinity control for other purposes including fish and wildlife, maintenance of quality at export pumps and meeting public trust needs. The payment obligation only arises from the release of	

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		Project developed truly surplus waters specifically for the enhancement of Delta water user supply. Eight separate cases were coordinated into said case, Judicial Council Coordination Proceeding No. 548. The parties fell into nine groups: (1) the SWRCB, (2) Delta industries, (3) the Central Delta riparians, (4) the South Delta riparians, (5) the U.S. Bureau of Reclamation (the U.S.), (6) the federal contractors, (7) DWR, (8) the state contractors, and (9) the Contra Costa municipal users. The court addressed the Delta water users' "inchoate right to 'recapture' water being exported by the state and federal projects" under the Watershed of Origin Statute and Delta Protection Act of 1959. The court generally concluded that perfection of the right to recapture water being exported would require a Delta user to obtain an appropriation permit and a contract to pay for the recaptured water that was "developed by the projects and that was released specifically for his benefit." Specific to the payment issues, the court provided that "Delta users need not pay for salinity control water even if they are incidentally benefited unless the water is released specifically for their benefit," "Delta water users need not pay for the enhanced water quality that results from water released by the projects to maintain adequate water quality at the export pumping stations," "Delta users need not pay for the enhanced water quality resulting from the release of abandoned water," and "Delta users need not pay for the enhanced water quality resulting from water released to preserve or enhance fish or wildlife.	
15	21	To the extent diverters in the Delta watershed including those in the legal Delta need more quantity of water (which they do not) or additional water rights they are entitled under the Watershed Protection Act to acquire senior water rights over the Projects to natural flow and recaptured Project stored water. The recapture of Project stored water includes the need to resolve the question of payment for water provided over and above Project obligations and incidental benefit. For the CVP the recapture appears to require that an appropriative right be obtained from the SWRCB and resolution of payment. For the recapture of SWP water, resolution by contract without the need for a new appropriative right appears sufficient. The appropriative right process subject to resolution of payment for recaptured Project water over and above Project obligations and incidental benefit should be available for recapture of Project water. Delta appropriation of natural flow, now	Please refer to the Executive Summary regarding the Project background, which explains that the Proposed Project would continue DWR's ongoing long-term SWP operations consistent with applicable laws, contractual obligations, and agreements. DWR proposes long-term operations of the SWP that will allow DWR to continue to store, divert, and convey water, in accordance with its existing water rights, to deliver water pursuant to water contracts and agreements up to full contract quantities. DWR is seeking to optimize water supply and improve operational flexibility while protecting fish and wildlife. Please also see Chapter 2, "Project Description," regarding the Project's objectives and DWR's operation of SWP in coordination with the CVP under the Coordinated Operations Agreement between the federal

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		wrongfully obstructed by the SWRCB application of Term 91, does not require payment and should be allowed. The planning for the CVP and SWP was to limit exports to water which is truly surplus to the present and future needs within the watersheds and to progressively continue with additional development of surplus water to meet increasing water needs within the watershed and increasing Project contractor demands. It was expected that the increasing needs in the Delta watershed would exceed the available natural flow and Project developed surplus water such that by the year 2000 it would be necessary to supplement water in the Delta annually with 5-millionacre feet of surplus water from Project development in North Coast watersheds. Such development did not take place and currently curtailment within and transfer of senior water rights from the Delta watershed is the predetermined outcome for the DEIR.	government and the State of California, pursuant to water right permits and licenses issued by the State Water Resources Control Board.
15	22	The SWP and CVP water rights are rights to waters which are public trust resources subject to review as to consistency with the principles supporting the State filings on which their permits are based. Public officials have caused and allowed the SWP and CVP water use to circumvent the underlying policy and law that only water which is surplus to the present and future needs within the counties and watersheds of origin can be used outside such areas.	Please refer to the Response to Comment 15-21 regarding the coordinated operation of the SWP and the CVP pursuant to water right permits and licenses issued by the State Water Resources Control Board. Please also see Common Response 10, "Public Trust," regarding public trust law and California Department of Water Resources' (DWR) consideration of the public trust in this EIR.
15	23	The proposed long term operation Plan cannot be found to "best develop, conserve, and utilize in the public interest the water included in the SWP and CVP permits." (Water Code 1253) The Plan does not best conserve the public interest. (Water Code 1255) The Plan conflicts with the California Water Plan. (Water Code 10504) The Plan conflicts with water quality objectives established pursuant to Law. (Water Code 10504) The Plan will deprive the counties in which the water covered by the SWP and CVP Permits originates of water necessary for the development of the county. (Water Code 10505) The Plan does not assure that the present and future water needs of the counties and watersheds of origin will be met with priority for use of water from such areas over use outside such areas and will not be blocked by SWRCB Term 91.	Please refer to the Response to Comments 15-21 and 15-22, regarding the Proposed Project objectives and DWR's consideration of the public trust in this EIR, which DWR has done through the Proposed Project design and analysis in the EIR. Please see Chapter 2, Section 2.1.1, "Project Objectives," regarding the project's purpose and objectives, including DWR's continuing commitment to operate the State Water Project in compliance with all state and federal water quality and environmental laws. Please see Common Response 13, "Water Rights Time Extensions," for discussion regarding the water right extensions and this EIR. Please also refer to Response to Comment 15-31 regarding area of origin.

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15	24	The plan ignores the need to reduce reliance on exports of water from the Delta. The hydrology of the Delta watershed is inadequate to support even the past level of exports. Development within the watersheds of origin and the need to recapture water from SWP and CVP exports will increase. There is evidence that more water will be needed to mitigate for the SWP and CVP damage to fish including meeting the CVPIA anadromous fish restoration requirements of 2 times the average natural production for the years 1967 through 1991. Climate change is also expected to adversely affect water supply . The increasing threat of terrorism, the continuing threat of natural calamities, including earthquakes and the growing need for electricity all gravitate towards less reliance on exports from the Delta and instead concentration on developing local self-sufficiency in the areas importing water. The deficit due to the failure to develop North Coast watersheds will not be overcome by efforts at self-sufficiency, however, increased efforts at self-sufficiency in urban communities can reduce the deficit in the amount of water available for agriculture and the environment. The Plan does not provide a plan or even a commitment	Please see Response to Comment 15-23. DWR encourages and incentivizes water conservation and improved water management through grant funding and by providing technical assistance. Please refer to Common Response 5, "Delta Reform Act," for additional information on compliance with the Delta Reform Act. Please see Chapter 11, Section 11.2, "Range of Alternatives Considered," and Common Response 3, "The CEQA Process," for a discussion on the range of alternatives considered and the development of alternatives. Table 11-1 in Chapter 11 includes several alternatives considered but not analyzed further, including alternatives that propose reducing exports or stopping exports. DWR considered these alternatives infeasible because they do not allow DWR to store, divert, and convey water in accordance with DWR's existing water rights to deliver water pursuant to water contracts and agreements up to full contract quantities, including areas that rely on SWP supplies to meet basic human health and safety when water supply is scarce. CVP operations are not included in the Proposed Project, which is focused on long term operations of the SWP. See Common Response 1, "Scope of Analysis," regarding coordinated operations of the SWP and CVP. Please see Common Response 9, "Relationship to the 2023 Biological Assessment and NEPA," regarding the separate federal endangered species act and National Environmental Policy Act processes that are underway and include both the SWP and CVP long-term operations.
15	25	The Plan does not provide a plan or even a commitment that Bay Delta water quality objectives will be met or that present or future needs including needs for full development of counties will be met. Water transfers, fallowing ground, depletion of groundwater for export, conversion of land to habitat and cropping restrictions add to the quantity of water needed to assure full development of the counties which includes the economy. Money paid to individuals for transfers and	Please see Chapter 2, Section 2.1.1, "Project Objectives," regarding the project's purpose and objectives, including DWR's continuing commitment to operate the State Water Project in compliance with all state and federal water quality and environmental laws. Please see Common Response 7, "Relationship to Healthy Rivers and Landscapes Program," regarding the water quality control plan update. Components of the comment

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		other water saving measures does not compensate for the economic loss to the related economy including loss of tax revenue. The SWP and CVP are actively directly and indirectly impairing development in the counties and watersheds of origin including the Delta. As to best conserving the public interest a plan and enforceable commitment from both the CVP and SWP to meet water quality objectives and other regulatory requirements is required. The adequacy of such objectives is critical and must be addressed as a part of consideration of the long-term operations. Since this DEIR is proceeding in advance of the long overdue update of the water quality control plan such requirements must be addressed now.	related to counties and watersheds of origin do not raise an issue associated with the contents or analyses included in the EIR and are beyond the scope of the EIR. Please see Response to Comment 15-31 regarding the "area of origin." Please also refer to Common Response 4, "CEQA and CESA Legal Standards," and Common Response 1, "Scope of Analysis."
15	26	Both State and federal law seek to: "PRESERVE, ENHANCE, AND RESTORE THE QUALITY OF CALIFORNIA'S WATER RESOURCES ON BEHALF OF All CALIFORNIANS". The goal of nondegradation and improvement of water quality and the responsibility to implement is particularly delegated to the SWRCB under the federal Clean Water Act, and State law. The goal and implementation have been replaced by a goal of reducing water quality objectives and other requirements to facilitate exports by the SWP, CVP and others of water that is not truly surplus to the present and future needs within the counties and watersheds of origin. The obligation to limit exports of water to that which is surplus to the present and future needs of the areas from which it is taken is a fundamental part of the California water rights administration and law including protection of the public trust.	Please refer to Chapter 5, "Surface Water Quality," regarding the impacts of the Proposed Project on water quality, which are less than significant. Please refer to the Response to Comment 15-22, regarding the Proposed Project objectives and DWR's duty to take into account public trust values, which DWR has done through the Proposed Project design and analysis in the EIR.
15	27	SWRCB Resolution No . 68-16 makes it clear that the nondegradation policy applies to the granting of permits and licenses for unappropriated water and provides: "WHEREAS the quality of some waters of the State is higher than that established by the adopted policies and it is the intent and purpose of this Board that such higher quality shall be maintained to the maximum extent possible consistent with the declaration of the Legislature." (See Exhibit 16 Resolution 68-16) The proposed voluntary agreements ("VA") appear to be yet another approach to facilitate the exports while avoiding the priority to meet the present and future needs including fish and wildlife needs within the Delta watershed and counties of origin. The needs for stream flow and	DWR is not seeking permits or licenses for unappropriated water. In addition, DWR has removed the water rights time extension from this EIR, refer to Common Response 13, "Water Rights Time Extensions." Please see Section 2.1.1., "Project Objectives," for a discussion of DWR's commitment to continuing commitment to operate the State Water Project in compliance with all applicable laws, contractual obligations, and agreements, including state and federal environmental laws. Refer to Response to Comment 15-31 regarding county of origin laws.

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		application of water to local lands is not only essential to the environmental and economic health of the areas of origin but to the overlooked cultural needs of native Americans. Included in the voluntary agreement proposal are taxpayer dollars which should not be used to subsidize exports by paying for SWP and CVP affirmative obligations, mitigation of such project caused impacts and paper water. Voluntary settlements to achieve compliance with adequate water quality standards in lieu of resort to enforcement actions has merit, however, the proposals particularly as related to the SWP and CVP responsibilities would violate the public trust and are not in the public interest. The proponents of the proposed VA's, especially the Resources Agency and DWR do not appear to seek improvement of the Bay Delta Water quality standards or to avoid degradation. The Projects have been unwilling to set forth a plan to assure that even the current water quality standards, which are conditions of their water right permits, will be met during a reoccurrence of multiple dry years such as 1929-1934, 1987-1992 and the more recent droughts.	Please see Chapter 7, "Tribal Cultural Resources," regarding potential impacts to Native American Tribes and Tribal Cultural Resources. Costs and funding associated with implementation of the Healthy Rivers and Landscapes Program (formerly Voluntary Agreements) are beyond the scope of this EIR and therefore are not discussed in the EIR. For additional information on how the VAs are analyzed in this EIR, please refer to Common Response 7, "Relationship to Healthy Rivers and Landscapes Program" (previously referred to as Voluntary Agreements). Please see Common Response 10, "Public Trust," regarding the SWP's violation of the public trust doctrine.
15	28	Many of the VA proposals don't apply to critical years. Some could adversely impact endangered species, reduce stream flows by increasing stream losses to the underground, reducing return flows and reducing accretions to areas downstream. One proposal even provides for taxpayer payments for foregone exports ignoring that the CVP and SWP were designed to develop sufficient surplus water to meet the present and future needs within the areas of origin and the desires of the water contractors who were to pay for the cost of the projects. Some proposals would shift the cost of project obligations and mitigation to the general taxpayers.	Please refer to Common Response 7, "Relationship to Healthy Rivers and Landscapes Program" (previously referred to as Voluntary Agreements), regarding the various operational scenarios analyzed in the EIR, some of which include Healthy Rivers and Landscapes Program flows as components of the Delta Outflow action. Please also see Chapter 2, "Project Description," Section 2.3.5, "Spring Delta Outflow," regarding information about Spring Delta Outflow and voluntary agreements. The Proposed Project includes specific components of the Healthy Rivers and Landscapes Program and does not include all previous Voluntary Agreement proposals, including those previous proposals that that use taxpayer payments for foregone exports or shift the cost of project obligations and mitigation to the general taxpayers. Please see Response to Comment 15-27 regarding the relationship of costs and funding to the CEQA analysis.
15	29	The Biological Opinion "deal" to substitute acreage of habitat (some inappropriately paid for by the taxpayers) to justify reducing fish protection water requirements for the long-term operations of the CVP	This comment does not raise a significant environmental issue associated with the 2024 SWP LTO and is beyond the scope of the EIR. Please see Common

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		and SWP is obviously wrong. Acreage of tidal habitat without suitable water conditions will not protect fish. The planned solution by the SWRCB in response to the need for water appeared to be the imposition of a mandatory percentage of unimpaired flow from each tributary to the Delta. Tributary areas inappropriately excepted are those upstream of the Merced River, those westerly of the San Joaquin River and those westerly of the Delta. The SWRCB proposal did not take into consideration the variable needs of fish species at particular stages, times and locations in the differing tributaries. No consideration was given to the causes of particular fish population declines and the legal responsibilities of parties for mitigation and enhancement. Consideration of Priorities for the counties and watersheds of origin and cultural needs of native Americans is also lacking. Fish need adequate water quality, water flow, water depth, water temperature and areas of suitable habitat for spawning, migration and foraging. The needs vary by fish species, stage of life, location, date and time. There are factors including impacts from invasive species, predation, water diversion entrainment, hatchery management, fish planting practices, discharges including those from abandoned mines, natural and intentional application of water to land where elements harmful to fish enter the waterbody and others such as ship channel and flood control works impacts on salinity intrusion, location and volume of the null or mixing zone and obstructions to fish passage.	Response 9, "Relationship to the 2023 Biological Assessment and NEPA," regarding the separate federal endangered species act process underway for both the SWP and CVP long-term operations. No further response is required.
15	30	The SWRCB imposition of mandatory tributary flows was bumped pursuant to the direction from other parts of the administration including the Governor to favor the pursuit of voluntary agreements facilitated with general taxpayer funding.	This is background information. It is not a comment on the contents of the DEIR. DWR has reviewed all comments and will consider all comments in its decision-making process.
15	31	THE RESPONSIBILITY OF STATE OFFICIALS AS TRUSTEES OF THE PUBLIC TRUST TO PROTECT THE PUBLIC INTEREST IS NOT BEING EMBRACED OR EVEN RECOGNIZED BY SUCH OFFICIALS Absent from public official action is embracing the duty as trustees to protect the public trust, follow the law and apply common sense that the water needs within the counties and watersheds of origin including the needs of fish and wildlife must be met and that only water that is truly surplus to such needs should be exported.	Chapter 2, Section 2.1.1, "Project Objectives," states that DWR's project objectives are to store, divert, and convey water in accordance with DWR's existing water rights to deliver water pursuant to water contracts and agreements up to full contract quantities and to optimize water supply and improve operational flexibility while protecting fish and wildlife based on the best available scientific information. Consistent with these objectives DWR's Proposed Project inherently includes protection of the public trust by including updated operating criteria that maximize the ability to

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			provide a safe and reliable water supply to millions of Californians while minimizing and avoiding impacts to fish and wildlife species, environmental justice communities, and Tribal Cultural Resources, while meeting Delta water quality objectives. DWR's Project Objectives also include a commitment to operate the SWP consistent with applicable laws, contractual obligations, and agreements. DWR acknowledges the multiple legal references, including legislative history, to area of origin laws. The legal term "area of origin" dates back to 1931 in California. At that time, concerns over water transfers prompted enactment of several area of origin statutes. Area of origin statutes were intended to protect local areas against export of water. In particular, counties in Northern California had concerns about the state tapping their water to develop California's supply. Early statutes prohibited depriving a "county in which the water…originates of any such water necessary for the development of the county." The major area-of-origin laws are: • The 1931 County of Origin Law (Water Code Sections 10500–10506) • The 1933 Watershed Protection Statute (Water Code Sections 11460–11465) • The 1959 Delta Protection Act (Water Code Sections 12200–12205) A fourth area-of-origin statute, enacted in 1984, designated specific "protected areas," all in northern California, and prohibited water exporters from depriving those areas "of the prior right to all the water reasonably required to adequately supply the beneficial needs of the protected area." These laws seek to grant areas in which water originates an adequate water supply for present and future needs. An important distinction related to these laws, recently clarified in Tehama-Colusa Canal Authority v. U.S. Dept. of the Interior, 819 F. Supp. 2d 956 (E.D. Cal. 2011) and

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			affirmed by the Ninth Circuit in an appeal (721 F.3d 1086 (9th Cir. 2013)), is that these laws generally apply to protect water users within the area of origin against previous appropriations for export. In other words, water users within an area where water originates may apply for new diversions by seeking a water right from the State Water Board and may obtain priority for such diversions ahead of already existing diversions for export uses by the CVP and the SWP. However, when water is acquired and stored in CVP or SWP reservoirs, area-of-origin laws do not control how the stored water is allocated, which is determined by individual water service contracts. Water contractors located in an area of origin cannot assert preferential allocation of acquired and stored water simply because of their location within a watershed. Please see Common Response 10, "Public Trust," for further discussion of DWR's consideration of the public trust.
15	32	The Delta Reform Act of 2009 statement of State of California Policy to reduce reliance on the Delta in meeting California's future water supply is not being embraced by the public officials proposing the VAs. Such officials are failing to carry out their duty as trustees of the public trust. Conflict of interest is a major factor. The structural challenge of having State regulatory entities/departments regulating other State entities/departments involved in operating water projects with interrelated programs, duties and personnel as part of the State administrative branch of government invites political influence which affects the fiduciary obligation of public officials to protect the public trust. A similar problem exists with the federal agencies and departments. Adding to the difficulty is the revolving door of employment of public officials between departments and in some cases with entities which have no State or federal duty to protect the public interest.	Please see Chapter 2, Section 2.1.1, "Project Objectives," for a description of DWR's continuing commitment to operate the State Water Project in compliance with all applicable laws, contractual obligations, and agreements. Regarding the Delta Reform Act, please see Common Response 5, "Delta Reform Plan." For more information on the Voluntary Agreements and State Water Board Update, please See Common Response 7, "Relationship to Healthy Rivers and Landscapes Program" (previously referred to as voluntary agreements) and Common Response 10, "Public Trust" for more information on the Proposed Project's consideration of Public Trust.
15	33	Voluntary agreements which are in compliance with law and in furtherance of protection of the public trust can help but the conflict of interest is real and difficult to overcome. Each tributary presents a different set of challenges and management. The true benefit of each of	Please see Response to Comment 15-28 regarding the Proposed Project's relationship to the Healthy Rivers and Landscapes Program (previously referred to as voluntary agreements) which has not yet been approved

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		the various proposed voluntary agreement measures is not clear. Some may be helpful and others detrimental. There is also a need for an adequate way to measure success. The CVPIA contains a natural production of fish doubling requirement which is based on abundance. Abundance of the desired species of fish appears to be a logical measure of benefit but how is it to be measured? For Salmon is it "escapement" determined by carcass count in a particular spawning area? Is it fish passage through a fish counting mechanism? Is it net capture? How can abundance be measured with a depleted population such as delta smelt? Mere calculation of quantity of water projected to be contributed or saved, or acreage of habitat types is not sufficient to measure the required result. Paper water even if paid for with millions of taxpayer dollars does not evidence compliance. Similarly, acreage of tidal or floodplain habitat alone does not suffice. The relevance of the proposed voluntary action to the objective to be achieved must be properly determined. Taxpayer funds should not be used to subsidize water project obligations or any export of water which is not surplus to the needs within the counties and watersheds of origin. Dam owners on tributaries to the Delta must allow sufficient water to pass through or around the dam to keep in good condition any fish that may be planted or exist below the dam and must meet other regulatory requirements. They should not be responsible for the CVP and SWP affirmative obligations and mitigation responsibilities. CVP, SWP and other Post 1914 appropriations resulting in exports are junior to area of origin and county needs. Export of project and transfer water which is not truly surplus to the present and future needs including fish and wildlife needs in the counties and areas of origin violates the promises and law and is bad policy. Depleting the water supply in one area of the State to foster development in desert and arid areas of other areas of the State is unreasonable and not in the best public interest.	by the State Water Resources Control Board. Costs and funding associated with implementation of the Healthy Rivers and Landscapes Program (formerly Voluntary Agreements) are beyond the scope of this EIR and therefore are not discussed in the EIR.
15	34	COMPLIANCE WITH LAW AS TO NONDEGRADATION OF WATER QUALITY AND LIMITATION OF EXPORTS TO SURPLUS WATER IS NECESSARY TO PROTECT THE PUBLIC TRUST INCLUDING THE NEEDS AND RIGHTS OF NATIVE AMERICANS Retention of adequate water quality and flow in the rivers and streams and precluding the export of water needed in the counties and watersheds from which the water is to be taken is consistent with and	Please refer to Common Response 10, "Public Trust," regarding Public Trust law. Please refer to Common Response 14, "Tribal Consultation," regarding consistency with Current State Policies Regarding Indigenous People of California.

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		protective of the cultural needs of native Americans. Consideration of the public trust needs for water from the Trinity River should not be precluded from the consideration of Voluntary Agreements because the river is located outside the Delta watershed and boundary for the Bay Delta water quality objectives. Flow from the Trinity River is diverted into the Sacramento River and becomes part of the flow within the Delta watershed. Due to the present shortage of millions of acre feet of water in the Delta Watershed the Proposed Voluntary Agreements should be directed at reducing reliance on the Delta and prevention of new demand which cannot be provided with assurance of a future firm supply from existing facilities. New urban and permanent crop development in desert and other arid areas requiring imports from the Delta should not be allowed until new firm surplus water supplies are in place to meet the current shortage and such new demand.	The Trinity River is outside the scope of the EIR. Please see Common Response 1, "Scope of Analysis," regarding the project scope and location. This comment describes components of the Voluntary Agreements. Thus, the comment does not directly address the 2024 DEIR for the Long-Term Operation of the State Water Project. However, DWR has reviewed the comment's content and provided responses where it may still be applicable to the 2024 DEIR for the Long-Term Operations of the State Water Project. Here, the comments provided are not applicable, and therefore, no further response is provided. Please also see Common Response 7, "Relationship to Healthy Rivers and Landscapes Program," regarding the Proposed Project's relationship with the Voluntary Agreements.
15	35	Water Code §85021 provides: "§85021. Reduction of reliance on Delta for future water supply needs The policy of the State of California is to reduce reliance on the Delta in meeting California's future water supply needs through a statewide strategy of investing in improved regional supplies, conservation, and water use efficiency. Each region that depends on water from the Delta watershed shall improve its regional self-reliance for water through investment in water use efficiency, water recycling, advanced water technologies, local and regional water supply projects, and improved regional coordination of local and regional water supply efforts." Degrading water quality and shifting Project burdens to those in the counties and watersheds of origin should not be the plan. The State through the SWP and the United States through the CVP are the major impactors of water in the Delta Watershed and are basically regulating themselves through sister agencies primarily for the benefit of their contractors. The conflicts of interest are both real and significant. The State Administration including the SWRCB has established a pattern and practice of granting Temporary Urgency Changes for the CVP and SWP to avoid meeting Bay-Delta water quality standards and avoid other requirements, including cold water fish requirements while allowing Project diversions and exports of water that could have been used to	Please refer to Appendix 2A, Attachment 6, for details regarding actions taken during drought conditions, specifically Action 9 regarding Temporary Urgency Change Petitions (TUCPs) and Action 11 regarding curtailments. Please also see Resource Chapters 5 and 6, respectively, for detailed effects analyses of Water Quality and Aquatic Biological Resources. Refer to Common Response 10, "Public Trust," and Common Response 4, "CEQA and CESA Legal Standards," for more information on the Proposed Project consideration of public trust and CEQA legal standards. Please refer to Common Response 13, "Water Rights Time Extensions." Please see Response to Comment 15-31 regarding portion of comment on Area of Origin.

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		meet such standards and requirements. Enforcement of violations of south delta salinity standards against the CVP and SWP was sidetracked while curtailment of senior water rights was vigorously pursued. The salinity standard at Brandt Bridge on the Lower San Joaquin River has been reduced from .7 EC to 1.0 EC. Tributaries to the San Joaquin River upstream of the Merced River which historically received extended flow from high quality snow melt including the Upper San Joaquin and the Kings River have been excluded from the Lower San Joaquin River consideration of minimum flows for fish. The San Joaquin River Restoration Program flows for Spring Run Salmon on the Upper San Joaquin are allowed to be diverted before they reach the Delta pumps for recirculation. The needs of fish other than Fall Run Salmon are not included in the objectives for fish flow in the Lower San Joaquin River. The ecological health needs of the Delta watershed including surface and groundwater quality and flow should be the focus of public trust protection. Export of water that is not truly surplus to such needs is detrimental.	
15	36	Constraints on creating new permanent demand in arid and desert areas which can't be served with firm water should be reimposed within the contracting policies of the CVP and SWP and the planning for the State. State water contract provisions limiting non-firm water use if permanent demand might result have been eliminated. Transfers, changes of places of use and other measures have been implemented to increase Project export demand and water use. CVP and SWP water deliveries for urban development and permanent crops should be reduced to quantities that can be firmly provided in critical years assuming reoccurrence of hydrology similar to what has occurred in the past. Surplus water, when available should be used to support firm supply and not create new demand for firm supply. There should be a prohibition of the use of SWP and CVP facilities to divert or redivert for export all water from transfers and changes unless water needs in the counties and watersheds of origin are fully met and improved water quality standards are being met and are projected to be met in all years if there is a reoccurrence of historical droughts. The SWP and CVP export impacts on salinity, including selenium and other deleterious constituents in the San Joaquin River have not been mitigated even though construction of a drainage outlet to the ocean was a precondition to the San Luis Unit authorization. (See Exhibit 5 San Luis Act)	Please refer to Chapter 1, "Introduction," Section 1.1, "Purpose of the Draft Environmental Impact Report," regarding the purpose of the project. Please see Chapter 1, "Introduction," for a description of the State Water Project and background information regarding how water supply has been developed and managed in California. Please also refer to Common Response 3, "The CEQA Process," regarding the project's purpose and objectives, including DWR's continuing commitment to operate the State Water Project. See Response to Comment 15-24 regarding the regulatory processes for CVP and SWP together. The EIR provides an impact analysis of environmental resources raised by the comment. Please refer to Chapter 4, "Surface Water Hydrology," and Chapter 5, "Surface Water Quality," and supporting appendices for these respective chapters, for discussion and analysis of the potentially significant environmental impacts on the environmental resources mentioned in the comment as a result of operation of the project.

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		The SWRCB has failed to require that the SWP and CVP produce a plan to operate the Projects to meet even the D-1641 Water Quality Standards, without relaxation, if there was a reoccurrence of a series of dry years such as 1929 through 1934, 1987 through 1992 and the more recent droughts. Due to such failure, Project storage has regularly been prematurely depleted thus making it more difficult to meet the standards including cold water needed for fish. It appears that there is still no requirement for the Projects to set forth a plan to meet adequate standards in a series of dry years like 1929 through 1934, 1987 through 1992 and the more current drought experience. If compliance is not possible then the plan should be to reduce Project diversions and export pumping accordingly. The long- term operating plan includes major exports from the Delta and to protect the public interest must provide the plan for compliance and commitments to assure compliance.	
15	38	PROTECTION OF THE PUBLIC TRUST AND PUBLIC INTEREST IS BEING CIRCUMVENTED, ENDANGERED SPECIES ARE NOT BEING PROTECTED AND CONFLICTS OF INTEREST ARE NOT BEING A VOIDED State public officials are trustees of the public trust and have a primary and fiduciary obligation to protect the public trust and public interest. It is not a matter of wearing two hats which can be interchanged. The public official hat cannot be taken off to wear the State Water Project hat. The fact that State costs allocated to the SWP are paid with off State Budget funds from project contractors cannot be allowed to interfere with the unfettered discharge of public official duty to the public. In California Taxpayers Action Network v. Tabor Construction, Inc. 12 Cal.App.5 th 115 the court addressed the Statutory and Common Law Conflict of lnterest at page 139: "Plaintiff quotes Terry v. Bender (1956) 143 Cal.App.2d 198 . 206-207, 300 P .2d 119, in which the court wrote: 'A public office is a public trust created in the interest and for the benefit of the people. Public officers are obligated, virtute officii, to discharge their responsibilities with integrity and fidelity. Since the officers of a governmental body are trustees of the public weal, they may not exploit or prostitute their official position for their private benefits. When public officials are influenced in the performance of their public duties by base and improper considerations of personal advantage, they violate their oath of office and vitiate the trust reposed in them, and the public is injured by being deprived of their loyal and honest services. It is therefore the general policy of this state that public officers shall not have a personal interest in any contract made in their official capacity	Most of this comment does not discuss issues related to the contents of the DEIR. Those portions of the comment provide citations of case law describing the responsibilities of public officials in protecting the public trust. Please see Response to Comment 15-31 regarding protection of endangered species and public trust conflicts of interest and DWR's commitment to supplying water and protecting fish and wildlife species. Please also see Chapter 6 of the EIR for analyses of impacts to aquatic resources, and Appendix 3A, "Initial Study," for analyses of impacts to plant and wildlife species. Please see Common Response 10, "Public Trust," for further discussion of DWR's consideration of the public trust

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		A transaction in which the prohibited interest of a public officer appears is held void both as repugnant to the public policy expressed in the statutes and because the interest of the officer interferes with the unfettered discharge of his duty to the public. The public officer's interest need not be a direct one, since the purpose of the statutes is also to remove all indirect influence of an interested officer as well as to discourage deliberate dishonesty. Statutes prohibiting such 'conflict of interest' by a public officer are strictly enforced." "Government Code section 1090 provides in relevant part, "Members of the Legislature, state, county, district, judicial district, and city officers or employees shall not be financially interested in any contract made by them in their official capacity, or by any body or board of which they are members." (Gov. Code.§ 1090. subd. (a) .) The statute "codifies the long-standing common law rule that barred public officials from being personally financially interested in the contracts they formed in their official capacities." (Lexin v. Superior Court (2010) 47 Cal.4th 1050. 1072, 103 Cal.Rptr.3d 767 . 222 P.3d 214 (Lexin).) "The common law rule and section 1090 recognize '[t]he truism that a person cannot serve two masters simultaneously ... .' [Citations.] 'The evil to be thwarted by section 1090 is easily identified: If a public official is pulled in one direction by his financial interest and in another direction by his official duties, his judgment cannot and should not be trusted, even if he attempts impartiality.' " (Id. At p 140). 1073 . 103 Cal.Rptr.3d 767 . 222 P.3d 214 .) "When public officials are influenced in the performance of their public duties by base and improper considerations of personal advantage, they violate their oath of office and vitiate the trust reposed in them, and the public is injured by being deprived of their loyal and honest services." (id. At p.138) "The state has an affirmative duty to take the public trust into account in the planning and allocation of water resources, and to protect public resources whenever feasible .... In so doing, however, the state must bear in mind its duty as trustee to consider the effect of the taking on the public trust (cite omitted), and to preserve, so far as consistent with the public interest, the uses protected by the trust." See National Audubon Society v. Superior Court 33 CAL. 3 rd 419, pages 446 and 447.	

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15	39	THE DEIR IS INCOMPLETE AND DOES NOT PROVIDE A GOOD FAITH EFFORT AT FULL DISCLOSURE BY LIMITING CONSIDERATION OF ALTERNATIVES CONTRARY TO NEPA REQUIREMENTS CVP and SWP water rights overlap, and the project operations are coordinated. CVP and SWP water is comingled throughout the system, at the points of diversion in the south Delta, in the aqueducts and in San Luis Reservoir. Points of diversion in the south Delta are joint points, places of use overlap and there are joint facilities such as the intertie, San Luis Reservoir and other facilities. The premature and piecemeal permit application to the USACE for the tunnel brings forth additional NEPA concerns including circumvention by the USACE. The complicity of the USACE in the predetermination of approval of the action to construct new SWP/CVP intakes on the Sacramento River with the isolated conveyance tunnel is confirmed by the USACE Noi and effort to prematurely move forward with permitting of a particular alternative to the exclusion of others in advance of a record of decision on a NEPA compliant EIS.	This comment describes components of the Delta Conveyance Project DEIR. Thus, the comment does not directly address the 2024 DEIR for the Long-Term Operation of the State Water Project. However, DWR has reviewed the comment's content and provided responses where it may still be applicable to the 2024 DEIR for the Long-Term Operations of the State Water Project. DWR has provided additional context in the form of Common Responses. See Common Response 9, "Relationship to the 2023 Biological Assessment and NEPA," for information on NEPA compliance. This DEIR is prepared according to CEQA Requirements, see Common Response 3, "The CEQA Process," and Common Response 4, "CEQA and CESA Legal Standards."
15	40	The Proposed Long-Term Operation is Clearly a Joint SWP and CVP Project. NEPA requires full disclosure of the potential effects of major actions proposed by federal agencies and accompanying alternatives, impacts and possible mitigation. NEPA also requires that environmental concerns and impacts be considered during planning and decision making so that steps may be more easily taken to correct or mitigate the impacts of an action. Compliance with NEPA should result in more informed decisions and the opportunity to avoid or mitigate for potential environmental effects before an action is implemented. The NEPA process is intended to identify and evaluate alternatives in an impartial manner. (See Reclamation's NEPA Handbook dated February 2012.) CEQA requires adequacy, completeness and a good faith effort at full disclosure. The BIR is to inform the decision makers and the public of the environmental impact of proposed actions. (See CEQA Guidelines sections 15002 and 15003.) The purposes need to include identifying ways to avoid or significantly reduce environmental damage and preventing significant, avoidable damage to the environment by requiring changes in projects through the use of feasible alternatives or mitigation measures.	Please see Common Response 9, "Relationship to the 2023 Biological Assessment and NEPA," regarding the separate federal endangered species act and National Environmental Policy Act processes that are underway and include both the SWP and CVP long-term operations. Please refer to Chapter 2, "Project Description," regarding information about the Proposed Project's purpose and objectives. Please also refer to Common Response 3, "The CEQA Process," regarding the requirements of CEQA and DWR's fulfillment of CEQA requirements in the preparation of the EIR, including the evaluation of a range of feasible alternatives. Please refer to Chapter 11, "Alternatives to the Proposed Project," regarding the alternatives considered by the lead agency and analyzed in the EIR. Operations of the CVP are beyond the scope of this EIR. Please see Common Response 5, "Delta Reform Act," for information on DWR's compliance with the Delt Reform Act, including its application to DWR SWP operations,

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		Under CEQA the Purpose and Need cannot be artificially narrowed to limit objective consideration of reasonable alternatives. The DEIR has done just that. "A reasonable definition of underlying purpose and need" should not be used to circumvent legal requirements. The Project Purpose and Objectives are not reasonable. Exports up to full contract amounts without a substitute for the planned 5 million acre feet of surplus water from the North Coast by the year 2000 is an impossibility and simply an attempt to circumvent the reduction in reliance on the Delta as provided in Water Code section 85021. The requirements for NEPA are different than for CEQA. The requirements of 40 CFR section 1502.14 provide: "§ 1502.14 Alternatives including the proposed action. This Section is the heart of the environmental impact statement. Based on the information and analysis presented in the sections on the Affected Environment (§1502.15) and the Environmental Consequences (§1502.16), it should present the environmental impacts of the proposal and the alternatives in comparative form . thus sharply defining the issues and providing a clear basis for choice among options by the decision maker and the public. In this section agencies shall: (a) Rigorously explore and objectively evaluate all reasonable alternatives, and for alternatives which were eliminated from detailed study, briefly discuss the reasons for their having been eliminated. Devote substantial treatment to each alternative considered in detail including the proposed action so that reviewers may evaluate their comparative merits. (b) Include reasonable alternatives not within the jurisdiction of the lead agency. (c) Include the alternative of no action. (d) Identify the agency's preferred alternative or alternatives, if one or more exists, in the draft statement and identify such alternative in the final statement unless another law prohibits the expression of such a preference. (e) Include appropriate mitigation measures not already included in the proposed action or alternatives." (Emphasis added.) The Delta Reform Act of 2009 includes provisions intended to provide additional protection for the Delta. Such provisions include Water Code §85054 which provides: "§85054. Coequal goals	actions subject to consistency review, and the policy goal of 'reduced reliance' and water conservation.

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		'Coequal goals' means the two goals of providing a more reliable water supply for California and protecting restoring, and enhancing the Delta ecosystem. The coequal goals shall be achieved in a manner that protects and enhances the unique cultural, recreational, natural resource, and agricultural values of the Delta as an evolving place." Water Code §85021: "§85021. Reduction of reliance on Delta for future water supply needs The policy of the State of California is to reduce reliance on the Delta in meeting California's future water supply needs through a statewide strategy of investing in improved regional supplies, conservation, and water use efficiency. Each region that depends on water from the Delta watershed shall improve its regional self reliance for water through investment in water use efficiency, water recycling, advanced water technologies, local and regional water supply projects, and improved regional coordination of local and regional water supply efforts."	
15	41	The Delta and other areas of origin both upstream and downstream are part of California and also need a more reliable water supply. The Project Purpose and Objectives are clearly directed only at the ability of the SWP and CVP to export water from the Delta. Restoration and protection of Delta water quality and flows including flushing flows are part of a more reliable water supply for California. Non-degradation of water quality and the statutory obligations to provide enhancement of water quality and an adequate supply for the counties and watersheds of origin including the Delta are also absent from the purposes. Alternatives which require that the SWP and CVP be operated to reduce reliance on the Delta and limit exports to water which is truly surplus to the present and future needs of the Delta and other areas of origin in accordance with current law are reasonable alternatives which must be rigorously and objectively evaluated. The long-term operation plan clearly ignores the law establishing the priorities for meeting needs within the Delta and other areas of origin including the needs of fish and wildlife. Without inclusion of a firm supply of surplus water the project will clearly increase reliance on the Delta and damage rather than enhance the resources of the Delta.	Please refer to Chapter 1, "Introduction," Section 1.1, "Purpose of the Draft Environmental Impact Report," regarding the purpose of the project. Please see Chapter 1, "Introduction," for a description of the State Water Project and background information regarding how water supply has been developed and managed in California. Please refer to Chapter 2, "Project Description," and Chapter 11, "Alternatives to the Proposed Project," regarding the operational criteria, real-time operational decision making and adaptive management, which seek to avoid impacts on fish and aquatic resources. Please refer to Response to Comment 15-31 regarding area of origin law.
15	42	There must be a comprehensive review of significant impacts and consideration of the least damaging alternatives. A range of reasonable alternatives must be considered including substantially reduced and at times no exports from the Delta and	The EIR has been prepared in accordance with CEQA and adequately discloses the scope, severity, and magnitude of potential impacts for the environmental resources analyzed in this EIR. Please see Chapter 11,

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		continuation of through Delta channel conveyance as required by California Water Code section 12205. Export of water from the Delta which is not truly surplus to the needs of the Delta is counter-productive to improving the ecosystem. The constrained description of the Long-Term r Project is being used to preclude presentation of the environmental impacts and alternatives in a manner providing a clear basis for choice among options by the decision maker and the public as required by 40 CFR section 1502.14. The proposition that removal of natural flows into and through the Bay-Delta Estuary will improve the ecosystem is unique, bold and unsupportable.	Section 11.2, "Range of Alternatives Considered," and Common Response 3, "The CEQA Process," for a discussion on the range of alternatives considered and the development of alternatives. Additionally, please see Chapter 2, Section 2.1.1, "Project Objectives," for a description of DWR's continuing commitment to operate the State Water Project in compliance with all applicable laws, contractual obligations, and agreements.
15	43	Reliability of water supply for exports from the Delta must be junior to the needs and obligations requiring water in the Delta and other areas of origin including fish and wildlife needs. The modeling and analysis should provide a clear confirmation of the types and numbers of years when no water will be available for export and provide estimates of the amounts that might be available in other years. Care should be taken to model carryover storage requirements with due consideration of meeting temperature, flow and statutory requirements to determine the firm yield available for export. Reliability of water supply for Northern California requires that water to meet the needs of and obligations to restore and enhance fish not be exported. The provision of salinity control and an adequate supply for the Delta was deemed to be of utmost importance and is a critical feature of a reliable supply for the Delta. It is crystal clear the project is intended to take all the water possible for export in the event of climate change, sea level rise or earthquake impacting export water quality. There is no analysis of resulting water quality in the Delta for the range of possible conditions and operations. The planned shift of legal priority is unlawful.	Under extreme conditions, CalSim 3 results should only be considered an indicator of stressed water supply conditions and should not necessarily be understood to reflect literally what would occur in the future under a given scenario. CalSim 3 does not reflect all potential relaxations that may be undertaken in real-time, so the model may underestimate reservoir storages and overestimate flows during severe droughts. CalSim 3 is not a predictive tool. Its results cannot be calibrated or validated with historical data. It is designed as a comparative analysis tool. Please refer to Common Response 12, "Drought Conditions," for additional discussion related to the minimum export rate. Additionally, water quality conditions in the Delta were modeled and analyzed for this EIR. For more information, please refer Chapter 5, "Surface Water Quality."
15	44	The DEIR reflects bad faith and is far from a reasonable analysis and disclosure of impacts. The alternatives presented don't even meet the DEIR screening criteria. There is no compliance with regulatory constraints including statutes and court decisions and there is no minimization of health and safety risks to the public in the Delta and surrounding region.	DWR is committed to operating the SWP in compliance with all applicable laws, contractual obligations, and agreements. Please see Common Response 3, "The CEQA Process," for a discussion on the range of alternatives considered and the development of alternatives. Please see Response to Comments 15-31 regarding area of

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		As discussed above the appropriative rights of both the SWP and CVP, in addition to the other protections for the Delta and other areas of origin do "not authorize the use of any water outside of the county of origin which is necessary for the development of the county". See Water Code section 10505.5.	origin law and 15-41 for reference to EIR chapters where issues in this comment are addressed.
15	45	The counties including the Delta need an adequate supply of good quality water in order to develop. The SWP and CVP are continuing to damage the quality and health of the water supply in the counties of origin for all uses including human consumption, fish and wildlife, agriculture, recreation, urban use, commercial and industrial use.	Please refer to Chapter 1, "Introduction," Section 1.1, "Purpose of the Draft Environmental Impact Report," regarding the purpose of the project. Please see Chapter 1, "Introduction," for a description of the State Water Project and background information regarding how water supply has been developed and managed in California. See Chapter 2, Section 2.1.1, "Project Objectives," for a description of DWR's continuing commitment to operate the State Water Project in compliance with all applicable laws, contractual obligations, and agreements. Please also refer to Common Response 3, "The CEQA Process," regarding the project's purpose and objectives, including DWR's continuing commitment to operate the State Water Project. Please see Response to Comment 15-31 regarding area of origin law Please see Chapters 4-9 and Appendix 3A, "Initial Study," regarding an analysis of environmental impacts on multiple environmental resources, including agriculture, recreation, as well as socioeconomics.
15	46	There is no specific allocation of stored water or inclusion of projects to mitigate for the water taken away from present needs or to provide supply for future development needs in the counties and watersheds of origin especially in a series of dry years. The DEIR for the long-term operation is not only defective under CEQA and NEPA but also constitutes additional substantial evidence of a breach of the fiduciary obligation of public officials to protect the Public Trust.	Long-term operations of the SWP is a state action, therefore it is subject to environmental review under CEQA and not NEPA. Please see Common Response 1, "Scope of Analysis," Common Response 9, "Relationship to the 2023 Biological Assessment and NEPA," and Common Response 11, "Application of CESA Standards," for additional discussion. Please see Common Response 2, "CEQA Environmental Baseline," for a description of how existing conditions are addressed through the CEQA process. See Common Response 10, "Public Trust," for information on the proposed project's consideration of the public trust. It would be speculative to assume future changes in development that may or may not

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			occur in different counties and watersheds. Under long-standing CEQA principles, speculative analysis is considered not to be meaningful or informative, and thus is not required.
15	47	[Attachment 1: Graph of Estimated Seasonal Runoff in North Coast Area and Central Valley from 1917-1947]	This is a reference document cited in the comment letter. It is not a comment on the contents of the DEIR. DWR has reviewed all comments and will consider all comments in its decision-making process.
15	48	[Attachment 2: DWR's Bulletin No.76 Report to California Legislature on the Delta Water Facilities, 1960.]	See Response 15-47.
15	49	[Attachment 3: DWR's SWP Memorandum Report, 1969.]	See Response 15-47.
15	50	[Attachment 4 - Central Delta Water Agency Letter on Curtailment Method based on Term 91 Type Approach.]	See Response 15-47.
15	51	[Attachment 5: CVP Public Law 86-488 document from June, 1980.]	See Response 15-47.
15	52	[Attachment 6: Research article on the lifetime chronicals of selenium exposure linked to imperiled migratory fish from 2020.]	See Response 15-47.
15	53	[Attachment 7: Draft State Water Project Delivery Capability report 2023.]	See Response 15-47.
15	54	[Attachment 8: Reclamation Water Supply and Yield Study from 2008.]	See Response 15-47.
15	55	[Attachment 9: Description of DWR compliance with SWRCB Water Rights Decision 1641.]	See Response 15-47.
15	56	[Attachment 10: California Water Plan Projected Use and Available Water Supplies to 2010, Bulletin 160-83 from December 1983.]	See Response 15-47.
15	57	[Attachment 11: DWRs Bulletin No.3 California Water Plan from May, 1957.]	See Response 15-47.
15	58	[Attachment 12: Argument in favor for the California Water Resources Development Act from 1960.]	See Response 15-47.
15	60	[Attachment 13: Water Rights Decision 1485 for Sacramento San Joaquin Delta and Suisun Marsh.]	See Response 15-47.
15	61	[Attachment 14: Revised Water Right Decision 1641. A petition to change points of diversion of CVP and SWP in South Delta. Adopted 1999 in accordance with WR 2000-02.]	See Response 15-47.
15	62	[Attachment 15: SWRCB Resolution No. 68-16.]	See Response 15-47.

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16	1	These comments supplement other comments being submitted on the above-referenced matter by the Central Delta Water Agency (CDWA). Please note that all of the CDWA's comments on this matter are also being submitted on behalf of the South Delta Water Agency.	This information describes the structure or organization of the comment letter, the background of the organization or individual commenter, clarification on the submittal of the comment letter, or general introductory text. It is not a comment on the contents of the DEIR. DWR has reviewed all comments and will consider all comments in its decision-making process.
16	2	1. The DEIR Fails to Properly Investigate, Analyze and Mitigate How the SWP Intends to Comply with D-1641. One of the "Proposed Project Actions" is to "[c]omply with D-1641 . . . ." (DEIR, p. ES-6.) The "Action Goal or Objective" for this action is to "[c]ontinue to comply with existing limits and permit requirements to protect water quality for the beneficial uses of fish and wildlife, agriculture, and urban uses." (Ibid.) (See also, DEIR, p. ES-8 [another "action goal or objective" is to "[m]aintain operation and permit requirements [including D-1641] during drought years."] Complying with D-1641 is something the SWP has historically undisputedly failed to do. For example, once conditions begin to become dry, the SWP and CVP rush to the SWRCB and seek temporary urgency changes to D-1641 on the alleged grounds that they do not have enough storage water to meet the D-1641 standards, i.e., they exported too much storage water from the Delta. They exported too much storage water from the Delta because there was no intent or plan to meet the D-1641 standards when conditions become dry. Actually complying with D-1641 at all times, including drought conditions, is something new. To the extent the SWP is turning over a new leaf with the proposed project and is sincere about this proposed objective, substantial investigation and analysis are required to demonstrate how the SWP intends, for the first time in history, to comply with D-1641 at all times, including drought conditions. Thus, far, there is zero investigation, analysis or mitigation associated with such compliance. If on the other hand, DWR revises this objective to state that it only intends for the SWP to comply with D-1641 when it is "convenient" or "feasible," then the DEIR must thoroughly explain the conditions under which DWR determines such compliance is "convenient" or "feasible" and subject such an operation plan to the full scope of CEQA analysis and mitigation.	Please see Chapter 2, Section 2.1.1, "Project Objectives," for a description of DWR's continuing commitment to operate the State Water Project in compliance with all state and federal water quality and environmental laws. Please also see Chapter 2, Section 2.2.2, "State Water Resources Control Board Water Rights and D-1641," for a description of DWR's obligations under D-1641. Please see Common Response 15, "Real-Time Operations," for further discussion on how DWR operates the SWP to comply with D-1641. Please refer to Appendix 2A, Attachment 6, "Drought Toolkit," for more information about the reasoning behind Temporary Urgency Change Petitions (TUCPs) and their relationship with D-1641. Please also refer to Common Response 12, "Drought Conditions," for additional discussion on drought actions including TUCPs.

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		Thus far, there is a complete failure to properly handle the proposed operations of the SWP to comply with D-1641 under CEQA.	
16	3	2. The DEIR's Baseline to Measure the Significance of Impacts from Climate Change is Incorrect. The DEIR recognizes substantial reductions in exports as a result of climate change. (See e.g., DEIR, p. 9-24 [showing an over 500,000 acre feet reduction in exports in below normal years].) These reductions result in large part from the anticipated substantial reduction in storage supplies. Because as just noted, the SWP currently fails to comply with D-1641 under all conditions, the anticipated substantial reduction in future storage supplies will greatly exacerbate such non-compliance unless the SWP develops a plan to comply with D-1641 notwithstanding that reduction. Currently there is nothing in the DEIR that explains how DWR will operate the SWP to comply with D-1641 in light of that substantial reduction. Such a reduction is a major change in the baseline conditions under which the SWP will operate in the future and something the DEIR must incorporate into the baseline conditions from which the significance of impacts will be evaluated. While the more analysis the merrier, the DEIR's mere comparison of how the proposed project will fare against a no-project alternative under a substantially depleted reservoir storage situation entirely evades the core and essential CEQA analysis that must be undertaken–i.e., a description of the SWP's operation plan to comply with the D-1641 standards in light of the substantial reduction in reservoir storage supplies and an investigation, analysis, and mitigation of the potentially significant direct and foreseeable indirect impacts from that operations plan on the entire range of potentially affected environmental resources. The DEIR must be revised to include that description, investigation, analysis, and mitigation.	Please see Chapter 2, Section 2.1.1, "Project Objectives," for a description of DWR's continuing commitment to operate the State Water Project in compliance with all state and federal water quality and environmental laws. Please also see Chapter 2, Section 2.2.2, "State Water Resources Control Board Water Rights and D-1641," for a description of DWR's obligations under D-1641. Please see Common Response 15, "Real-Time Operations," for further discussion on how DWR operates the SWP to comply with D-1641. Please refer to Appendix 2A, Attachment 6, "Drought Toolkit," for more information about the reasoning behind Temporary Urgency Change Petitions (TUCPs) and their relationship with D-1641. Chapter 9, "Climate Change Resiliency and Adaptation," evaluates the Long-Term Operations of the State Water Project (SWP) facilities in the Sacramento–San Joaquin Delta (Delta), Suisun Marsh, and Suisun Bay (Proposed Project) in regard to how climate change could influence the ability of the Project to fulfill its intended purpose. Please also refer to Common Response 12, "Drought Conditions," for additional discussion on drought actions including D-1641 compliance and why modifications are necessary under certain conditions. For additional information on the CEQA baseline, please refer to Chapter 3, "Scope of Analysis," and Common Response 2, "CEQA Environmental Baseline."
16	4	3. Releases from San Luis Reservoir to Comply with the D-1641 Standards and Other Laws Must be Included in the SWP's Future Operations Plan. Regarding compliance with the D-1641 standards in general, as well as achieving such compliance in light of the anticipated substantial reduction in upstream-of-the-Delta storage supplies, the SWP has another substantial asset–the San Luis Reservoir–that can and must be used to maintain compliance with the D-1641 standards, as well as	Please see Chapter 2, Section 2.1.1, "Project Objectives," regarding the project's purpose and objectives, including DWR's continuing commitment to operate the State Water Project in compliance with all state and federal water quality and environmental laws. The comment alludes to the development and inclusion of additional alternatives regarding the use of San Luis Reservoir or exchanges with SWP contractors to meet water quality

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		compliance with the Watershed Protection Act (Wat. Code, § 11460 et seq.), the Delta Protection Act of 1959 (Wat. Code, § 12200 et seq.), the Delta Reform Act of 2009 (Wat. Code, § 85000) and other laws intended to protect the Delta and areas of origin from the export of non-surplus waters. Releases of previously exported water stored in San Luis Reservoir back into the Delta can be accomplished through various means including exchanges of water from SWP contractors (or CVP contractors). Additional facilities (e.g., canals or pipelines) should also be considered to more directly release San Luis Reservoir water back into the Delta. In the interim, however, such releases could be easily accomplished through exchanges with no need for additional facilities. How the SWP (and CVP) have gone this long without using San Luis Reservoir water to help comply with the D-1641 standards and other laws is difficult to comprehend. The additional operational flexibility it provides the SWP (and CVP) to meet those standards and laws is manifest. For example, releases from San Luis Reservoir to meet Delta outflow standards could reduce the need for upstream-of-the-Delta storage releases and, hence, help preserve cold water storage in those upstream reservoirs for later in the year.	objectives but does not describe the request in detail or indicate whether these potential alternatives would meet most of the Project Objectives, be feasible to implement, or avoid or substantially lessen significant effects. Please see Chapter 5, "Water Quality," for the analyses conducted on Delta water quality and the conclusions that water quality impacts would be less than significant. Please see Chapter 11, Section 11.2, "Range of Alternatives Considered," and Common Response 3, "The CEQA Process," for a discussion on the range of alternatives considered and the development of alternatives.
16	5	While the CDWA believes the use of San Luis Reservoir to meet D-1641 standards and other laws is mandatory under the above-referenced laws, it is also a logical and feasible mitigation measure to help the SWP cope with the effects of climate change. It fits perfectly with the concept that more water will be exported when water is more abundant for use during times when water is less abundant. For example, San Luis Reservoir provides a storage facility that could store water for use to meet D-1641 standards later in the year when water supplies in the rivers are less abundant and when preserving cold-water storage is of paramount concern. The DEIR must accordingly be revised to include the use of San Luis Reservoir as an integral component of the SWP's future operations and a key component of the SWP's climate adaptation strategy that will allow it to fulfill its objective of compliance with D-1641 under all future conditions, including droughts. The DEIR must also investigate, analyze, and mitigate all potentially significant direct and foreseeable indirect impacts from the use of San Luis Reservoir in that manner.	The comment requests the development and inclusion of an additional alternative to use San Luis Reservoir to meet water quality objectives but does not describe whether these potential alternatives would meet most of the Project Objectives, be feasible to implement, or avoid or substantially lessen significant effects. Please see Chapter 2, Section 2.1.1, "Project Objectives," for a description of DWR's continuing commitment to operate the State Water Project in compliance with all state and federal water quality and environmental laws. Please see Chapter 5, "Water Quality," for the analyses conducted on Delta water quality and the conclusions that water quality impacts would be less than significant. Please see Chapter 11, Section 11.2, "Range of Alternatives Considered," and Common Response 3, "The CEQA Process," for a discussion on the range of alternatives considered and the development of alternatives. Please also see Appendix 2D, "Geographic Scope," and Common Response 1, "Scope of Analysis," for

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			a discussion of the geographic scope of the Proposed Project analysis and coordinated operations.
16	6	4. The DEIR Fails to Address the Adverse Impacts to Water Users and the Environment that Result from the Project's Capture of Delta Flushing Flows that Would Otherwise Freshen the Water Quality in the Delta. Through the operation of their upstream-of-the-Delta reservoirs, the SWP and CVP control the amount of flushing flows that flow through the Delta and freshen the water quality of the Delta (in terms of salinity and other contaminants). Whenever the SWP and CVP store water that would otherwise flow through the Delta, the water quality in the Delta is negatively impacted by the lack of those flushing flows. It is common knowledge that those flushing flows have a lasting impact on water quality in the Delta. For example, winter and spring flushing flows can substantially improve water quality in the Delta for many months into the future. The reduction in flushing flows can have widespread adverse impacts on water users and all aspects of the environment. For example, the lack of flushing flows could result in the premature triggering of Term 91, i.e., it could result in the premature need for the SWP and CVP to release some of those captured flushing flows later in the year to meet the D-1641 standards.	Chapter 5, "Surface Water Quality," used output from CalSim 3 (hydrology) and DSM2 (water quality) to assess the effects of the project on water quality within the Delta. The project's proposed operations, including any "capture of Delta flushing flows" as mentioned in the comment, is captured in the CalSim 3 and DSM2 modeling output for the project. Modeling output for the project was compared to modeling output for Baseline Conditions for the purposes of assessing impacts of the project on Delta water quality. As such, the effects of the project storing water that would otherwise flow through the Delta under Baseline Conditions was captured by the modeling and was assessed in Chapter 5, "Surface Water Quality," and impacts were determined to be less than significant. Furthermore, CalSim 3 accounts for Term 91 curtailments. Curtailments only occur when: (1) supplemental project water is needed to meet water quality objectives and (2) the Delta is in balanced conditions. Drier conditions in the Delta result in Term 91 curtailments. Conditions during which Term 91 curtailments typically occur during the summer and fall months but may be extended as a result of drought conditions. Please review Term 91 Water Availability and Curtailment FAQ (https://www.waterboards.ca.gov/water_issues/programs/delta_watermaster/docs/term_91_faq.pdf) for more details. As Term 91 curtailments are triggered by environmental and hydrologic conditions, the proposed long-term operation of SWP would not alter frequency of Term 91 curtailments as compared to Baseline Conditions.
16	7	In this regard, the operations of the SWP and CVP influence when water right holders within the Delta watershed with Term 91 will be deprived of diverting the natural flows in the rivers. In light of the climate adaptation strategy to increase the capture of flushing flows during the winter and spring, the DEIR must thoroughly	Please refer to Response to Comment 16-6 regarding the Proposed Project operations and effects on triggering Term 91 curtailments.

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		discuss, investigate, and analyze the potential impacts that capture will have on Delta water quality later in the year, including the triggering of Term 91. The entire widespread range of impacts that would result from such triggering must also be throughly discussed, investigated, analyzed, and mitigated.	
16	8	5. The DEIR Fails to Address Impacts from Actions Included in its Drought Toolkit. Another one of the project's proposed actions is the following: Starting each October, Reclamation and DWR, through the Drought Relief Year (DRY) Team, will meet at least monthly to determine whether it would be appropriate to pursue actions to respond to current or anticipated drought and dry year conditions using the Drought Toolkit. (DEIR, p. ES-8.) The purpose of CEQA is to investigation, discuss, analyze, and mitigate the potentially significant direct and foreseeable indirect impacts from the proposed actions. Here, there has been no attempt to do that with any of the numerous proposed actions in the so-called "Drought Toolkit." This is yet another egregious CEQA deficiency that must be fixed.	Please see Common Response 12, "Drought Conditions," for discussion regarding how the modeling evaluated in the EIR included drought conditions. Additionally, the comment paraphrases the requirements of CEQA to evaluate direct and foreseeable indirect impacts. Although droughts will occur in the future, they are not predictable and the timing, number, severity, and duration cannot be identified and analyzed. DWR included the Drought Toolkit and DRY Team as part of the Proposed Project with the specific intent of using the actions described in the Drought Toolkit as needed in coordination with other state and federal water management and resource agencies. DWR cannot predict which action will be utilized or appropriate for utilization at this time. Therefore, it is speculative to analyze specific potential effects of the Drought Toolkit in this EIR. However, during future droughts when DWR and Reclamation need to employ actions described in the Drought Toolkit, these actions would undergo additional environmental review, as needed.
16	9	6. Additional Comments and Incorporation of Prior Comments. Enclosed herewith are four (4) attachments. The first two attachments contain additional new comments on this matter. The remaining two attachments consist of comments on the prior 2020 DEIR for the SWP's long-term operations. The CDWA asserts that the current DEIR suffers from the same deficiencies alleged in the prior 2020 DEIR comments. Thank you for considering these comments and concerns.	This information describes the structure or organization of the comment letter, the background of the organization or individual commenter, clarification on the submittal of the comment letter, or general introductory text. It is not a comment on the contents of the DEIR. DWR has reviewed all comments and will consider all comments in its decision-making process.
16	10	[ATT 1:] California Code of Regulations, Title 14, § 15126.6 governs the consideration and discussion of Alternatives to the Proposed Project in an Environmental Impact Report (EIR). These requirements include that the EIR must describe "a range of reasonable alternatives to the project, or to the location of the project, which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen	Much of this comment is introductory text. Regarding the proposed alternatives, please see Chapter 11, Section 11.2, "Range of Alternatives Considered," and Common Response 3, "The CEQA Process," for a discussion on the range of alternatives considered and the development of alternatives. As noted in this

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		any of the significant effects of the project and evaluate the comparative merits of the alternatives. An EIR need not consider every conceivable alternative to a project. Rather it must consider a reasonable range of potentially feasible alternatives that will foster informed decision-making and public participation." The range of Alternatives considered in the DEIR is not wide enough to foster informed decision-making regarding the operations of the SWP. The DEIR includes consideration of the following alternatives: No Project Alternative Alternative 1: May Deployment of SWP-Facilitated Fallowing Inject and No Expansion of the Clifton Court Forebay (CCF) Increased Winter Diversion Window Alternative 2: May Deployment of SWP-Facilitated Fallowing Inject and Expansion of the CCF Increased Winter Diversion Window Alternative 3: Flexible Deployment of SWP-Facilitated Fallowing Inject	comment letter, DWR also listed ten Alternatives Considered but Not Analyzed Further in Table 11-1.
16	11	[ATT 1:] The DEIR also includes ten Alternatives Considered but Not Analyzed Further. The DEIR indicates that these Alternatives were not considered further because of questionable feasibility. Several of these alternatives involve reductions or caps on exports. The DEIR explains that these alternatives would not allow DWR to store, divert, and convey water in accordance with DWR's existing water rights to deliver water pursuant to water contracts and agreements up to full contract quantities. The DEIR continues by stating that "The feasibility of [these alternatives] is questionable because some areas rely on SWP supplies to meet basic human health and safety when water supply is scarce." Please note that the requirements for EIRs stated above require a range of reasonable alternatives that feasibly attain most of the basic project objectives. Instead of rejecting the notion of export reductions out of hand, the DEIR should at a minimum include quantitative analyses of potential export reductions as one potential Alternative. Only then can the DEIR credibly make the statement that these types of export reductions or caps do not attain the basic objectives of the project or are infeasible.	Please see Common Response 3, "The CEQA Process," for a discussion on the range of alternatives considered and the development of alternatives. DWR considered a range of alternatives that met most of the Project Objectives, but did not analyze alternatives in detail that could not meet those objectives because they reduced water supply reliability during periods when water supply is scarce or would not allow DWR to deliver water pursuant to existing water contracts and agreements up to full contract quantities. See Table 11-1. Alternatives Considered but Not Analyzed Further in Chapter 11, which looks at both feasibility of the alternative and whether it met basic project objectives.
16	12	[ATT 1:] Additionally, one of the Alternatives Considered but Not Analyzed Further involves providing flow and water quality necessary to meet CVPIA fish doubling requirements and restoration of fall-run, spring-run, and winter-run salmon on the San Joaquin River. The DEIR's	Please see Chapter 11, Section 11.2, "Range of Alternatives Considered," and Common Response 3, "The CEQA Process," for a discussion on the range of

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		response to this request is to state that it is not applicable to DWR because it has no ability to provide water on the San Joaquin River. The DEIR questions the feasibility of this alternative for the same reason - that DWR has no ability to provide water to the San Joaquin River. It should be noted that on July 22, 2024 the State Water Resources Control Board issued an unnumbered Order approving a petition for temporary change to facilitate the transfer/exchange of up to 428,300 acre-feet (AF) of water between the SWP and CVP places of use. Included in this transfer/exchange are multiple instances where DWR and USBR facilitate the transfer or exchange of water between projects to allow delivery of SWP water to CVP places of use. Accordingly, it is feasible for DWR to include an Alternative that evaluates the potential for similar exchanges to provide flow to the San Joaquin River.	alternatives considered and the development of alternatives. The DEIR correctly explained that, in general, the SWP does not have the ability to provide water to the San Joaquin River. The Proposed Project relates to the long-term operations of the SWP. It is not a water transfer proposal, and it is unknown whether or what kind of transfers might be proposed during the term of this project. The commenter appears to be referencing the Consolidated Place of Use Petition that we submit annually for transfers/exchanges between the projects for water that is already south of Delta. Analyzing potential water transfers would be speculative at this time.
16	13	[ATT 1:] In summary, the DEIR does not meet the requirements of California Code of Regulations, Title 14, § 15126.6 due to its elimination of reasonable and feasible alternatives related to export reductions and caps and San Joaquin River flow. The DEIR should be amended to include additional Alternatives which address: 1. Export reductions. This may be done by first disclosing the quantitative methodology that CalSIM 3 uses to determine the relative percent of the available water dedicated to carryover storage vs. the percent exported for delivery. Once this quantitative methodology is disclosed, variations to this methodology which increase the percent of carryover storage maintained versus the percent of water exported for delivery can be run through CalSIM 3 and compared to both the Baseline Conditions and the proposed Project. San Joaquin River Flows. The Alternatives considered by the DEIR include up to 600,000 AF of water transfers modeled in CalSIM 3. Additionally, land fallowing is modeled by the addition of specific amounts of water at the Sacramento River at Freeport. The DEIR also includes informational modeling of CalSIM 3 runs that represent the flows provided in the proposed Voluntary Agreements to the Sac/Delta Water Quality Control Plan. These flows are modeled in a similar fashion. Accordingly, additional flows in the San Joaquin River may be modeled as well.	The EIR has been prepared in accordance with CEQA and adequately examines a reasonable range of alternatives to achieve the project's objectives. DWR considered a wide range of alternatives that included several alternatives with reduced exports. DWR did not conduct detailed analyses on alternatives that did not meet most of the project objectives or were not feasibly implemented for health and safety reasons. The feasibility of modeling the two alternatives described by the comment is not in question. Implementing these alternatives is questionable because they do not meet the project objectives or would be infeasible because some areas rely on SWP supplies to meet basic human health and safety when water supply is scarce. Please see Common Response 3, "The CEQA Process," for a discussion on the range of alternatives considered and the development of alternatives. Please refer to Chapter 11, Section 11.2, "Range of Alternatives Considered," to see the discussion of 'Alternatives Considered but Not Analyzed Further.'
16	14	[ATT 1:] Comments on Appendix 4B, Attachment 8: DSM2 Water Quality Compliance Results	Please see Sections 4A-8.3, "DSM2 Model Limitations," and 4A-8.4, "Appropriate Use of Model Results," in

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		The DSM2 water Quality Compliance Results contained in Appendix 4B, Attachment 8 of the DEIR are not indicative of actual conditions and additional computer modeling is required to make the conclusions contained therein. The modeling presented in the DEIR shows that, over the 100 year history used in CalSIM 3, there were only 9 days of exceedances at Old River at Middle River, 7 days of exceedances at San Joaquin River at Brandt Bridge, and 34 to 38 days of exceedances at Old River Tracy Road Bridge. For reference, in 2021 alone there were actually 22 days of exceedances at Old River Middle River, 24 days of exceedances at San Joaquin River at Brandt Bridge, and 71 days of exceedances at Old River Tracy Road Bridge. Obviously, the ability of CalSIM 3 and DSM2 to model Southern Delta Salinity is severely limited. As a result of these limitations, the Board instructed DWR to perform a Monitoring Special Study (MSS) specifically intended to address concerns with existing salinity transport modeling in the Southern Delta. The Semi-Implicit Cross-scale Hydroscience Integrated System Model (SCHISM) is a three dimensional hydrodynamic and water quality computer model. This model is used in the DEIR to evaluate the Suisun Marsh Salinity Control Gate reoperation and flow augmentation related to the proposed project. For Southern delta salinity, SCHISM is intended to provide much more accurate representations of the relative influence of Vernalis inflow, Vernalis water quality, State and Federal Project exports, and in-Delta sources on salinity in the three interior Southern Delta river segments. The SCHISM final report on these relative influences was originally scheduled for March 2024; however, it has been delayed. Until this final report is issued, the impacts of the operations of the SWP on Southern Delta Salinity cannot be calculated using the methodology contained in the DEIR.	Appendix 4A, "Model Assumptions," Attachment 8, "Model Limitations," for discussion related to the interpretation and limitations of DSM2 model results. In general, DSM2 has been used to evaluate the long-term changes between the Baseline Conditions and Proposed Project using generalized and simplified representations of a complex water resources system. The goal of the Monitoring Special Study (MSS) is to identify the effect of Vernalis flows and Project operations on the South Delta water quality. This geographically focused flow and water quality investigation includes the use SCHISM (and DSM2) modeling, along with other monitoring and data collection activities. Within that project, the main consideration that affected salinity results are the accuracy to the contribution from in-Delta sources. This work may inform future model updates, but was not available for this EIR and the extension of the work to long term planning assumptions is not complete. The water quality analysis within this EIR used the best available models for the purposes of evaluating the long-term effects on water quality due to the Proposed Project. See Section 4A-8.4, "Appropriate Use of Model Results."
16	15	[ATT 1:] Comments on Appendix 4A, Attachment 8: Model Limitations The DEIR includes Appendix 4A, Attachment 8: Model Limitations which describes the limitations of CalSIM 3 modeling. These limitations include a section describing "Extreme Operational Conditions and Regulatory Uncertainty". This section states: However, under full implementation of these operations, not all conditions of the operations may be met in a given month due to competing hydrologic, operational, and regulatory requirements. As a result, the simulation provides what is referred to as "extreme operational conditions". Frequency of such conditions can increase in	Please see Common Response 12, "Drought Conditions," for discussion related to extreme conditions. Extreme conditions only occur in a handful of months in the following periods: during the 1930s drought (1929-1934), 1976-1977, 1986-1992, and the 2014-2015 drought. Under these extreme conditions, CalSim 3 results should only be considered an indicator of stressed water supply conditions and should not necessarily be understood to reflect literally what would occur in the future under a given scenario. CalSim 3 does not reflect all potential actions or combination of actions

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		the future with climate change, if the hydrology is drier or with the occurrence of sea-level rise, without changes in the existing obligations of the CVP and SWP. Extreme operational conditions are defined as simulated occurrences of storage conditions at CVP and SWP reservoirs in which storage is at "dead pool" levels. Reservoir storage at or below the elevation of the lowest outlet is considered to be at the dead pool level. Under extreme operational conditions, CalSim 3 will utilize a series of rules within the specified priority to reach a numerically feasible solution to allow for the continuation of the simulation. The outcome of these types of solutions in CalSim 3 may vary greatly depending upon the antecedent conditions from the previous timestep result. The model may reach a numerical solution, but the results of the simulation may not reflect a reasonably expected outcome (i.e., an outcome which would require negotiation). In such cases, flows may fall short of minimum flow criteria, salinities may exceed standards, diversions may fall short of allocated volumes, and operating agreements may not be met, indicating a stressed water supply condition. This section identifies several areas where further information needs to be disclosed by the DEIR. This information is as follows: a. A clear explanation of the series of rules and specified priority utilized during extreme operational conditions; b. A complete list of each month of the historical record where extreme operational conditions are triggered; and c. A description of how the series of rules and specified priority operated during each month where extreme operating conditions were triggered. This Appendix also includes a section on Delta Salinity Compliance. This section makes the following claim: CalSim 3 and DSM2 model results may indicate exceedances of D-1641 salinity standards. These exceedances are rare and result from limitations in the modeling process. In actual operations, DWR and Reclamation staff constantly monitor Delta water quality conditions and adjust operations of the SWP and CVP in real time, as necessary, to meet water quality objectives.	that may be undertaken in real-time, the conditions on which certain actions might be taken, or the order in which actions might be considered. . CalSim 3 is not a predictive tool. Its results cannot be calibrated or validated with historical data. It is designed as a comparative analysis tool. Because of these factors, inclusion of the additional information requested by the commenter is not meaningful for the analyses that have been conducted and could be misleading. Please see Chapter 3, Section 3.5.5, "Appropriate Use of Modeling," for a discussion of the use of CalSim 3 as a planning tool for comparative analyses. Please also see Appendix 4A, Attachment 8, "Model Limitations," for discussion of the use and limitations of the CalSim 3 model, including discussion of extreme conditions.
16	16	[ATT 1:] Comments on Appendix 4A, Attachment 8: Model Limitations This section identifies several areas where further information needs to be disclosed by the DEIR.	Please see Response to Comment 16-15. Please refer to Common Response 12, "Drought Conditions," and Appendix 4I, "Operations Sensitivity to Drought

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		First, the instances (year and month of the historical record) where objectives are not met should be identified as described above [see comment 15]. Secondly, the fact that these instances are rare in the model is at odds with the actual history of DWR's noncompliance with D-1641. In every critically dry water year (as defined by the Sacramento Valley Water Index) since the adoption of D-1641 in 1999, DWR and USBR have requested Temporary Urgency Changes to relax some of the objectives contained therein. Additionally, the Southern Delta Salinity objectives have been exceeded on a regular basis during this time period. Thus, additional alternatives, which modify the process by which SWP allocations and ultimately deliveries are calculated, must be included in the DEIR to evaluate the frequency of these extreme operating conditions relative to the allocation procedures.	Conditions," for further discussion related to TUCPs. Additionally, although TUCPs could be sought by DWR, whether such changes would be approved and under what conditions, the extent of changes to operations, relaxation of water quality standards, and potential effects on special status fish species of those changes to operations are not reasonably foreseeable and are speculative at this time. Please see Common Response 2, "CEQA Environmental Baseline," for a description of how existing conditions are addressed through the CEQA process.
16	17	[ATT 1:] Comments on Appendix 4E Operations Sensitivity to Climate Change, Temporary Urgency Change Petitions, and the Interim Operating Plan The DEIR includes Appendix 4E: Operations Sensitivity to Climate Change, Temporary Urgency Change Petitions, and the Interim Operating Plan. This appendix includes the following section on Temporary Urgency Change Petitions (TUCPs): TUCPs are petitioned by DWR and Reclamation in challenging years. In recent TUCPs, D-1641 requirements are adjusted to prevent severely impairing public water supply. TUCPs are not modeled in both the Baseline Conditions and Alternative 1 for this EIR. For the Baseline Conditions and Alternative 1 scenarios in this sensitivity analysis that include TUCPs, triggering criteria for this action is based on the Sacramento River Valley Water Year Index and/or Lake Shasta storage levels. While both of these criteria are considered, extremely dry conditions for one criterion can outweigh conditions for the other and trigger TUCPs. During these years, TUCPs relax the criteria that drive releases from storage for Delta outflow and D-1641 requirements between February and April; this is modeled as a 4,000 cfs Net Delta Outflow Index (NDOI) requirement. If water quality requirements are relaxed in February through April, they cannot be initiated until May and only if challenging conditions have dissipated. If these conditions persist in May and continued relaxation of D-1641 requirements are warranted, TUCPs are enabled through September and shift to a 3,000 cfs NDOI requirement in June through September. Furthermore, the D-1641 requirement for Emmaton is moved to Threemile Slough. Exports are	Please refer to Response to Comment 16-16. Appendix 4E, "Operations Sensitivity to Climate Change, Temporary Urgency Change Petitions, and the Interim Operating Plan," is intended to analyze differences between the Baseline Conditions and a scenario representative of Reclamation's No Action Alternative as well as the incremental changes under the Proposed Project with and without those same differences. While TUCPs are included in Reclamation's No Action Alternative analysis, they are not the sole focus. As such, long-term averages are utilized. Instead, Appendix 4I, "Operations Sensitivity to Drought Conditions," includes a more detailed analysis on TUCPs for both long-term averages and Critically Dry water years (i.e., water years where TUCPs are most likely to be in effect) under multiple scenarios. Please refer to Appendix 4I for more information.

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		limited to health and safety conditions if NDOI is less than the full regulatory standard. First, the pertinent information regarding TUCPs is the month and year of the historical record that TUCPs are triggered. Averaging the monthly outflows over an entire 100-year record only minimizes their reported impact. Secondly, DWR and USBR have requested TUCPs in every critically dry water year since D-1641 was adopted in 1999. Since one of the limitations of CalSIM 3 is its inability to be used in a predictive manner, additional alternatives which adjust the SWP allocation procedure must be included in the DEIR. Then, the relative frequency of TUCPs can be evaluated based on varying the allocation procedure.	
16	18	[ATT 2:] The DEIR fails to analyze potential and foreseeable impacts related to the transfer of water through the SWP. Water Transfers make up a substantial component of the operations of the SWP. Indeed, the preferred alternative in the DEIR allows for up to 600 TAF of transfers in Critical, Dry (following critical), and Dry (following dry) water years as outlined on page 2-39 of the DEIR. The one-page analysis therein seems to woefully under analyze, if at all, potential impacts to the environment, public trust resources and other legal users of water. Furthermore, the DEIR mischaracterizes the regulatory environment in which potential impacts of water transfers are analyzed. The DEIR states at page 2-39: The actions taken by contractors to make water available for these transfers (i.e., reducing consumptive use by crop idling, contractor reservoir releases, or groundwater substitution) have separate ESA section 7 consultations and CESA permitting processes, and are not part of this proposed project.	As stated in the EIR, Chapter 2, "Project Description," Section 2.3.11, "Water Transfers"; water transfers are subject to separate regulatory approval processes and therefore are not analyzed as part of the proposed project. It would be too speculative to assume specific timing and operations associated with transfers, however, the EIR accounted for water transfers by including a water transfer window and maximum allowable transfer quantity as part of the hydrologic modeling of existing conditions as well as for each alternative evaluated in the EIR.
16	19	[ATT 2:] Historically many water transfers are effectuated under California Water Code section 1725 ("Temporary changes") which does not require analysis under CEQA, CESA or ESA section 7 consultation. The SWRCB has a pattern and practice of granting such transfers regardless of hydrologic conditions, potential harm to other legal users of water, public trust resources, and fish and wildlife. Many of these transfers are serial in nature. For example, please review the attached comments from a transfer/change that was authorized earlier this year "RE: Comments on the May 16, 2024 Petition for Temporary Change under the Department of Water Resources' (DWR) Application Number 14443 - Permit 16479 and the United States Bureau	This comment does not raise a significant environmental issue associated with the 2024 SWP LTO. Please see Common Response 12, "Drought Conditions," and refer to Appendix 4I, "Operations Sensitivity to Drought Conditions," Section 4I.1, "Preface," for further discussion. No further response is required.

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		of Reclamation's (USBR) Application Numbers: 23, 234, 1465, 5626, 5628, 5638, 9363, 9364, 9368, 13370, 13371, 15374, 15375, 15764, 16767, 17374, 17376 - License Number 1986 and Permit Numbers: 11885, 11886, 12721, 11967, 11887, 12722, 12723, 12727, 11315, 11316, 11968, 11969, 12860, 11971, 11973, 12364." [ATT 1 of ATT 2] As stated in the comments, "CDWA would like to highlight that this petition and the requested changes are of a revolving and recurring nature, that the Protestants (DWR & USBR) have put forward a similar petition in 14 of the last 16 water years." (Emphasis added).	
16	20	[ATT 2:] In Chapter 6 of the DEIR ("Aquatic Biological Resources"), water transfers are briefly discussed in section 6.4.1.5. The analysis is limited to a discussion regarding Delta Smelt. DWR avoids any mention or analysis of potential impacts to additional listed species in the watershed including, but not limited to, Longfin Smelt, Winter Run-chinook Salmon, Spring-Run Chinook Salmon, Central Valley Steelhead, and White Sturgeon. Transfers may result in latent impacts to water quality, streamflow, carryover storage and cold-water pool. These impacts may occur in the same In Chapter 6 of the DEIR ("Aquatic Biological Resources"), water transfers are briefly discussed in section 6.4.1.5. The analysis is limited to a discussion regarding Delta Smelt. DWR avoids any mention or analysis of potential impacts to additional listed species in the watershed including, but not limited to, Longfin Smelt, Winter Run-chinook Salmon, Spring-Run Chinook Salmon, Central Valley Steelhead, and White Sturgeon. Transfers may result in latent impacts to water quality, streamflow, carryover storage and cold-water pool. These impacts may occur in the same water year as the transfer or may be carried over, impacting conditions in following years, or a series of years.	Water transfer proposals will be analyzed under CEQA as they are proposed, and it is unknown whether and what kind of transfers might be proposed during the term of this project. Analyzing potential water transfer proposals would be speculative at this time. However, general water transfer impacts are discussed for all of the species mentioned in the comment, in addition to the other fish and aquatic species of management concern analyzed in the EIR: Longfin Smelt (Section 6.4.2.5), winter-run Chinook Salmon (Section 6.4.3.5), spring-run Chinook Salmon (Section 6.4.4.5), fall-run and late-fall-run Chinook Salmon (Section 6.4.5.5), Central Valley steelhead (Section 6.4.6.5), North American Green Sturgeon (Section 6.4.7.5), White Sturgeon (Section 6.4.8.5), Pacific Lamprey and Western River Lamprey (Section 6.4.9.5), native minnows (Sacramento Hitch, Sacramento Splittail, Hardhead, and Central California Roach; Section 6.4.10.5), Starry Flounder (Section 6.4.11.5), Northern Anchovy (Section 6.4.12.5), Striped Bass (Section 6.4.13.5), American Shad (Section 6.4.14.5), Threadfin Shad (Section 6.4.15.5), black bass (Largemouth Bass, Smallmouth Bass, and Spotted Bass; Section 6.4.16.5), and California Bay Shrimp (Section 6.4.17.5).
16	21	[ATT 2:] In Chapter 9 of the DEIR ("Climate Change Resiliency and Adaptation"), the DEIR states, "DWR will continue to support water transfers across the Delta without alteration from SWP operation other than the specific timing of these flows (See Section 2.4.8, "Water Transfers")." The DEIR not only avoided any specific or programmatic	Please see Response to Comment 16-18 regarding how water transfers were considered in the EIR. Chapter 9, "Climate Change," has been revised to correct the cross reference to the section on water transfers provided in Chapter 2.

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		analysis of the impacts of such action, but the reference is non-existent in the document. There is no Section 2.4.8, "Water Transfers".	
16	22	[ATT 2:] In Chapter 10 of the DEIR ("Other CEQA Discussions"), water transfers are briefly mentioned; however, the chapter again lacks any substantive analysis of foreseeable impacts. As mentioned herein, DWR regularly violates and seeks modification of the D-1641 standards. The Cumulative Impact analysis avoids consideration of foreseeable impacts of short-term water transfers, the Sites Reservoir Project, the Delta Conveyance Project and the Los Vaqueros Reservoir Expansion Project. Indeed, the authors acknowledge so much in section 10.1.6.1: "Operations effects could occur from projects such as long-term and short-term water transfers, the Sites Reservoir Project, and the Los Vaqueros Reservoir Expansion Project. Each of these would be subject to project-specific permitting analyses and, if necessary, mitigation to meet regulatory standards (e.g. full mitigation to meet CESA requirements for state-listed fish)."	Please see Response to Comment 16-18 regarding how water transfers were considered in the EIR.
16	23	[ATT 1 of 2: CDWA comments on the May 16, 2024 Petition for Temporary Change under Department of DWR Application 14443.]	This is a reference document cited in support of comments provided on the DEIR. Those comments are responded to herein. DWR has reviewed all comments and will consider all comments in its decision-making process.
16	24	[ATT 3: to CDWA SUPPLEMENTAL Comments on the May 2024 DEIR for the Long-Term Operations of the SWP.]	See Response 16-23.
16	25	[ATT 4: to CDWA SUPPLEMENTAL Comments on the May 2024 DEIR for the Long-Term Operations of the SWP.]	See Response 16-23.
17	1	Attached are the comments of San Francisco Baykeeper, Friends of the River, Golden State Salmon Association, California Sportfishing Protection Alliance and Restore the Delta regarding the Draft Environmental Impact Report for Long-Term Operations of the State Water Project. Documents referenced in our comments are available at: https://drive.google.com/drive/folders/15KN4rd5mS2c_YYp8mWb7ea8uATvQik14?usp=sharing Please confirm receipt by replying to [redacted name] at [redacted email address], and let us know if you have any problems accessing the link. Thank you for your time and consideration of our comments.	This information describes the structure or organization of the comment letter, the background of the organization or individual commenter, clarification on the submittal of the comment letter, or general introductory text in addition to a link for references. It is not a comment on the contents of the DEIR. DWR has reviewed all comments and will consider all comments in its decision-making process.

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17	2	This letter is submitted as the comments of San Francisco Baykeeper, Friends of the River, Golden State Salmon Association, California Sportfishing Protection Alliance, and Restore the Delta on the Department of Water Resources ("DWR") May 2024 Draft Environmental Impact Report ("DEIR") regarding Operations of the State Water Project ("SWP"). Unfortunately, as discussed in detail on the pages that follow, the DEIR fails to comply with requirements of the California Environmental Quality Act ("CEQA"), and recirculation of a revised DEIR is required to comply with CEQA. DWR must substantially revise the DEIR to comply with CEQA, and DWR must recirculate the revised DEIR for public comment. See Cal. Code Regs., tit. 14, §§ 15088.5(a)(1)-(3), 15090.	Please see Chapter 2, Section 2.1.1, "Project Objectives," for a description of DWR's continuing commitment to operate the State Water Project in compliance with all applicable laws, contractual obligations, and agreements, including all CEQA requirements.
17	3	In particular, the DEIR: • Fails to provide an accurate and consistent project description; • Fails to consider a reasonable range of alternatives; • Fails to adequately analyze the effects of implementing the addendum to the Coordinated Operating Agreement, notwithstanding DWR's Notice of Preparation; • Fails to adequately disclose likely environmental impacts during droughts, including by failing to consider the effects of climate change; • Fails to consider the whole of the action under CEQA, because it fails to analyze the effects of coordinated operations of the SWP and CVP upstream of the Delta; • Fails to adequately analyze environmental impacts and fails to disclose the significant adverse impacts of the Proposed Project; and Fails to adequately consider cumulative impacts.	Please refer to Common Response 6, "Other State Efforts," regarding DWR's discretion to evaluate projects separately as long as each project has independent utility. Please also refer to Common Response 6 regarding the Coordinated Operations Agreement. Please refer to Common Response 12, "Drought Conditions," regarding the consideration of drought conditions in the hydrologic modeling used in the analysis of potential impacts associated with the proposed project and its alternatives. Please also refer to Common Response 3, "The CEQA Process," regarding the scope and reasonable range of alternatives evaluated in the EIR. In addition, please see Common Response 1, "Scope of Analysis," regarding the geographic scope of the analysis. Please also refer to Common Response 8, "Climate Change," regarding the consideration of climate change and potential future impacts associated with the proposed project. The EIR has been prepared in compliance with CEQA and evaluates potential impacts in Chapters 4-9. The EIR also includes a cumulative analysis which was prepared in compliance with CEQA (see Chapter 10, "Other CEQA Discussions"). Because the comment does not provide rationale for the claim that the analysis is

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			inadequate, no further response can be provided. To the extent this comment is introductory, please see responses to comments therein.
17	4	Finally, DWR's preferred alternative in the DEIR plainly would jeopardize the continued existence of species listed under the California Endangered Species Act ("CESA"), in violation of CESA's requirements. As we noted in CEQA comments on the existing ITP [incidental take permit], the changes in SWP operations authorized in 2020 are expected to exacerbate the problems that led to CESA listing of four fish species that are native to the San Francisco Bay Delta estuary ("estuary") and its watershed [Footnote 1: Our January 6, 2020 comment letter is available at the link provided below and incorporated by reference.]. Those project impacts were not fully mitigated, as required under CESA. In many ways, DWR's new preferred alternative for SWP operations makes those problems worse and is likely to increase the risk of extinction for five native Delta fish species that are protected under CESA [Footnote 2: In 2020, four CESA listed fish species were negatively affected by the change in SWP operations: winter-run Chinook Salmon, spring-run Chinook Salmon, Delta Smelt, and Longfin Smelt. On June 19, 2024, the California Fish and Game Commission voted unanimously to make California White Sturgeon, which spawn only in the estuary's watershed, a candidate for CESA listing CESA candidate species enjoy full protection under CESA until the California Department of Fish and Wildlife completes a status review. (https://wildlife.ca.gov/News/Archive/fish-and-game-commission-approves-white-sturgeon-as-a-candidate-speciesfor-listing-asthreatened#:~:text=2022%2D2024%20News%20Releases&text=The%20California%20Fish%20and%20Game,that%20listing%20may%20be%20warranted).].	With respect to comments submitted on the 2019 DEIR, DWR fully responded to comments provided on the 2019 DEIR in the 2020 FEIR (Part II, "Comments and Responses.") The 2020 ITP issued for the 2020 Proposed Project included measures to minimize and fully mitigate the effects to CESA-listed species. The current Proposed Project is also required to obtain an ITP, which would include any necessary measures to minimize and fully mitigate effects to CESA-listed species. Refer to Common Response 4, "CEQA and CESA Legal Standards," and Common Response 11, "Application of CESA Standards," for additional information on CESA compliance for this proposed project.
17	5	The baseline for the Proposed Project is measurably worse for imperiled fish species than the conditions that preceded the 2020 update. The DEIR's baseline conditions are expected to produce declines in imperiled species, and conditions under the preferred project are projected to be worse for these species than the baseline. Indeed, the DEIR's baseline includes the 2019 biological opinions authorized by the Trump administration (2019 BiOps), despite the fact that the state successfully challenged the 2019 BiOps in court as inadequate to protect endangered species. The DEIR is wholly inadequate for use by DFW in its consideration of an incidental take permit under CESA.	Please see Common Response 2, "CEQA Environmental Baseline," for a response to the comment about baseline. In response to the commenter referencing further comments in this letter, please also see the responses to the referenced comments.

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		These issues are discussed in further detail on the pages that follow.	
17	6	I. The DEIR Violates CEQA Because it Fails to Provide an Accurate and Stable Project Description. The DEIR violates CEQA because it fails to provide an accurate and stable description of the project. First, DWR's project description excludes a critical component of SWP operations, Oroville Reservoir operations and immediate downstream impacts to the Feather River. Second, the DEIR violates CEQA because the DEIR incorporates the proposed Voluntary Agreements ("VA" or "VAs"), which are not reasonably certain to occur, rendering the project unstable, and as a result the DEIR is fundamentally misleading and does not accurately assess potential environmental impacts from the project. [Footnote 3: Please note that while some of the documents in the LTO process adopt the new, misleading branding for the Voluntary Agreements, "the Healthy Rivers and Landscapes [HRL]", we will continue to refer to this critical element of operations under the federal Proposed Action and state Proposed Project as the "Voluntary Agreements" (VA or VAs) for ease of reading, consistency and transparency for all involved parties.] It is black letter law that, "[a]n accurate, stable and finite project description is the sine qua non of an informative and legally sufficient EIR." County of Inyo v. City of Los Angeles, 71 Cal. App. 3d 185, 193 (1977). CEQA requires that a DEIR identify a preferred alternative. Washoe Meadows Community v. Department of Parks and Recreation, 17 Cal.App.5th 277, 285-87 (2017). That preferred alternative must give a clear explanation of the nature and scope of the Proposed Project, otherwise it "is fundamentally inadequate and misleading." See Communities for a Better Environment v. City of Richmond, 184 Cal.App.4th 70, 84-85 (2010). DWR has violated these requirements here.	The EIR has been prepared in accordance with CEQA and the project description is accurate and stable. Please see Responses 17-7 regarding Oroville Reservoir and Responses 17-8 and 17-9 regarding Voluntary Agreements. Please see Chapter 2, "Project Description," Section 2.1.1, "Project Objectives," for a description of DWR's continuing commitment to operate the State Water Project in compliance with all applicable laws, contractual obligations, and agreements. Please see Common Response 2, "CEQA Environmental Baseline," and Common Response 3, "The CEQA Process," for additional information on the approach for considering the CEQA Proposed Project utilizing "baseline conditions" in this EIR.
17	7	I. The DEIR Violates CEQA Because it Fails to Provide an Accurate and Stable Project Description. A. Exclusion of Upstream Operations First, DWR's Proposed Project in the DEIR erroneously excludes upstream operations of Oroville reservoir and related facilities. DEIR at pp. 2-17 at Table 2-3 and 2-18, 3-17, and 3-18. Therefore, the Proposed Project description is not accurate as required by CEQA. The DEIR goes as far as to admit that Oroville operations are critical to project	Upstream operations including the Oroville facilities are outside of the geographic scope of the Proposed Project and therefore were not analyzed. Operations at the Oroville Complex are governed by separate legal authorizations. A Federal Energy Regulatory Commission (FERC) license, FERC License 2100, govems the Oroville Complex. Please refer to Common Response 1, "Scope of Analysis," and Appendix 2D, "Geographic

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		operations, describing the connection between upstream operations, Delta conditions and SWP exports, "The principal facilities of the SWP are Oroville Reservoir and related facilities, and San Luis Dam and related facilities, facilities in the Delta, the Suisun Marsh Salinity Control Gates (SMSCG), the California Aqueduct including its terminal reservoirs, and the North and South Bay Aqueducts…. Water stored in the Oroville facilities, along with water available in the Delta (consistent with applicable regulations) is captured in the Delta and conveyed through several facilities to SWP contractors. As such, changes to SWP operations at these facilities may result in changes to surface water hydrology in the lower Sacramento River, downstream from the Feather River confluence, the Delta and Suisun Bay, and exports from the Delta to south-of-Delta SWP water users." DEIR at 4-1 (emphasis added). A court compared this requirement to similar provisions in the National Environmental Policy Act (NEPA), recognizing "that an accurate description of the project is necessary in order to decide what kind of environmental impact statement need be prepared [internal citations omitted]." County of Inyo v. City of Los Angeles, 71 Cal.App.3d 185, 192 (1977). There has never been a CEQA analysis of the SWP's water supply operations for Oroville Dam and the Feather River, and there is none in the DEIR at issue here. There is no baseline analysis in for this operation. There is no quantification of the operation. There is no analysis of how this operation has changed or could reasonably be expected to change in the future. Thus, the DEIR does not have an accurate project description. As a result, the DEIR also cannot disclose the environmental impacts of changes to the water supply operations of Oroville Reservoir and changes to the Feather River downstream of Oroville Dam. CEQA requires that the DEIR analyze the effects of the whole project on the environment. See CEQA Guidelines § 15378 (definition of "project" means "the whole of an action"). The definition of a project is broadly construed in order to maximize protection of the environment. Nelson v. County of Kern, 190 Cal.App.4th 252, 271 (2010). Additionally, the entire project being proposed must be described in the EIR, and the project description must not minimize project impacts. City of Santee v. County of San Diego, 214 CA3d 1438, 1450 (1989). Without inclusion of	Scope," for more information on the treatment of the Oroville Complex. Please see Chapter 2, Section 2.1.1, "Project Objectives," for a description of DWR's continuing commitment to operate the State Water Project in compliance with all applicable laws, contractual obligations, and agreements.

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		upstream operations, the DEIR also violates CEQA because it fails to analyze the whole of the action. The DEIR must be revised to provide an accurate, consistent and stable project description that is the project that DWR intends to implement, and thereafter recirculated for public comment.	
17	8	I. The DEIR Violates CEQA Because it Fails to Provide an Accurate and Stable Project Description. B. Incorporation and Improper Reliance on Voluntary Agreements Moreover, the DEIR violates CEQA because its description of the project is inaccurate and potentially unstable due to its incorporation of the Voluntary Agreements. 1. The Voluntary Agreements are not reasonably certain to occur. The Voluntary Agreements are not reasonably certain to occur. See, e.g., Nat'l Wildlife Fed'n, v. Nat'l Marine Fisheries Serv., 524 F.3d 917, 936 & n.17 (9th Cir. 2008). [Footnote 4: For purposes of interpreting statutory intent, the federal Endangered Species Act can be used to compare for CESA. San Bernardino Valley Audubon Society v. City of Moreno Valley (App. 4 Dist. 1996) 44 Cal.App.4th 593.] The VA proposal has been in development for more than a decade and proponents have still not produced a complete proposal as of July 2024. See Voluntary Agreement Timeline, Attachment 4. Given this track record, there is no reason to assume that the VA effort will ever actually produce a complete package. Missing elements include, but are not limited to, a final Funding Agreement, enforcement agreements, and technical details such as "which reservoirs may be reoperated, which fields will be fallowed, when reservoirs can refill, and when groundwater substitution will occur, have not been fully specified." See SWRCB Draft Staff Report at p. G3a-1. Further, it is not certain that the State Water Board will approve the VA proposal. The proposed Bay-Delta VA is more complicated than any previous "block of water" effort anywhere in the nation. The Building Blocks white paper (accessible in the link we provide below) documents significant challenges that have faced 18 other efforts to create environmental blocks of water – most of which are located in California. [Footnote 5: Building Blocks – Tools and Lessons for Designing a Block of Water for the Environment. Barry Nelson, Defenders of Wildlife. June 2022.] The problems faced by previous environmental blocks of water included a failure to purchase anticipated environmental water,	See Response to Comment 17-6. Please see Chapter 2, Section 2.1.1, "Project Objectives," for a description of DWR's continuing commitment to operate the State Water Project in compliance with all applicable laws, contractual obligations, and agreements. Please see Common Response 7, "Relationship to Healthy Rivers and Landscapes Program" (previously referred to as the voluntary agreements) for a detailed discussion on the relationship between the Long-term Operations of the State Water Project and the Voluntary Agreements. Regarding Tribal Consultation please see Chapter 7, "Tribal Cultural Resources," for information on the consultation process. Please see Appendix 7A, "Tribal Consultation and Engagement Log," for a comprehensive list of Tribes included in the CEQA Process. Regarding SWP Proportional Share, please see Chapter 2, "Project Description," Section "SWP Proportional Share," for a discussion on the governance process of proportional share.

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		accounting issues related to the program's environmental baseline, unanticipated impacts caused by changes in project operations and more. Here, the Bay-Delta VA proposal is broader in geographic scope, broader in terms of the species and beneficial uses it would address, and broader in terms of the complexity of the water management systems involved. All of these problems make the anticipated VA environmental flows even less likely to occur. The VA proposal also contains numerous additional flaws that reduce the likelihood of anticipated environmental flows: • The VA accounting proposal clearly allows future increases in demand, or the development of new storage or conveyance facilities, to reduce environmental water over time. This problem is exacerbated by the fact that the VAs would provide no protection for current environmental flows that are greater than current regulatory minimums. Future water diversions could capture these unregulated flows, effectively reducing environmental flows and harming listed species. • Given the current focus on wet season diversions to recharge groundwater basins, this flaw in the VA accounting proposal could allow anticipated environmental water to be reduced significantly during the term of the final Incidental Take Statement. • The flows promised in the American River VA could be provided in as few as 3 of the 8 years of the VA's initial term. In no case would VA environmental flows be provided in more than 6 of the 8 years. • The Proposed Project does not exclude the use of Temporary Urgency Change Petitions ("TUCPs") and Temporary Urgency Change Orders during future droughts. The VA proposal contemplates continued use of TUCPs. Approval of these TUCPs have allowed State Water Board flow requirements to be waived. This is particularly important, given the impacts on Delta Smelt and other listed species during droughts. TUCPs in the future would reduce environmental flows to a level below that assumed in the Proposed Project. As a result, the total environmental flows in the VA package, including existing regulatory flow requirements, are unlikely to occur. • The VA proposal has no adequate enforcement mechanism, in the likely event that it fails to produce anticipated environmental water. For example, the VAs do not require annual, much less real-time or seasonal, accounting of flows – so there is no way to ensure that the	

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		pledged water arrives as promised or when it is needed by imperiled fish and wildlife. • Finally, it is important to note that VA proposal is currently undergoing legal review. A Civil Rights Petition was filed by a coalition of Tribal and Environmental Justice organizations on December 16, 2022, and is currently pending before the U.S. Environmental Protection Agency. [Footnote 6: The Petition can be accessed here: https://www.restorethedelta.org/wp-content/uploads/2022-12-16-Bay-Delta-Complaint-and-Petition.pdf] The Petition articulates several legal issues with the VAs. Additionally, "[t]he Legislature finds and declares that California Native American tribes traditionally and culturally affiliated with a geographic area may have expertise concerning their tribal cultural resources. See Cal. Pub. Res. Code § 21080.3.1 (West). There is a question as to whether the Voluntary Agreements have met the Tribal consultation requirements under CEQA. [Footnote 7: We strongly encourage the Department of Water Resources and the other agencies in the reconsultation process to proactively reach out to Tribal entities and interests so they can properly inform DWR's decision-making.] For all of these reasons, even if the State Water Board were to approve the VAs, the amount of environmental water that is described in the VA proposal – and which is uncritically repeated in the Proposed Project – is not reasonably certain to occur. [Footnote 8: In addition to failing to provide an accurate project description, the failure to ensure that these operational requirements will be achieved appears to violate CEQA's requirements that mitigation measures must be fully enforceable through permit conditions, agreements, or other legally-binding instruments. Cal. Code Regs., tit. 14, § 15126.4(a)(2). This proportional share approach clearly would violate CESA, since it does not ensure that these measures are successfully implemented, nor does it prevent the coordinated operations of the CVP and SWP from jeopardizing the continued existence of CESA-listed fish species. Id. §§ 783.4(a)(2), (b), ©. Because the SWP is operated by the State of California, which has a duty to conserve listed species, CESA's general requirement of rough proportionality does not apply. Cal. Fish and Game Code §§ 2052, 2052.1.] Therefore, reliance on the VA proposal is unlawful, jeopardizing years of collaboration and collective work by all agencies involved in the reconsultation process.	

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17	9	I. The DEIR Violates CEQA Because it Fails to Provide an Accurate and Stable Project Description. 2. The Project Description is misleading and potentially unstable by assuming VA flows would be realized and would benefit the environment. The Proposed Project erroneously relies on "early implementation" actions by DWR and BOR [Bureau of Reclamation], based on the proposed VAs, to allegedly contribute to Delta outflow in the spring. Reliance on the proposed VAs is highly problematic for the listed fish species (all of which suffer from reduced river flows into and through the Delta) because even if it were fully implemented, the VA fails to provide anything even remotely close to adequate Delta outflows, based on the best available scientific evidence. Therefore, this increases the likelihood the DEIR project description will fundamentally change, rendering the project unstable. An "unstable project description draws a red herring across the path of public input." Save Our Capitol! v. Dep't of Gen. Servs., 87 Cal.App.5th 655, 674 (2023). In fact, NMFS has determined that "(t)he flow commitments identified in the VA Term Sheet would not provide a significant divergence in average flow relative to the baseline." NMFS also stated that "[W]e are highly uncertain that the VAs as currently proposed will provide for the reasonable protection of fish and wildlife beneficial uses." [Footnote 9: Cathy Marcinkevage, Assistant Regional Administrator, National Marine Fisheries Service to the State Water Resources Control Board, Jan. 19, 2024.] The U.S. Environmental Protection Agency has also concluded that "VA flow assets provide only minimal benefits," and that "EPA is concerned that the total volume and timing of Delta inflow and outflow provided under the proposed VA alternative relative to baseline is not large enough to adequately restore and protect aquatic ecosystems." Finally, the EPA concluded that "(D)uring critical dry years the proposed VA alternative will result in a decrease of flows from baseline." [Footnote 10: Thomas Torres, Director, Water Division, EPA Region 9 to State Water Resources Control Board, Jan. 19, 2024.] Based on this information from other agencies, the DEIR project description at issue here is misleading. The DEIR states in Chapter 2, Section 2.3.5.2 "Early Voluntary Agreement Implementation" that, "Early implementation Spring Delta outflow actions will be achieved through either . . . . Implementation of Condition of Approval 8.17 of	Please see Chapter 2, Section 2.1.1, "Project Objectives," for a description of DWR's continuing commitment to operate the State Water Project in compliance with all applicable laws, contractual obligations, and agreements. Please refer to Common Response 7, "Relationship to Healthy Rivers and Landscapes Program," for more information. Recognizing that the SWRCB has not yet approved HRLP, DWR included an alternate mechanism for Delta Outflow, "Early Voluntary Agreement Implementation," in the Proposed Project, which provides the Delta outflow action would be achieved through 2020 ITP Condition of Approval 8.17 or actions to generate equivalent flow volumes.

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		DWR's 2020 Incidental Take Permit (2020 ITP) . . . [or] . . . Actions to generate flow volumes that are on average equivalent to implementation of the 2020 ITP Condition of Approval 8.17. If this latter approach is pursued, DWR and CDFW will meet and confer on the final operational plan that considers hydrology and accounting methods, and DWR will obtain CDFW approval of the operational plan prior to April 1st. This flow volume will be through cuts to SWP export of unstored water. DWR will not be required to restrict exports at the Banks Pumping Plant below its minimum health and safety exports of 600 cfs to meet the low volumes." DEIR at p. 2-33 (emphasis added). Not only is this second "option" for implementing Delta outflows missing critical information and deferring analysis of the final "operational plan" at issue in this DEIR, but DWR is assuming that the VA flows will be realized and sufficient to meet operational requirements (and all applicable environmental compliance requirements, as well). This is a fundamental mischaracterization of not just the Voluntary Agreements, but also presuming that two different state agencies will approve the foundational flows that are implicated here in this action. Furthermore, the State Water Board's analysis indicates that the VAs are supposed to be additive to the ITP flow regime, rather than just contribute to the ITP flows, and more importantly, the VAs are likely to result in lower Delta outflows than would have occurred under that agency's baseline, which incorporates the 2008/2009 Biological Opinion RPAs rather than the invalid 2019 BiOp. See SWRCB Phase II Bay Delta Plan Draft Staff Report, pp. 9-13 and 9-14. Like in Save Our Capitol!, a project description is unstable and misleading "when it significantly changed the project description . . .in the final EIR to the detriment of public participation and informed decision-making on the project's most controversial aspect." 87 Cal.App.5th 655, 678 (2023). Here, the flows, and specifically the amount of Delta outflow, are easily the "most controversial aspect" of the project description. As discussed more in attached comment letters, the VAs could decrease environmental flows during critical dry years, particularly relative to the current the 2024 Interim Operations Plan, which is being implemented at the direction of the federal court. Thus, the DEIR's portrayal of potential flow improvements under the VA proposal is misleading and could dramatically change in the FEIR and final implementation of the coordinated project operations. This thwarts true "public participation and informed decision-making", in violation of CEQA. Id.	

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		The DEIR's Proposed Project also appears to incorrectly assume that all anticipated Voluntary Agreement environmental flows would benefit listed species by providing Delta outflow. See DEIR at pp. 2-31, 9-30. Yet the VA proposal appears to "count" as a VA contribution to flow water that is not diverted due to causes that are unrelated to environmental protection – such as regular or unscheduled maintenance, pump/canal/storage capacity limitations, or lack of demand. Even if it provides an environmental benefit (and there is no requirement that it must), flows bypassed under these circumstances are a significant portion of current Delta outflows and would not be additive to the baseline (Reis et al. 2019). The assumption implicit in the Proposed Project – that all of the anticipated VA water would be managed to achieve maximum benefits for listed species – is not a reasonable assumption. These wholly inconsistent descriptions of the Proposed Project due their misleading characterization of the Voluntary Agreements are grossly misleading to the public and decisionmakers in violation of CEQA. See, e.g., San Joaquin Raptor Rescue Center v. County of Merced, 149 Cal.App.4th 645, 655-56 (2007) (holding that the project description was inconsistent as to whether the project would increase mining production and violated CEQA, in part based on statements in public hearings on the CEQA document that demonstrated such inconsistencies); Communities for a Better Environment, 184 Cal.App.4th at 83-84 (holding project description violated CEQA because of inconsistent statements whether the objectives of the project were to increase processing of heavier crudes at the refinery, relying in part on contradictory statements made by Chevron in a 10-K filing). Therefore, the DEIR is wholly inaccurate due to missing upstream operations from the second largest reservoir in the state, and improper reliance on the Voluntary Agreements, the DEIR violates CEQA. DWR must revise the DEIR and recirculate to address these fundamental flaws and allow true public participation and informed-decision-making.	
17	10	II. The DEIR Violates CEQA because it Fails to Consider a Reasonable Range of Alternatives. CEQA requires that a reasonable range of alternatives to the Proposed Project be considered in the environmental review process, including a no project alternative. Cal. Pub. Res. Code §§ 21002, 21061, 21100; tit. 14, Cal. Code Regs. ("CEQA Guidelines") § 15126.6. "While the lead	The EIR has been prepared in accordance with CEQA and adequately examines a reasonable range of alternatives to achieve the project's objectives. Please see Appendix 2D, "Geographic Scope," and Common Response 1, "Scope of Analysis," for a discussion of the geographic scope of the Proposed Project and the Oroville Facilities. Please see Chapter 11, Section 11.2,

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		agency may ultimately determine that the potentially feasible alternatives are not actually feasible due to other considerations, the actual infeasibility of a potential alternative does not preclude the inclusion of that alternative among the reasonable range of alternatives." (Watsonville Pilots Assn. v. City of Watsonville (2010) 183 Cal.App.4th 1059, 1087; see also, Banning Ranch Conservancy v. City of Newport Beach (2017) 2 Cal.5th 918, 936-937; Habitat and Watershed Caretakers v. City of Santa Cruz (2013) 213 Cal.App.4th 1277, 1300-1306 (no feasible water alternatives considered").) The alternatives considered in the DEIR do not provide a reasonable range, nor do they provide sufficient information for public to understand the impacts of the Proposed Project. The fundamental purpose of the DEIR is to ensure compliance with the law in operation of the project, specifically the California Endangered Species Act. Yet none of the alternatives considered would have decreased diversions or increased Delta outflow in a way that would protect endangered species. Instead, DWR rejects these as "infeasible" without analysis of the impacts of alternatives that would comply with CESA. This is inconsistent with CEQA. DWR acknowledges that it chose not to consider alternatives which would have increased Delta outflow because such alternatives may reduce water deliveries from DWR. See DEIR at 11-5. The DEIR says that such alternatives "would not allow DWR to store, divert, and convey water in accordance with DWR's existing water rights to deliver water pursuant to water contracts and agreements up to full contract quantities." DEIR at 11-5. DWR then explains that the "feasibility of this alternative is questionable because this alternative would require operation of facilities that are outside of the geographic scope of the Proposed Project and are subject to different regulatory requirements and operational control." DEIR at 11-5. This does not comply with CEQA or CESA. First, it is an admission that compliance with CESA cannot be achieved consistent with water deliveries that are up to full contract quantities. Second, it chooses not to provide information to the public or to analyze alternatives because of the existence of water rights. But CESA and CEQA are not subservient to the water rights of the State Water Contractors — CESA requires protection of endangered species, and CEQA requires full analysis of the impacts of the long-term operations of the State Water Project, not just analysis of the limited range of conduct DWR has	"Range of Alternatives Considered," and Common Response 3, "The CEQA Process," for a discussion on the range of alternatives considered and the development of alternatives. DWR conducted a detailed evaluation of the Proposed Project and alternatives on special status aquatic species, including CESA-listed species, in Chapter 6, "Aquatic Biological Resources," and Chapter 11, "Alternatives to the Proposed Project," and determined that the impacts of the Proposed Project and alternatives on these species would be less than significant. Additionally, DWR is seeking an Incidental Take Permit (ITP) from CDFW to ensure that DWR complies with CESA. Issuance of the ITP will ensure that DWR minimizes and fully mitigates for any potential impacts to CESA-listed species. Please see Common Response 4, "CEQA and CESA Legal Standards," and Common Response 11, "Application of CESA Standards," for discussion regarding CEQA and CESA requirements.

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		proposed. Third, DWR asserts that analyzing a full range of alternatives, including ones that meet the demands of CESA, require analysis of the project as a whole (both Oroville operations and interaction with the federal operations of the Central Valley Project). Again, CESA and CEQA require this analysis in order to provide complete and accurate information about the impacts of the project.	
17	11	II. The DEIR Violates CEQA because it Fails to Consider a Reasonable Range of Alternatives. The DEIR states that the objective of the Proposed Project is the continued operation of the SWP consistent with applicable laws, including CESA, contractual obligations, and agreements. DEIR at 2-1. The best available science demonstrates that existing protections to limit diversions from the Delta need to be strengthened to comply with CESA. [SWRCB 2017 SED, SWRCB 2023 SED, EPA 2024 comments on Phase 2 SED, Baykeeper et al. 2024 comments on Phase 2 SED.] Yet the DEIR fails to consider any alternatives that would increase protections for endangered species by reducing water exports from the Delta as compared to the baseline. This is a failure to consider alternatives that would comply with CESA.	Please see Chapter 11, Section 11.2, "Range of Alternatives Considered," and Common Response 3, "The CEQA Process," for a discussion on the range of alternatives considered and the development of alternatives. DWR did consider an alternative that would reduce imports in Table 11-1, Alternatives Considered but Not Further Analyzed. The "Reduce Exports or Exports from the Delta Limited to 2 Million Acre-Feet per Year" Alternative proposed to reduce reliance on the Delta, restore the Delta ecosystem, and reduce SWP exports in order to increase freshwater flows through the Delta. This alternative was not further analyzed because it would not allow DWR to meet a basic project objective, to store, divert, and convey water in accordance with DWR's existing water rights to deliver water pursuant to water contracts and agreements up to full contract quantities. In addition, the feasibility of this alternative is questionable due to the reduction of exports generally or reducing exports to 2 million acre-feet per year may not be sufficient to meet human health and safety needs during periods of low water availability. This alternative was not deemed feasible and was not considered further as noted in Table 11-1. Table 11-1 also included a proposed alternative to "Reduce Diversions from the Delta Watershed to Significantly Increase Delta Outflows, Improve Reservoir Coldwater Pool Storage, and Increase Winter/Spring Flows in the Sacramento River and Other Rivers to Meet CESA Requirements and Other Legal Obligations." This alternative would not allow DWR to meet a basic project objective, to store, divert, and convey water in accordance with DWR's existing water rights to deliver water pursuant to water contracts and agreements up to

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			full contract quantities. In addition, the feasibility of this alternative is questionable because this alternative would require operation of facilities that are outside of the geographic scope of the Proposed Project and are subject to different regulatory requirements and operational control.
17	12	II. The DEIR Violates CEQA because it Fails to Consider a Reasonable Range of Alternatives. In addition, the DEIR fails to provide a reasonable range of alternatives because it fails to include any alternative that would require increased winter-spring Delta outflows, despite the findings of numerous state and federal agencies that such measures are necessary to protect native species and their habitats.	Please see Response 17-11 regarding alternatives.
17	13	II. The DEIR Violates CEQA because it Fails to Consider a Reasonable Range of Alternatives. The No Project Alternative would continue the status quo operations of the Project based on the 2020 ITP [Incidental Take Permit], the 2019 BiOps as modified by the Interim Operations Plan for the CVP and SWP operations as of June 16, 2023. DEIR at 11-7. This is the same as "baseline conditions" for the Project. Id. Because the No Project Alternative and baseline conditions are the same, DWR concludes in the DEIR that there would be no change, and this would be "similar to the Proposed Project." DEIR at 11-8. Alternative 1 adopts the Proposed Project with a few changes – keeping the CCF [Clifton Court Forebay] increased diversion period December 15-March 15 instead of expanding it, and modifying spring Delta outflow to "deploy" flows from the "Voluntary Agreement program" to limit those flows to May, rather than to allow them in March, April, or May. See DEIR at 11-8. "All other components of the Proposed Project are included in Alternative 1." DEIR at 11-9. Figures 11-1 to 11-16 show that there is effectively no change between baseline conditions, the Proposed Project, and Alternative 1. See DEIR at 11-10 to 11-19. Similarly, the tables of projected salvage and take at the South Delta Export Facility for various fish species demonstrates the lack of variation between the Proposed Project and the various alternatives. See DEIR Table 11-5 (mean modeled salvage due to Proposed Project and Alternatives 1-3 are nearly identical for juvenile Winter-run Chinook Salmon); Table 11-6 (same for Spring-run Chinook Salmon); Table 11-9	The EIR has been prepared in accordance with CEQA and adequately examines a reasonable range of alternatives to achieve the project's objectives. Please see Chapter 11, Section 11.2, "Range of Alternatives Considered," and Common Response 3, "The CEQA Process," for a discussion on the CEQA requirements regarding the scope of alternatives, the reasonable range of alternatives considered and the development of alternatives. The No Project Alternative is considered in Chapter 11, Section 11.3, "No Project Alternative." As noted in Response 17-11, Table 11-1 includes all of the alternatives that were considered but not analyzed further. The reasoning behind not analyzing the alternatives further can be found in the Table 11-1 columns titled "Project Objective Component Not Met by the Alternative" and "Feasibility." Also, please refer to Common Response 4, "CEQA and CESA Legal Standards," and Common Response 2 "CEQA Environmental Baseline."

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		(same for Steelhead); Table 11-10 (same for Green Sturgeon); Table 11-11 (same for White Sturgeon). The March – May Delta Outflow (Table 11-24), March – June Delta Outflow (Table 11-25), February – June Delta Outflow (Table 11-26), April – June Delta Outflow (Table 11-27) all show the same: effectively no difference between the Delta outflow under the Proposed Project and each of the Alternatives. DEIR at 11-29 to 11-32. Ultimately, DWR concludes that, "for listed species, the effects of Alternative 1 generally would be similar to those for the Proposed Project." DEIR at 11-33. Alternative 2 is, like Alternative 1, nearly indistinguishable from the Proposed Project. As DWR describes them, the "relative incremental changes . . . due to Alternative 2 as compared to Baseline Conditions are similar to those described under the Proposed Project." DEIR at 11-45. Figures 11-27 to 11-35 demonstrate the near identity between the Proposed Project and Alternative 2. As DWR concludes: "overall long-term average Delta outflow, exports, or other hydrologic conditions would be similar under Alternative 2 and the Proposed Project. Because differences in these long-term average hydrologic variables would be minimal, impacts on all other resources under Alternative 2 would be expected to be the same as described for the Proposed Project." DEIR at 11-58. Alternative 3 is, like the other alternatives, essentially the same as the Proposed Project. Again, DWR describes the "relative incremental changes in surface water hydrology due to Alternative 3 as compared to the Baseline Conditions are similar to those described under the Proposed Project." DEIR at 11-58. Figures 11-45 to 11-57 show the overlap between the Proposed Project and Alternative 3. In sum, "the impacts of the Proposed Project and Alternative 3 are essentially equivalent." DEIR at 11-76. Despite the lack of difference in the impacts of the Proposed Project and the Alternatives analyzed by DWR, DWR concludes that it has both analyzed a reasonable range of alternatives and identifies an "environmentally superior" alternative. Yet neither DWR's analysis of the limited range of alternatives nor its selection of Alternative 3 as the environmentally superior alternative meet the requirements of CEQA.	
17	14	II. The DEIR Violates CEQA because it Fails to Consider a Reasonable Range of Alternatives.	Please see Responses 17-11 and 17-13 regarding alternatives.

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		DWR asserts that Alternative 3 is "environmentally superior" because it would "provide the same benefits" during the spring as the Proposed Project while limiting diversions from December to March to baseline conditions. DEIR at 11-76. The purported benefits from Alternative 3 are focused on a "potentially" lower entrainment risk due to the choice not to expand the period during which winter diversions can occur. First, none of the alternatives included in the DEIR would strengthen protections for endangered fish and wildlife compared to today. The DEIR excludes consideration of any alternatives that provide increased restrictions on Delta exports. Increased protections for endangered fish and wildlife in the Bay-Delta is necessary to meet the requirements of state and federal law including CESA. In 2008 the Supreme Court upheld the failure to consider a reduced export alternative in the final EIR for CALFED [California Bay-Delta Program], stating that, "Bay–Delta ecosystem restoration to protect endangered species is mandated by both state and federal endangered species laws, and for this reason water exports from the Bay–Delta ultimately must be subordinated to environmental considerations. The CALFED Program is premised on the theory, as yet unproven, that it is possible to restore the Bay–Delta's ecological health while maintaining and perhaps increasing Bay–Delta water exports through the CVP and SWP. If practical experience demonstrates that the theory is unsound, Bay–Delta water exports may need to be capped or reduced." (In re Bay-Delta Programmatic Environmental Impact Report Coordinated Proceedings (2008) 43 Cal.4th 1143, 1168.) Practical experience has now plainly demonstrated that theory is unsound; indeed, the DEIR (and recent federal biological opinions from NMFS [National Marine Fisheries Service] and US FWS [U.S. Fish and Wildlife Service]) demonstrate that the Proposed Project and alternatives are likely to result in continued declines in the survival and abundance of CESA-listed fish species in the Bay-Delta watershed. Thus, the failure to consider an alternative in this DEIR that reduces water diversions from the Delta in order to improve environmental conditions for fish and wildlife violates CEQA.	
17	15	II. The DEIR Violates CEQA because it Fails to Consider a Reasonable Range of Alternatives. Second, numerous state and federal agencies have identified the need to increase winter-spring outflow to protect fish and wildlife, including	Please see Responses 17-11 and 17-13 regarding alternatives.

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		endangered species. In contrast, the DEIR fails to even consider any alternatives that would increase winter-spring outflow, and only the no action alternative would maintain existing outflow. Despite the repeated recognition of the need to increase Delta outflow in the winter and spring months, none of the alternatives in the DEIR would increase Delta outflow in the winter and spring months.	
17	16	II. The DEIR Violates CEQA because it Fails to Consider a Reasonable Range of Alternatives. Third, such alternatives exist, were proposed during the NOP by various commenters, and similar alternatives were analyzed in the federal Biological Opinions recently published by NMFS and FWS. DWR's failure to consider one or more alternatives that increase Delta outflow from January to June is even more problematic because, as discussed infra, the DEIR's conclusion that the reduction in Delta outflow would not cause a significant impact is clearly erroneous and is the result of statistical manipulation in contravention of sound science.	Please see Responses 17-11 and 17-13 regarding alternatives. The comment suggesting "statistical manipulation in contravention of sound science" is incorrect. The analyses included in Resource Chapters 4-9 and their associated appendices were comprehensive and based on the best available science. Please see Chapter 2, Section 2.1.1, "Project Objectives," for a description of DWR's continuing commitment to operate the State Water Project in compliance with all state and federal water quality and environmental laws. Please see also Common Response 9, "Relationship to the 2023 Biological Assessment and NEPA," Common Response 4, "CEQA and CESA Legal Standards," and Common Response 11, "Application of CESA Standards," for further discussion on the applicable process under CEQA.
17	17	II. The DEIR Violates CEQA because it Fails to Consider a Reasonable Range of Alternatives. The impact of DWR's failure to analyze an adequate range of alternatives is compounded in this instance because (a) it failed to consider a reasonable range of alternatives in analyzing the 2020 ITP [Incidental Take Permit], and (b) the current baseline conditions are inadequate to actually protect endangered fish species. As a result, DWR limits its CEQA analysis to a baseline that is not protective and was identified largely based on a lack of informed CEQA and CESA analysis leading up to the 2020 ITP and a series of alternatives that do not materially differ from that baseline and none of which would improve conditions from the baseline. Only by using a cramped analysis which excludes relevant information and legally required alternatives can DWR justify its conclusion that continuing to divert more and more water between December and June will not continue to cause increasing harms to the	Please see Responses 17-11 and 17-13 regarding alternatives. Please see Chapter 2, Section 2.1.1, "Project Objectives," for a description of DWR's continuing commitment to operate the State Water Project in compliance with all applicable laws, contractual obligations, and agreements. The range of alternatives analyzed as part of the 2020 ITP process does not directly address the 2024 DEIR for the Long-Term Operation of the State Water Project. Please see Chapter 11, Section 11.2, "Range of Alternatives Considered," and Common Response 3, "The CEQA Process," for a discussion on the range of alternatives considered and the development of alternatives. Please see Chapter 3, "Scope of Analysis," Section 3.3, "Environmental Baseline," and Common

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		endangered species put on the brink of extinction by the lack of freshwater flow during those months. Because the DEIR fails to consider a reasonable range of alternatives in violation of CEQA, it must be revised and recirculated.	Response 2, "CEQA Environmental Baseline," for a detailed discussion of the baseline conditions.
17	18	III. The DEIR Violates CEQA Because it Fails to Analyze the Effects of the 2018 Addendum to the Coordinated Operating Agreement. For the 2020 ITP, DWR failed to analyze the 2018 Addendum to the 1986 Coordinated Operations Agreement which governs combined operation of the SWP and CVP. This meant analysis of the 2020 ITP ignored the potential adverse effects of implementing the Addendum to the Coordinated Operating Agreement at Lake Oroville and other areas upstream of the Delta, and rather than evaluating these potential effects, included the Addendum to the Coordinated Operating Agreement in the environmental baseline. See 2019 DEIR at 4-2; see 2019 DEIR, Modeling Appendix at B-5. The DEIR again makes this error, omitting needed information for the public, DWR, and CDFW to understand the overall impacts of the Proposed Project and the Alternatives. Having failed to previously analyze the impacts of the 2018 Addendum to the COA, DWR again incorporates the COA into its baseline. DEIR at 4A-1-12 (defining the COA as "Same as the Baseline Conditions"). Federal assessments of the COA Addendum showed storage declines in Lake Oroville as a result. But the DEIR (improperly) fails to analyze or consider operations at Lake Oroville. And there is a reasonable scientific basis and a fair argument to believe that implementation of the COA Addendum would cause significant adverse environmental impacts under CEQA. See Bureau of Reclamation, Environmental Assessment, Addendum to the Coordinated Operating Agreement, Central Valley Project/State Water Project, December 2018 (explaining storage impacts at Lake Oroville) [Footnote 11: This document is available online at: https://www.usbr.gov/mp/nepa/includes/documentShow.php?Doc_ID=36503 (last visited August 5, 2024). It is hereby incorporated by reference.]; see also NRDC et al. 2019 Comments at pp. 11-13 (section III, explaining Feather River impacts due to Lake Oroville storage changes), and at Exhibit 1 (CDFW's modeled impacts). DWR has a duty to analyze and disclose the effects of the 2018 Addendum to the COA, including these significant adverse effects. DWR has not complied done so, either in the DEIR or previously. DWR must	Please see Common Response 1, "Scope of Analysis," for a discussion of the COA Addendum and Geographic Scope of the Project, including the Oroville Facilities. Please see Appendix 2D, "Geographic Scope," for the rationale for selecting the geographic scope of the Proposed Project. Please see Chapter 11, Section 11.2, "Range of Alternatives Considered," and Common Response 3, "The CEQA Process," for a discussion on the range of alternatives considered and the development of alternatives. See also Common Response 2, "CEQA Environmental Baseline," further discussing the baseline conditions rationale.

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		revise the DEIR to analyze the effects of implementing the 2018 Addendum to the COA in connection with the impacts of the Proposed Project as well as a reasonable range of alternatives. By failing to disclose and analyze upstream impacts, incorporating changes to the COA into the baseline, and then comparing the Proposed Project to that unanalyzed baseline, DWR conceals the scope of overall impacts of its actions from 2018 to the present that have reduced protection for endangered fish.	
17	19	IV. The DEIR Fails to Adequately Analyze and Disclose the Significant Adverse Environmental Impacts that the Proposed Project is Likely to Cause during Droughts. The DEIR fails to analyze or disclose the adverse environmental effects of water project operations during droughts. As discussed below, the DEIR's proposed Spring Outflow and Delta Smelt Summer-Fall Habitat measures fall far short of outflows necessary to protect Delta smelt, Longfin smelt, and estuarine habitat in all years, and fail to augment flows at all in Critically Dry Years. But the DEIR's inadequacy is not limited to its proposed measures, because it also utterly fails to consider drought conditions – and the management responses to drought – that were experienced in the real world in recent years. The DEIR acknowledges that in its analysis: "Actual exports in 2014, 2015, and 2021 were outside the modeled range. Export data during these years represent operations under stressed water supply conditions. DWR and Reclamation filed Temporary Urgency Change Petitions (TUCPs) to temporarily modify requirements in their water rights permits in response to the drought conditions in 2014, 2015, and 2021. As noted in Appendix 4A, Attachment 8, "Model Limitations," CalSim 3 results differ from real-time operations under stressed water supply conditions." DEIR at 4-7. Absent the adoption of regulatory and/or management regimes that are more protective than the DEIR's preferred alternative, it is more than reasonably foreseeable – it is a virtual certainty – that numerous operational and other protective measures for fish and wildlife (such as water temperature standards, Old and Middle River flow restrictions, and Delta outflow requirements), including measures considered and assumed in the DEIR, will not be implemented during future droughts. Thus, the DEIR fails to disclose the likely adverse impacts that will result from less protective operations during droughts, and it fails to identify in	The EIR has been prepared in accordance with CEQA and adequately discloses the scope, severity, and magnitude of potential impacts for the environmental resources analyzed in this EIR. Please see Common Response 12, "Drought Conditions," for a response to this comment regarding assessment of impacts in drought conditions.

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		any detail mitigation measures that could credibly or sufficiently reduce or avoid these impacts. Over the past decade, DWR and Reclamation have repeatedly, consistently, and successfully sought to waive or weaken numerous water quality objectives (including minimum Delta outflow) and ESA requirements under both the 2008 and 2009 and the 2019 biological opinions and failed to meet water temperature standards – despite the fact that existing water quality objectives, ESA requirements, and water temperature management regimes are widely acknowledged to be insufficiently protective (see, for instance, SWRCB 2010, 2017). TUCPs submitted by DWR and Reclamation were approved by the SWRCB in in six out of 10 years in the last decade: 2014, 2015, 2016, 2021, 2022, and 2023. These changes to water project operations were not previously analyzed as part of the environmental documentation for the biological opinions or in the SWRCB's 1995 Bay-Delta Water Quality Control Plan and Water Right Decision 1641. See, e.g., Water Rights Order 2014-0029 (September 24, 2014) [Footnote 12: Available online at: http://www.waterboards.ca.gov/waterrights/board_decisions/adopted_orders/orders/2014/wro2014_0029.pdf] ; Water Rights order dated February 3, 2015 [Footnote 13: Available online at: https://www.waterboards.ca.gov/drought/docs/tucp/2015/tucp_order020315.pdf]; April 6, 2015 Revised Order [Footnote 14: Available online at: http://www.waterboards.ca.gov/waterrights/water_issues/programs/drought/docs/tucp/2015/tucp_order040615.pdf]; July 3, 2015 order conditionally approving petition for temporary urgency change [Footnote 15: Available online at: http://www.waterboards.ca.gov/waterrights/water_issues/programs/drought/docs/tucp/2015/tucp_order070315.pdf]. (For instance, in 2015 the waivers of water quality standards reduced Delta outflows and increased water deliveries by approximately 800,000 acre feet). These waivers of required operations contributed to devastating impacts to winter-run Chinook salmon, spring-run Chinook salmon, Delta smelt, Longfin smelt, and other native fish species, including: • Greater than 95% mortality of endangered winter-run Chinook salmon eggs and juveniles above Red Bluff Diversion Dam in 2014 and 2015, including temperature dependent mortality of 77% in 2014 and 85% in 2015 due to lethal and chronically adverse water temperatures below Keswick Dam;	

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		• Greater than 95% mortality of fall-run Chinook salmon eggs and juveniles that spawned in the mainstem Sacramento River above Red Bluff Diversion Dam in 2014; • Record low abundance indices for Delta smelt in the 2014 and 2021-23 Fall Midwater Trawl and 2015 and 2021 Spring Kodiak Trawl surveys; • Near record low abundance of Longfin smelt in the 2014 Fall Midwater Trawl survey and a new record low abundance in the 2015 Fall Midwater Trawl survey; • Negative impacts on the survival of juvenile Delta smelt in June through August of 2021, on the recruitment and post-larval survival of Delta smelt in 2022, and on the recruitment of Delta smelt in 2023; • Negative impacts on the spawning and recruitment of Longfin smelt in June and July of 2021 and on abundance of Longfin smelt in 2022 and 2023; • Lower survival and recruitment of several other estuarine species in 2021, 2022, and 2023; • Increases in the abundance of nonnative species like Black bass in the Delta; and, • Increases in the abundance of toxic cyanobacteria in the genus Microcystis that result in harmful algal blooms in the Delta (see Lehman et al 2022 and SWRCB 2021). See, e.g., Water Rights Order 2014-0029; Water Rights order dated February 3, 2015; April 6, 2015 Revised Order; July 3, 2015 order conditionally approving petition for temporary urgency change; Protest to TUCP filed by the NRDC dated February 13, 2015 [Footnote 16: Available online at: http://www.waterboards.ca.gov/waterrights/water_issues/programs/drought/comments_tucp2015/docs/nrdc_obegi021315.pdf] ; March 24, 2015 Petition for Temporary Urgency Change, Attachment A [Footnote 17: Available online at: http://www.waterboards.ca.gov/waterrights/water_issues/programs/drought/docs/tucp/2015/apr2015_req032415.pdf] ; Feb 15, 2022 Order Denying in Part and Granting in Part Petitions for Reconsideration of the Executive Director's Approvals of the June 1, 2021, Order Conditionally Approving a Petition for Temporary Urgency Changes To License and Permit Terms and Conditions Requiring Compliance with Delta Water Quality Objectives In Response To Drought Conditions and the June 10, 2021, Sacramento River Temperature Management Plan [Footnote 18:	

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		Available at: https://www.waterboards.ca.gov/waterrights/board_decisions/adopted_orders/orders/2022/wro2022_0095.pdf]; March 18, 2022 Temporary Urgency Change Petition for April 1, 2022through June 30, 2022 [Footnote 19: ; and February 13, 2023 Temporary Urgency Change Petition for February 1, 2023 through March 31, 2023 [Footnote 20: Available at: https://www.waterboards.ca.gov/drought/tucp/docs/2023/20230213_tucp.pdf]. DWR's sole proposed mitigation for impacts of the SWP during drought conditions is the Voluntary Drought Toolkit, which would provide "a coordination process to implement drought relief actions." DEIR Appendix 2a, Attachment 6 at 3. However, the measures in the Toolkit are described qualitatively and not included in the DEIR's modeling of project operations. Furthermore, as discussed {above}, there is no reason to assume that the Toolkit's measures are likely to occur, given that there is currently no authorization or funding for its implementation. Droughts are a normal part of the California climate, and consecutive dry years can be planned for as readily as single ones. California law identifies TUCPs as limited to urgencies that cannot otherwise be avoided through the exercise of due diligence. See Wat. Code § 1435, subd. (c). DWR has failed to exercise such due diligence by failing to analyze the impacts of TUC Orders in drought years and failing to specify and analyze the impact of potential mitigation measures such as the proposed Drought Toolkit or alternative approaches.	
17	20	IV. The DEIR Fails to Adequately Analyze and Disclose the Significant Adverse Environmental Impacts that the Proposed Project is Likely to Cause during Droughts. It should be noted that the problem of TUCPs and their adverse impact on endangered species is not solely limited to drought years. For instance, the most recent TUC Order was issued on February 21, 2023 [Footnote 21: Available at: https://www.waterboards.ca.gov/drought/tucp/docs/2023/20230221-final-tuco.pdf]. By January of 2023, multiple atmospheric rivers were hitting the Sierra Nevada and Central Valley, leading to significant flood events. [Footnote 22: Matthew Cappucci, "California is not Done: Three More Atmospheric Rivers are on the Way," The Washington Post, January 6, 2023. Available at https://www.washingtonpost.com/weather/2023/01/06/california-atmosphericriver-forecast-flooding/] Water year 2022-2023 ultimately	Please see Response to Comment 17-19. Also, refer to Common Response 12, "Drought Conditions," for a response to this comment regarding assessment of impacts in drought conditions and discussion of TUCPs.

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		was determined to be a wet year. Clearly, TUCPs and the potential damage from them are not limited to drought years. Therefore, the analysis of TUCPs must also include nondrought years, particularly including years at the end of droughts. Indeed, DWR's failure to perform due diligence extends to its failure to analyze in the DEIR that that climate change will likely reduce Lake Oroville reservoir storage during droughts to levels far below the minimum water storage ever observed historically, which DWR admits is likely to result in changes to water project operations during future droughts that includes not meeting minimum flow conditions and violating salinity standards. These and similar operational responses are likely to cause significant adverse effects on fish and wildlife, including adverse water temperatures in the Feather River and the significant adverse effects observed in 2014-2015. However, these reasonably foreseeable adverse effects are not considered in the DEIR. In addition, the DEIR's analysis and modeling improperly assumes that the proposed operational measures would be implemented in future droughts, when the text indicates otherwise. See CEQA Guidelines § 15126.4(a)(2). Because waivers of protective operations in future drought conditions are reasonably foreseeable, and because such waivers are likely to result in significant adverse impacts that are not disclosed in the DEIR, DWR must identify feasible mitigation measures to reduce or avoid these significant impacts. CEQA Guidelines §§ 15126, 15126.4. DWR must recirculate a revised DEIR that includes such mitigation measures. CEQA Guidelines § 15088.5(a)(1)-(3).	
17	21	V. The DEIR Fails to Accurately Assess Environmental Impacts, and the DEIR Fails to Disclose Significant Environmental Impacts of the Proposed Project. CEQA requires that the DEIR accurately assess potential environmental impacts from the Proposed Project and alternatives, using credible methods of analysis. See, e.g., Cal. Code Regs., tit. 14, § 15151; Laurel Heights Improvement Assn. v. Regents of University of Cal., 47 Cal.3d 376, 409 (1988). The DEIR fundamentally fails this essential function, and it fails to disclose environmental impacts that are significant. The DEIR must be revised and recirculated. A. The Flawed Modeling in the DEIR, including Baseline Modeling, Results in Inaccurate Assessment of Environmental Impacts.	The comment does not establish any of the grounds for recirculation set forth in CEQA Guidelines Section 15088.5. The EIR has been prepared in accordance with CEQA and adequately discloses the scope, severity, and magnitude of potential impacts for the environmental resources analyzed in this EIR. This comment describes comments submitted on the 2019 DEIR for the Long-Term Operation of the State Water Project. Thus, the comment does not directly address the 2024 DEIR for the Long-Term Operation of the State Water Project and DWR is not required to respond to comments on projects that are no longer being pursued. DWR fully responded to comments

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		First, as discussed supra, the CalSim modeling in the DEIR is deeply flawed [Footnote 23: Furthermore, we reiterate our concern that impacts of the project baseline were never properly modeled. Specifically, the previous environmental documentation failed to model the more negative OMR conditions authorized by the project description (see NRDC et al. 2020 at 19). More negative OMR would likely increase entrainment and reduce survival and abundance of fish species including Delta smelt, Longfin smelt, winter-run Chinook salmon, spring-run Chinook salmon, fall-run Chinook salmon, and Central Valley Steelhead. These modeling flaws significantly underestimated the environmental impacts of the current baseline when it was originally analyzed, resulting in biased and inaccurate assessment of environmental impacts of the project, which is now the baseline for the Proposed Project. If this modeling error has not been corrected in the current DEIR, then it will fail to reveal differences between modeling of the previous project (and associated outcomes) and the baseline as presented here. As a result, the DEIR fails to disclose the incremental impact of the baseline versus operations prior to 2020, and comparisons of this baseline to the Proposed Project and Alternatives do not reflect the true impact of the Proposed Project on the biological resources of the of the estuary and its watershed.]. Because this CalSim modeling is used as an essential input to the biological models and analyses that are used to assess potential environmental impacts, the flawed hydrological modeling infects the DEIR's assessment of environmental impacts, leading the DEIR to report misleading and erroneous conclusions regarding significant impacts.	provided on the 2019 DEIR in the 2020 FEIR. However, DWR has reviewed the comment's content and provided responses where it may still be applicable to the 2024 DEIR for the Long-Term Operation of the State Water Project. The following response is provided for those elements of the comment that are applicable to the 2024 DEIR for the Long-Term Operation of the State Water Project. As part of development for the Proposed Project, previous assumptions were reevaluated for consistency with the current understanding of OMR management. As such, the current Baseline Conditions has been updated to reflect these assumptions. Please refer to Appendix 4A, "Model Assumptions," Attachment 6, "Scenario Related Changes to CalSim 3 and DSM2," Section 4A-6.3, "Old and Middle River Flows," for additional information. OMR model assumptions for the Baseline Conditions are also documented in Appendix 4A, "Model Assumptions," Attachment 1, "Model Assumptions," and Attachment 2, "CalSim 3 Model Assumptions Callouts." For additional discussion of baseline conditions, see Common Response 2, "CEQA Environmental Baseline."
17	22	V. The DEIR Fails to Accurately Assess Environmental Impacts, and the DEIR Fails to Disclose Significant Environmental Impacts of the Proposed Project. CEQA requires that the DEIR accurately assess potential environmental impacts from the Proposed Project and alternatives, using credible methods of analysis. See, e.g., Cal. Code Regs., tit. 14, § 15151; Laurel Heights Improvement Assn. v. Regents of University of Cal., 47 Cal.3d 376, 409 (1988). The DEIR fundamentally fails this essential function, and it fails to disclose environmental impacts that are significant. The DEIR must be revised and recirculated. Second, the CalSim modeling fails to account for reasonably foreseeable waivers of protective measures including OMR [Old and Middle River] and Delta outflow requirements. See Section IV, supra. In six of the 10	Please see Response to Comment 17-21 regarding modeling. Please see Common Response 12, "Drought Conditions," and refer to Appendix 4I, "Operations Sensitivity to Drought Conditions," Section 4I.1, "Preface," for further discussion related to TUCPs. DWR is not seeking CEQA or CESA coverage for any TUCPs that might be filed in the future.

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		the [sic] years between 2014 and 2023, DWR and Reclamation applied for and received waivers from existing water quality standards (D-1641) via Temporary Urgency Change Orders (TUCOs). There is no question that these waivers of Delta outflow requirements contributed to significant adverse impacts on fish species in the Delta, yet the DEIR fails to consider and incorporate the effects of reduced Delta inflow, outflow, and/or Old and Middle River flows resulting from future waivers of water quality standards. In addition, the DEIR fails to account for waivers of Old and Middle River flow requirements under previous BiOps (see Section IV, above, and Reis et al. 2019).	
17	23	V. The DEIR Fails to Accurately Assess Environmental Impacts, and the DEIR Fails to Disclose Significant Environmental Impacts of the Proposed Project. CEQA requires that the DEIR accurately assess potential environmental impacts from the Proposed Project and alternatives, using credible methods of analysis. See, e.g., Cal. Code Regs., tit. 14, § 15151; Laurel Heights Improvement Assn. v. Regents of University of Cal., 47 Cal.3d 376, 409 (1988). The DEIR fundamentally fails this essential function, and it fails to disclose environmental impacts that are significant. The DEIR must be revised and recirculated. Furthermore, the DEIR fails to disclose the effects of actual implementation of the Proposed Project's already inadequate safeguards for threatened and endangered fishes. For example, in 2024 combined operations of the CVP and SWP resulted in substantial exceedances of mortality ("loss") limits for endangered winter-run Chinook Salmon and federally threatened Central Valley Steelhead that exceeded the incidental take limits identified in the NMFS [national marine fisheries service] 2019 biological opinion (NMFS 2019; NMFS 2024b. Reclamation 2024a). Unpermitted take of these protected species continued for weeks and exports frequently exceeded levels identified as protective by NMFS biologists (WOMT 2024). As a result, the DEIR fails to analyze and disclose likely significant environmental impacts and overstates the impact of the Proposed Project on water supplies.	The EIR has been prepared in accordance with CEQA and adequately discloses the scope, severity, and magnitude of potential impacts for the environmental resources analyzed in this EIR. Please see Chapter 2, Section 2.1.1, "Project Objectives," for a description of DWR's continuing commitment to operate the State Water Project in compliance with all applicable laws, contractual obligations, and agreements. DWR operates its south Delta export facility to limit potential negative effects to listed fish and is investigating losses of winter-run Chinook Salmon and steelhead in order to fully contextualize the losses in terms of the methods used to identify take limits; please also see Response to Comment 17-54. The Proposed Project includes various Old and Middle River Flow Management actions to minimize the potential for loss and to account for the genetic identity of winter-run Chinook Salmon, as opposed to length-at-date methods currently employed which have relatively high error rates in Chinook Salmon run identification. In addition, special studies are proposed, which include an Alternative Loss Estimation Pilot Study provide more accurate estimates of entrainment loss at the south Delta facilities.
17	24	V. The DEIR Fails to Accurately Assess Environmental Impacts, and the DEIR Fails to Disclose Significant Environmental Impacts of the Proposed Project. CEQA requires that the DEIR accurately assess potential environmental impacts from the Proposed Project and alternatives, using credible	With respect to the 2019 DEIR, please see Response to Comment 17-4. With respect to federal and state endangered species acts, please see Common Response 9, "Relationship to the 2023 Biological Assessment and NEPA," and Common Response 11, "Application of CESA

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		methods of analysis. See, e.g., Cal. Code Regs., tit. 14, § 15151; Laurel Heights Improvement Assn. v. Regents of University of Cal., 47 Cal.3d 376, 409 (1988). The DEIR fundamentally fails this essential function, and it fails to disclose environmental impacts that are significant. The DEIR must be revised and recirculated. Finally, the Proposed Project continues to ratchet up negative effects on imperiled fish, fisheries, and water quality, while erroneously concluding that the incremental effects are "small" and "not significant" under CEQA. The environmental analysis ignores that baseline operations of the CVP and SWP are devastating for imperiled fish, fisheries, and water quality in the Delta. As described in our previous comments (NRDC et al. 2020), current SWP operations (the "baseline" of the current DEIR) degraded conditions from the previous baseline, which reflected operational requirements of the 2008/2009 federal biological opinions, the 2009 state incidental take permit, and requirements of the Bay-Delta Water Quality Control Plan (D-1641) (hereafter: "the 2008/2009 operational baseline"). The 2008/2009 operational baseline was already understood to cause significant adverse impacts on fish and wildlife in the Delta caused by upstream water temperatures for spawning and egg incubation, water operations in the Delta on rearing habitat, and effects of water operations on migration habitat for covered fish species (USDOI 2016; SWRCB 2010, 2017) [Footnote 24: See Department of Water Resources, Bay Delta Conservation Plan / California WaterFix, Final Environmental Impact Report / Environmental Impact Statement, December 2016, at ES-67 to ES-68; id., Chapter 11, at 11-273 to 11-275.]. The 2019 DEIR, which analyzed the current baseline, found that it would increase entrainment, reduce survival of salmon migrating into and through the Delta, and reduce winter-spring Delta outflow and abundance of various imperiled species as compared to the 2008/2009 operational baseline. Nevertheless, the 2019 DEIR erroneously concluded that these impacts would be less than significant. The Proposed Project will exacerbate many of these negative effects relative to current project operations. Thus, the DEIR shows that the Proposed Project will worsen environmental conditions relative to an environmental baseline that was degraded relative to the 2008/2009 operational baseline which was understood to cause significant impacts. Continuing to degrade environmental conditions and the conservation status of fish populations that are already trending towards extinction is not consistent with the DEIR's repeated findings of "no significant	Standards." Regarding baseline conditions, please see Common Response 2, "CEQA Environmental Baseline." It is unclear which "different conclusions" the comment is referring to; the present EIR's conclusions are consistent with the 2020 EIR (e.g., all less than significant with no mitigation required for fish and aquatic biological resources), with the rationale for the present EIR's conclusions provided in the subsections discussing the significance of impacts for each resource.

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		effect", nor is it consistent with federal or state endangered species acts. At a minimum, DWR must provide a reasoned explanation for the different conclusions regarding significance, and it has not done so here. The DEIR must be revised and recirculated.	
17	25	In addition to the inaccurate modeling preventing accurate assessment of impacts, the analyses that are presented are scientifically flawed and, in many cases, not credible. Nevertheless, these analyses show that the Proposed Project will cause significant impacts which the DEIR fails to acknowledge or disclose. We describe some of these impacts in detail below. Longfin Smelt The U.S. Fish and Wildlife Service ("USFWS") recently observed that Bay-Delta Longfin Smelt DPS "…has plausibly been declining for over 50 years and that decline is presently at circa 3–4 orders of magnitude below initial observations" (USFWS 2024 at 36). In its final listing decision [Footnote 25: Federal Register Number 2024-16380, Document ID FWS-R8-ES-2022-0082-0031, available at: https://www.regulations.gov/document/FWS-R8-ES-2022-0082-0031], USFWS found that despite numerous efforts regarding conservation and regulation of the San Francisco Bay estuary and its resources, including the 2019 Biological Opinions, 2020 CESA ITP, and existing water quality requirements, "…the current condition of the estuary and continued threats facing the estuary and Bay-Delta longfin smelt, such as reduced freshwater inflow, severe declines in population size, and disruptions to the DPS's food resources, have not been ameliorated" (see also, Federal Register Vol. 87, No. 194 (Friday, October 7, 2022) at pp. 60957-60974). Furthermore, USFWS analysis revealed that: "Forecasts of population size using vital rates estimated by the model indicate that it is likely that Longfin Smelt population sizes will dip below recoverable levels within a decade if these recent levels of reproduction and survival continue" (USFWS 2024 at 195). Therefore, any alternative that does not improve conditions relative to the status quo for the San Francisco Bay estuary's Longfin Smelt population is inconsistent with the requirements of the ESA. Despite this finding, the proposed combined operations of the SWP and CVP analyzed in the DEIR would not only fail to improve conditions for the imperiled Longfin Smelt, they would make those conditions worse.	The EIR has been prepared in accordance with CEQA and adequately discloses the scope, severity, and magnitude of potential impacts for the environmental resources analyzed in this EIR. Regarding the comment's suggestion that the alternatives are not consistent with the ESA, please see Common Response 11, "Application of CESA Standards," and Common Response 9, "Relationship to the 2023 Biological Assessment and NEPA." With respect to the comment's suggestion that the Proposed Project will result in reduced Regarding the comment's suggestion that the alternatives are not consistent with the ESA, please also see Common Response 9, "Relationship to the 2023 Biological Assessment and NEPA." Please note that the project is the long-term operations of the SWP and does not include CVP operations. See Common Response 1, "Scope of Analysis," for further information regarding the treatment of coordinated SWP and CVP operations in the EIR. With respect to the comment's suggestion that the Proposed Project will result in reduced Longfin Smelt abundance, the results provided in the "Delta Outflow-Abundance Analysis" of Section 6.4.2.1, the quantitative results demonstrate a variety of minor differences between the Proposed Project and Baseline Conditions scenarios, ranging from water year type mean differences of less than +1% to less than -1%, with overall variability in results that were considerably greater than differences between the scenarios. With respect to not accounting for increases in entrainment, the outflow-abundance relationships explicitly account for differences in outflow but likely account for variability in entrainment to the extent that this this has occurred historically and contributed to the outflow-abundance relationship; however, the best available

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		The DEIR acknowledges that the Proposed Project's effects on Delta Outflow will result in reduced Longfin Smelt abundance relative to the baseline (which is already inadequate to ameliorate the threats to this population, according to USFWS 2024). Furthermore, the DEIR's projected decline in Longfin Smelt abundance does not account for the massive increases in entrainment mortality for Longfin Smelt juveniles that the DEIR also predicts will result from implementation of the Proposed Project. And, these results are likely to underestimate the true impact of combined CVP/SWP proposed operations on Longfin Smelt because the modeling assumes that requirements of the bay-delta water quality control plan (D-1641) and federal biological opinions will be enforced in all years, which has not been the case historically.	information indicates that entrainment losses are small at population level and the project includes measures to minimize these losses for adult, larval, and juvenile Longfin Smelt (see additional discussion in Response to Comment 17-35.) With respect to enforcement of requirements, please see Common Response 12, "Drought Conditions." Please see Chapter 2, Section 2.1.1, "Project Objectives," for a description of DWR's continuing commitment to operate the State Water Project in compliance with all applicable laws, contractual obligations, and agreements
17	26	Reduced Delta Outflows under the Proposed Project will harm Longfin Smelt The DEIR employs flawed modeling to estimate the impacts of the Proposed Project and misrepresents the harm to Longfin Smelt represented by its modeled results[.] To investigate the potential for the Proposed Project and Alternatives to affect the Bay-Delta Longfin Smelt population via their effect on Delta outflow, the DEIR employs a novel statistical approach, which has not been peer-reviewed, to develop multiple models [Footnote 26: The modeling that produced these results is not credible. First, the modeling relies on incorrect assumptions about the nature of the Longfin Smelt-flow abundance relationship. Specifically, the models incorporate different Longfin Smelt flow-abundance relationships during different time periods that it identifies as "ecological regimes," citing Nobriga and Rosenfield (2016) as the source of these different categories. In fact, Nobriga and Rosenfield provide no support for the "ecological regimes" used in the DEIR's modeling approach and neither does Thomson et al. (2010 at 1439-140 and Figure 6 at 1442). Second, the DEIR's modeling employs unorthodox and non-traditional approaches. For example, the DEIR generates different predictions of Longfin Smelt population response to the Proposed Project for each fish sampling program. Each of these predictive models relies on multiple models whose "distributions were combined as a weighted average across models" in a process called "stacking". The DEIR explains (at Appendix 6B p. 6B-396): "…the model with the largest stacking weight does not necessarily have the highest predictive score compared to other models in the set" and "[c]ompared to more traditional model averaging approaches, stacking	With respect to the comment's suggestion that the modeling referenced in the comment includes incorrect assumptions, firstly the inclusion of ecological regimes cited Nobriga and Rosenfield (2016) as an example of a paper including ecological regimes, but the FEIR has been edited per the comment to reference Kimmerer (2002), which more closely aligns with the specific ecological regime analyzed; the section of the EIR referenced in the comment did not cite Thomson et al. (2010), although that reference generally supports an early-2000s change point as well (Thomson et al. 2010, 1431, i.e., reference to common decline in 2002.) Secondly, with respect to the portion of the comment regarding the stacking approach used in the modeling, although the comment suggests this is an unorthodox and non-traditional approach, the approach is established, has been peer-reviewed in other settings (see references in Appendix 6B, Section 6B.13, "Longfin Smelt Delta Outflow–Abundance Index Analysis (Bayesian Method)"), and allows multiple hypotheses for factors such as timing of Delta outflow periods or presence of ecological regimes to be incorporated while accounting for the statistical support of the various hypotheses. Bayesian methods have a long history in fisheries modeling and are considered statistical best practice in terms of quantifying sources of uncertainty like those noted above. The comment misinterprets that

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		differs in terms of how model weights are assigned. Instead of calculating model weights based on the relative predictive ability for each individual model—where the best model for prediction would be given the highest weight—the model weights estimated through stacking minimize the LOO mean squared error of the resulting averaged posterior predictive distribution across models. In other words, stacking was used to estimate the optimal linear combination of model weights…" (emphasis added). Thus, the DEIR's predictions of Longfin Smelt response to different operational alternatives is based on a weighted average of multiple models, where the weights did reflect their predictive ability. Furthermore, the final "stacked" model includes models where the flow variable is measured from December-May Delta outflow (as per CDFW 2010; see also, Nobriga and Rosenfield 2016) and others where flow is measured from March-May outflow. This means that flow during March-May is differentially represented in the final model – the DEIR provides no explanation of, or justification for, why this would be the case. Third, the models rely on randomization procedures, used to generate "probability distributions" for the modeled results (DEIR Appendix 6B at 6B-395 thru 6B-403). These randomizations confound variability from multiple sources, including those that have nothing to do with the effect of project alternatives such as variation in abundance over the entire Longfin Smelt data series. These "probability distributions" for model predictions are then inappropriately compared to the differences in means for several water year types across different alternatives to suggest that differences between alternatives are "very small" compared to the variability (DEIR at 6-100). These overwrought statistical machinations obscure very simple facts – (1) Delta outflow is the only known variable affecting changes in Longfin Smelt abundance from year to year that is affected by combined CVP/SWP operations (USFWS 2024 and sources cited therein), and (2) the effect of Delta outflow on the Longfin Smelt population is most likely due to its relationship with recruitment of young-of-year fish, a relationship that has not changed in five decades of sampling data (Nobriga and Rosenfield 2016).]. These models indicate that the Longfin Smelt population is likely to decline under the Proposed Project (DEIR Tables 6-26 & 6-27 at 102). In addition, the modeling predicts that Longfin Smelt abundance indices are likely to be lower more frequently under the Proposed Project than under the baseline in the majority of years (DEIR Tables 6-29 & 6.30 at 103).	the model weights do not reflect predictive ability. That is not correct. As noted in the methods (and quoted in the comment), "the model weights estimated through stacking minimize the LOO mean squared error of the resulting averaged posterior predictive distribution >>across models<<. In other words, stacking was used to estimate >>the optimal linear combination of model weights…<<" (emphasis added to the phrases indicated by ">><<"). In other words, the model stacking weights maximize the predictive accuracy of the resulting ensemble model. This approach does not rely on a single "best" model, which would ignore model uncertainty. Rather than relying on a single model, the Bayesian stacking approach integrates model uncertainty in the results. And the stacking weights are determined by the predictive accuracy (as measured by cross-validation) of the resulting ensemble model. With respect to explanation or justification of differential representation of flow during March-May mentioned in the comment, the representation of March-May flow is explicitly tabulated in the statistical models for each of the three surveys analyzed in the referenced section and reflects the statistical support for those months. With respect to the comment's suggestion that the models' randomization procedures confound variability from multiple sources, the models account for variability appropriately, consistent with recommendations on similar analyses by peer-review panels (Simenstad et al. 2016:50.) With respect to the comment's interpretation of the specific results of the modeling, please see Response to Comment 17-27 for a response. References cited in this response: Kimmerer, W. J. 2002. Effects of freshwater flow on abundance of estuarine organisms: physical effects or trophic linkages? Marine Ecology Progress Series 243:39–55. Nobriga M. L., and J. A. Rosenfield. 2016. Population Dynamics of an Estuarine Forage Fish: Disaggregating

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			Forces Driving Long-Term Decline of Longfin Smelt in California's San Francisco Estuary. Transactions of the American Fisheries Society 145(1)44–58. DOI: 10.1080/00028487.2015.1100136. Simenstad, C., J. Van Sickle, N. Monsen, E. Peebles, G. T. Ruggerone, and H. Gosnell. 2016. Independent Review Panel Report for the 2016 California WaterFix Aquatic Science Peer Review. Sacramento, CA: Delta Stewardship Council, Delta Science Program. Thomson, J. R., W. J. Kimmerer, L. R. Brown, K. B. Newman, R. Mac Nally, W. A. Bennett, F. Feyrer, and E. Fleishman. 2010. Bayesian Change Point Analysis of Abundance Trends for Pelagic Fishes in the Upper San Francisco Estuary. Ecological Applications 20(5):1431–1448.
17	27	The DEIR claims that the negative effects of the Proposed Project will be "very small" relative to the high variability of predicted abundances generated by the DEIR's population model (DEIR at 6-100). In 2019, CDWR attempted to dismiss the negative effects of its then-Proposed Project (which is now the baseline) using the same excuse [Footnote 27: Reductions in Delta outflow resulting from CDWR's previously proposed (now current) operations were predicted to cause a reduction in the Longfin Smelt population, in every year type, up to 11% (DEIR 2019 "Part III revisions to the DEIR" Table 4.4-9 at 4-179).]. This explanation is erroneous and misleading for several reasons. First, the DEIR's own modeling shows Longfin Smelt will be negatively affected by the Proposed Project's effect on Delta outflow relative to the status quo, even after ignoring other negative effects (e.g., increased entrainment mortality, see below). Second, status quo conditions under current operations have already been found inadequate to protect the imperiled Longfin Smelt population; even if the negative impact of the Proposed Project relative to the baseline is "very small", it cannot be consistent with CESA. Third, the large variability of predicted abundance is due, in large part, to the artificial variance generated by the DEIR's population abundance model (see FN 3). As we commented previously (NRDC et al. 2020), comparing the average outcomes among alternatives with their overall variance improperly obscures the differences between alternatives. A valid comparison of the impacts on Longfin Smelt of SWP operational alternatives would analyze the average of annual differences	With respect to magnitude and direction of impact, please see Response to Comment 17-25 for a response. With respect to the variability in abundance, please see Response to Comment 17-26 for a response. Inclusion of a table illustrating differences in mean indices of abundance of water year type, as done in the EIR, is consistent with the general method outlined in the comment; consideration of the probability of difference is done qualitatively to provide context but is not quantitatively combined with the mean differences. With respect to entrainment, please see Response to Comments 17-25 and 17-33. Regarding consistency with CESA, please see Common Response 11, "Application of CESA Standards," and Response to Comment 17-4.

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		among alternatives in projected abundance relative to the variance in those annual differences. Because the best available science continues to show that Longfin Smelt abundance increases in response to increased winter-spring Delta outflow (Rosenfield and Baxter 2007; Rosenfield 2010; Thomson et al. 2010; Nobriga and Rosenfield 2016; USFWS 2024), operations that produce higher winter-spring Delta outflow in a given year will outperform alternative operations that result in lower winter-spring Delta outflows. There will be little variance in this result. Most of the additional variance in estimated abundance referred to by the DEIR (e.g., as depicted in Figures 6-53 through 6-55) is not relevant to comparison of operational alternatives.	
17	28	Increased entrainment-related mortality of juveniles under the Proposed Project will harm Longfin Smelt The DEIR shows very large increases in entrainment-related mortality of Longfin Smelt relative to current operations are likely under the Proposed Project. Still, the DEIR dismisses entrainment-related mortality under the Proposed Project as "small." The DEIR's modeling of this impact is severely flawed because it likely underestimates the impact of entrainment by an order of magnitude or more.	Please see Responses to Comments 17-29 through 17-36 for responses to the issues raised in this comment.
17	29	Furthermore, any impact of increased entrainment due to changes in CVP/SWP combined operations is likely to be additive to the effects of changes in Delta outflow – yet the DEIR fails to disclose the additive effect of these separate impacts. The DEIR (at 6-96) acknowledges that there will be "large relative increases in entrainment under the Proposed Project relative to the Baseline Conditions scenario," yet, it ignores this stress on the population. Although no model linking Longfin Smelt entrainment-related mortality with overall population dynamics has yet been developed, if this (or any) mortality source increases dramatically as the result of changed project operations, it must have a negative effect on overall abundance at some point. The DEIR projects very substantial increases – between 8% and 73.8%, depending on water year type – in salvage of juvenile Longfin Smelt from Proposed Project operations relative to the baseline (DEIR at Table 6-22 and Figure 6-52).	The EIR has been prepared in accordance with CEQA and adequately discloses the scope, severity, and magnitude of potential impacts for the environmental resources analyzed in this EIR. The comment asserts that the CEQA analysis is flawed and selectively cites the EIR, which in the section cited by the comment more fully stated that the quantitative analysis "suggested the potential for large relative increases in entrainment under the Proposed Project compared to the Baseline Conditions scenario, albeit with considerable uncertainty around the predictive estimates." The analysis does not ignore the potential effect on the population, as suggested by the comment, but places the result in context related to population size, for example. With respect to development of a model relating entrainment mortality to population dynamics, the Proposed Project includes such an effort (see further detail in Response to Comment 17-35.) With respect to increases estimated from modeling, these do not

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			account for all aspects of real-time operations that will be based on fish monitoring and catch thresholds related to population size that will limit the potential for loss (see the EIR's discussion of "Larval and Juvenile Longfin Smelt Protection Action" in Section 2.3.3.3 of Chapter 2); please see also Response to Comment 17-33.
17	30	The DEIR's explanation that entrainment mortality is likely to represent a "very small percentage of the population" is not convincing and its analysis is flawed in various ways. DEIR Table 6-23 (at 6-97) purports to show that entrainment of the Longfin Smelt population was small, relative to estimates of total abundance, in the years 1995-2015. Entrainment estimates are based on equations derived from Grimaldo et al. 2009; however, that paper measured "salvage," not entrainment [Footnote 28: Grimaldo et al. (2009 at 1256) report: "In this paper, we use salvage as an index of entrainment. Actual entrainment losses at the SWP and CVP are unknown because fish are not sampled continuously and because the louvers are less than 100% effective (Brown et al. 1996; Puckett et al. 1996; Bowen et al. 1998). Louver efficiency varies by species, life stage, and probably facility (Bowen et al. 1998, 2004), but for the purposes of this paper we assume that louver efficiencies are constant within and among years. The SWP salvage data also do not include additional fish losses in the Clifton Court Forebay as a result of predation before reaching the louvers (Gingras 1997) or within the holding tanks themselves (Liston et al. 1994)." (emphasis added).] "Salvage" of small fish at the CVP/SWP south Delta export pumps is generally only a small fraction of mortality due to entrainment because the salvage operations are inefficient. For each "salvaged" fish, many more fish are either drawn into the export pumps or consumed by predators in canals that lead to the pumps and salvage facilities (Grimaldo et al. 2009). The DEIR applies a static multiplier (20.3) to convert estimated "salvage" into entrainment loss (see footnote Table 6-23). This expansion of salvage to entrainment-mortality does not represent the best available science and is arbitrary and capricious. Castillo et al. (2012) concluded that entrainment loss prior to salvage of Delta Smelt (which are similar in size, shape, and swimming ability to Longfin Smelt) was the largest source of entrainment-related mortality and that the percentage of fish killed following entrainment, but prior to salvage, changed from month to month. In three separate months of their study, pre-screen loss amounted to 94.3%, 99.1%, and 99.9% of	The comment incorrectly suggests that the estimates of entrainment loss from the referenced table are based on Grimaldo et al. (2009), but they are in fact based on the source noted in the table's footnote, which the comment subsequently acknowledges. The analysis used estimates of entrainment loss including the factors mentioned in the comment (e.g., predation loss in Clifton Court Forebay) specifically for Longfin Smelt based on studies involving Delta Smelt and other species as proxies for Longfin Smelt (California Department of Fish and Game 2009:Appendix B), which was authored by one of the authors of the Castillo et al. (2012) study referenced in the paper and included technical advice and verification of calculations from one of the other authors of the Castillo et al. (2012) study. Application of multipliers based on the study of Castillo et al. (2012) cited by the comment would suggest considerably larger proportional entrainment loss than the best available science considers to occur (see discussion of Kimmerer and Gross 2022 in Response to Comment 17-35) and than was concluded to occur during the species federal listing (89 FR 61029 at 61041: "…since 2009, the entrainment of longfin smelt has not been substantial;" and 89 FR 61029 at 61042: " the best information currently available indicates that management actions for operating water diversion facilities are assisting in limiting entrainment impacts for the Bay-Delta longfin smelt." With respect to the comment's suggestions regarding Bay-Delta water quality requirements/TUCOs and requirements in federal biological opinions and state ITP, please see Common Response 12, "Drought Conditions."

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		Delta Smelt in the SWP's south Delta export infrastructure [Footnote 29: Given these results, it is highly likely that some entrainment-related mortality occurs, even in years when "salvage" is zero.]. To convert "salvage" to entrainment loss under these circumstances would require expansion by factors of 16.5, 110.1, and 999, respectively. Thus, the DEIR's assumption that entrainment-related loss is consistently 20.3 times salvage (Table 6-23) is not supported and is likely to be far too low most of the time. And, these results likely seriously underestimate entrainment losses as the modeling does not account for waivers of Bay-Delta water quality requirements via TUCOs, and/or relaxation of requirements in federal biological opinions and this ITP, both of which have occurred frequently in the past.	References cited in this response: California Department of Fish and Game. 2009. A Status Review of the Longfin Smelt (Spirinchus thaleichthys) in California. Report to the Fish and Game Commission. January 23. Castillo, G., J. Morinaka, J. Lindberg, R. Fujimura, B. Baskerville-Bridges, J. Hobbs, G. Tigan, L. Ellison. 2012. Pre-screen Loss and Fish Facility Efficiency for Delta Smelt at the South Delta's State Water Project, California. San Francisco Estuary and Watershed Science 10(4). Grimaldo, L. F., T. Sommer, N. Van Ark, G. Jones, E. Holland, P. B. Moyle, B. Herbold, and P. Smith. 2009. Factors Affecting Fish Entrainment into Massive Water Diversions in a Freshwater Tidal Estuary: Can Fish Losses be Managed? North American Journal of Fisheries Management 29:1253–1270.19. Kimmerer, W., and E. Gross. 2022. Population Abundance and Diversion Losses in a Threatened Estuarine Pelagic Fish. Estuaries and Coasts 45:2728–2745.
17	31	The DEIR's estimate of entrainment-related mortality impacts of the baseline and the Proposed Project are further flawed because they are based, in part, on patterns of entrainment that occurred under more restrictive regulatory regimes. Table 6-23 presents salvage and population estimates from 1995-2015. During the final third of that period (2009-2015), water exports were constrained by protections found in the 2008/2009 biological opinions (USFWS 2008; NMFS 2009). Recent research indicates that those constraints reduced entrainment impacts for Delta Smelt (Smith et al. 2021) and they are more likely than not to also have reduced entrainment for Longfin Smelt. However, those operating rules have now been replaced by operations analyzed in CDWR's 2019 DEIR (as revised). CDWR previously projected massive increases in Longfin Smelt juvenile entrainment resulting from current project operations when compared to the prior baseline (the 2008/2009 baseline; CDFW 2019 "Part III revisions to the DEIR" Table 4.4-13 and Figure 4.4-56 at 4-185; see below [Exhibit 1]). Thus, juvenile salvage rates (CDFW 2019 Table 6-23) were expected to increase several-fold under current SWP operations. Under the Proposed Project, rates of entrainment-related mortality are expected to increase yet again.	With respect to the table referenced in the comment, entrainment loss as a percentage of population abundance is estimated to have been low regardless of regulatory regime (i.e., pre- or post-2008/2009). Please see Response to Comment 17-30 regarding additional context related to the federal species listing conclusion and Comment 17-33 for additional context on population-level estimates of entrainment loss to most vulnerable (larval) life stage based on Kimmerer and Gross (2022). Please see Common Response 2, "CEQA Environmental Baseline," and Common Response 3, "The CEQA Process," for additional information on the approach for considering the CEQA Proposed Project utilizing "baseline conditions" in this EIR. References cited in this response: Kimmerer, W., and E. Gross. 2022. Population Abundance and Diversion Losses in a Threatened Estuarine Pelagic Fish. Estuaries and Coasts 45:2728–2745.

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17	32	[Exhibit 1: CDFW 2019 "Part III revisions to the DEIR" Table 4.4-13 and Figure 4.4-56. Table 4.4-13 shows Longfin Smelt April-May Salvage, from the Regression Including Mean Old and Middle River Flows (Grimaldo et al. 2009), Grouped by Water Year Type, and Figure 4.4-56 shows a Box Plot of the same data.]	Please see Response to Comment 17-31 for a response to this comment.
17	33	Increased entrainment-related mortality of larvae under the Proposed Project will harm Longfin Smelt The DEIR fails to adequately analyze entrainment of larval Longfin Smelt or to disclose the impact of entrainment-related larval mortality on the Longfin Smelt population as a whole. The DEIR acknowledges that larval Longfin Smelt are more vulnerable to entrainment-related mortality than juveniles (CDFW 2019 at 6-96). Yet it fails to analyze entrainment in several months in which larvae are abundant near the south Delta export facilities; the risk of larval entrainment increases dramatically in two of those months (April-May) due to proposed operations. Instead, the DEIR relies on findings of Kimmerer and Gross (2022) to assert that larval entrainment will average 1.5% of the population. (No rationale is provided which would explain why chronic loss of 1.5% of this one life stage via this one mechanism does not represent a significant impact to the population). Kimmerer and Gross (2022) underestimate the likely magnitude of larval entrainment in several ways. First, that paper studied larval Longfin Smelt exposure to entrainment based on data from 2009-2020. But the rules that governed entrainment risk during that period (the 2008/2009 operational baseline) have now changed in ways that are expected to increase entrainment-related mortality of larval Longfin Smelt (see above; CDWR 2019 Table 4.4-8a at 4-173 shows estimated increases in entrainment of particles that serve as proxies for larval fish). Second, they assumed that larval Longfin Smelt were only susceptible to entrainment for approximately 7-13 days post hatching, but recent data reveal that larval many Longfin Smelt remain in low salinity habitats, which are often within the area affected by water exports, for 100-150 days (Lewis et al. 2019 at 9 and at 48-83 of the PDF). Third, Kimmerer and Gross (2002) estimated direct entrainment only during January-March (and the DEIR models entrainment of particles as a proxy for larval entrainment only during these months; Tables 6-24 and 6-25); but larvae remain in the upper estuary through at least May (SWRCB 2010 Table 2 at 45; CDFW 2010) and likely into June (CDFW 2010; Rosenfield 2010; Lewis et al. 2019 at 9 of the PDF). Omitting estimates of larval entrainment in April	As summarized in Section 6.4.2.11, "Significance of Impacts of Longfin Smelt," overall entrainment loss of Longfin Smelt would be limited because of entrainment protections: larval Longfin Smelt entrainment under the Proposed Project would be similar or less than under Baseline Conditions, with conditions preceding spring generally being conducive to a lower proportion of juveniles potentially being in the south Delta and susceptible to entrainment following the larval stage; although OMR flows would be lower (more negative) under the Proposed Project than Baseline Conditions in April/May, OMR flows would be within the protective ranges described in Chapter 2 (see Section 2.3.3.3, discussion of "Larval and Juvenile Longfin Smelt Protection Action"), ranges within which entrainment risk for smelt early life stages is limited. In addition, the Proposed Project includes flows associated with the Healthy Rivers and Landscapes Program, which would result in a more westward distribution of Longfin Smelt during the spring, which would furth limit entrainment potential. With respect to the comment's suggestion that the months of April and May were not analyzed, these were assessed both with the analysis of salvage of juveniles in April/May (see discussion of "Juvenile Salvage-Old and Middle River Flow Analysis (based on Grimaldo et al. 2009a) in Chapter 6, Section 6.4.2.1), and also with the fact that the particle tracking models tracked particles for 90 days (see Appendix 6B, Section 6B.11, "Longfin Smelt Larval Entrainment (DSM2 Particle Tracking Model)";) this latter point means, for example, that particles released in March would include tracking

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		and May fails to disclose significant Longfin Smelt mortality that is likely to occur under the Proposed Project because (a) larval entrainment mortality occurs in months beyond what is estimated in the DEIR, (b) the salinity field usually moves east during April and May, increasing X2 and drawing rearing larvae closer to the export facilities (X2 is expected to increase under the Proposed Project relative to the baseline in most water year type during April and May (DEIR Appendix 4C at Table 4C-5-1-1c)), and (c) Old and Middle River flows are projected to become much more negative in April and May under the Proposed Project (Table 4B-2-8-1c), increasing the risk of larval entrainment.	during the months of April and May (in addition to March). With respect to the study of Kimmerer and Gross (2022), the EIR does not assert that larval entrainment will average 1.5% of the population but instead uses the study to provide context for the low level of population loss during 2009-2020, including updates following the same methods as the study for the years 2021 and 2022, which gave low percentage loss consistent with the published study (and represent additional years following changes in operational criteria noted in the comment). Kimmerer and Gross (2022:2734) summarized results from six monitoring surveys to note that vulnerability to south Delta entrainment is greatest for early larvae, and concluded on the basis of the estimates of the magnitude of proportional loss that this loss was too low to measurably influence population dynamics (Kimmerer and Gross 2022:2728). The Kimmerer and Gross (2022) study represents the best available study on this topic and the Proposed Project includes Longfin Smelt Science and Monitoring Initiatives including priority areas related to improved distribution and larval entrainment monitoring and life cycle model (see Chapter 2, Section 2.3.19.5, "Longfin Smelt Science Plan"), which will generate information informing adaptive management of Larval and Juvenile Longfin Smelt OMR Management (see Appendix 2B, Attachment 2, Section 2B-2.2, "Adaptive Management Actions"). References cited in this response: Grimaldo, L. F., T. Sommer, N. Van Ark, G. Jones, E. Holland, P. B. Moyle, B. Herbold, and P. Smith. 2009. Factors Affecting Fish Entrainment into Massive Water Diversions in a Freshwater Tidal Estuary: Can Fish Losses be Managed? North American Journal of Fisheries Management 29:1253–1270.19.

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			Kimmerer, W., and E. Gross. 2022. Population Abundance and Diversion Losses in a Threatened Estuarine Pelagic Fish. Estuaries and Coasts 45:2728–2745.
17	34	Furthermore, the 2019 DEIR (CDFW 2019) also failed to analyze the effect of project operations (the current baseline) on entrainment of larval Longfin Smelt in April and May. Larval entrainment would be expected to increase significantly between the 2008/2009 operational baseline and the SWP operations analyzed in CDFW 2019 – OMR flows became much more negative in April and May of the 2019 project, as evidenced by massive increase in juvenile entrainment expected under that project (see above) and increases in entrainment of particles meant to serve as proxies for larval entrainment during those months (CDWR 2019 Table 4.4-8a at 4-173). Because both X2 and negative OMR flows increase under the Proposed Project, larval Longfin Smelt entrainment will again increase substantially.	This comment describes comments submitted on the 2019 DEIR for the Long-Term Operation of the State Water Project. DWR fully responded to comments provided on the 2019 DEIR in the 2020 FEIR. The comment does not directly address the 2024 DEIR for the Long-Term Operation of the State Water Project and DWR is not required to respond to comments on projects that are no longer being pursued. However, DWR has reviewed the comment's content and provided responses where it may still be applicable to the 2024 DEIR for the Long-Term Operation of the State Water Project. The following response is provided for those elements of the comment that are applicable to the 2024 DEIR for the Long-Term Operation of the State Water Project. See Response to Comment 17-33 regarding longfin smelt entrainment from the perspective of the 2024 DEIR for the Long-Term Operation of the State Water Project.
17	35	The proposed "Larval and Juvenile Longfin Smelt Protection" action is not reasonably certain to prevent entrainment-mortality. This action is only triggered when Longfin Smelt larvae are detected at two specific sampling locations. But fish sampling programs can fail to detect target fish, even when those fish are in the vicinity and susceptible to entrainment. This is especially likely when abundance of a target fish species is low, which is exactly the condition when preventing entrainment-mortality is most critical. For instance, Delta Smelt have been entrained on days when sampling designed to detect Delta Smelt failed to find any of these fish at stations near to the south Delta Export facilities. Specifically, on days in 2013 when Kodiak Trawl sampling detected no Delta Smelt at sampling stations nearest the south Delta water export facilities (January 7, February 4-6, March 4, and April 29-May 2), large numbers of Delta Smelt were salvaged (16, 11, 4, and 284 fish, respectively; Figure 1 [Exhibit 2]). This indicates that Longfin Smelt	With respect to the comment's suggestion that the cited action is not reasonably certain to prevent entrainment mortality, the action is not intended to prevent entrainment mortality but to minimize entrainment risk and therefore minimize entrainment mortality. The example of loss of Delta Smelt in 2013 (for adults, as opposed to the larvae to which the cited action applies) provides no context as to estimated population-level loss in that year, which was in fact relatively low during that year (see Smith et al. 2021: Figure 2.) The two specific sampling locations are at the outer edge of the entrainment zone to south Delta export facilities, and farther away from the facilities than the overall range of sampling locations from the current ITP, making the OMR action more proactive than the current ITP's actions. The action is also scaled to the San Francisco

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		larvae and juveniles are susceptible to entrainment-mortality, even when sampling programs fail to detect them close to the export facilities.	Bay Study Longfin Smelt index in order to account for fluctuations in population abundance, as opposed to being based on fixed numbers as in the current ITPA, which would not account for lower abundance. Please also see Response to Comment 17-33 related to the Longfin Smelt Science and Monitoring Initiatives, which is relevant to adaptive management of monitoring as it relates to entrainment management. References cited in this response: Smith, W. E., L. Polansky, and M. L. Nobriga. 2021. Disentangling Risks to an Endangered Fish: Using a State-Space Life Cycle Model to Separate Natural Mortality from Anthropogenic Losses. Canadian Journal of Fisheries and Aquatic Sciences 78(8):1008-1029.
17	36	[Exhibit 2: Reported CVP daily salvage of Delta Smelt (blue) and combined daily CVP/SWP salvage (orange), December 2012-May 2015. The USFWS's Kodiak Trawl detected no Delta Smelt and sampling stations nearest the export facilities during this period. On days when the Kodiak Trawl was sampling but detected no Delta Smelt (grey bars: January 7, February 4-6, March 4, and April 29-May 2), Delta Smelt were salvaged at both CVP and SWP water export facilities.]	Please see Response to Comment 17-35 regarding this issue.
17	37	Entrainment-related mortality of larvae and juvenile Longfin Smelt represents a significant threat to the persistence of this population and its ability to recover, at least episodically (Rosenfield 2010). In fact, each previous Incidental Take Permit for SWP operations has included actions intended to limit this source of mortality, as does the current ITP; clearly CDFW considers Longfin Smelt entrainment mortality to be a problem that must be avoided and fully mitigated in a CESA permit. The very large proportional changes in entrainment projected for the Proposed Project, on top of massive increases in entrainment mortality expected under current operations relative to the 2008/2009 baseline, are likely to have measurable impacts on overall population dynamics. The final DEIR must: • correct its flawed estimates of entrainment-related mortality, • apply estimates of the likely conversion between juvenile salvage and entrainment loss that are based in the best available science (or at least study a range of such values),	Please see Responses to Comments 17-29 through 17-35 on these issues.

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		• acknowledge that some entrainment is likely to occur even when Longfin Smelt "salvage" is zero, • estimate larval entrainment impacts in April and May (at least) • disclose the cumulative impact on larval and juvenile Longfin Smelt entrainment due to operational changes to those that persisted under the 2008/2009 BiOps and analyze the combined impact of reduced Delta outflows and increasing larval and juvenile Longfin Smelt entrainment-related mortality on overall population dynamics and viability.	
17	38	Delta Smelt Delta Smelt are now one of the most endangered species on Earth. They are found only infrequently in the wild and none have been caught in the fall midwater trawl since 2017 (although a few fish are still detected every year in other sampling programs and/or at the CVP/SWP export facilities). Given its dire plight, operational proposals that do not significantly improve status quo conditions are likely to lead to extinction of Delta Smelt in the wild (Smith et al. 2021) and are thus inconsistent with state and federal endangered species acts. The DEIR's comparisons to the status quo conditions do not disclose the harm to Delta Smelt that is likely from proposed operations. Relatedly, Delta Smelt life cycle modeling results presented in the 2024 CVP LTO draft EIS (federal DEIS 2024) in support of the forthcoming federal biological opinions, which is not utilized or presented in the DEIR, indicates that the nearly identical federal preferred alternative will result in continued declines in abundance of Delta Smelt (federal DEIS Figure 12-4 at 12-55). This result is not consistent with the DEIR's finding of no significant impact. One of the other modeled operational alternatives in the federal DEIS was expected to result in population growth; however, the DEIR does not consider this alternative or any alternative with similar environmental benefits (i.e., the DEIR does not consider an adequate range of alternatives). The Proposed Project reinforces status quo conditions or makes them worse for Delta Smelt – it is not consistent with state or federal Endangered Species Acts. The DEIR finding that unmitigated negative impacts of Project Operations to critically endangered Delta Smelt are not significant is not consistent with CEQA.	The comment suggests that Smith et al. (2021) investigated extinction of Delta Smelt, but this was not something explored in that study. It is unclear why the comment cites the federal DEIR life cycle modeling analysis, given that life cycle modeling for the Proposed Project was presented in the EIR and demonstrated limited potential for negative effects (see the discussion of "Delta Smelt Life Cycle Modeling" in Section 6.4.1.1.) With respect to consistency with state and federal endangered species acts, please see Common Response 9, "Relationship to the 2023 Biological Assessment and NEPA," and Common Response 11, "Application of CESA Standards." With respect to alternatives considered, please see Common Response 3, "The CEQA Process." Regarding the comment's suggestion that the Proposed Project reinforces status quo conditions or makes them worse, as summarized in Section 6.4.1.11, "Significance of Impacts on Delta Smelt," although there is the potential for impacts on Delta Smelt primarily by entrainment (with only spring entrainment in April/May potentially being greater under the Proposed Project than Baseline Conditions) and changes to summer Delta outflow, such effects would likely result in a relatively small percentage change to population numbers. Elements of the Proposed Project—in particular Delta Smelt supplementation—would more than offset potential negative effects because supplementation would result in a severalfold increase

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			in population size, which is greater than estimated negative effects. References cited in this response: Smith, W. E., L. Polansky, and M. L. Nobriga. 2021. Disentangling Risks to an Endangered Fish: Using a State-Space Life Cycle Model to Separate Natural Mortality from Anthropogenic Losses. Canadian Journal of Fisheries and Aquatic Sciences 78(8):1008-1029.
17	39	Reduced Delta outflow under the Proposed Project will harm Delta Smelt Numerous recent studies indicate that Delta Smelt population growth is positively correlated with Delta outflow during certain months and seasons (USFWS 2016, CDFW 2016, Polanski et al. 2020, CSAMP 2024). Reporting on results of the USFWS's Delta Smelt Life Cycle Model (Delta Smelt LCM), Polanski et al. (2020 at 358) states: "… the following relationships were observed: (a) recruitment was most influenced by temperature, the approximate location of the 2-ppt isohaline during the previous fall, and adult food (note also the export-inflow ratio had high evidence of support based on the models summarized in Table C.2); (b) post-larval survival by outflow and turbidity; (c) juvenile survival by turbidity (Secchi depth) and temperature; and (d) sub-adult survival by turbidity in the south Delta (south Secchi depth), a spatially localized hydrodynamics flow measure in the Old and Middle River corridor (OMR), and adult striped bass (Morone saxatilis)." (emphasis added) Post-larval survival is positively associated with Delta outflow during June-August ("summer Delta outflow"; see also CSAMP 2024). Summer Delta outflow under the Proposed Project is expected to decrease in all water year types relative to baseline conditions (DEIR Appendix 4c Table 4C-3-10-1c at 189 of the PDF). Therefore, according to the best available science, the Proposed Project would be expected to harm Delta Smelt.	Please see Response to Comment 17-38 describing the limited effects of differences in Delta outflow under the Proposed Project and the overall more than offsetting of operations-related effects as a result of other elements of the Proposed Project, in particular supplementation.
17	40	Recruitment of larval Delta Smelt is negatively associated with X2 (positively associated with Delta outflow) in the previous fall ("Fall X2"; USFWS 2008; Polansky et al. 2020; CSAMP 2024). The Proposed Project would reduce fall Delta outflow in Wet years, Below Normal years, and Dry years (DEIR Appendix 4c Table 4C-3-10-1c at 189 of the PDF), increasing fall X2 in those year types (DEIR Appendix 4c Table 4C-5-1-1c at p. 3 of the PDF). This decrease in fall Delta outflow is in addition to the	As the comment mentions, the modeling investigation by Polansky et al. (2021) found September–November X2 was negatively correlated to the subsequent year's recruitment (adult to larval survival); however, as illustrated by plots of the predicted relationship with associated credible intervals from statistical modeling (Polansky et al. 2021: Figures 1 and C.1), there is

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		decrease that was expected to result from current operations relative to the 2008/2009 operational baseline (CDWR 2019 Figure 4.4-27 at 4-14). As a result, it is more likely than not that the Proposed Project will harm Delta Smelt recruitment and post-larval survival.	appreciable statistical uncertainty in the relationships, which are based on annual mean values across water years, as discussed in Section 6.4.1.2, "Delta Smelt Summer and Fall Habitat Actions." September–November X2 thus was not included in the subsequent modeling effort by Smith et al. (2021), which focused only on the relationships found by Polansky et al. (2021) to have the most evidence of having an effect in the hypothesized direction. The Compass Resource Management (2024) analysis (cited in the comment as CSAMP 2024) is based on the same modeling (Polansky et al. 2021; Smith et al. 2021) and therefore also demonstrates limited effects of fall X2. This indicates that any effect of the Proposed Project on Delta Smelt as a result of differences in fall X2 would be limited; please also see Response to Comment 17-38 describing the limited effects of differences in Delta outflow under the Proposed Project and the overall more than offsetting of operations-related effects as a result of other elements of the Proposed Project, in particular supplementation. References cited in this response: Compass Resource Management. 2024. CSAMP Delta Smelt Structured Decision Making, Round 1 Evaluation Report. Prepared for Collaborative Science and Adaptive Management Program by Brian Crawford and Sally Rudd, Compass Resource Management, in collaboration with CSAMP Delta Smelt Technical Working Group. June 6. Draft Version 3.0. Polansky, L., K. B. Newman, and L. Mitchell. 2021. Improving Inference for Nonlinear State-Space Models of Animal Population Dynamics Given Biased Sequential Life Stage Data. Biometrics 77(1):352–361. Smith, W. E., L. Polansky, and M. L. Nobriga. 2021. Disentangling Risks to an Endangered Fish: Using a State-Space Life Cycle Model to Separate Natural Mortality from Anthropogenic Losses. Canadian Journal of Fisheries and Aquatic Sciences 78(8):1008-1029.

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17	41	The Proposed Project's "Summer Fall Habitat" action will not mitigate for the expected negative effects of flow changes described above. The DEIR makes clear that additional fall flow promised as part of the 2019 ITP, is not reasonably likely to occur under the Proposed Project, stating: "One of the actions required by the 2020 ITP (Condition of Approval 8.19) includes release of 100 TAF for Delta Outflow during June through September of wet and above-normal water years, or October immediately following the end of that water year. However, if conditions are appropriate and it is approved by CDFW, DWR may defer and redeploy the additional 100 TAF Delta Outflow to supplement Delta Outflow in the following water year during the March through September period, or the October immediately following the end of that water year. The additional 100 TAF is not required to be deployed if the following water year is a critically dry water year." DEIR at 2-34 (emphasis added). The Proposed Project suggests that: "DWR and Reclamation will consider food subsidy measures to augment the SFHA." (DEIR at 2-50). However, in addition to not being reasonably certain to occur, the effect of food subsidies that the DEIR describes are hypothetical and uncertain. Indeed, Hammock et al. (2019) indicate that Delta Smelt foraging success is improved by the physical context (proximity to marsh habitat) more than by prey abundance.	The discussion in Section 6.4.1.2 of the DEIR, "Delta Smelt Summer and Fall Habitat Actions," illustrates that summer-fall habitat conditions would be expected to be generally similar for Baseline Conditions and the Proposed Project; this is without the additional fall flow, which was not modeled. The impact analysis in the EIR also does not include consideration of food subsidy measures, which have not been defined. Please also see Response to Comment 17-38 describing the limited effects of differences in Delta outflow under the Proposed Project and the overall more than offsetting of operations-related effects as a result of other elements of the Proposed Project, in particular supplementation.
17	42	Increased entrainment-related mortality under the Proposed Project will harm Delta Smelt The negative effect of entrainment-related mortality on Delta Smelt is well documented (USFWS 2008; 2019; Castillo et al. 2012). Recently, Smith et al. (2021 at 1021) concluded: "In a population in which recruitment success rates cannot sustain the population, no additional mortality is sustainable; there is no surplus production. Given average environmental conditions, no level of predicted delta smelt entrainment mortality, including that associated with zero net OMR, led to a high probability of population growth. No additional mortality can be sustained by the population, but that does not mean that entrainment mortality of 0 will result in its recovery". Nonetheless, OMR flows are expected to become much more negative (flow toward the export pumps) in April and May under the Proposed Project, increasing the likelihood of larval and juvenile Delta Smelt entrainment mortality. The DEIR acknowledges (at 6-43): "The [particle tracking model] analysis suggests the potential for appreciable relative	As described in the "Delta Smelt Life Cycle Modeling" section of Section 6.4.1.1, "Delta SWP Facility Operations," of the DEIR, the life cycle modeling including effects of entrainment found limited differences in scenarios, reflecting limited differences in Old and Middle River flows (and summer Delta outflow). Note that the modeling of entrainment such as particle tracking modeling, also has limited ability to account for minimization measures related to real time operations-related adjustments Old and Middle River flows. With respect to the portion of the comment related to the turbidity bridge, the -3,500-cfs Old and Middle River flow level proposed in the action is consistent with the level of Old and Middle River flow beyond which flows more negative would be certain to harm the population (Smith et al. 2021:1021 and Figure 3). Note also that the

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		increases in larval and early juvenile Delta Smelt entrainment at CCF in April and May under the Proposed Project scenario compared to the Baseline Conditions scenario (Table 6-4). This reflects greater differences in OMR flows during this time-period ..." DEIR Table 6.4 reveals that modeled entrainment of particles (which serve as a modeling proxy for Delta Smelt) would increase by 26%-216% in May (and this likely underestimates the increase in entrainment during drought conditions when Bay-Delta water quality requirements are waived under Temporary Urgency Change Orders). These findings are not consistent with conserving and eventually recovering Delta Smelt in the wild. Given changes in combined CVP/SWP project operations since 2019, it is likely that entrainment of larval and juvenile Delta Smelt now has significant impact on overall Delta Smelt population dynamics, but the DEIR inappropriately dismisses the significance of those impacts. Using data from 1994 through 2015, Polansky et al (2020) found strong evidence that OMR/entrainment was a major factor in the survival of sub-adult Delta Smelt. Smith et al. (2021) found that hydrodynamic management resulted in lower entrainment mortality in the period 2007-2015. However, constraints on negative OMR have weakened substantially compared to the periods studied by Polansky et al. and Smith et al. And the Proposed Project would again weaken requirements for OMR flow that are designed to minimize entrainment mortality. During the OMR management season, OMR will be limited to no more negative than -5,000 cfs. The Proposed Project's Adult Delta Smelt "turbidity bridge" trigger will require reduction of negative OMR to -3,500 cfs for 10 days. This is less protective than the baseline operations, which required reduction of OMR to no less than -2000 cfs for 5 days (DEIR Appendix 4A attachment 2 at 4A-2-7). Both the default OMR limit and the new proposed threshold following initiation of the "turbidity bridge" action are arbitrary and capricious. The DEIR fails to demonstrate that these OMR thresholds are adequately protective of Delta Smelt or any of the other species for which entrainment is a concern. CDWR previously admitted that OMR flows of -5,000 cfs represented "the inflection point at which entrainment tends to sharply increase." CDFW 2019 at 4-123. In fact, the 2008 USFWS BiOp RPA restricted use of the -5,000 cfs limit to a "low-entrainment risk" scenario. Under a "high-entrainment risk scenario," OMR flow was limited to fourteen-day moving averages no more negative than - 3,500	additional turbidity monitoring stations for assessing the turbidity bridge are geographically farther from the south Delta export facilities than the stations included in the turbidity bridge action under Baseline Conditions, likely making the Proposed Project more proactive in terms of triggering Old and Middle River flow management in response to increases in turbidity. In addition, the Proposed Project includes a two-day buffer at the end of the action, indicated by turbidity less than 12 FNU, allowing more opportunity for fish to avoid entry into the south Delta by limiting changes to more negative Old and Middle River flow until after the turbidity field has diminished. See Chapter 3, Section 2.3.3.3, discussion of Adult Delta Smelt Entrainment Protection Action (Turbidity Bridge.) With respect to Temporary Urgency Change Orders and drought conditions, please see Common Response 12, "Drought Conditions." Please also see Response to Comment 17-38 describing the limited effects of differences in Delta outflow under the Proposed Project and the overall more than offsetting of operations-related effects as a result of other elements of the Proposed Project, in particular supplementation. References cited in this response: Smith, W. E., L. Polansky, and M. L. Nobriga. 2021. Disentangling Risks to an Endangered Fish: Using a State-Space Life Cycle Model to Separate Natural Mortality from Anthropogenic Losses. Canadian Journal of Fisheries and Aquatic Sciences 78(8):1008-1029.

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		cfs or -2,000 cfs (USFWS 2008 at p. 353–54) depending on actual salvage of Delta Smelt. The Proposed Project does not include any limit on actual entrainment of Delta Smelt adults and, because they are now so far, any entrainment of adult would represent a severe negative impact (Smith et al. 2021) that should be avoided at all costs. The DEIR should be revised to analyze whether impacts that are likely to occur as a result of weakening the "turbidity bridge" element and other OMR thresholds are adequately protective of Delta Smelt and other fish populations and whether these impacts can be fully mitigated or avoided. The negative effects on Delta Smelt of continued weakening of OMR constraints under the Proposed Project are large and obvious. As noted above, entrainment of particles meant to serve as proxies for Delta Smelt entrainment were projected to increase dramatically (by 26% to 321% depending on the water year type) during April and May under the 2019 project (which is now the baseline) relative to the 2008/2009 BiOp baseline (CDWR 2019 Table 4.4-8a at 4-173). The Proposed Project threatens to increase Delta Smelt entrainment again during these months. As a result of these consecutive changes in the project operations, entrainment of larval and juvenile Delta Smelt is expected to have increased many-fold compared to conditions studied by Polansky et al. (2020) and Smith et al. (2021). It is now likely that entrainment of larval and juvenile Delta Smelt is a serious threat to Delta Smelt persistence. The draft DEIR should be revised to reflect this reality and project operations should be modified to avoid this impact, especially given the grave status of Delta Smelt and the consequences of additional entrainment-related mortality.	
17	43	White Sturgeon In response to a petition from some of our organizations (Baykeeper et al. 2023), the California Fish and Game Commission recently declared California White Sturgeon to be a candidate for listing under the state Endangered Species Act (CESA) [Footnote 30: A federal petition to list the San Francisco Bay estuary watershed population of White Sturgeon is pending.]. This means that this population receives full protection under CESA until CDFW completes a status review. White Sturgeon harvest is now prohibited and what had been a valuable fishery is now closed. It is appropriate for the DEIR to analyze potential impacts of proposed CVP/SWP combined operations on White Sturgeon, and to minimize and fully mitigate those impacts that are expected to result from those operations. Table 6-1 of the DEIR should be revised to	The text of the EIR has been revised per the comment.

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		properly reflect the "candidate" status of California White Sturgeon that are affected by project operations	
17	44	The only known spawning population of White Sturgeon in California is found in the San Francisco Bay watershed. Most spawning occurs in the Sacramento River although NMFS (17388 Federal Register/Vol. 70, No. 65 citing Beamesderfer et al. 2004), CDFW 2015, and Heublein et al. (2017) indicate that White Sturgeon may spawn in the Feather River. Spawning has also been detected in recent years in the San Joaquin River mainstem, though reproductive success has not been confirmed (Jackson et al. 2016). The California White Sturgeon population is declining and imperiled. CDFW (2015 at p. 224) states "Annual recruitment of white sturgeon in California appears to have decreased since the early 1980s." Similarly, Blackburn et al. (2019 at pp. 897-898) observed that "Few age-0 and age-1 White Sturgeon have been sampled since 1998, and only two strong year-classes (2006 and 2011) have been documented in the last 19 years [through 2016]"; they concluded, "[c]ontinued poor recruitment has the potential to put the population at risk." In 2022 and 2023, large numbers of White Sturgeon were killed by a harmful algal bloom in San Francisco Bay, which further degraded the viability of this imperiled fish (CDFW 2023). Recruitment of juvenile White Sturgeon is positively correlated with high river flows and Delta outflow during spring and early summer months (Israel et al. 2009; CDFW 2015, 2023; SWRCB 2017; see also AFRP 2001; Moyle 2002; Willis et al. 2022). The connection between White Sturgeon reproductive success and high river flows is also known from other watersheds (Parsley and Beckman 1994). One of the main threats to California White Sturgeon is the diversion of fresh water from major Central Valley rivers where they spawn, incubate, and rear as larvae (or did so historically), and diversion from the Delta, which is habitat for juveniles, sub-adults, and adults. Chronically low river flows and reductions in freshwater inflow to San Francisco Bay (Delta outflow) resulting from water diversion and storage operations have been implicated in the decline of California White Sturgeon (CDFW 2015; Jackson et al. 2016; SWRCB 2017; Baykeeper et al. 2023). As a result, successful cohort formation is infrequent for California White Sturgeon, corresponding to years of high spring-summer river flows into and out of the Delta (Moyle 2002; Fish 2010; CDFW 2015 citing Kohlhorst et al. 1991 and Schaffter and Kohlhorst 1999; SWRCB 2017).	The impacts noted in the comment based on differences in Delta outflow are limited, with little difference in White Sturgeon year class strength between the Proposed Project and Baseline Conditions. Updated analysis has been added to the FEIR to address the issue of log-linear versus non-linear relationships between White Sturgeon and Delta outflow; these analyses demonstrated that there was little difference in the statistical explanatory ability of the different models and the relative difference between scenarios is generally similar to that provided by the original method from the DEIR. Please see Response to Comment 17-46 with respect to CESA standards. The minor modifications included in the Project's FEIR do not change conclusions or impact determinations identified in the analysis and recirculation is not required.

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		The SWRCB analyzed the relationship between recruitment of juvenile White Sturgeon and average freshwater Delta outflow in March-July (SWRCB 2017). That analysis found that recruitment of juvenile White Sturgeon was much less likely to occur when March-July average flows were below certain thresholds (see Figures 3.6-2 and 3.6-3 of SWRCB 2017 at pp. 3-65) and determined that monthly average Delta outflows > 37,000 cfs during this period were necessary to protect the public trust benefits of California White Sturgeon. From 1980-1999, average March-July Delta outflows >37,000 cfs occurred 30% of the time (6 out of 20 years). Since 1999, flows of this magnitude have occurred only 17.4% of the time (4 out of 23 years). Reis et al. (2019 Table 5 at 12) show that the frequency of wet and above average hydrology (as they measured it) experienced by White Sturgeon in the Bay's watershed is reduced by water diversions and storage, including operations of the SWP. Furthermore, Baykeeper et al (2023) showed that recruitment of YOY White Sturgeon was very low or zero when Sacramento River flows ("SAC" + "YOLO" variables in Dayflow) average < 30,000 cfs between April and July (Figure 2) [Exhibit 3]. Reduced River Flows and Delta Outflows under the Proposed Project will harm White Sturgeon The DEIR reveals that the Proposed Project will have negative effects on the Bay's White Sturgeon population. Based on a linear regression of the White Sturgeon year class index (Age 0 + Age 1 fish), the DEIR projects declines in Wet and Above Normal year types (DEIR Tables 6- 80 at 6-208 and 6-81 at 6-209). Projected impacts in Dry years are likely to be erroneous because juvenile White Sturgeon production generally occurs only in wetter years (Figure 2; Willis et al. 2022) [Footnote 31: Projections for change in drier year types reveal flaws in the analysis that would tend to understate the true impact of the Proposed Project. The DEIR's method for calculating Delta Outflow impacts of the Proposed Project on White Sturgeon (DEIR Appendix 6B at 6B-408) assumes that the relationship between production of White Sturgeon juveniles and Delta outflow is log-linear across the range of inflows. Figure 2 reveals that young-of-year (Age 0) White Sturgeon are almost never produced when Sacramento River flows are below a certain level and the recruitment-flow relationship is non-linear (a pattern sometimes referred to as a "hockey stick"). Because the DEIR applies a log-linear regression across the range of flows, it estimates that project operations will affect production of juvenile White Sturgeon across the	

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		range of flows. But this is unlikely and the analysis is flawed. Ignoring the non-linear nature of the flow-juvenile production relationship also means that the DEIR's regression is lower magnitude ("flatter") than the actual relationship, thus it likely underestimates production of juveniles at high flows. As a result, the DEIR's analysis is likely to underestimate the Proposed Project's effects on White Sturgeon production in wetter years, relative to the baseline.]. Project operations that exacerbate one of the major forces driving the long-term decline of a fish that is already imperiled and protected under CESA is a significant impact on the environment, and contrary to CESA. The DEIR must be revised to disclose and address this impact.	
17	45	Failure to analyze or disclose effects of the Proposed Project as a whole Despite the strong evidence that White Sturgeon population viability (i.e., population abundance, productivity, spatial distribution) benefits from a relatively high frequency of relatively high river flows into and through the Delta, the DEIR fails to analyze or disclose the likely negative effects of the SWP's Oroville reservoir operations (including reduction of April-July flows and radical alteration of the timing of those flows) on White Sturgeon reproductive success in the Feather River. Moreover, the DEIR fails to disclose effects of the Proposed Project on entrainment of White Sturgeon at the CVP's south Delta water export facilities. CVP and SWP operations are coordinated and their combined effect on Delta hydrodynamics results in entrainment of White Sturgeon at both facilities. Ignoring an effect of the Proposed Project on entrainment of White Sturgeon at the CVP represents a failure to consider the effects of the whole project and a failure to properly evaluate cumulative effects.	With respect to areas of upstream of the Delta, please see Common Response 1, "Scope of Analysis," for an explanation of the geographic scope of the EIR Discussion of CVP effects combined with the Proposed Project is provided in Chapter 10, Section 10.1.6, of the DEIR, "Aquatic Biological Resources." Please note that the project is the long-term operations of the SWP and does not include CVP operations.
17	46	Entrainment-related mortality under the Proposed Project will harm White Sturgeon The DEIR shows that average annual entrainment mortality of White Sturgeon juveniles will increase in most year-types (Table 6-79 at 6-207). The DEIR's analysis regarding the potential impact of entrainment on the Bay's White Sturgeon population is flawed because its calculation of average entrainment includes years where White Sturgeon juvenile abundance is very low or zero – i.e., the plurality of years in which reproduction is unsuccessful. In many years, hundreds of White Sturgeon are salvaged – in 2023, almost one thousand White Sturgeon juveniles appeared in salvage. And, as discussed above (see discussion of	The analysis of entrainment risk cited in the comment shows overall similar entrainment risk. As described in supplemental information for White Sturgeon provided as part of the ITP Application (ICF 2024:6-9), annual salvage at the SWP Skinner Fish Facility is on the order of tens of White Sturgeon, which consists of juveniles less than a year old up to ~five years old based on length. Take by mortality during the salvage process is likely low because of relatively high louver efficiency and low predation for juvenile sturgeon. The most recent five-year estimate of legal-sized (40- to 60-inch;

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		Longfin Smelt), entrainment-related mortality is likely to be higher than salvage; the DEIR does not disclose this impact[.] Nevertheless, the DEIR states (at 206) "salvage as assessed with the salvage-density method … would be expected to be low under the Proposed Project and Baseline Conditions, with limited differences anticipated between the scenarios based on modeled exports … and generally similar entrainment risk." Despite this unsupported assertion, the DEIR's analysis of impacts to White Sturgeon focusses only on entrainment-related impacts to White Sturgeon at CVP/SWP export facilities. The proposed "White Sturgeon Protection Measures" (DEIR Section 2.3.4) amount to convening a technical team to develop studies related to entrainment. DWR proposes to consider relevant data to inform "take reduction measures" by 2027 and "[i]n the interim, DWR and CDFW will develop information that will form the basis of an operational assessment in the event of elevated entrainment risk that may lead to the implementation of a measure to reduce take at the SWP" (DEIR at 2-31). Although we support scientific research into factors that may reduce take of White Sturgeon at the export pumps, (a) those studies do nothing to minimize or fully mitigate the take that occurs now and will occur under the Proposed Project, and (b) the impacts DWR proposes to study are not the only major impacts to the White Sturgeon population from current or proposed operations. Conserving this species and the options to recover it requires applying the best available science. At this time, the science clearly indicates that White Sturgeon are harmed by operations that reduce flows into or through the Delta when those flows would exceed certain thresholds.	~1,000- to 1,500-mm) White Sturgeon is ~33,000 fish. Given the survival rates at age assumed by Blackburn et al. (2019), and assuming the abundance estimate of legal-aged White Sturgeon represents 9- to 19-year-olds, at an equilibrium age structure recent historical salvage would correspond to ~0.2 percent of age one through five juveniles in the population and associated loss would be lower if the majority of fish are successfully salvaged as suggested by the experiments of Steel et al. (2020). Even if prescreen predation losses prior to salvage amounted to several times the number of fish salvaged, as has been observed in Chinook Salmon, the loss would remain a low percentage of the population (<~1 percent). Although loss of juveniles at the CVP increases the cumulative estimate to potentially several hundred juveniles based on the year with highest observed salvage, the percentage of salvaged juveniles or juveniles cumulatively dying during salvage would remain small, even if salvage efficiency is at lower values observed in experimental studies. With respect to CESA standards, please see Common Response 11, "Application of CESA Standards." In addition to the minimization measures specific to White Sturgeon described in the EIR, as cited in the comment, for full mitigation the ITP Application also includes a Feather River passage improvement project (i.e., removal of the Sunset Pumps diversion rock weir) to provide compensatory mitigation for White Sturgeon take by improving adult White Sturgeon passage (ICF 2024:5-2). With respect to Delta outflow, please see Response to Comment 17-44. References cited in this response: Blackburn, S. E., M. L. Gingras, J. DuBois, Z. J. Jackson, and M. C. Quist. 2019. Population Dynamics and Evaluation of Management Scenarios for White Sturgeon in the Sacramento–San Joaquin River Basin. North American Journal of Fisheries Management 39(5):896–912.

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			ICF. 2024. Long-term Operations of the State Water Project Incidental Take Permit White Sturgeon Supplement (No. 2081-2023-054-00). July. (ICF 104469.0.014.01.). Sacramento, CA. Prepared for California Department of Water Resources, Sacramento, CA. Steel, A. E., J. J. Anderson, B. Mulvey, and D. L. Smith. 2020. Applying the mean free-path length model to juvenile Chinook salmon migrating in the Sacramento River, California. *Environmental Biology of Fishes* 103:1603–1617.
17	47	Chinook Salmon – Spring Run The viability of spring-run Chinook Salmon is extremely precarious (Lindley et al. 2007; NMFS 2014) and NMFS now considers the species to be at "high" risk of extinction (SWFSC 2023). Spring-run Chinook Salmon abundance and productivity are low and declining. They are also at high risk from localized catastrophic events (fire, volcanic activity, disease outbreaks, chemical spills) because of their constricted geographic range [Footnote 32: As this is written, two of the few remaining wild Central Valley spring-run Chinook Salmon populations are at grave risk from wildfires that are ravaging their watersheds (KQED 2024 at https://www.kqed.org/news/11998224/park-fire-jeopardizes-californias-iconic-spring-run-chinook-salmon).]. Elevated genetic influence from hatchery-reared fish and degraded life-history diversity also undermines the viability of this species. Failure to analyze or disclose effects of the Proposed Project as a whole The DEIR's failure to analyze or disclose impacts of Oroville Reservoir operations on state and federally threatened Central Valley spring-run Chinook Salmon is a significant omission. Operations of Oroville are intimately and inextricably connected to SWP export operations in the Delta. The Feather River hosts a persistent population of wild-spawning spring-run Chinook salmon, which is affected by operations of Oroville Reservoir (NMFS 2014 at 40-42). The federal ESA recovery plan for Central Valley salmonids recommends many actions necessary to recover Central Valley spring-run Chinook salmon that implicate Oroville operations, including "Manage releases from Oroville Dam with instream flow schedules and criteria to provide suitable water temperatures for all life stages, reduce stranding and isolation, protect	Please see Common Response 1, "Scope of Analysis," for a response to this comment. Please refer to Response to Comment 17-7 in regards to Oroville Reservoir operations. To the extent that this comment describes various background information in support of comments on the DEIR, no response is required. DWR has reviewed all comments and will consider all comments in its decision-making process. Further the EIR did not omit the baseline discussion, resource chapters in the EIR, Chapters 4-9, compare the project with existing conditions baseline. See also Common Response 2, "CEQA Environmental Baseline."

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		incubating eggs from being dewatered, and promote habitat availability" (NMFS 2014 at 241-252). By omitting any analysis of the Proposed Project (or the baseline) on Oroville operations, the DEIR fails to analyze or disclose the totality of SWP operational impacts on spring-run Chinook Salmon.	
17	48	Entrainment-related mortality under the Proposed Project will harm threatened spring-run Chinook Salmon Entrainment-related loss impairs the viability of imperiled Chinook Salmon (Kimmerer 2008). The DEIR anticipates that the Proposed Project will dramatically increase entrainment-related mortality of spring-run Chinook Salmon. Loss of juvenile spring-run Chinook Salmon in the SWP export infrastructure is expected to increase by 7%-48% under the Proposed Project versus the baseline (DEIR Table 6-67 at 6-165). The DEIR acknowledges (at 6-175), "[t]here is greater potential for negative effects on spring-run Chinook Salmon under the Proposed Project relative to Baseline Conditions as a result of spring (April/May) Entrainment…" Moreover, the baseline was estimated to produce very large increases in mortality of spring-run Chinook Salmon as compared to operations under the 2008/2009 biological opinions (CDWR 2019 Table 5.3-15 l. at 5-174). The DEIR fails to disclose this impact of the Proposed Project or its baseline on spring-run Chinook Salmon. Furthermore, the DEIR fails to analyze or disclose the effects of the Proposed Project on spring-run Chinook Salmon entrainment-related loss in the CVP export infrastructure, despite the fact that coordinated operations of the two water projects produces environmental conditions (e.g., OMR) that affect entrainment rates at both facilities.	The EIR has been prepared in accordance with CEQA and adequately discloses the scope, severity, and magnitude of potential impacts for the environmental resources analyzed in this EIR. Regarding the level of impact mentioned in the comment, as discussed in Section 6.4.4.11, of the DEIR, "Significance of Impacts on Spring-Run Chinook Salmon," the Proposed Project includes various measures that would limit the potential for significant impacts on spring-run Chinook Salmon, including but not limited to entrainment protection, spring Delta outflow, and other measures such as Skinner Fish Facility improvements (see detailed descriptions in Chapter 2). Although there is potential for increases in entrainment as noted in the comment and analyzed in the EIR, the EIR analysis showed that the number of genetically identified individuals is likely low and also indicated that this would have little effect on through-Delta survival, which would be similar under the Proposed Project and Baseline Conditions. With respect to baseline conditions, any impacts to spring-run Chinook Salmon were minimized and fully mitigated by the conditions from the 2020 Incidental Take Permit. Please see Common Response 3, "The CEQA Process," and Common Response 2, "CEQA Environmental Baseline," for additional information on the approach for considering the CEQA Proposed Project to "baseline conditions" in this EIR.
17	49	Project impacts on through-Delta survival under the Proposed Project will harm spring-run Chinook Salmon River flow and diversion patterns affect through-Delta survival of juvenile Chinook Salmon (SWRCB 2017; Perry et al. 2018; Michel 2018; Hance 2022; Notch et al. 2020). NMFS has repeatedly warned that, "[s]mall reductions across multiple life stages can be sufficient to cause	With respect to the through-Delta survival results, neither the Delta Passage Model results for spring-run Chinook Salmon nor the STARS modeling results for the spring months of primary relevance for spring-run Chinook Salmon demonstrated differences between scenarios of 1%. In the case of the Delta Passage Model

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		the extirpation of a population," and in the WaterFix biological opinion [Footnote 33: National Marine Fisheries Service, Final Biological Opinion, California WaterFix Project, NMFS Consultation No. WCR-2016-5506.] concluded that a 1% reduction in survival observed in the Delta Passage Model "can impact the population to a greater degree," and that a "1% to 2% mean reduction in survival is a notable reduction for an endangered species, especially if it occurs on a consistent (i.e., annual) basis." Reducing the negative effects of CVP/SWP operations (exports and reservoir releases) on Chinook Salmon migration through the Delta is essential to ensuring the viability of imperiled populations and preserving opportunities to recover them. NMFS recovery plan for endangered Central Valley salmonids identifies a suite of actions needed to achieve minimum through-Delta survival objectives of "… 57% for winter-run, 54% for spring-run, and 59% for steelhead originating from the Sacramento River; and 38% for spring-run and 51% for steelhead originating from the San Joaquin River" (NMFS 2014 Table 5-4 at 127). Among the actions necessary to achieve these targets NMFS (2014) calls for: minimizing the frequency, magnitude, and duration of reverse flows in Old and Middle River to reduce the likelihood that fish will be diverted from the San Joaquin or Sacramento rivers into the southern or central Delta (at 133); augmenting flows and curtailing exports during critical migration periods (April-May) (at 135); and other actions to reduce mortality from entrainment and salvage. The DEIR claims that the Proposed Project will have little effect on survival of spring-run Chinook Salmon smolts migrating through the Delta relative to the baseline [Footnote 34: The presentation of DEIR's analyses of through-Delta survival of Chinook Salmon juveniles obfuscates and fails to acknowledge significant impacts of the Proposed Project. Multiple-models are applied to analyze this issue, including physical modeling (e.g., velocity) at various locations and different biological models of overall migration success. The DEIR does not explain the relevance or relative merits of these models. With respect to modeling through-Delta survival of Chinook salmon smolt, the STARS model (Perry et al. 2018) is considered to be the best available science and our critique of project impacts is based on those modeled outputs. Modeling results are presented by month (rather than as annual averages) and sometimes within month estimates are provided based on different assumptions about mitigation efficacy. This cumbersome and	results, the only differences close to 1% were 0.8% greater under Proposed Project compared to Baseline Conditions. Similar patterns are generally evident from the results of the STARS model, with nearly all differences in mean values less than 1% and many positive differences (i.e., greater through-Delta survival under the Proposed Project), reflecting the overall similarity in results. The multiple models used in the analysis reflect input on appropriate methods based on resource agency feedback and other input, with introduction to relevance provided in the text (see, for example the discussions in the "Delta Hydrodynamic Assessment and Junction Routing Analysis" presented in Section 6.4.3.1, "Delta SWP Facility Operations." Consistent with the NMFS Recovery Plan cited in the comment, various Old and Middle River flow measures are included in the Proposed Project, as well as spring outflow (see Chapter 2, Section 2.3.3.1, "Old and Middle River Flow Management," and Section 2.3.5, "Spring Delta Outflow." With respect to NMFS through-Delta survival objectives referenced in the comment, the analyses included in the EIR are appropriate for comparison of scenarios as opposed to generating absolute estimates of through-Delta survival, which would be expected to vary based on data sources used to establish the statistical relationships. The comment suggests that the STARS model is the best available science but then cites results from the Delta Passage Model from the 2020 EIR (CDWR 2020; cited as CDWR 2019 at 4-218). As illustrated in the present EIR, analysis with the STARS model produces appreciably higher absolute estimates of through-Delta survival than the Delta Passage Model, although as noted previously, the results are only to be compared between scenarios and are not for absolute values. Regarding that modeling results are presented by month rather than annual averages; monthly values are provided so that changes, for the periods when spring-run Chinook Salmon smolt through-Delta

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		confused presentation of results is a significant barrier for the general public to understand project impacts.]. The DEIR fails to disclose that baseline through-Delta survival for spring-run Chinook Salmon smolt was previously estimated to be ~35% at best and just over 15% during Critical years (CDWR 2019 Figure 4.4-75 at 4-218), always far less than the NMFS (2014) target for through-Delta survival of this run (54%). The DEIR does not disclose that its baseline produced lower survival than the baseline modeled with requirements of the 2008/2009 biological opinions (CDWR 2019 at 4-218). Thus, the Proposed Project maintains through-Delta survival rates that are inconsistent with viability of, and limit possibilities to recover, this population.	migration may occur, can be assessed without confounding the results by including additional periods when they would not be present. References cited in this response: California Department of Water Resources. 2020. Final Environmental Impact Report for Long-term Operation of the California State Water Project. State Clearinghouse No. 2019049121. March.
17	50	The analysis also reveals that CDWR does not know how efficient its Bioacoustic Fence mitigation will be (the DEIR models two assumptions regarding efficiency) and that the effect of this proposed mitigation is inconsistent (sometimes positive, sometimes negative as compared to no mitigation). Regardless of the assumptions made in the DEIR regarding efficiency of this mitigation, the effect of this mitigation is never meaningfully positive (DEIR Tables 6-37 through 6-46).	With respect to the Bio-Acoustic Fish Fence (BAFF) at Georgiana Slough, the two effectiveness values used to illustrate potential BAFF effects reflected the overall effectiveness observed in the pilot years of implementation of 2011 (67%) and 2012 (50%). As described in Section 2.3.12, "Georgiana Slough Salmonid Migratory Barrier Operations," preliminary data collected in 2024 suggest similar levels of efficiency as the prior studies (probability of staying in the mainstem between 82.1% and 91.6%). The BAFF effects are small but consistently positive when appropriately comparing the same scenario for 50% and 67% effectiveness in months with full assumed BAFF operation: for example, in January, the BAFF increases through-Delta survival by 0.01 to 0.02 when comparing Baseline Conditions at 50% to Baseline Conditions at 67% or when comparing Proposed Project at 50% to Proposed project at 67% (it is important to note that the BAFF is assumed to be operated the same way under both Baseline Conditions and the Proposed Project, given that it is continuation of measure required under the 2020 ITP.)
17	51	Restoring spring-run Chinook Salmon populations to the San Joaquin Valley is essential to the recovery of Central Valley spring-run (NMFS 2014; SWFSC 2023). Through-Delta survival of juvenile spring-run Chinook Salmon from the San Joaquin River is nearly identical in every year type under the Proposed Project compared to the baseline (DEIR Table 6-69 at 6-171). Median survival is expected to be <20%,	Please see Response to Comment 17-49 regarding absolute versus comparative analyses. With respect to federal and state endangered species act requirements, please see Common Response 9, "Relationship to the 2023 Biological Assessment and NEPA," and Common Response 11, "Application of CESA Standards."

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		approximately half of the NMFS (2014) minimum survival target for spring-run from the San Joaquin Valley. The DEIR does not reveal that through-Delta survival under the Proposed Project would foreclose opportunities to recover spring-run Chinook Salmon. These results indicate that the Proposed Project is not consistent with protection and eventual recovery of spring-run Chinook Salmon, contrary to the requirements of federal and state endangered species acts. The DEIR fails to disclose this impact.	
17	52	Chinook Salmon – Winter Run The viability of winter-run Chinook Salmon is extremely precarious (Lindley et al. 2007; NMFS 2014 and NMFS now considers the species to be at "high" risk of extinction (SWFSC 2023). Winter-run Chinook Salmon abundance and productivity are low and declining. Winter-run are also at high risk from localized catastrophic events (fire, volcanic activity, disease outbreaks, chemical spills) because of their extremely constricted geographic range. Elevated genetic influence from hatchery-reared fish and degraded life-history diversity also undermines the viability of this species. The decline in winter-run Chinook Salmon viability has continued despite existing safeguards including water quality requirements, provisions of the 2019 biological opinions, the 2020 CESA ITP, and the Bay-Delta water quality control plan (i.e., the baseline) intended to maintain this unique population. In NMFS's most recent viability assessment of endangered salmonids, the agency concluded: "The overall viability of the [winter-run Chinook Salmon] ESU has continued to decline since the 2015 viability assessment (Johnson and Lindley 2016), with the single spawning population on the mainstem Sacramento River no longer at a low/moderate risk of extinction (Table 5.4)" (SWFSC 2023 at 142). In other words, the status quo leads to decline of winter-run Chinook Salmon under the current baseline. The life cycle modeling results presented in the 2024 CVP LTO draft EIS (USFWS 2024) in support of the forthcoming federal biological opinions, which is not utilized or presented in the DEIR, also indicates that the nearly identical federal Proposed Action will result in continued declines in winter-run Chinook salmon, stating "[o]verall, all phases of Alternative 2 [the preferred alternative] and the No Action Alternative had mean annual decreases in spawner abundance, (federal DEIS Appendix O at O-705)." These	The comment focuses on only one of several available life cycle modeling results available for the DEIS, for which the negative effects cited were overall relatively low and a mixture of positive and negative differences, depending on water year type. Overall results for the other life cycle models were positive for the most relevant scenario for the Proposed Project; mention of this has been added to Chapter 10, Section 10.1.6.1 of the DEIR, "Water Supply, Water Management, and Water Quality Projects and Actions."

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		findings are not consistent with the DEIR's assertion that the effects of the Proposed Project on endangered winter-run Chinook Salmon are not significant.	
17	53	Entrainment-related mortality under the Proposed Project will harm winter-run Chinook Salmon The DEIR claims (at 6-117) that "… entrainment loss of juvenile winter-run Chinook Salmon at the SWP south Delta export facility would be similar between Baseline Conditions and Proposed Project scenarios (Table 6-33)." This is plainly untrue based on results presented in Table 6-33 (at 6-118), which shows that entrainment will increase or decrease by more than 10% in several year types. Averaging across these water year types does not capture the true risk of entrainment impacts to winter-run Chinook Salmon as there can be no expectation that these year types are distributed evenly through time. For example, if Critically Dry years occur in sequence (as has happened repeatedly in the recent past), then negative impacts projected for those year types would compound within one generation of winter-run Chinook Salmon. Furthermore, because Bay-Delta water quality requirements are frequently waived, especially during Dry and Critically Dry years, and enforcement of endangered species act requirements (i.e., OMR flows requirements) is frequently relaxed under these conditions (Reis et al. 2019), modeled estimates of loss that assume these baseline will be consistently enforced are unlikely to be accurate and are likely to underestimate the true impact of entrainment loss on winter-run Chinook Salmon.	Regarding differences in modeled entrainment, the overall pattern is for similar entrainment risk and the modeling does not fully account for the Old and Middle River flow real-time operations. As noted in the analysis, entrainment management through criteria described in Chapter 2, including Winter-Run Chinook Salmon Early Season Migration, Winter-Run Chinook Salmon Annual Loss Threshold, and Winter-Run Chinook Salmon Weekly Distribution Loss Threshold, would be expected to maintain low levels of entrainment observed in recent years, i.e., considerably less than authorized take. Regarding the suggestion that Bay-Delta water quality requirements are frequently waived, please Common Response 12, "Drought Conditions."
17	54	Furthermore, the provision that is supposed to protect early season winter-run Chinook Salmon juvenile migration is inadequate to avoid or fully mitigate entrainment impacts. First, this provision would only be triggered once winter-run salvage has exceeded certain thresholds. By the time salvage is detected (a) the damage has already occurred and (b) heavy "loss" of winter-run is likely to continue to occur because the fish are already in close proximity to the export infrastructure. Second, once salvage thresholds are triggered, the provision would only reduce exports to achieve OMR of -5,000 cfs. The 2008/2009 operational baseline did not permit OMR to be more negative than -5,000 cfs and required reducing exports to achieve more positive levels of OMR when winter-run Chinook Salmon were being salvaged or at risk of high levels of "loss" at the export facilities. The Proposed Project makes what was	The EIR has been prepared in accordance with CEQA and adequately discloses the scope, severity, and magnitude of potential impacts for the environmental resources analyzed in this EIR. With respect to early season winter-run Chinook Salmon migration, early season salvage of genetically confirmed juvenile winter-run Chinook Salmon during water years 2010-2022 did not occur prior to December, and in the 3 years that salvage occurred in December, the loss amounted to 0.31% to 3.21% of the total confirmed juvenile winter-run loss for the year. This equated to 0.0003%-0.0093% of that year's juvenile production estimate, consistently less than 1% of the take limit. Operation of the

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		once the lowest level of protection for winter-run Chinook salmon into the upper limit of protection, even when fish are actively being killed at the export facilities. The experience of 2023, when the winter-run "loss" limit identified in the NMFS 2019 BiOp was exceeded over a prolonged period demonstrates that OMR flow rates even modestly more positive than -5,000 cfs are unlikely to be protective of endangered winter-run Chinook Salmon. Also, the DEIR fails to disclose that entrainment under the existing baseline has exceeded the incidental take limit of the 2019 biological opinion (Reclamation 2024; NMFS 2024). This demonstrates that entrainment of winter-run Chinook Salmon is higher than expected (and higher than modeled) under the baseline. It also demonstrates that the 2019 biological opinion and 2019 CESA ITP (i.e., baseline) are inadequately protective of winter-run Chinook Salmon. The DEIR's assurances that entrainment under the Proposed Project will be "similar" to the baseline indicate that the Proposed Project will not be consistent with the requirements or intent of state and federal endangered species acts.	Georgiana Slough Salmonid Migratory Barrier also has considerable potential to limit movement into the south Delta during the early season, reducing the potential for winter-run Chinook Salmon juveniles to be in close proximity to the south Delta export facilities (see also Response to Comment 17-50.) With respect to 2023, the NMFS 2019 BiOp loss limit was not exceeded when considering genetic confirmation in place of the length-at-date criteria. "The proposed action component sets the winter-run Chinook salmon threshold as equal to loss of one percent of the annual winter-run juvenile production estimate for unclipped (natural) fish (genetically confirmed) or two percent of the juvenile production estimate if length-at-date identification is used (NMFS 2019 BiOp:528). Genetically confirmed loss of juvenile winter-run Chinook Salmon in water year 2023 was 2.88, or 0.58% of the loss limit. The highest single year loss for the period of water years 2010-2022 was 0.51% of the annual winter-run juvenile production estimate, demonstrating that loss under the existing baseline did not exceed the NMFS 2019 BiOp limit. Regarding the requirements of the federal and state endangered species acts, please see Common Response 9, "Relationship to the 2023 Biological Assessment and NEPA," and Common Response 11, "Application of CESA Standards."
17	55	Project impacts on through Delta survival under the Proposed Project will harm winter-run Chinook Salmon The DEIR indicates that the Proposed Project will have little effect on through-Delta survival of winter-run Chinook Salmon relative to the baseline (at 6-131 and 6-146). Baseline survival through the Delta was previously estimated to be less than 40% in all cases, and less than 20% in Critically Dry years (as elsewhere, these estimates fail to disclose the impact on winter-run Chinook Salmon survival through the Delta of waiving water quality requirements with TUCOs and/or relaxing enforcement of the 2008/2009 biological opinion RPAs). This is well below NMFS (2014) target for through-Delta of winter-run 57%. The	It is unclear which source the comment is referring to with respect to the previously estimated values of through-Delta survival; please see response to this topic in Comment 17-49. References cited in this response: National Marine Fisheries Service. 2019. Biological Opinion on Long-Term Operation of the Central Valley Project and the State Water Project. WCRO-2016-00069. October. West Coast Region, Sacramento, CA.

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		DEIR estimates that proposed operations will have little effect on winter-run Chinook Salmon survival through the Delta, meaning that survival will remain well-below that needed for recovery of this endangered species. Operations of the SWP thus preclude opportunities to recover winter-run Chinook Salmon. The DEIR fails to disclose this impact.	
17	56	The relevant months for winter-run Chinook Salmon migration through and out of the Delta are October through April (Figure 3 [Exhibit 4]). The DEIR's application of the STARS model shows that winter-run Chinook Salmon through-Delta survival under the Proposed Project will be equal to or worse than the baseline in most years in October (Table 6-48 at 6-152), December (Table 6-50), and February (Table 6-52). Other months are projected to have survival rates that are less than or equal to the status quo in multiple water year types. In cases where analyses suggest the likelihood of increased survival relative to the status quo, such increases are tiny. As discussed above, it is very likely that river flows and Delta outflow will decrease and the negative effect of Delta hydrodynamics (e.g., increasingly negative OMR) will increase in years where project operations are governed by TUCO's and/or waivers/relaxed enforcement of ESA safeguards. Thus, expectations of through-Delta survival rates for winter-run Chinook Salmon are likely to be less positive in real life than they are in the DEIR's modeling. The DEIR does not reveal that the project baseline was expected to result in lower through-Delta survival of winter-run migrating prior to December (CDWR 2019 at 5-163), a pattern that is potentially exacerbated under the Proposed Project. Nor does the DEIR disclose that baseline survival, which was previously estimated to range from below 20% in Critically Dry years to at best < 40% in Wet years (CDWR 2019 Figure 5.3-57 at 5-162), is well below the 57% survival that NMFS targets as the minimum necessary to recover this endangered salmon population [Footnote 35: CDWR does not disclose why its estimates of winter-run Chinook Salmon survival in the current DEIR appear to be inconsistent with (higher than) estimates generated by the same model for the 2019 DEIR.].	The differences in through-Delta survival cited in the comment indicate little difference between the scenarios. The comment appears to compare a result of the Delta Passage Model from the 2019 DEIR with a result from the STARS model in the present EIR; these are different models, so similar absolute values would not be expected, and in any case the emphasis should always be on a relative comparison of values between scenarios for a particular model, as opposed to comparison of absolute values across models given differences in model assumptions and historical data used to establish the statistical relationships within the model, for example. With respect to the references to 2019 baseline, please see Common Response 2, "CEQA Environmental Baseline."
17	57	[Exhibit 4: Figure 3: Figure C-2 copied from Reclamation's Biological Assessment of Central Valley Project long-term operations; Appendix AB-C of Reclamation's DEIS for Central Valley Project long-term operations at p. 22 of the PDF.]	Please see Response to Comment 17-56 regarding response to issue raised, that this exhibit supports.

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17	58	Chinook Salmon – fall-run Central Valley fall-run Chinook Salmon are the backbone of the California and Oregon coastal recreational and commercial fisheries. These fisheries have been closed for two years straight because of low production of juvenile salmon in previous years. [Footnote 36: CDFW 2024 available at: https://wildlife.ca.gov/News/Archive/pfmc-recommends-repeat-closure-for-californias 2024-ocean-salmon-fisheries] Chinook Salmon are also a traditional food source for Central Valley Indian Tribes – the tribal fishery has also been severely impacted by declines in all Central Valley Chinook Salmon populations. The DEIR fails to disclose the full impact of proposed operations on the coastal fishing industry or Tribal cultural and subsistence fishing.	The EIR has been prepared in accordance with CEQA and adequately discloses the scope, severity, and magnitude of potential impacts for the environmental resources analyzed in this EIR. With respect to the coastal fishing industry, the less than significant impact to fall-run Chinook Salmon described in Chapter 6 indicates that there would not be significant effects to the coastal fishing industry. With respect to tribal fishery, Impact TCR-1 in Chapter 7 of the DEIR found a less than significant impact on the Delta Tribal Cultural Landscape Tribal Cultural Resource, including fish and aquatic species habitats because there would not be material impairment of an affiliated Tribe's ability to physically, spiritually, or ceremonially experience these character-defining features of the Delta Tribal Cultural Landscape.
17	59	The DEIR identifies important impacts to fall-run Chinook Salmon production arising from the Proposed Project. The DEIR projects very large increases in entrainment of fall-run Chinook Salmon under the Proposed Project (at 6-172). Similarly, the DEIR indicates that through-Delta survival of fall-run Chinook Salmon would be reduced under the Proposed Project in the vast majority of years, relative to the Proposed Project. The DEIR fails to disclose that the baseline represents a decrease in survival of fall-run Chinook Salmon migrating through the Delta as compared to conditions that prevailed under the 2008/2009 biological opinions (CDFW 2019 at 4-233 and 4-236).	Although there is greater potential for negative effects on fall-run Chinook Salmon under the Proposed Project relative to Baseline Conditions as a result of spring (April/May) entrainment, the various analyses indicated that this would have little effect on through-Delta survival, which generally would be similar under the Proposed Project and Baseline Conditions. With respect to the references to 2019 baseline, please see Common Response 2, "CEQA Environmental Baseline."
17	60	As elsewhere, the DEIR fails to disclose the full impact of proposed operations by failing to analyze impacts on the Feather River population of fall-run Chinook Salmon related to Oroville Reservoir, the largest dam in the State Water Project. The DEIR also fails to analyze the impact on fall-run Chinook Salmon survival of waivers to water quality standards in the Bay-Delta (i.e., TUCOs) or relaxation of water temperature requirements upstream (i.e., changes in the temperature control point or temperature limits under WR 90-5), which are affected by joint operations of the CVP/SWP.	The EIR has been prepared in accordance with CEQA and adequately discloses the scope, severity, and magnitude of potential impacts for the environmental resources analyzed in this EIR. Please see Common Response 1, "Scope of Analysis," and Common Response 12, "Drought Conditions," for responses to the issues raised in this comment.
17	61	In addition, the DEIR fails to analyze whether and how the Proposed Project would affect achievement of the Bay-Delta Water Quality Control Plan's narrative salmon protection objective, which calls for doubling of	Chapter 2, Section 2.1.1 of the DEIR, "Project Objectives," for a description of DWR's continuing commitment to operate the State Water Project in compliance with all

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		natural production of Central Valley Chinook Salmon runs as compared to their 1967-1991 average. This omission applies to the other runs of Central Valley Chinook Salmon as well. Levels of through-Delta survival and entrainment under the baseline produce conditions that are inconsistent with attainment of the narrative salmon protection objective; the DEIR acknowledges that the Proposed Project would further degrade those conditions. The failure of the Proposed Project or alternatives to provide flow and water quality conditions inconsistent with achievement of the narrative salmon protection objective constitutes a significant impact under CEQA because it would impede compliance with a water quality standard.	state and federal water quality and environmental laws. Please see Common Response 7, "Relationship to Healthy Rivers and Landscapes Program," for a discussion of the relationship of the Proposed Project to the Water Quality Control Plan Update. Please see Chapter 5, "Surface Water Quality," for analyses conducted on all applicable water quality standards in the Delta, which includes evaluation of quantitative numeric standards and concludes less than significant impacts to those standards. The narrative objective in the Bay-Delta Water Quality Control Plan is not a numeric standard that DWR is required to meet. Therefore, no changes to the EIR are required.
17	62	Central Valley Steelhead The Central Valley Steelhead distinct population segment is imperiled by combined operations of the CVP and SWP. The population has been listed as threatened under the federal endangered species act since 1998. Although, NMFS considers it to be "stable", at "moderate" risk of extinction (SWFSC 2023), it finds, "... the majority (11 of 16) of populations for which there are data are at a high risk of extinction based on abundance and/or hatchery influence, with no population considered to be at a low risk of extinction." In addition, NMFS notes " [t]he lack of improved natural production ... [and] low abundances coupled with large hatchery influence in the Southern Sierra Nevada diversity group are causes for continued concern." (SWFSC 2023 at 156). Entrainment-related mortality under the Proposed Project will harm winter-run Central Valley Steelhead The DEIR's conclusion that increased entrainment are not a significant impact to the federally threatened Steelhead population is unsupported by the best available science. Entrainment-related mortality ("loss") is projected to be higher under the Proposed Project than under the baseline (Table 6-77 at 6-196). The DEIR also fails to disclose that loss is more likely than not to be higher than the values portrayed in Table 6-77. First, the DEIR does not disclose potential changes in Steelhead entrainment at the CVP export facilities; entrainment and related mortality are a function of combined operations and federal take limits are generally for combined "loss" of the two projects (NMFS 2019 BiOp at 809-810). Second, the DEIR does not disclose that in 2023 existing	Please note that the project is the long-term operations of the SWP and does not include CVP operations. See Common Response 1, "Scope of Analysis," for further information regarding the treatment of coordinated SWP and CVP operations in the EIR. Discussion of CVP effects combined with the Proposed Project is provided in Chapter 10, Section 10.1.6, "Aquatic Biological Resources." DWR operates its south Delta export facility to limit potential negative effects to listed fish and is investigating losses of steelhead in order to fully contextualize the losses in terms of the methods used to identify take limits. Furthermore, the proposed weekly approach to loss and OMR management has the potential to reduce entrainment of steelhead and minimize the potential for a disproportionate impact of entrainment on any single week. Loss in 2023 did not exceed the annual loss limit identified in the 2019 Biological Opinion.

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		controls on exports (i.e., the baseline) resulted in loss that significantly exceeded two separate loss limits identified in the 2019 Biological Opinion (Reclamation 2024). These exceedances demonstrate again that limits on baseline operations are inadequate to protect federally endangered species, like Central Valley Steelhead.	
17	63	Furthermore, the DEIR fails to separately analyze project impacts to Central Valley Steelhead migrating from the San Joaquin valley (the "southern Sierra diversity group") even though (1) NMFS (2014) identifies these Steelhead as critical to the viability and recovery of Central Valley Steelhead as a whole, and (2) juveniles in the southern Sierra diversity group are maximally exposed to entrainment (because they must migrate past the CVP/SWP export facilities) during April and May, when the risk of entrainment increases dramatically under the Proposed Project (i.e., because project exports (Appendix 4C-4 Table 4C-4-3-1c at p. 47 of the PDF) and negative OMR flows (Appendix 4C-3 Table 4C-3-8-1c at p. 145 of the PDF) are expected to increase).	Contrary to the comment's suggestion, the EIR analyzes effects to steelhead emigrating from the San Joaquin River basin in the "Through-Delta Survival discussion" in Section 6.4.6.1 of the DEIR.
17	64	C. Elements of the Proposed Project are inconsistent with the best available science and are likely to cause harm in addition to that disclosed in the DEIR. Like its predecessor, the Proposed Project includes a "storm flex" provision which allows for OMR index values up to -6,250 cfs between the start of OMR management season and either the onramp of the larval and juvenile Delta Smelt protection action onramp or the last day of February, whichever occurs first. As we described in our comments on the previous EIR for the 2019 ITP, this provision is inadequately defined and would allow for conditions that are known to increase the risk of entrainment-related mortality for numerous imperiled fish species. CDWR previously admitted that OMR flows more negative than -5,000 cfs would exceed the "-5000 inflection point deemed protective of Delta smelt entrainment risk," and that -5,000 cfs OMR is "the inflection point at which entrainment tends to sharply increase" (CDFW 2019 at 4-123). The storm flex provision also increases the risk that salmonids (particularly winter-run Chinook Salmon, spring-run Chinook Salmon yearlings, late-fall run Chinook Salmon, and Central Valley Steelhead) will experience reduced through-Delta survival and entrainment-related mortality ("loss") at the south Delta export facilities. In fact, NMFS described the likely effects of the 2019 federal CVP storm-flex provision, as follows:	With respect to the storm flex action, as described in Chapter 2, Section 2.3.3.4 of the DEIR, this action would occur through the Water Operations Management Team and would be subject to meeting many different criteria as well as reviewing real-time distribution of listed species in relation to available tools such as particle tracking modeling and prediction tools in order to limit the potential for negative effects. Please also see Response to Comment 17-54. See also Common Response 15, "Real-time Operations," for additional information on SWP operational decisions.

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		"The salvage density modeling shows that salvage and associated loss increases with exports during months when listed salmonids are present in the Delta. Therefore, if fish are present in the vicinity of the export facilities in the south Delta during a time that storm flex export operations are implemented, NMFS concludes there will be an increase in the number of fish entrained into the salvage facilities above that which would have been seen with no increases in exports. Furthermore, since listed salmonids tend to start migrating downstream in response to elevated flows in the Sacramento River basin and San Joaquin River basin waterways, there is a high probability that more fish will be present in the Delta exactly when the CVP and SWP increase their exports. Besides the fish entering the Delta on the elevated storm flows, listed salmonids (especially winter-run Chinook salmon) may already be present in the Delta due to migration earlier in the year..." 2019 NMFS BiOp at 531 (emphasis added). The Proposed Project's limits on OMR, including the constraint that OMR flows can be no more negative than -6500 cfs, do not minimize the potential negative effects of project operations that result from the storm-flex provision. Important details of the Storm Flex provision remain undefined or are clearly unprotective: -"storm" is defined as merely "measurable precipitation." The only additional qualification of what qualifies as a storm is that CDWR and Reclamation must determine that there is a higher level of outflow "available for diversion" -elevated export rates could continue indefinitely after a "storm" occurs, unless a real-time OMR protection is "likely to be triggered," but storm flex decisions will be re-evaluated only on a weekly basis, meaning that significant entrainment may occur while the WOMT evaluates the potential effect of maintaining storm-flex relaxation of constraints on OMR. Furthermore, the real-time salvage triggers (e.g., salvage/loss limits) are generally lagging indicators; by the time these impacts are noticed, significant impacts are likely to have occurred already. Given CDWR's finding that OMR more negative than -5,000 cfs is not protective of Delta Smelt and high levels of winter-run and Steelhead "loss" during 2023 which indicate that such negative OMR flows are not protective of imperiled salmonids, it is unclear why the Proposed Project allows exceeding this threshold any time that the Delta is in excess	

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		conditions, and why the DEIR maintains that more negative OMR flows would not cause a significant environmental impact under CEQA. In summary, given the imperiled status of these species, the further reductions in abundance and survival caused by the Proposed Project constitute mandatory findings of significant impacts under CEQA. The populations of Delta smelt, Longfin smelt, White Sturgeon, Green Sturgeon, winter-run Chinook salmon, and spring-run Chinook salmon already are not self-sustaining (particularly without hatchery supplementation of salmonids and Delta Smelt) and are declining in abundance, and the Proposed Project would further "cause a fish or wildlife population to drop below self-sustaining levels." Cal. Code Regs., tit. 14, § 15065(a)(1). [Footnote 37: Moreover, any reductions in abundance and survival of listed species under the proposed project compared to the baseline demonstrates that the proposed project is not fully mitigating impacts as required by CESA, and thus that the proposed project is inconsistent with the project objectives.] Because the DEIR fails to recognize these mandatory findings of significance, the document must be revised to acknowledge these significant impacts and propose necessary mitigation measures, and the revised DEIR must be recirculated for public comment.	
17	65	VI. The Proposed Project violates the California Endangered Species Act, and the California Department of Fish and Wildlife Should Not Rely on the DEIR. The abundance of CESA-listed species including winter-run Chinook salmon, spring-run Chinook salmon, Delta smelt, Longfin smelt, and White Sturgeon has declined significantly under baseline conditions. The coordinated operations of the CVP and SWP have significantly contributed to the declines of these and other fish species, and the adverse effects of CVP and SWP operations have never been fully mitigated, including over the past decade when numerous requirements of the 2008 and 2009 biological opinions were waived, weakened, and/or not fully implemented. [Footnote 38: The federal CVP currently does not have an incidental take permit under CESA, and to our knowledge DWR lacks an incidental take permit under CESA for upstream operations of the State Water Project, including take resulting from SWP operations of Lake Oroville and in the Feather River. See also DEIR at 3-18 (stating that DWR is not seeking an ITP for Oroville Dam and Feather River operations, Coordinated Operation Agreement, or CVP facilities, operations and agreements).] The best available science	Please see responses to other comments in this letter with respect to the specific comments related to the species mentioned in the comment (winter-run Chinook Salmon: Comments 17-4, 17-13, 17-19, 17-21, 17-23, 17-49, 17-52, 17-53, 17-54, 17-55, 17-56, 17-6; spring-run Chinook Salmon: Comments 17-4, 17-13, 17-19, 17-21, 17-47, 17-48, 17-49, 17-50, 17-51; Delta Smelt: Comments 17-4, 17-8, 17-19, 17-21, 17-38, 17-39, 17-40, 17-41, 17-42, 17-64; White Sturgeon: Comments 17-4, 17-13, 17-43, 17-44, 17-45, 17-46, 17-64.) Please see Common Response 11, "Application of CESA Standards," for a discussion how the California Endangered Species Act applies to the Proposed Project. With respect to areas of upstream of the Delta, please see Common Response 1, "Scope of Analysis." The Proposed Project continues previously required mitigation such as habitat restoration and includes

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		demonstrates that increased protections are necessary to avoid jeopardizing the species and fully mitigate impacts. See, e.g., Longfin Smelt Listing, USFWS, July 30, 2024. [Footnote 39: Available online at: https://www.federalregister.gov/documents/2024/07/30/2024-16380/endangered-and threatened-wildlife-and-plants-endangered-species-status-for-the-san-francisco.] Yet the baseline and the Proposed Project both eliminate existing protections, especially as compared to the protections that existed prior to their weakening in 2019. Under the Proposed Project CESA-listed species are likely to continue declining in abundance, and survival and abundance of CESA-listed species will be lower under the Proposed Project than under baseline conditions and as compared to pre-2019 conditions, demonstrating that that the effects of the Proposed Project were not and are not fully mitigated as required under CESA and are likely to jeopardize the continued existence of the species. In addition, while DWR purports to only seek an incidental take permit under CESA for project operations in the Delta, we are unaware of any authority for SWP operations in the Feather River to incidentally take CESA-listed species. DFW must consider the whole of the operations of the CVP and SWP to ensure that the Proposed Project will not jeopardize listed species, in light of upstream impacts and other impacts on the species. Finally, as discussed supra the DEIR fails to use the best available science regarding the effects of the Proposed Project on CESA-listed fish species and fails to analyze effects upstream. Therefore, DFW should not rely on the DEIR in making its conclusions under CESA.	additional actions as necessary to meet regulatory requirements.
17	66	VII. The DEIR Fails to Adequately Consider Cumulative Impacts The DEIR fails to adequately consider and disclose cumulative impacts. This violates CEQA DWR states that the "impacts of past projects, including past operation of the SWP" are included in the baseline environmental conditions. DEIR 10-26. This has resulted in a "baseline consisting of a trending decline of listed-species populations in the Delta and other waterways used by anadromous fish populations in Northern California." DEIR at 10-26. "Existing federal statutes and regulatory requirements . . . provide . . . measures to avoid jeopardizing" endangered species, including BiOps to allow the SWP and CVP to operate. DEIR at 10-26. And "California [law] requires authorization under CESA for the long-term operation of the SWP" to protect those species. DEIR at 10-26. "Despite these protections,	As noted in the section of the DEIR cited by the comment, it is difficult to quantify the proportion of the decline of listed-species populations attributable to a specific project, action, or event. The conclusion of a less than significant cumulative impact is supported by the qualitative and quantitative analyses presented in Section 10.1.6, "Aquatic Biological Resources." Section 10.1, Cumulative Impacts provides analyses of the cumulative impacts of the cumulative projects identified by DWR on the resources which the Proposed Project has the potential to contribute to potentially significant cumulative impacts, including surface water hydrology, surface water quality, aquatic biological

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		the cumulative impact of past Delta modifications and other past and present projects has contributed to the continuing decline of Delta fish populations." DEIR at 10-26. And despite this finding, DWR concludes the cumulative impact of the SWP long term operations are not significant. This conclusion contradicts the findings and the reality that the status quo is ongoing declines of endangered fish and closure or severe constriction of multiple commercial, recreational, and/or Tribal fisheries.	resources, tribal cultural resources, environmental justice, and climate change resiliency and adaptation.
17	67	DWR lists a host of projects that will continue to divert flow, reduce Delta outflow, and increase storage, see DEIR at 10-4 to 10-21 (Table 10-1a). Yet DWR does not actually analyze the impacts because of its conclusion that the Proposed Project's impacts are not significant. But this conclusion is baseless, making the DEIR's conclusion that the cumulative impacts are not significant similarly unreliable. Additionally, the failure to analyze the cumulative impacts of Sites Reservoir, [Footnote 40: See Declaration of Jon Rosenfield re Sites, explaining impacts of Sites project.] the Delta Conveyance Project, [Footnote 41: See Protest to Water Rights Change Application re DCP filed by Baykeeper, et al.] and the SWP mean the whole of the infrastructure projects and operation of the State Water Project are not analyzed or disclosed. Because Sites, the DCP, and ongoing operation of the SWP cause similar harms—reduced flow into and through the Delta—failing to analyze the operations of each of these projects as a whole is a failure to accurately disclose, describe, and analyze the cumulative impacts.	Please see Common Response 6, "Other State Efforts," regarding the Proposed Project's relationship to new facilities and other projects, including the inclusion of the Delta Conveyance Project in the cumulative analyses. The Proposed Project analyzes operations under a requested ITP that would be in place for ten years, whereas construction of the Delta Conveyance Project is anticipated to be complete in 2040. Similarly, the Sites Reservoir Project is not anticipated to be constructed and operational in ten years. Therefore, the DCP and Sites Reservoir Project operations are not considered in the cumulative analyses presented in the EIR. Section 10.1.1, "CEQA Requirements for Cumulative Assessment," describe the approach to the cumulative analyses in the EIR and explains that the analysis presented in the subsequent sections are consistent with statutory and regulatory requirements to assess cumulative impacts. Section 10.1.4, "Surface Water Hydrology," Section 10.1.5, "Surface Water Quality," Section 10.1.6, "Aquatic Biological Resources," Section 10.1.7, "Tribal Cultural Resources," and Section 10.1.8, "Environmental Justice," utilize the approach described in Section 10.1.1 to evaluate the cumulative impacts of the Proposed Project on these resources. .
17	68	Moreover, the coordinated operations of the SWP and CVP are responsible for a significant proportion of the water that is stored and diverted in the Bay-Delta system, and thus are responsible for a significant proportion of the adverse effects on fish and wildlife in the watershed including from changes in hydrology, water quality and temperature, entrainment, and habitat degradation. More than half of	Please see Response to Comment 17-67 regarding cumulative impacts.

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		the total water diversions in the Bay-Delta watershed are associated with the CVP and SWP in some years, and the decline in fish species has accelerated as the CVP and SWP increased diversions over the past several decades. The DEIR's conclusion that the impacts are cumulatively significant, but that the SWP's contribution to these problems is not cumulatively considerable, is not supported by substantial evidence.	
17	69	It is abundantly clear that the Proposed Project is inconsistent with the requirements of CESA, and that the Proposed Project, alone and in combination with CVP operations, will jeopardize the continued existence of species listed under CESA. Therefore, DWR must significantly revise the Proposed Project before re-submitting an application for an incidental take permit under CESA, and DWR must recirculate a revised draft DEIR describing that revised project for public and agency review and comment.	Please Common Response 11, "Application of CESA Standards," regarding consistency with CESA requirements.
17	70	IV. Conclusion The documents referenced in these comments are available online at: https://drive.google.com/drive/folders/15KN4rd5mS2c_YYp8mWb7ea8uATvQik14?usp=sharing If you have any problem accessing the documents using this link, please let us know.	This is a list of the references cited in the comment letter. It is not a comment on the contents of the DEIR. Specific comments in this letter are responded to in specific responses. DWR has reviewed all comments and will consider all comments in its decision-making process.
17	71	Thank you for the opportunity to comment on the DEIR. Please contact us if you have any questions regarding the concerns we have raised. We look forward to working with you to ensure that long-term operations of the SWP comply with the requirements of CESA and other legal mandates and ensure the survival and recovery of the Bay-Delta estuary's endangered native species.	The commenter summarizes their comments. Specific responses to the specific comments on the DEIR are provided in the responses to those specific comments. No additional response is required.
17	72	[ATT 1: AFRP 2001. Anadromous Fish Restoration Program. 2001. Final Restoration Plan for the Anadromous Fish Restoration Program: A plan to increase natural production of anadromous fish in the Central Valley of California. Prepared for the Secretary of the Interior by the United States Fish and Wildlife Service with assistance from the Anadromous Fish Restoration Program Core Group under authority of the Central Valley Project Improvement Act. January 9, 2001.]	The commenter provided this attachment for reference purposes in support of their comments. Those comments are addressed in these responses to the commenter's letter. DWR has reviewed all comments and will consider all comments in its decision-making process.
17	73	[ATT 2: Baykeeper et al. 2023. A petition to the state of California Fish and Game Commission to list the California White Sturgeon (Acipenser transmontanus) as Threatened under the California Endangered Species	See Comment 17-72.

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		Act (CESA) Submitted November 29, 2023 on behalf of Baykeeper, California Sportfishing Protection Alliance, Restore the Delta, and The Bay Institute.]	
17	74	[ATT 3: CDFW. 2010. California Department of Fish and Game. 2010. Quantifiable Biological Objectives and Flow Criteria for Aquatic and Terrestrial Species of Concern Dependent on the Delta. November 23. Available: https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=25987.]	See Comment 17-72.
17	75	[ATT 4: CDFW 2015. California Department of Fish and Wildlife. 2015. Fish Species of Special Concern in California. Sacramento: California Department of Fish and Wildlife. Prepared for CDFW by Moyle, P.B., R. M. Quiñones, J. V. Katz, and J. Weaver. www.wildlife.ca.gov]	See Comment 17-72.
17	76	[ATT 5: CDFW. 2016. California Department of Fish and Wildlife. 2016. CDFW Rationale for Summer Delta Flow Augmentation for Improving Delta Smelt Survival, July 8, 2016. https://www.nrdc.org/sites/default/files/media-uploads/cdfw_outflow.pdf.pdf]	See Comment 17-72.
17	77	[ATT 6: CDWR. 2019. Part III Revisions to the DEIR. 2019 Draft Environmental Impact Report for Long-Term Operation of the California State Water Project. (Original DEIR is: StateClearinghouse No. 2019049121)]	See Comment 17-72.
17	78	[ATT 7: CSAMP 2024. Collaborative Science and Adaptive Management Program. CSAMP Delta Smelt Structured Decision Making – Round 1 Evaluation Report. Prepared by Brian Crawford and Sally Rudd Compass Resource Management Ltd. www.compassrm.com CSAMP Delta Smelt Technical Working Group. June 6, 2024 – Draft Version 3.0]	See Comment 17-72.
17	79	[ATT 8: Castillo, G., J. Morinaka, J. Lindberg, R. Fujimura, B. Baskerville-Bridges, J. Hobbs, G. Tigan, and L. Ellison. 2012. Pre- screen loss and fish facility efficiency for Delta smelt at the South Delta's State Water Project, California. San Francisco Estuary and Watershed Science 10(4):1–23.]	See Comment 17-72.
17	80	[ATT 9: Hammock, B.G., Hartman, R., Slater, S.B. et al. 2019a. Tidal Wetlands Associated with Foraging Success of Delta Smelt. Estuaries and Coasts 42, 857–867 (2019). https://doi.org/10.1007/s12237-019-00521-5]	See Comment 17-72.
17	81	[ATT 10: Hance et al. 2021. From drought to deluge: spatiotemporal variation in migration routing, survival, travel time and floodplain use of	See Comment 17-72.

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		an endangered migratory fish. 79 Can. Journ. Fish. & Aquatic Sci. 3 (March 2022), doi.org/10.1139/cjfas-2021-0042.]	
17	82	[ATT 11: Heublein, J., R. Bellmer, R. Chase, P. Doukakis, M. Gingras, D. Hampton, J. Israel, Z. Jackson, Zachary, R Johnson, O. Langness, S. Luis, E. Mora, M. Moser, L. Rohrbach, A. Seesholtz, T. Sommer, J. Stuart. 2017. Life history and current monitoring inventory of San Francisco Estuary sturgeon. Na5onal Oceanic and Atmospheric Administra5on, Technical Memorandum NOAATM-NMFS-SWFSC-589. htps://doi.org/10.7289/V5/TM-SWFSC-589]	See Comment 17-72.
17	83	[ATT 12: Jackson, Z.J., Gruber, J.J., & Van Eenennaam, J.P. (2015). White sturgeon spawning in the San Joaquin River, California, and effects of water management. Journal of Fish and Wildlife Management, 7(1), 171–180. https://doi.org/10.3996/092015-jfwm-092]	See Comment 17-72.
17	84	[ATT 13: Kimmerer, W. J. 2008. Losses of Sacramento River Chinook Salmon and Delta Smelt to Entrainment in Water Diversions in the Sacramento–San Joaquin Delta. San Francisco Estuary and Watershed Science, 6(2). doi:https://doi.org/10.15447/sfews.2008v6iss2art2 Retrieved from https://escholarship.org/uc/item/7v92h6fs]	See Comment 17-72.
17	85	Lehman, P.W., Kurobe, T, S.J. Teh. 2020. Impact of extreme wet and dry years on the persistence of *Microcystis* harmful algal blooms in San Francisco Estuary. Quaternary International Volume 621(30): 16-25. https://doi.org/10.1016/j.quaint.2019.12.003 [Reference not attached]	See Comment 17-725.
17	86	[ATT 14: Lindley, S. T., R. Schick, E. Mora, P. B. Adams, J. J. Anderson, S. Greene, C. Hanson, B. P. May, D. R. McEwan, R. B. MacFarlane, C. Swanson, and J. G. Williams. 2007. Framework for assessing viability of threatened and endangered Chinook salmon and steelhead in the Sacramento–San Joaquin Basin. San Francisco Estuary and Watershed Science [online serial] 5(1): Article 4. Available at: https://doi.org/10.15447/sfews.2007v5iss1art4]	See Comment 17-72.
17	87	[ATT 15: Michel, C.J. 2018. Decoupling outmigration from marine survival indicates outsized influence of streamflow on cohort success for California's Chinook salmon populations. Canadian Journal of Fisheries and Aquatic Sciences. https://doi.org/10.1139/cjfas-2018-0140]	See Comment 17-72.
17	88	[ATT 16: NMFS 2014. National Marine Fisheries Service. 2014. Recovery Plan for the Evolutionarily Significant Units of Sacramento River Winter-Run Chinook Salmon and Central Valley Spring-Run Chinook Salmon and the Distinct Population Segment of California Central Valley Steelhead.	See Comment 17-72.

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		West Coast Region, Sacramento, CA. Available at: https://www.fisheries.noaa.gov/resource/document/recovery-plan-evolutionarily-significantunits-Đacramento-river-winter-run]	
17	89	[ATT 17: NMFS 2024. Letter re: NMFS Brood Year 2023 JPE calculation. From Cathy Marcinkevage, Assistant Regional Administrator, to Kristin White, Operations Manager, Bureau of Reclamation. Dated: January 12, 2024.]	See Comment 17-72.
17	90	[ATT 18: NRDC et al. 2020. Comment letter to You Chen (Tim) Chao, PhD, PE, CFM, California Department of Water Resources. RE: Comments on the Draft Environmental Impact Report for Operations of the State Water Project. Natural Resources Defense Council, SF Baykeeper, The Bay Institute, Defenders of Wildlife, California Sportfishing Protection Alliance, Golden State Salmon Association.]	See Comment 17-72.
17	91	[ATT 19: Nobriga, M. and J. Rosenfield. 2016. Population dynamics of longfin smelt in the San Francisco Estuary. Disaggregation forces driving long term decline of an estuarine forage fish. Transactions of the American Fisheries Society 145(1):44–58.]	See Comment 17-72.
17	92	[ATT 20: Notch J. J., A. S. McHuron, C. J. Michel. F. Cordoleani, M. Johnson, M. J. Henderson, and A. J. Ammann. 2020. Outmigration survival of wild Chinook salmon smolts through the Sacramento River during historic drought and high water conditions. Environmental Biology of Fishes 103:561–576.]	See Comment 17-72.
17	93	[ATT 21: Parsley, M.J. and L.G. Beckman. 1994. White sturgeon spawning and rearing habitat in the lower Columbia River. North American Journal of Fisheries Management 14: 812–827.]	See Comment 17-72.
17	94	[ATT 22: Perry, R. W., A. C. Pope, J. G. Romine, P. L. Brandes, J. R. Burau, A. R. Blake, A. J. Ammann, and C. J. Michel. 2018. Flow-Mediated Effects on Travel Time, Routing, and Survival of Juvenile Chinook Salmon in a Spatially Complex, Tidally Forced River Delta. Canadian Journal of Fisheries and Aquatic Sciences 75(11): 1886-1901]	See Comment 17-72.
17	95	[ATT 23: Polansky L., Newman K.B., Mitchell L. 2021. Improving inference for nonlinear state-space models of animal population dynamics given biased sequential life stage data. Biometrics 77:352–361. https://doi.org/10.1111/biom.13267 [Including appendices available at: https://doi.org/10.1111/biom.13267]]	See Comment 17-72.

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17	96	[ATT 24: Reclamation. 2024. Weekly Fish and Water Operations Outlook 6/18/2024 – 6/24/2024. US Bureau of Reclamation. [Received by email from ebuttermore@usbr.gov on June 18, 2024].]	See Comment 17-72.
17	97	[ATT 25: Reis, G.J., J.K. Howard, and J.A. Rosenfield. 2019. Clarifying Effects of Environmental Protections on Freshwater Flows to—and Water Exports from—the San Francisco Bay Estuary. San Francisco Estuary and Watershed Science, 17(1). Available at: https://escholarship.org/uc/item/8mh3r97j]	See Comment 17-72.
17	98	[ATT 26: Smith, W.E., L. Polansky, and M.L. Nobriga. 2021. Disentangling risks to an endangered fish: using a state-space life cycle model to separate natural mortality from anthropogenic losses. Can. J. Fish. Aquat. Sci. 00: 1–22 (0000) dx.doi.org/10.1139/cjfas-2020-0251]	See Comment 17-72.
17	99	[ATT 27: SWFSC 2023. Southwest Fisheries Science Center. 2023. Viability assessment for Pacific salmon and steelhead listed under the Endangered Species Act: Southwest. Southwest Fisheries Science Center (U.S.). NOAA Technical Memorandum NMFS SWFSC; 686. DOI : https://doi.org/10.25923/039q-q707]	See Comment 17-72.
17	100	[ATT 28: SWRCB 2010. State Water Resources Control Board. State Water Resources Control Board (State Water Board). 2010. Development of Flow Criteria for the Sacramento–San Joaquin Delta Ecosystem. Prepared pursuant to the Sacramento–San Joaquin Delta Reform Act of 2009. Final. August 3. Sacramento, CA. Available: http://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/deltaflow/ docs/final_rpt080310.pdf.]	See Comment 17-72.
17	101	[ATT 29: SWRCB 2017. State Water Resources Control Board. 2017. Scientific Basis Report in Support of New and Modified Requirements for Inflows from the Sacramento River and its Tributaries and Eastside Tributaries to the Delta, Delta Outflows, Cold Water Habitat, and Interior Delta Flows. California Environmental Protection Agency, Sacramento, CA. Available at: https://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/california_waterfix/exhibits/docs/PCFFA&IGFR/part2/pcffa_168.pdf]	See Comment 17-72.
17	102	[ATT 30: USBR 2024b. U.S. Bureau of Reclamation. 2024. Long-Term Operations of the Central Valley Project and State Water Project Draft Environmental Impact Statement Central Valley Project, California Interior Region 10 – California-Great Basin. US Bureau of Reclamation. July 2024.]	See Comment 17-72.

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17	103	[ATT 31: Fish and Wildlife Service Response to USBR on Formal Endangered Species Act Consultation on the Proposed Coordinated Operations of the Central Valley Project (CVP) and State Water Project (SWP)]	See Comment 17-72.
17	104	[ATT 32: USFWS 2016. U.S. Fish and Wildlife Service. 2016. Why flow is a necessary element of Delta Smelt habitat. US, Fish and Wildlife Service Bay-Delta Fish and Wildlife Office. 6/29/2016. https://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/california_waterfix/exhibits/docs/NRDC_TBI_DOW/NRDC-61.pdf]	See Comment 17-72.
17	105	[ATT 33: USFWS 2024. U.S. Fish and Wildlife Service. 2024. Species Status Assessment for the San Francisco Bay-Delta Distinct Population Segment of the Longfin Smelt. Prepared by: E. Chen V. Tobias, M. Eakin J. Hobbs A. Roessler; Edited by: S. Detwiler, Joe Miller, M. Nobriga. Available for download at: https://www.regulations.gov/document/FWS-R8-ES-2022-0082-0034]	See Comment 17-72.
17	106	[ATT 34: WOMT. Water Operations and Management Team notes. 3/6/2024.]	See Comment 17-72.
17	107	[ATT 35: CDFW News article, Pacific Fishery Management Council Recommends Repeat Closure for California's 2024 Ocean Salmon Fisheries]	See Comment 17-72.
17	108	[ATT 36: Bay Keeper Comments on Draft Staff Report on Proposed Sacramento/Delta Updates. January 19, 2024]	See Comment 17-72.
17	109	[ATT 37: Protest Petition for Changes in Water Rights of Water Resources for the Delta Conveyance Project. May 13, 2024.]	See Comment 17-72.
17	110	[ATT 38: Jackson and Quist 2019. Population Dynamics and Evaluation of Management Scenarios for White Sturgeon in the Sacramento - San Joaquin River Basin.]	See Comment 17-72.
17	111	[ATT 39: San Francisco Baykeeper and The Bay Institute comments on CDWR's ITP. March 12, 2020.]	See Comment 17-72.
17	112	[ATT 40: Declaration of Jonathan A. Rosenfield, PhD, re Sites Reservoir Water Rights. July 15, 2024]	See Comment 17-72.
17	113	[ATT 41: EPA Comments on Sacramento/Delta Draft Staff Report. January 19, 2024]	See Comment 17-72.

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17	114	[ATT 42: Grimaldo et al. 2009. Factors Affecting Fish Entrainment into Massive Water Diversions in a Tidal Freshwater Estuary: Can Fish Losses be Managed?]	See Comment 17-72.
17	115	[ATT 43: KQED News, Park Fire Could Deal 'Final Death Blow' to California's Endangered Spring-Run Chinook Salmon. August 1, 2024]	See Comment 17-72.
17	116	[ATT 44: Lewis et al. 2019. Interdisciplinary Studies on Longfin Smelt in the San Francisco Estuary]	See Comment 17-72.
17	117	[ATT 45: NMFS Biological Opinion on the Long-term Operation of the Central Valley Project and the State Water Project]	See Comment 17-72.
17	118	[ATT 46: Thomson et al. 2010. Bayesian point analysis of abundance trends for pelagic fishes in the upper San Francisco Estuary]	See Comment 17-72.
17	119	[ATT 47: U.S. DOI Letter to USFW Office in Sacramento, CA, regarding request for reinitiation of consultation on the 2008 Biological Opinion for the LTO of the CVP and SWP. September 4, 2019.]	See Comment 17-72.
17	120	[ATT 48: U.S. Department of Interior Memo from DOI Secretary Jewell to POTUS. August 30, 2016.]	See Comment 17-72.
18	1	The San Luis & Delta-Mendota Water Authority ("Water Authority") and its member agencies thank the California Department of Water Resources ("DWR") for the opportunity to submit these comments on the Draft Environmental Impact Report (SCH #2023060467) ("Draft EIR") for Long-Term Operations of the State Water project in the Sacramento-San Joaquin Delta, Suisun Marsh, and Suisun Bay ("Proposed Project"). The Water Authority is a joint powers authority and represents 27 member agencies that receive water from the Central Valley Project ("CVP"), including Westlands Water District, Henry Miller Reclamation District #2131, Banta-Carbona Irrigation District, Patterson Irrigation District San Luis Water District, and West Stanislaus Irrigation District. A Complete list of the Water Authority's member agencies is attached as Attachment A [ATT 1].	This information describes the structure or organization of the comment letter, the background of the organization or individual commenter, clarification on the submittal of the comment letter, or general introductory text in addition to a link for references. It is not a comment on the contents of the DEIR. DWR has reviewed all comments and will consider all comments in its decision-making process.
18	2	The Water Authority appreciates the 21-day extension of the public comment period. We also understand and appreciate that the modeling associated with the EIR will continue to be refined, but we remain concerned about key aspects of the Draft EIR. The Water Authority is concurrently submitting separate comments with the Friant Water Authority, Tehama Colusa Canal Authority, Sacramento River Settlement Contractors, and others, highlighting three points: 1) the importance of	In regard to potential impacts to and analysis of CVP operations, please see Common Response 1, "Scope of Analysis," for the treatment of Coordinated SWP/CVP Operations. DWR SWP operations are governed by the COA, which DWR will continue to comply with. Please see Table 2-3 in Chapter 2, "Project Description," for a summary of the Proposed Project Elements. In regard to

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		analyzing and disclosing potential effects of the Proposed Project on CVP operations, 2) the need to accurately define and describe the CVP Proposed Action in the Project Description, the effects analysis, and related modeling runs, and 3) issues associated with including the 2020 ITP and related CEQA analysis in the baseline used in the EIR. The Water Authority and its member agencies submit these additional comments to provide supporting detail regarding the first two points, plus to raise two additional points: 4) that the EIR should better describe the Proposed Project and what it would change from the status quo, and 5) that the discussion of aquatic biological resources in Chapter 6 of the Draft EIR should be supplemented and refined (Attachment B [ATT 2] of this letter offers specific suggestions on how to do so).	Chapter 6, "Aquatic Biological Resources," please see Responses 18-15 to 18-38.
18	3	1. The EIR Should Analyze and Disclose the Potential Impact of the Proposed project on CVP Operations Under CEQA, and EIR must identify and describe the project's significant environmental effects, include mitigation measures proposed to minimize these significant impacts, and briefly set forth the reasons that possible significant environmental impacts were found to be insignificant. (Pub. Res. Code [Section] 21100(b), (c), CEQA Guidelines, [Section] 15126.2.) Unfortunately, the Draft EIR does not fully address whether or how changes to SWP operations included as part of the Proposed Project may affect future CVP operations, or the magnitude of any such effects. The Draft EIR makes no express statements about whether the Proposed Project will cause impacts to future CVP operations, but implies it will not. Table ES-2, the "Summary of Impacts of the Proposed project", reports there will be no changes to "Surface Water Hydrology." (Draft EIR at ES-12.) Yet, while Table ES-2 specifically states there will be "no impact" to "SWP Banks Pumping Plant Exports" it makes no similar express statement about exports at the CVP's Jones Pumping plan. (Id.) [Footnote 1: Chapter 4, regarding surface water hydrology: "Over the long-term average modeling annual SWP Bank Pumping Plant is increasing by about 57 TAF (2 percent) under the Proposed Project compared to the Baseline Conditions." (Draft EIR at 4-17.)] The Draft EIR also reports that "no significant impacts associated with the Proposed Project were identified" and that hence "no CEQA mitigation measures are required." [Id. At ES-13.) [Footnote 2: In this letter, quotes from the Draft EIR that are not set off as an indented block quote are italicized.] The narrative chapters of the Draft EIR thus suggest the	See the first part of the Response to Comment 18-2 for a response to this comment.

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		proposed Project will have no significant effect on CVP operations. But the Draft EIR leaves significant uncertainty whether this is, in fact, the case.	
18	4	First, the uncertainty arises from the modeling completed for the Draft EIR. The modeling results in Appendix 4 of the Draft EIR indicate there may be a significant reduction in CVP exports under the Proposed Project as compared to Baseline Conditions. Table 4B-3-7-1c indicates the rate of CVP exports will decline. The months of January, February, and June, in particular, show significant declines in the rate of CVP export pumping in some year types. The modeling results in Appendix 4 regarding CVP exports thus appear to be inconsistent with the narrative chapters of the Draft EIR, which make no mention of such impacts. Also, the reported results do not disclose water supply impacts in individual years, because of the use of averages. At a minimum, the EIR should explain why CVP exports are projected to decline under the Proposed Project, and the magnitude and consequences of such a decline should be disclosed, such that an assessment can be made as to whether the magnitude and consequences of the decline constitute a significant impact and mitigation of the impact can be evaluated.	Please see the section titled "Geographic Scope," in Common Response 1, "Scope of Analysis." DWR considered whether the long-term operations of the SWP would result in changes in CVP operations outside the SWP zone of influence. As explained in Appendix 2D, "Geographic Scope of Project's Influence of Flow," DWR and Reclamation independently decide how to operate the SWP and CVP to meet applicable requirements. Please see the section titled "Treatment of Coordinated SWP/CVP Operations" in Common Response 1, "Scope of Analysis," for further discussion. Changes in SWP and CVP exports are primarily driven by the OMR actions described in Chapter 2, "Project Description," Section 2.3.3, "Old and Middle River Flow Management." Discussion of changes to OMR flow are highlighted Chapter 4, "Surface Water Hydrology," Section 4.3.3.3, "Old and Middle River Flow."
18	5	Another area of uncertainty arises from the differing assumptions used for modeling of future Delta operations by the SWP and CVP, respectively. [Footnote 3: The modeling assumptions are described in Appendix 4A, Attachment 1.] In the Baseline Conditions assumptions, SWP export pumping is subject to a "Spring Outflow Requirement." As described in the Draft EIR, the baseline Spring Outflow Requirement limits pumping based on the San Joaquin River Inflow to Export ratio ("I:E ratio"), and is a condition imposed on SWP operations by the 2020 ITP. (Id. At 4A-1-7.) Under Baseline Conditions assumptions, the CVP likewise operates to the Spring Outflow Requirement, pursuant to the 2021 Interim Operations Plan. (Id.) Under the Proposed Project assumptions, however, SWP pumping is no longer subject to the baseline Spring Outflow Requirement. That requirement has been replaced with a reduction in SWP exports "during either Delta excess (or restricted) conditions or balanced conditions when unstored water for export (UWFE) is greater than zero." (Id. At 4A-1-14.)	Please see Response to Comment 18-4 and "Treatment of the Interim Operations Plan" in Common Response 2, "CEQA Environmental Baseline." The commenter provided this comment to describe their understanding of modeled assumptions under the Proposed Project. Unless proposed actions overlap (e.g., changes to OMR management), the Proposed Project does not include a representation of proposed future operations of the CVP. However, cumulative considerations were modeled in other scenarios. Please refer to Appendix 4F, "Cumulative Model Results," Attachment 1, "CalSim 3 Callouts," for assumptions related to proposed actions for the CVP.
18	6	In contrast, under the Proposed Project assumptions, CVP pumping remains subject to the baseline Spring Outflow Requirement, including	Please see Responses to Comments 18-4 and 18-5. Additional assumptions related to third party VAs are

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		the I:E ratio. (Id.) It is difficult to conceive why under future regulations CVP export pumping would be subject to the San Joaquin River I:E ratio restriction while the SWP export pumping would not. Moreover, the Draft EIR does not explain why a change to SWP export pumping would not affect CVP operations in managing Delta outflow. A second, related difference in the modeling assumptions relates to implementation of the Healthy Rivers & Landscapes Program, or "Voluntary Agreements" (VAs) across the two projects. The export reduction by DWR that replaces the I:E ratio limitation for SWP exports under the Proposed project assumptions reflects DWR's anticipated implementation of the VAs. At least as the VAs are currently framed, there is no reasonable future scenario under which the SWP implements the VAs while the CVP does not. The differing assumptions are reasonable, create doubt whether the Draft EIR has adequately assessed potential impacts to CVP operations under the Proposed Project.	also included in Appendix 4G, "Cumulative Model Results," Attachment 1, "CalSim 3 Callouts."
18	7	Second, uncertainty and concern about whether the Draft EIR adequately assesses potential effects of the Proposed Project on CVP operations arises from its limitation on the geographical scope of the analysis. The "project area" is defined in the Draft EIR as the "geographical area potentially affected by the Proposed Project and includes the Sacramento River from the confluence with the Feather River to the Delta, SWP facilities in the Delta, waters of the Delta, SWP facilities in Suisun Marsh and Suisun Bay, and waters of Suisun Marsh and Suisun Bay." (Draft EIR at 2-2). The Draft EIR also refers to the area modeled as the "zone of influence." [Footnote 4: Appendix 2D states: "for the purposes of this EIR, the Proposed Project's zone of influence is confined to the Sacramento River below the confluence with the Feather River, the legal Delta, and the Suisun Marsh and Bay." (Draft EIR at 2D-3)]. Based on this limitation, the modeling results reported in the appendices does not include projected flows in the Sacramento River upstream from the confluence with the Feather River, or projected storage elevations in any CVP reservoirs except San Luis Reservoir.	Please refer to Common Response 1, "Scope of Analysis," regarding how DWR determined the geographic scope of the analysis of the Proposed Project in the DEIR, which considered: (1) the geographic scope of SWP operations' influence (i.e., the "zone of influence"), particularly with respect to the operations affected by the Proposed Project; and (2) whether, in light of SWP and CVP coordinated operations, the Proposed Project would cause a reasonably foreseeable response by the U.S. Bureau of Reclamation that could result in changes in CVP operations outside the SWP zone of influence. DWR concluded that the analysis of flow-related impacts was appropriately focused on the SWP zone of influence (the Sacramento River below the confluence of the Feather River, the legal Delta, and the Suisun Marsh and Bay) and does not include areas that are affected only by CVP actions. Please also refer to Common Response 9, "Relationship to the 2023 Biological Assessment and NEPA," for more information about CVP coordinated operations. Operations of the CVP are beyond the scope of this EIR.
18	8	The Draft EIR largely excludes any discussion or analysis of CVP operations outside the defined project area on the basis that	Please refer to Common Response 1, "Scope of Analysis," regarding how DWR determined the geographic scope of

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		Reclamation decides how to operate the CVP, and hence it "would be speculative for DWR to try to predict how Reclamation will exercise its discretion in real time." (Id. at 2D-4.) [Footnote 5: The rationale for the limits on the geographic scope of analysis are further described in Appendix 2D.] This rationale for not attempting to better define and describe the consequences of the Proposed Project for CVP operations outside the confines of the "project area" or "zones of influence" is inadequate. While there will be some uncertainty in precisely how Reclamation would operate the CVP in response to changes to SWP operations under the Proposed Project, that uncertainty does not foreclose DWR's ability to make a reasonable forecast of potential responses based on known, joint regulatory requirements. (CEQA Guidelines, [Section] 15144.) In fact, Appendix 2D states that DWR was able to consider "whether SWP operations would cause reasonably foreseeable CVP operational responses in areas outside the SWP zone of influence due to coordinated SWP and CVP operations." (Id. at 2D-3.) DWR reports this "assessment" of "the extent of modeled change outside the Proposed Project's geographic scope… indicated minimal changes in flows when compared to existing conditions modeling for the most part." (Id. at 2D-4.) That assessment is not further described and there is no disclosure of the changes in flows. The EIR should disclose DWR's methodology and specific assessment of potential effects on flows in areas involving CVP operations outside the "zone of influence." In sum, the EIR should include additional and different analysis and disclosure to satisfy CEQA's obligation to identify and describe significant impacts and provide a rationale for why other environmental impacts are deemed insignificant. In particular, the analysis and disclosure should address potential impacts to CVP exports, make more consistent and reasonable assumptions about future operations of the SWP and CVP respectively, and be expanded in geographic scope to include all areas where the CVP operates that are potentially affected by operations of the SWP. [Footnote 6: Below we make a related comment regarding the Draft EIR's lack of a definition of the "CVP Proposed Action" used for modeling for the cumulative effects analysis.]	the analysis of the Proposed Project in the DEIR, which considered: (1) the geographic scope of SWP operations' influence (i.e., the "zone of influence"), particularly with respect to the operations affected by the Proposed Project; and (2) whether, in light of SWP and CVP coordinated operations, the Proposed Project would cause a reasonably foreseeable response by the U.S. Bureau of Reclamation that could result in changes in CVP operations outside the SWP zone of influence. DWR concluded that the analysis of flow-related impacts was appropriately focused on the SWP zone of influence (the Sacramento River below the confluence of the Feather River, the legal Delta, and the Suisun Marsh and Bay) and does not include areas that are affected only by CVP actions. Operations of the CVP are beyond the scope of this EIR.
18	9	2. The EIR Should Describe the "CVP Proposed Action" Used for the Cumulative Effects Analysis The Draft EIR includes discussion of CVP operations in evaluating the cumulative effects of the Proposed Project on water supply, water management, and water quality projects and actions. (Draft EIR at 10-	Please see Responses to Comments 18-4 and 18-5.

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		27-10-152.) To perform this analysis, DWR determined that an updated set of assumptions for CVP operations was needed to evaluate cumulative impacts from potential changes to operations, referred to as the "CVP Proposed Action:" Continued operation of the CVP has the potential to cumulatively affect aquatic biological resources in conjunction with the Proposed Project. Proposed changes to CVP operations as part of the ongoing consultation on the Long-Term Operation of the CVP and SWP could result in operations effects on aquatic biological resources relative to the analyses focusing on the SWP presented in Chapter 6.... Both the CVP and Voluntary Agreements were modeled in CalSim 3, in addition to the Proposed Project, to illustrate potential cumulative effects. The CalSim 3 modeling of the Proposed Project plus Cumulative scenario includes the SWP Proposed Project, the CVP Proposed Action, and the Voluntary Agreements for the Sacramento River, Feather River, Yuba River, American River, Putah Creek, and Mokelumne River. The baseline CVP operations onto which the CVP Proposed Action is applied differ from the CVP operations assumed in the Baseline Conditions CalSim 3 model. The baseline CVP operations used in the CVP Proposed Action were not available during development of the Baseline Conditions CalSim 3 model. Changes to CVP baseline include operations of Shasta Lake, CVP allocations, and the Delta Cross Channel gates. A new baseline model, Baseline Conditions (Updated), was developed to properly represent baseline CVP operations and the effects of the CVP Proposed Action in the Proposed Project plus Cumulative CalSim 3 mode. The Baseline Conditions (Updated) CalSim 3 model applies these revised CVP baseline operations onto the Baseline Conditions CalSim 3 modeled. Discussion of CalSim 3 results in this chapter compares modeled results from the Proposed Project plus Cumulative to Baseline Conditions (Updated). The analysis below is divided into sections for Delta Smelt, Longfin Smelt, winter-run Chinook Salmon, spring-run Chinook Salmon, and the other species considered in Chapter 6. (Draft EIR, at 10-28 (emphasis added), see also id. At 10-31, 10-83.) We understand that DWR may be completing additional CalSim modeling using the latest model. However, more is required to improve the EIR. DWR must define the "CVP Proposed Action" in the EIR and disclose how the "CVP Proposed Action" differs from existing CVP operations. Without this information, decisionmakers and the public are unable to fully evaluate the potential cumulative impacts that would	

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		result from the Proposed Project. Due to the coordinated nature of SWP and CVP operations, DWR should include an adequate description of the "CVP Proposed Action" with Chapter 2 (Project Description).	
18	10	3. The EIR Should Describe the Components of the Proposed Project in a Manner that Permits Decisionmakers and the Public to Evaluate the Specific Changes from the Status Quo To Satisfy CEQA's informational requirements, an EIR must describe the components of the proposed Project in a manner sufficient to enable meaningful comparison between the Proposed Project, its alternatives, and baseline conditions. (CEQA Guidelines, [Sections] 15124(c), 15125.) The EIR must include additional information to allow for a meaningful evaluation of the Proposed Project. The Draft EIR states: "The Proposed Project consists of multiple elements that characterize future operations of SWP facilities including modifying operations of Banks Pumping Plant, Skinner Fish Protection Facility, Clifton Court Forebay, Barker Slough Pumping Plant, and Suisun Marsh facilities, modifying ongoing programs being implemented as part of SWP operations, improving specific activities that would enhance protection of special-status fish species, or supporting ongoing studies and research on these special-status species to improve the basis of knowledge and management of these species." (Draft EIR at 2-16.) As illustrated in Table 2-3, the Proposed project contains fourteen (14) separate elements. (Draft EIR at Table 2-3, pp. 2-17-2-18.) Because most of these project components would modify existing operations or programs, an adequate description of baseline conditions relevant to each component is necessary to ascertain whether the Proposed Project would have significant environmental effects. In most cases, the Draft EIR provides no comparison of the Proposed Project to existing operations that would allow the reader to understand changes to existing operations occurring as a result of the Proposed Project. To provide this information that CEQA requires, DWR should (1) add a column to Table 2-3 titled "Baseline Operations" that summarizes the relevant baseline for each project component; and (2) disclose the baseline conditions relevant to each project component in sections 2.3.2 to 2.3.21 with sufficient detail to meaningfully understand changes under the Proposed Project. While it may be possible to determine this information together by collating information included in the Draft EIR's appendices, CEQA requires more disclosure and analysis. The Proposed	Regarding a comparison of the Proposed Project to Baseline conditions, please refer to resource Chapters 4-9 where a comprehensive analysis of the Proposed Projects compared to baseline conditions is discussed. Chapter 11, "Alternatives to the Proposed Project," provides a comprehensive analysis of each alternative compared to the Proposed Project and Baseline Conditions. Common Response 3, "The CEQA Process," discusses the range of alternatives considered and the development of alternatives. Appendix 4A, "Model Assumptions," describes the assumptions included in the CalSim 3 modeling used to characterize actions included in both the Baseline Conditions and the Proposed Project.

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		Project's core changes from baseline conditions "must be presented in a manner calculated to adequately inform the public and decision makers, who may not be previously familiar with the details of the project. Information scattered here and there in EIR Appendices… is not a substitute for reasoned analysis." (Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova (2007) 40 Cal.4th 412, 442 [quotations omitted]; Banning Ranch Conservancy v. City of Newport Beach (2017) 2 Cal.5th 918, 941; Santa Clarita Org. for Planning v County of L.A. (2003) 106 Cal.App.4th 1219,1239 ["[a]t minimum, the text of the EIR should refer to the appendices that contain the relevant discussion"].) More information regarding basic changes from baseline under the Proposed project must therefore be included in the EIR. An accurate and complete project description is also crucial to ensure DWR's analysis of project alternatives complies with CEQA. The Draft EIR discloses that each alternative "is a variation of the Proposed Project," with all components of the Proposed Project except for narrow alterations to one or two project components. (Draft EIR at 11-8, 11-44, 11-58.) In the EIR, DWR must adequately describe the basic components of the Proposed Project and how the Proposed Project differs from baseline conditions to meaningfully evaluate the Proposed Project and its alternatives pursuant to CEQA.	
18	11	4. The Description of Aquatic Biological Resources and Related Project Impacts in Chapter 6 of the Draft EIR should be Refined Chapter 6 of the Draft EIR contains a lengthy discussion intended to address the potential effects of the Proposed Project on Aquatic Biological Resources. That discussion should be further refined to reflect additional science and data. A compilation of specific comments on Chapter 6 is attached as Attachment B [ATT 2]. We encourage DWR to consider this information and refine and update its discussion of this important subject area accordingly.	Please see responses to the specific comments provided on fish and aquatic resources (i.e., Responses to Comments 18-15 to 18-38.)
18	12	Thank you for your consideration of these comments.	This is not a comment on the contents of the DEIR. Specific responses to the specific comments on the DEIR are provided herein. No additional response is required.
18	13	[ATT 1: A description of the San Luis & Delta-Mendota Water Authority and a list of its member agencies.]	This is a reference document cited in the comment letter. It is not a comment on the contents of the DEIR. DWR has reviewed all comments and will consider all comments in its decision-making process.

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18	14	[ATT 2:] Page 6-1: The linkages between the environmental baseline discussion and the specific elements of the proposed action that are assessed in the effects analysis are difficult to understand and are not explicit. It would help to clarify the linkages if the environmental baseline discussion included a sentence or two for each major element of the baseline and its relevance and use in the effects analysis. The baseline discussion could then cross-reference the section of the effects analysis in which it was evaluated.	Thank you for your comment. Appendix 4A, "Model Assumptions," Attachment 1, "Model Assumptions," includes a comprehensive list of model assumptions for the baseline conditions including assumptions for facilities, regulatory standards, and operations. Please also see Common Response 2, "CEQA Environmental Baseline," for additional information on the environmental baseline.
18	15	[ATT 2:] Pages 6-5, 6-6: The Draft EIR cites Feyrer et al. (2007 and 2011) as scientific support for several statements relating delta smelt performance and the position of the low-salinity zone in the upper estuary without acknowledging the substantial criticism and challenges to the analyses, interpretation, and conclusions presented in Feyrer et al. (2007 and 2011). The discussion does not elaborate on this controversy, rather cites conclusions from Feyrer et al. as scientific fact without presentation of alternative and conflicting findings in subsequent published studies and critical uncertainties in the Feyrer et al. papers.	Discussion of other studies providing alternative findings to those of Feyrer et al. (2007, 2011) is provided in the same section cited by the comment, e.g., Manly et al. (2015), ICF International (2017), and Murphy and Weiland (2019). References cited in this response: Feyrer, F., M. L. Nobriga, and T. R. Sommer. 2007. Multi-decadal Trends for Three Declining Fish Species: Habitat Patterns and Mechanisms in the San Francisco Estuary, California, U.S.A. Canadian Journal of Fisheries and Aquatic Sciences 64:723–734. Feyrer, F., K. Newman, M. Nobriga, and T. Sommer. 2011. Modeling the Effects of Future Freshwater Flow on the Abiotic Habitat of an Imperiled Estuarine Fish. Estuaries and Coasts 34:120–128. ICF International. 2017. Public Water Agency 2017 Fall X2 Adaptive Management Plan Proposal. Submitted to United States Bureau of Reclamation and Department of Water Resources. Draft. August 30. (ICF 00508.17.) Sacramento, CA. Manly, B. F. J., D. Fullerton, A. N. Hendrix, and K. P. Burnham. 2015. Comments on Feyrer et al. "Modeling the Effects of Future Outflow on the Abiotic Habitat of an Imperiled Estuarine Fish." Estuaries and Coasts 38(5):1815–1820. Murphy, D. D., and P. S. Weiland. 2019. "The Low-Salinity Zone in the San Francisco Estuary as a Proxy for Delta Smelt Habitat: A Case Study in the Misuse of Surrogates in Conservation Planning." Ecological Indicators 105:29–

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			35. Available: https://doi.org/10.1016/j.ecolind.2019.05.053.
18	16	[ATT 2:] Page 6-6: The report states that abundance indices for several species have been correlated with X2 (citing Jassby et al. 1995, Kimmerer 2002a, 2002b, and Tamburello et al. 2019). Several of these analyses are more than 20 years old and do not reflect many of the more recent changes that have occurred in the estuary, including further declines in fishes of conservation concern, habitat extent and quality for them, and resource availability. Those analyses should be updated to include data through 2023 to confirm that they are still valid.	Consistent with the comment's suggestion, the EIR includes updated outflow-abundance index relationships including data up to the most recently available year; see, for example, Appendix 6B, Section 6B.13, "Longfin Smelt Delta Outflow-Abundance Index Analysis (Bayesian Method)," and Section 6B.16, "Delta Outflow-Abundance Index Regressions (Starry Flounder, Striped Bass, American Shad, and California Bay Shrimp.)"
18	17	[ATT 2:] Page 6-8: The Draft EIR states that the relationship between longfin smelt Fall Midwater Trawl Survey (FMWT) abundance and X2 has shifted based on analyses by Kimmerer (2002b) and others. It should be noted that this relationship for longfin smelt has continued to change through to the present. The document should state directly that abundance indices derived from the FMWT are unreliable for use in determining the status and trend in numbers of longfin smelt. The FWMT does not sample locations where most longfin smelt occur during the FWMT sampling period. It does not sample habitat gradients that are occupied by longfin smelt. The FMWT samples longfin smelt as bycatch and may grossly misrepresent its abundance given that longfin smelt sampled by that trawl are individuals largely outside of their habitat, therefore less fit than most individuals not captured. Higher numbers of longfin smelt in the FMWT may reflect lower longfin smelt effective population size and misrepresent the status of the species. The longfin smelt DPS is not monitored per se by the standing fish surveys and "abundance indices" derived from them are inaccurate. Longfin smelt captured in the focused two-year longfin smelt study (2013 and 2014) by Grimaldo et al. (2017 – Sampling uncharted waters: examining rearing habitat of larval longfin smelt in the upper San Francisco Estuary, Estuaries and Coasts 40: 1771-1784) counter the notion that (1) the fish exists in the Delta in diminished numbers, (2) that high local longfin smelt densities are a response to high through-Delta outflow (both survey years were "below average" years for outflow, but show substantial differences in local longfin smelt abundance), and (3) that the FMWT survey returns accurately reflect species abundance and	To address the types of uncertainty in the relationship between Longfin Smelt abundance indices and Delta outflow mentioned in the comment, the quantitative analyses in the EIR developed relationships using data up to the present (to account for changes in the nature of outflow-abundance index relationships, including changes in ecological regime as mentioned in the comment) for three different surveys (Bay Study Midwater Trawl and Bay Study Otter Trawl, in addition to Fall Midwater Trawl Index), as described in Appendix 6B, Section 6B.13, "Longfin Smelt Delta Outflow-Abundance Index Analysis (Bayesian Method)." These methods specifically estimate the probability of the Proposed Project resulting a lower abundance index than Baseline Conditions, accounting for statistical uncertainty, and there is also discussion of the types of factors mentioned in the comment such as the range covered by the surveys and catchability (see Chapter 6, Section 6.4.2.1, discussion of "Delta Outflow-Abundance Analysis.") As described in Chapter 2 of the EIR, the proposed project includes a Longfin Smelt Science Plan which includes life cycle modeling to highlight critical gaps in the current understanding of Longfin Smelt ecology and will guide core elements of the Science Plan, particularly with respect to new and expanded monitoring as needed through the adaptive

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		provide an abundance index that is reliable for conservation planning purposes. The increases in the FMWT indices in 2021 and 2022 were not predicted by the previous correlation between Delta outflow and abundance. The years 2021 and 2022 were drought years, when Delta outflow was critically low, and previous flow-abundance correlations would have predicted a reduction in longfin smelt abundance. The catches in 2021 and 2022 were the highest since 2011 and were equal to or surpassed index values from recent high-flow wet years of 2011, 2017, and 2023. The abundance of indices in 2021 and 2022 were the fourth and fifth highest since 2000, over the last two decades. The discussion in the EIR should be expanded to provide more insight into the uncertainty in the outflow-abundance relationship for longfin smelt. Interest in the relationship between Delta outflow and during the winter and spring and the abundance of longfin smelt has a long history. Decades ago, longfin smelt were one of the first species seen as showing a positive correlation between Delta outflow during January-March and the index of abundance the following fall derived from the FMWT survey (Rosenfield and Baxter 2007, Kimmerer 2004). The ecology of the Bay-Delta estuary is ever-changing, and so are the observed correlations between outflow and the index of abundance of the longfin smelt. The magnitude of the relationship between the longfin smelt population and Delta outflow has declined over the past 50 years (the correlation of increased Delta outflow now relates to with a lower level of increased smelt abundance; see figure below [ATT 2: Exhibit 1]) suggesting that non-flow related factors have impacted and are impacting longfin smelt population dynamics. Kimmerer (2004) hypothesized that the change in the relationship between longfin smelt abundance and Delta outflow beginning in about 1988 was due to the effects of the introduction and rapid dramatic increase in densities of the Asian clam (Corbula amurensis). The Asian clam is a benthic filter feeder. The Asian clam filters zooplankton (the same species that longfin smelt rely on as their food source and other material out of the water column) which was hypothesized to result in substantial reductions in the zooplankton food supply for longfin smelt. Later results from 1989-2002 showed another notable reduction in the relative abundance of a number of pelagic fishes of the upper estuary including delta smelt, longfin smelt, striped bass, and threadfin shad. Between 2002 and 2006, FMWT abundance indices included record	management process (Section 2.3.19.5, "Longfin Smelt Science Plan.")

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		lows for delta smelt and juvenile striped bass, and near-record lows for longfin smelt and threadfin shad. The decline in these four pelagic fish species was an important management issue, and became known as the Pelagic Organism Decline ("POD"). Hanson and Greene (2021) reported evidence from more recent CDFW fishery surveys (2003-2020) that another substantial decline has occurred in the Delta outflow-longfin smelt abundance correlation. The figure [ATT 2: Exhibit 1] illustrates the change in the correlation between longfin abundance index values and Delta outflow. Over the three periods, 1967 to 1985, 1989 to 2002, and 2003 to 2023, the same level of Delta outflow has correlated with lower abundance as measured by the FMWT indices. In the figure above, the correlation based on fishery survey results in 2003-2023 (after the POD) indicates not only a lower longfin smelt abundance for a given Delta outflow but also greater variability (reflected by the decline in the r2 values of the regression) within the data on longfin smelt abundance indices. The regression line is still upward-sloping in this most recent period, however, analysis of the correlation between longfin smelt abundance and Delta outflow from the FMWT surveys (see figure above) shows a progressive decrease in the r2 values over time (1967-1988 r2=0.78; 1989-2002 r2=0.70; 2003-2023 r2=0.22), reflecting greater variability and higher levels of uncertainty in any confidence that might be placed in the prediction that an increase in Delta outflow may produce a measurable increase in longfin smelt abundance in the subsequent FMWT survey. This increased level of uncertainty in the relationship is further reflected in FMWT indices of abundance in 2022 (Index value=403) in a critically low flow drought year and 2023 (Index value=464), in one of the wettest high Delta outflow years (precipitation was 140 percent of the long-term average) to occur in decades. For these two most recent years, the FMWT longfin smelt abundance index is virtually the same despite significantly different magnitudes of Delta outflow during these two years. The fundamental mechanisms underlying the flow-abundance correlations in longfin smelt are not known, adding to the uncertainty in the predicted biological benefits of management actions designed to increase Delta outflow. Confounding a Delta outflow-abundance relationship is the fact that longfin smelt (the longfin smelt DPS) are distributed well beyond the FMWT survey envelope and it spawns in multiple tributaries to the Bay. The explanation for a Delta outflow-	

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		longfin abundance relationship is that it is correlated with the actual environmental determinant of longfin smelt abundance in the Bay-Delta system, that is, precipitation in the Bay-Delta (and flows from the Sacramento and San Joaquin are not the population abundance driver). In that light, how the potential mechanisms affecting the outflow-abundance relationship for longfin smelt have changed, if they have, and how those changes impact the population dynamics of longfin smelt are unknown. They add to the uncertainty attending the Delta outflow-longfin smelt abundance correlation, which has been changing over time. For unknown underlying causal reasons, the correlation between Delta outflow and longfin smelt abundance has become weak.	
18	18	[ATT 2: Exhibit 1: Graph showing longfin smelt abundance and Delta outflow.]	Please see Response to Comment 18-17.
18	19	[ATT 2:] Page 6-9: The report cites recent climate-change modeling that is predicted to increase sediment loading and Delta turbidity. The report does not cite or discuss more credible findings by USGS (Schoellhamer) predicting that sediment loading in the future is likely to decline. The decline in sediment delivery to the Delta is also a function of floodplain reclamation and the loss of shallow mudflats. Papers including Reactivation of Floodplains in River Restorations: Long-Term Implications on the Mobility of Floodplain Sediment Deposits, Maaβ and Schüttrumpf (2019) Water (2019) Water Resources Research 55: 8178-8196 could be used to expand appropriately the discussion.	The paper from the EIR cited in the comment (i.e., Stern et al. 2020) is also by USGS researchers, cites prior research by authors such as the one mentioned in the comment (i.e., Schoellhamer), and represents the best available science on this issue. References cited in this response: Schoellhamer, D. H., T. L. Morgan-King, M. A. Downing-Kunz, S. A. Wright, and G. G. Shellenbarger. 2014. Appendix 5. U.S. Geological Survey Sediment Monitoring and Analysis. In Synthesis of Studies in the Fall Low-Salinity Zone of the San Francisco Estuary, September–December 2011. U.S. Geological Survey Scientific Investigations Report 2014–5041, 111–123. Stern, M. A., L. E. Flint, A. L. Flint, N. Knowles, and S. A. Wright. 2020. The Future of Sediment Transport and Streamflow Under a Changing Climate and the Implications for Long-term Resilience of the San Francisco Bay-Delta. Water Resources Research 56(9): e2019WR026245. Available: https://agupubs.onlinelibrary.wiley.com/doi/10.1029/2019WR026245.
18	20	[ATT 2:] Page 6-13: The discussion of pre-screen losses in CCFB [Clifton Court Forebay] should include the CHTR [collection, handling, transport, release] efforts to improve salvage, handling, and release methods to increase effectiveness and survival. The CCFB predator removal program should also be included as an effort to reduce pre-screen predation	Various fish protection facility improvements are included in the Proposed Project (see Chapter 2, Section 2.3.7, "John E. Skinner Delta Fish Protective Facility") and analyzed in Chapter 6 (see species-specific discussions.) DWR has considered predator removal, no

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		mortality. Information on predator relocation efforts is described at: 0.7.115.9071-000006.pdf (noaa.gov).	changes regarding predator removal have been made to the Proposed Project based on this comment. Please refer to Common Response 3, "The CEQA Process," for more information about the reasonable range of alternatives.
18	21	[ATT 2:] Page 6-15: The discussion of Delta salmon and steelhead survival studies needs to be expanded to include a discussion of findings from the 6-year steelhead survival study (Buchanan et al. 2021). Outmigration survival of a threatened steelhead population through a tidal estuary (cdnsciencepub.com).	Discussion of the study mentioned in the comment is provided in the "Through-Delta Survival" discussion in Section 6.4.6.1, "Delta SWP Facility Operations."
18	22	[ATT 2:] Page 6-16: The report cites Cunningham et al. (2015), for a statement that an increase in Delta exports would reduce salmon survival by 57.8%. This prediction has not been validated and relies on data from an earlier time period when SWP operations did not incorporate certain current regulatory obligations. That earlier prediction is not relevant to the current proposed project and could mislead readers.	The section of the EIR to which the comment refers includes context regarding the flow levels and regulatory obligations that were in place during the referenced study but differed from current regulatory requirements.
18	23	[ATT 2:] Page 6-20: The discussion of long-term trend monitoring should be expanded to include the recent re-evaluation of Delta monitoring programs, particularly that by the Delta Independent Science Board, which found that the ongoing fish surveys are not competent for use in assessing the performance of targeted management actions, the short-comings of many past and ongoing "monitoring" efforts, and necessary changes to the designs of data-collection necessary [to] better address the information needs of resource managers. Information on the Interagency Ecological Program (IEP) review of current fish monitoring in the Delta is available at: bing.com/ck/a?!&&p=6a5cd92bb9f21bd2JmltdHM9MTcyMjQ3MDQwMCZpZ3VpZD0zOGVhY2Q2YilmZmRiLTZkNjAtMjExNy1kZjE0ZmUwNDZjZTkmaW5zaWQ9NTE5Nw&ptn=3&ver=2&hsh=3&fclid=38eacd6b-ffdb-6d60-2117-df14fe046ce9&psq=IEP+fish+monitoring+review&u=a1aHR0cHM6Ly9ucm0uZGZnLmNhLmdvdi9GaWx1SGFuGxlci5hc2h4P0RvY3VtZW50SUQ9MzI5NjU&ntb=1	DWR recognizes the limitations of long-term monitoring programs for assessing the performance of targeted management actions and has included a suite of adaptive management actions and special studies (see Section 2.3.18, "Adaptive Management," Appendix 2B, "Adaptive Management Program," and 2.3.19, "Special Studies") to continue to refine management actions based on targeted performance monitoring.
18	24	[ATT 2:] Page 6-22: The discussion of delta smelt supplementation should be expanded to include preliminary results of the releases to date, the plans to significantly expand production at a Rio Vista facility, future planned releases of up to 500,000 smelt/year, and linkage of that discussion to the effects analysis.	Further discussion of Delta Smelt supplementation, including details such as those mentioned in the comment, is provided in Chapter 2, Section 2.3.9, "Delta Smelt Supplementation." Preliminary results of releases to date are provided in Section 6.4.1.4, "Delta Smelt Supplementation."

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18	25	[ATT 2:] Page 6-23: The discussion of the Suisun Marsh Salinity Control Gates should be expanded to provide a brief discussion of the objective(s) of gate operations for salinity control, results of the early evaluations of effects on adult salmon migration, and results from the tests and monitoring of inferred potential benefits to delta smelt and their habitat. The Suisun Marsh Salinity Control Gates management action does not include monitoring of delta smelt or a sampling scheme that samples its prey at appropriate locations and frequencies). https://cwemf.org/wp/wp-content/uploads/2018/05/4-CWEMF_suisun_final.pdf https://www.deltacouncil.ca.gov/pdf/science-program/review-documents/2024-02-28-appendix-b-suisun-marsh-salinity-control-gates-action-workplan.pdf https://baydeltalive.com/assets/5c92b61032e1bfd2c6a30d4ee74773aa/application/pdf/SMSCG_Delta_Smelt_Pilot_Study_Project_Description_3-18-18_1.pdf	Further discussion of Suisun Marsh Salinity Control Gates operations including objective is provided in Chapter 2, Section 2.1.3.5, "Suisun Marsh Operations." With respect to monitoring related to the Suisun Marsh Salinity Control Gates action, It is unclear if the comment is referring to the Proposed Project's management action; as described in Section 2.3.6.2, "Suisun Marsh Salinity Control Gates," a monitoring plan will be developed that responds to uncertainties in the performance metrics to evaluate action performance. Results from study of the previous implementation of the Suisun Marsh Salinity Control Gates (Sommer et al. 2020) was cited in Section 6.4.1.2, "Delta Smelt Summer and Fall Habitat Actions." Reference to the prior study (Vincik 2012) that led to the Suisun Marsh Salinity Control Gates being open has been added to Section 6.4.5.9, "Suisun Marsh Operations." References cited in this response: Sommer, T., R. Hartman, M. Koller, M. Koohafkan, J. L. Conrad, M. MacWilliams, A. Bever, C. Burdi, A. Hennessy, and M. Beake. 2020. Evaluation of a Large-Scale Flow Manipulation to the Upper San Francisco Estuary: Response of Habitat Conditions for an Endangered Native Fish. PLoS ONE 15(10): e0234673. https://doi.org/10.1371/journal.pone.023467. Vincik, R. F. 2012. Multi-Year Monitoring to Facilitate Adult Salmon Passage Through a Temperate Tidal Marsh" Environmental Biology of Fishes 96(2–3):203–214.
18	26	[ATT 2:] Page 6-28: The report notes that longfin smelt have been found to spawn in lower Coyote Creek in years with high freshwater flows, but it does not discuss findings for the Napa and Petaluma rivers smelt and other tributaries to the Bay. Past reports from environmental consultants have reported longfin smelt in tributaries to the Bay in all area counties. There are reports from independent sampling efforts (particularly by Hobbs and colleagues) that indicate consistent use of tributaries to the Bay in all water-year types and that the most	The information for occurrence of Longfin Smelt in other tributaries to San Francisco Bay mentioned in the comment is provided in Appendix 6A, Section 6A.1.2.3, "Distribution and Abundance."

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		successful longfin smelt spawning occurs low in the Delta and in the larger (non-Delta) tributaries to the Bay.	
18	27	[ATT 2:] Page 6-45: Note that Hamilton and Murphy (2018) Analysis of limiting actors across the life cycle of delta smelt (Hypomesus transpacificus). Environmental Management 62: 365-382. And others have also evaluated delta food resources but are not included in the effects analysis. https://www.researchgate.net/publication/325048221_Analysis_of_Limiting_Factors_Across_the_Life_Cycle_of_Delta_Smelt_Hypomesus_transpacificus	The study of Hamilton and Murphy is cited in Appendix 6A, Section 6A.1.1.4, "Species Threats," with respect to food availability, consistent with the comment. With respect to Chapter 6, additional sources are cited in the subsequent sections beyond the specific page cited by the commenter, with further references presented in the above-mentioned section of Appendix 6A.
18	28	[ATT 2:] Page 6-45: There are a number of papers that address elements of the pelagic food web and the linkage to smelt that are not included in the discussion. Note that Hamilton and Murphy (2018), Kimmerer, and others have also evaluated delta food resources, but are not included in the effects analysis (https://www.researchgate.net/publication/325048221_Analysis_of_Limiting_Factors_Across_the_Life_Cycle_of_Delta_Smelt_Hypomesus_transpacificus). Merz, J.E., Bergman, P.S., Simonis, J.L. et al. Long-Term Seasonal Trends in the Prey Community of Delta Smelt (Hypomesus transpacificus) Within the Sacramento-San Joaquin Delta, California. Estuaries and Coasts 39, 1526-1536 (2016). Long-Term Seasonal Trends in the Prey Community of Delta Smelt (Hypomesus transpacificus) Within the Sacramento-San Joaquin Delta, California | Estuaries and Coasts (springer.com) Hamilton, S., Bartell, S., Pierson, J. et al. Factors Controlling Calanoid Copepod Biomass and Distribution in the Upper San Francisco Estuary and Implications for Managing the Imperiled Delta Smelt (Hypomesus transpacificus). Environmental Management 65, 587-601 (2020). Factors Controlling Calanoid Copepod Biomass and Distribution in the Upper San Francisco Estuary and Implications for Managing the Imperiled Delta Smelt (Hypomesus transpacificus) | Environmental Management (springer.com). Characterizing macroinvertebrate community composition and abundance in freshwater tidal wetlands of the Sacramento-San Joaquin Delta Hartman et al. 2019., Characterizing macroinvertebrate community composition and abundance in freshwater tidal wetlands of the Sacramento-San Joaquin Delta | PLOS ONE. These studies and several more should be added to the discussion to both strengthen the scientific foundation and compare and contrast results of the different studies. Prey availability has emerged as the	The EIR includes reference to the specific papers mentioned in the comment (see Appendix 6A, Section 6A.1.1.4, and Chapter 6, Section 6.4.1.1, discussion of "Subadults to Adults (September-December)") and other relevant papers regarding flow effects such as Hassrick et al. (2023) and tidal marsh (Hammock et al. 2019) (see, for example, the "Food Availability" section within Section 6.4.1.1, "Delta SWP Facility Operations" and the "Food Availability" discussion in Section 6.4.1.1, "Delta SWP Facility Operations.") References cited in this response: Hammock, B. G., S. P. Moose, S. S. Soils, E. Goharian, and S. J. Teh. 2019. Hydrodynamic Modeling Coupled with Long-Term Field Data Provide Evidence for Suppression of Phytoplankton by Invasive Clams and Freshwater Exports in the San Francisco Estuary. Environmental Management 63:703–717. Available: https://link.springer.com/article/10.1007/s00267-019-01159-6. Hassrick, J. L., J. Korman, W. J. Kimmerer, E. S. Gross, L. F. Grimaldo, C. Lee, and A. A. Schultz. 2023. Freshwater Flow Affects Subsidies of a Copepod (Pseudodiaptomus forbesi) to Low-Salinity Food Webs in the Upper San Francisco Estuary. Estuaries and Coasts 46:450–462.

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		apparent primary driver of delta smelt population dynamics. Several of the management actions, like wetland restoration, are intended to supplement prey densities for smelt and other fish. There is an ongoing shift from flow-centric management actions to management actions addressing food-web dynamics to support recovery of delta smelt that should be documented in the EIR to make it transparent and representative of current knowledge. Food availability and production in shallow wetlands are key factors in supporting smelt growth and survival as well as elements of the effects analyses linked to Delta flow/hydrology, export operations, seasonal and geographic distributions, and effects of non-native species identified and addressed in the document. The discussion of the environmental baseline for primary and secondary production is important to support the effects analyses and should be expanded and made more robust and rigorous.	
18	29	[ATT 2:] Page 6-100: Based on the geographic distribution of longfin smelt, comparing the Bay Study sampling to the FMWT [Fall Midwinter Trawler Survey], it can be concluded that the FMWT does not adequately sample the entire longfin smelt population, therefore abundance indices from the FMWT at best have a very high degree of uncertainty. The development of a new linear regression between FMWT abundance and December-May and March-May Delta outflow is not supported by the best available data. The abundance of longfin smelt is more accurately reflected in the Bay Study sampling. In addition, the analyses should be stratified to detect potential changes in the Delta outflow-abundance relationship in response to the POD [Pelagic Organism Decline], 2008 BiOp, and other changes in SWP operations over the period of analysis. See comments on page 6-8.	In addition to the Fall Midwater Trawl, the analysis referred to in the comment includes analysis based on the Bay Study Midwater Trawl and Bay Study Otter Trawl, consistent with the comment. Also consistent with the comment, the analysis includes consideration of changes in ecological regime, including the Pelagic Organism Decline (see Appendix 6B, Section 6B.13, "Longfin Smelt Delta Outflow-Abundance Index Analysis (Bayesian Method)"). Please also see Response to Comment 18-17.
18	30	[ATT 2:] Page 6-107: Section 6.4.2.9 discusses results of PTM [Particle tracking model] analysis of the potential risk of larval longfin smelt to entrainment due to Suisun Marsh operations, citing Culberson et al. (2004) as the source of PTM results. There have been substantial improvements and refinements to the PTM since 2004 that are not reflected in results from the older version of the model. Did the PTM used by Culberson et al. include current operation like spring X2 management under the NAA [No-Action Alternative] and operations under the Proposed Project? The EIR analysis should be updated to use	The EIR cites a representative historical study that remains relevant to the general point of likely limited entrainment at the MIDS. Particle tracking modeling (PTM) used for the effects analysis reflects the most recently available PTM model.

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		the best currently available PTM model and, importantly, model assumptions.	
18	31	[ATT 2:] Page 6-159: Section 6.4.3.2 reports that there would be no expected adverse effects on winter-run Chinook salmon from the Summer/Fall X2 Action targeting delta smelt. Implementation of the Summer/Fall Action would require joint operations between the SWP and CVP. Would Summer/Fall Actions require releases from Shasta Reservoir coldwater pool storage that could have significant adverse impacts on could-water management in the upper Sacramento River on development, hatching, growth, and/or survival of winter-run salmon eggs, alevin, or fry? How would Shasta storage change between NAA [No-Action Alternative] and Proposed Project operations? What are the model predictions for both upper Sacramento River temperatures and winter-run egg mortality over the wide range of year-types. The EIR finding needs further analytical treatment and technical support.	Please see Common Response 1, "Scope of Analysis."
18	32	[ATT 2:] Page 6-162: The effects analysis cites Acierto et al. (2014) for model results and analyses to estimate the mean percentage of juvenile winter-run salmon entering the Yolo Bypass (6%) based on seasonal timing, length-at-date occurrence, and proportion of Sacramento River flow entering the Yolo Bypass through the Fremont Weir. Acierto et al. estimated that with a notch in the Fremont Weir, the percentage of winter-run entering the Yolo Bypass would increase to 16% in wet and above-normal years and 8% in dry and critically dry years. The Draft EIR does not report whether the assumptions used for the notched weir were comparable with the design and operation of the Big Notch currently completing construction that will be in operation during the proposed project. The EIR discussion should be expanded to include a more recent analysis of the Big Notch operations and the modeling used in CEQA and permitting for the Fremont Weir modifications and the predicted migration of juvenile winter-run into the Yolo Bypass over the wide range of year-types. Information on the Fremont Weir fish passage EIR is available at: Yolo Bypass Salmonid Habitat Restoration and Fish Passage Project (ca.gov).	Please see "Treatment of Yolo Notch Project" in Common Response 2, "CEQA Environmental Baseline," for additional discussion on the representation of the Yolo Notch Project.
18	33	[ATT 2:] Page 6-182: The axis label for Figure 6-11 is not correct. Rather than flow, the label should be number of days DCC [Delta Cross Channel] is closed during the fall. This applies to Figure 6-12 as well.	The figures have been revised per the comment.
18	34	[ATT 2:] Page 6-185: The effects analysis relied on the DPM, STARS, and ECO-PTM survival simulation models. Why was the Reclamation SIT	Models used in the effects analysis reflected the Proposed Project being focused on Delta operations and

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		model and NMFS winter-run life-cycle model not used in those analyses? Similarly, several models are available for use in assessing potential impacts to delta smelt and longfin smelt like the USFWS delta smelt lifecycle model.	so the through-Delta survival models provide population-level context to assess impacts. One of the scenarios modeled with IOS, OBAN, and the Winter-Run Life Cycle Model related to the Draft Environmental Impact Statement for the Long-Term Operations of the Central Valley Project and State Water Project have relevance to the cumulative effects of the Proposed Project and reference to these has been added to Chapter 10, Section 10.1.6.1, "Water Supply, Water Management, and Water Quality Projects and Actions." With respect to Delta Smelt, the Delta Smelt Life Cycle Model with Entrainment was used in the EIR; see Chapter 6, Section 6.4.1.1, subsection entitled "Delta Smelt Life Cycle Modeling." Population-level effects were also assessed for Longfin Smelt; see Chapter 6, Section 6.4.2.1, subsection entitled "Delta Outflow-Abundance Analysis." As described in Chapter 2 of the EIR, the proposed project includes a Longfin Smelt Science Plan which includes life cycle modeling to highlight critical gaps in the current understanding of Longfin Smelt ecology and will guide core elements of the Science Plan, particularly with respect to new and expanded monitoring as needed through the adaptive management process (Section 2.3.19.5, "Longfin Smelt Science Plan.")
18	35	[ATT 2:] Page 6-189: The effects analysis for juvenile fall-run chinook salmon based on the STARS survival model are presented for the baseline and proposed project for the seasonal period from December through May/June. Juvenile fall-run salmon migrating downstream in December-February would predominantly be in the fry life stage (generally 35-50 mm in length). Because of their small size, there are no survival data available for salmon fry; survival of larger smolt sized juveniles in March-May are representative of fry survival. It is not clear how those estimates were derived using the STARS model and how accurate or reliable they are in application in assessing proposed project effects on salmon fry. This same comment applies to results of the ECO-PTM analyses presented on page 6-190.	As the comment notes, there are no analogous flow-survival estimates at the current time for fry-sized fish; the survival results for the larger fish are assumed to be generally representative at a relative scale of the types of effects for smaller fish and demonstrated little potential for negative effects (see the STARS and ECO-PTM results cited in the comment.)

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18	36	[ATT 2:] Page 6-201: Section 6.4.6.9 reports that operation of the SMSCG [Suisun Marsh Salinity Control Gate] from September through May coincides with the upstream and downstream migration of juvenile fall-/late-fall-run Chinook salmon and the upstream migration of adult spring-run Chinook salmon. This is not relevant since this section is addressing steelhead.	The text has been revised per the comment, to reference steelhead.
18	37	[ATT 2:] Page 6-217: The first paragraph in Section 6.4.10.1 states "resulting in limited potential effects of the North Delta intakes." This appears to be a cut-and-paste error from and earlier EIR, and is not relevant to the effects analysis for the proposed project.	The text has been revised per the comment.
18	38	[ATT 2:] Page 6-224: The effects analysis cites O'Rear et al. (2023) for long-term sampling of starry flounder from 1979-2014. Why is this period not consistent with other citations to the same study over the period 1979-2020?	The text has been revised per the comment.
19	1	Please the attached Comment Letter from the Solano County Water Agency in regards to Long-Term Operations of the State Water Project. Thanks so much!	This information describes the structure or organization of the comment letter, the background of the organization or individual commenter, clarification on the submittal of the comment letter, or general introductory text. It is not a comment on the contents of the DEIR. DWR has reviewed all comments and will consider all comments in its decision-making process.
19	2	The Solano County Water Agency (SCWA) is grateful for the opportunity to provide comments on the Public Draft Environmental Impact Report (DEIR) pertaining to the Long-Term Operations (LTO) of the State Water Project (SWP). SCWA is appreciative of the diligent efforts by the California Department of Water Resources (DWR) in putting together the DEIR, and in trying to address some of the prior operational constraints associated with the North Bay Aqueduct (NBA) reach of the SWP. The purpose of this letter is to share with DWR, several remaining concerns and comments on behalf of SCWA and our NBA (and non-NBA) member agencies, which include the Cities of Fairfield, Vacaville, Vallejo, Suisun City, Benicia, Travis Air Force Base, and Reclamation District 2068.	This information describes the structure or organization of the comment letter, the background of the organization or individual commenter, clarification on the submittal of the comment letter, or general introductory text. It is not a comment on the contents of the DEIR. DWR has reviewed all comments and will consider all comments in its decision-making process.
19	3	Concerns & Comments: 1. Clarification of Cities Served by the NBA [North Bay Aqueduct] (Section 2.3.14)	Chapter 2, Section 2.3.14 states "The NBA serves Napa County, and the Solano County cities of Fairfield, Vacaville, Vallejo, Benicia, and Travis Air Force Base," i Indicating that the NBA serves the named cities of

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		For clarification, the NBA serves over 500,000 residents and businesses in Napa and Solano Counties. In Napa County, this includes the cities of Napa, American Canyon, and Calistoga. In Solano County, this includes the communities of Fairfield, Vacaville, Vallejo, Benicia, and Travis Air Force Base.	Solano County in addition to all cities within Napa County.
19	4	Concerns & Comments: 2. Larval Delta Smelt NBA [North Bay Aqueduct] Curtailments (Section 2.3.14.1) For the May 1 to June 30 period of dry and critical water years, DWR is recommending the use of Station 716 (Cache Slough at Liberty Island) as a trigger. Station 716 is at the confluence of newly created tidal wetland restoration habitat, specifically Prospect Island, Lookout Slough, and Lower Yolo Ranch. SCWA [Solano County Water Agency] is concerned that the potential success of these restoration projects will lead to a curtailment in flows at the Barker Slough Pumping Plant (BSPP), but for no real purpose. Hydrodynamic flows at Station 716 are not strongly connected with operational flows from the BSPP.	Although DWR developed the Prospect Island, Lookout Slough, and Lower Yolo Ranch restoration projects with the intention of them being successful, whether the projects will certainly increase population abundance is not known at this time. Therefore, it is premature and speculative to modify the Proposed Project's use of Station 716 as a trigger for curtailments of North Bay Aqueduct diversions based on the existence of these restoration projects. However, Section 2.3.14, "Barker Slough Pumping Plant," includes Barker Slough Pumping Plant conservation measures for larval Delta Smelt. These conservation measures are designed to be adaptive to a changing baseline of increased Delta Smelt abundance from population increases associated with habitat restoration and supplementation. By having the trigger for reducing NBA exports be a percent of the broader abundance of larvae across the North Delta, the trigger level will be higher if habitat restoration success or supplementation result in a higher presence of Delta Smelt larvae in the area. Additionally, DWR has included Adaptive Management Action 6, "Tidal Habitat Restoration Effectiveness for Smelt Fishes" in Appendix 2B, Attachment 2, "Adaptive Management Actions and Programs," that will assess the effectiveness of the habitat restoration projects. Information derived from this Adaptive Management Action will be used to help make future operational decisions, potentially including use of Station 716 as a trigger to curtail North Bay Aqueduct diversions.
19	5	Concerns & Comments: 3. Delta Smelt Supplementation (Section 2.3.9 | Delta Smelt Supplementation)	With respect to the potential impacts of supplementation on NBA exports, the DEIR Proposed Project includes Barker Slough Pumping Plant conservation measures for larval Delta Smelt. These

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		While SCWA [Solano County Water Agency] understands the importance of Delta Smelt Supplementation, the NBA agencies continue to be concerned with the location of Delta Smelt Supplementation in the North Delta Arc and the potential to curtail the NBA [North Bay Aqueduct]. Furthermore, based on Appendix 2E (Delta Smelt Supplementation Strategy), releases will be done in the North Delta Arc to be "far removed from the south of Delta and risk of entrainment releases" but there is no discussion on potential impacts to Solano water supply facilities such as the NBA, City of Vallejo's Cache Slough Pump Station, or Reclamation District 2068. Furthermore, exact release locations are unknown. Below is an excerpt from Appendix 2E, Delta Smelt Supplemental Strategy, Section III (Timing and Location of Releases, North Delta Arc). North Delta Arc To meet these criteria, we expect that delta smelt will be released in the North Delta Arc (see Hobbs et al. 2017), a large expanse of inter-connected habitat in the north and west Delta that contains habitat of acceptable quality for delta smelt, benefits from managed flow actions (NDFA and SMSCG), and is far removed from the south Delta and risk of entrainment releases. The North Delta Arc extends from the Cache-Slough complex, through the lower Sacramento River, and westward through Suisun Bay and Marsh. The North Delta Arc is preferred for delta smelt population supplementation activities for the following reasons. The FCCL predominantly captures wild broodfish within this geographic area, most often near Decker Island along the Sacramento River (Barkerville-Bridges 2005). Habitat restoration projects that have been completed, are pending, or are planned in the North Delta Arc (CNRA 2016, 2017) are anticipated to improve foraging opportunities for released delta smelt (e.g., Hammock et al. 2019; Hartman et al. 2019). Specific sites for population supplementation are not listed because conditions in the Bay-Delta are highly variable. Instead, water quality and biological data collected by monitoring programs and in-situ gauges should be evaluated as releases are being readied each year. Release location will therefore be managed in real-time.	conservation measures are designed to be adaptive to a changing baseline of increased Delta Smelt abundance from supplementation. By having the trigger for reducing NBA exports be a percent of the broader abundance of larvae across the North Delta, the trigger level will be higher if supplementation results in a higher presence of Delta Smelt larvae in the area. With respect to the location of Delta Smelt releases, while facilities identified in the comment are located in the North Delta Arc, no consideration is being given to releasing cultured Delta Smelt in Barker or Lindsey sloughs, nor having any releases be in close proximity to any other diversion structures. Generally, the North Delta Arc contains the highest quality habitat for Delta Smelt in the San Francisco Estuary, so it is the logical location for releasing fish because they have the highest potential for surviving and reproducing in that region of the estuary. Particle Tracking Modeling results included in Section 6.4.1.1, "Delta SWP Facility Operations," and Appendix 6B, Section 6B.8, Delta Smelt Larval Entrainment "DSM2 Particle Tracking Model" to identify potential Barker Slough Pumping Plant impacts show that entrainment would be limited, which suggests that releases at current survey locations in the North Delta Arc would not substantially affect NBA Operations, particularly given the adaptive triggers for limiting diversions under the Proposed Project.
19	6	Thank you for the opportunity to submit comments on the DEIR pertaining to the Long-Term Operations of the State Water Project. As a Bay-Delta County, SCWA has a longstanding interest in the Delta to ensure the NBA [North Bay Aqueduct] and other water supplies can	This is a concluding comment. Specific responses to the specific comments on the DEIR are provided herein. No additional response is required.

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		provide reliable and high-quality water to the agricultural and municipal water users in Solano County. SCWA also understands the importance to protect and sustain the Co-Equal Goals for the Sacramento – San Joaquin Delta. We look forward to working collaboratively with DWR and appreciate all of DWR's efforts to date. Should you have any questions, please don't hesitate to contact me by e-mail at [commenter email] or by phone [commenter phone number].	
20	1	Thank you for the opportunity to comment on the Department of Water Resources' (DWR) Draft Environmental Impact Report (EIR) for the Long-Term Operation (LTO) of the State Water Project (SWP) prepared pursuant to the requirements of the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.) and CEQA Guidelines (Cal. Code Regs., tit. 14, § 15000 et seq.). The mission of the State Water Resources Control Board (State Water Board or Board) and Regional Water Quality Control Boards (Regional Water Boards) is to preserve, enhance, and restore the quality of California's water resources and drinking water for the protection of the environment, public health, and all beneficial uses, and to ensure proper water resource allocation and efficient use, for the benefit of present and future generations. The State Water Board administers water rights in California, including DWR's water rights for the SWP and the various conditions placed upon those rights in State Water Board Decision 1641 (D-1641) and other orders and decisions. The State Water Board and Regional Water Boards also have primary authority over the protection of the State's water quality. To protect water quality, the State and Regional Water Boards develop water quality control plans that identify beneficial uses of water, water quality objectives to protect those beneficial uses, and a program of implementation to achieve the objectives, as well as monitoring and special studies and reporting requirements. The water quality control plans that are relevant to the Proposed Project include the State Water Board's Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary (Bay-Delta Plan), as well as the Central Valley and San Francisco Bay Regional Water Boards' water quality control plans for the Central Valley and San Francisco Bay, respectively. The Draft EIR states that the Proposed Project would continue DWR's ongoing long-term SWP operations in order to allow DWR to continue to store, divert, and convey water in accordance with its existing water	This information describes the structure or organization of the comment letter, the background of the organization or individual commenter, clarification on the submittal of the comment letter, or general introductory text. It is not a comment on the contents of the DEIR. DWR has reviewed all comments and will consider all comments in its decision-making process.

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		rights, and to deliver water pursuant to contracts and agreements up to the full contracted quantities. The Draft EIR further states that DWR is seeking to optimize water supply and improve operational flexibility while minimizing and fully mitigating the take of listed species, in compliance with California Endangered Species Act (CESA) requirements. DWR operates the SWP in compliance with existing Endangered Species Act (ESA) and CESA authorizations, including the 2020 Incidental Take Permit (ITP), the 2019 National Marine Fisheries Service (NMFS) LTO Biological Opinion (BiOp), the 2019 United States Fish and Wildlife Service (USFWS) BiOp, and seeks a new ITP from the California Department of Fish and Wildlife (CDFW) supported by the subject EIR. This letter includes preliminary comments on the Draft EIR based on State Water Board staff's limited review of the document and current understanding of the Proposed Project and associated environmental impacts. Due to the limited comment period and the Board's other ongoing priority efforts, Board staff's review of the Draft EIR was limited to areas most relevant to the Board's authorities and responsibilities, including the Board's Bay-Delta planning and implementation efforts; surface water hydrology; water quality; and aquatic biological resources.	
20	2	Board staff also reviewed the Draft EIR's analyses related to petitions for time extension for the SWP's water rights permits, which the Draft EIR indicates the EIR is intended to support. Board staff are providing initial comments and may provide additional comments upon further review, including additional information that may be needed to support the Board's processing of a time extension petition for the SWP's water rights. Petition for Extension of Time The Draft EIR states that the State Water Board may use the document as a responsible agency in consideration of petitions for time extensions for DWR's SWP water rights permits 16478, 16479, 16481, 16482, 16477, and 16480 (p. ES-3). The EIR should clarify the scope and extent of the time extension being referenced. Namely, the EIR should state expressly the amount of time requested and whether it is intended to cover an extension of time based on now-existing facilities or rather an extension of time that would include a future operating condition or proposed future infrastructure.	Please see Common Response 13, "Water Rights Time Extension," for discussion regarding the water right extensions and this EIR.

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		The Draft EIR does not appear to include information detailing previous maximum diversion and use quantities under the SWP water rights during the permitted development period through December 31, 2009, compared to proposed operations. To inform a State Water Board decision on time extension petitions that may be filed by DWR in the future, an analysis of anticipated increases in diversion and use relative to the maximum diversion and beneficial use achieved under DWR's SWP permits prior to the expiration of their 2009 "complete use" deadline will be necessary, together with a comprehensive evaluation of the potential impacts of the anticipated increase in diversion and use on water quality and aquatic resources. If this information is not included in the EIR, it will need to be submitted as a supplemental analysis in support of any time extension petitions that DWR files with the Board. Further, the no project alternative should evaluate the time extension and the environmental impacts if it were not approved. In addition, the EIR should evaluate the cumulative impacts of approving the time extension with other proposed operational changes.	
20	3	Consistency with Bay-Delta Plan Updates The State Water Board is currently in the process of updating and implementing the Bay-Delta Plan to provide for the reasonable protection of native fish and wildlife. In September 2023, the State Water Board released a draft Staff Report in support of Sacramento/Delta updates to the Bay-Delta Plan (Staff Report). The draft Staff Report evaluates a range of alternatives for updating the Sacramento and Delta portions of the Bay-Delta Plan, including alternatives based on flow scenarios, and a proposed Voluntary Agreements (VAs) alternative that includes water contributions and physical habitat restoration actions. The Draft EIR includes specific VA components related to state-facilitated export reductions, water purchases, and fallowing in its Proposed Project. Additionally, a broader set of proposed VA components are evaluated in the analysis of cumulative impacts. While the Board is considering the proposed VAs in its public planning process, it has not yet made a decision on whether to approve and incorporate the VAs in the Bay-Delta Plan update. Board staff recommend the EIR also evaluate operations consistent with the regulatory approach described in the draft Staff Report under a range of percent unimpaired flow scenarios including 55 percent of unimpaired flow, associated Delta outflows, and cold water habitat provisions, given that the Board has not yet made a decision on VAs.	Please see Common Response 7, "Relationship to Healthy Rivers and Landscapes Program," for discussion regarding the Proposed Project's relationship to the Bay-Delta Plan update. Please see Common Response 13, "Water Rights Time Extension," for discussion regarding the water right permit extensions. Please see Common Response 3, "The CEQA Process," for discussion regarding alternatives.

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		Although the Draft EIR determines that operational impacts from the Proposed Project would be less than significant, as explained further below, there is scientific uncertainty about this conclusion, particularly with respect to cumulative impacts. Further, while more stringent operational constraints on the Proposed Project would not be expected to have additional significant impacts that require evaluation under CEQA, specific evaluations of possible interactive effects would confirm this conclusion and ensure adequate CEQA documentation for the Board's decision-making processes on the time extension petition.	
20	4	Protection of Baseline As part of the Bay-Delta Plan update process, the Board is evaluating VAs proposed by water users and federal and state agencies, including DWR, as a possible means for updating and implementing the Bay-Delta Plan. Under the proposed VAs alternative, the draft Staff Report identifies the need to consider protection of both the VA flows, and the base upon which VA flows are intended to be added, from new or expanded water diversions that may occur under new water right applications and change petitions. The draft Staff Report includes a modular alternative (Alternative 6a) that could be added to the VA alternative to protect these flows. DWR may also develop an alternate proposal for the Board's consideration. The EIR should explain how the time extension petition and potential actions to protect VA flows would interact and evaluate whether and to what extent any expanded diversions allowed as part of the time extension petition could reduce the VA flows or underlying base flows.	To the extent the comment references water rights time extension, see Common Response 13, "Water Rights Time Extension," describing its removal from this EIR. Please also see Common Response 6, "Other State Efforts," and Common Response 7, "Relationship to Healthy Rivers and Landscapes Program," for additional discussion of these topics. Please see Common Response 3, "The CEQA Process," for a discussion of a reasonable range of alternatives.
20	5	Delta Outflow The Draft EIR shows an average reduction in Delta outflow of 8 thousand acre-feet (TAF) in April and 49 TAF in May (Table 4C-3-10-1c in Appendix 4C). It is not clear how these reductions in spring Delta outflow would affect additive flows proposed in the 2022 VA Memorandum of Understanding (MOU). It would be helpful for the EIR to clarify this issue. In addition, as described in the peer-reviewed 2017 Scientific Basis Report in Support of New and Modified Requirements for Inflows from the Sacramento River and its Tributaries and Eastside Tributaries to the Delta, Delta Outflows, Cold Water Habitat, and Interior Delta Flows (Scientific Basis Report), which is also included as Appendix B in the draft Staff Report for updating the Bay-Delta Plan, decreasing freshwater outflows, particularly during the winter and spring, is	The values referenced by the commenter have been updated to reflect the latest CalSim modeling. While the table in Appendix C referenced by the commenter displays an average decrease in Delta outflow during certain months, modeled flows under the Proposed Project include additional VA outflow commitments as noted in the Appendix 4A, "Model Assumptions." The additive flows discussed in the 2022 VA Memorandum of Understanding are additive with respect to "Delta outflows required by Revised Water Rights Decision 1641 (Revised D-1641) and resulting from the 2019 Biological Opinions," not the Baseline Conditions. As such, Delta outflow may fluctuate slightly in certain

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		expected to have a negative impact on the survival and abundance of native fish species. Section 4.3.3.1 of the Draft EIR identifies that Sacramento River flows in September of Wet and Above Normal years would increase in part due to outflow commitments under the VAs. To the degree that these changes in flow result from the VA, this is not consistent with the commitments in the VA MOU, which identifies that outflows additive to baseline will be provided in January through June (VA MOU Appendix 1) and is not consistent with the description of the Proposed Project in Chapter 2 of the Draft EIR, which states that Delta outflow volumes per the terms of the VAs will generally be delivered from March 1 to April 31 during Dry, Below Normal, and Above Normal years (Section 2.3.5.1). The EIR should describe the origin of the VA additions to Delta outflow that are expected to increase Sacramento River flows during September of Wet and Above Normal years; if these flows do not originate from VA outflow commitments, the reference to them should be modified.	months when compared to the Baseline Conditions. Please refer to Chapter 2, "Project Description," Section 2.3.5, "Spring Delta Outflow," for further discussion. Please see Chapter 6, Section 6.4, "Impacts of the Proposed Project," for analyses of impacts of the Proposed Project to special status fish species, with all impacts concluded to be less than significant. The description of Sacramento River flow increases in September of Wet and Above Normal years in Section 4.3.3.1, "Sacramento River at Freeport," is representative of a modeled response from the replacement of the 100 TAF block of water in the Proposed Project with the identified actions mentioned in sentence in question. This modeled response is further described by recognizing that the replacement of this action allows for greater end-of-August storage, and therefore increased September releases, at Oroville in the Proposed Project. The commenter is correct in noting that VA outflow commitments do not occur in September. However, the noted response for the Proposed Project is due to the replacement of 100 TAF block of water with other actions, not the incorporation of additional VA outflow commitments specifically.
20	6	Drought Operations The Proposed Project includes a goal to maintain operational and permit requirements during drought years and activates a "Drought Relief Year" (DRY) Team each October to determine whether to pursue actions in response to current or anticipated drought and dry year conditions using the Drought Toolkit. Multi-year extreme drought conditions similar to the 2012-2016 and 2020-2022 periods should be evaluated in the EIR, and specific operating criteria proposed for these conditions that do not increase reliance on Temporary Urgency Change Petitions (TUCPs). This is particularly important given the challenges with meeting water quality and flow requirements, which have occurred during recent drought conditions, and the effect that reducing Delta outflows could have on future water quality conditions.	Please see Common Response 12, "Drought Conditions," for discussion regarding how the modeling evaluated in the EIR included drought conditions. Although droughts will occur in the future, they are not predictable and the timing, number, severity, and duration cannot be identified and analyzed. As such, it is not possible to identify specific operating criteria that reduce the need for TUCPs. Indeed, requests for TUCPs are only available to DWR and Reclamation as part of the regulatory process. In addition, whether a TUCP will be issued and what the specific terms may be is not predictable nor subject to DWR discretion because drought conditions are unpredictable. DWR included the Drought Toolkit and DRY Team as part of the Proposed Project with the specific intent of using the actions described in the Drought Toolkit as needed in coordination with other

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			state and federal water management and resource agencies. Only one of the tools in the Drought Toolkit is the use of TUCPs, which would not necessarily be used during every drought condition. DWR and Reclamation have many tools to use in the case of severe, multi-year droughts. For example, the use of specific tools such as the Drought Salinity Barrier described in Action 10 of the Drought Toolkit may be implemented as needed and would not necessarily be used during every drought condition. However, during future droughts when DWR and Reclamation need to employ actions described in the Drought Toolkit, these actions would undergo additional environmental review, as needed.
20	7	Specific Elements of the Proposed Project and Alternatives Scope of Analysis The Draft EIR analyzes LTO of the SWP as a separate action from LTO of the Central Valley Project (CVP), to the degree that the operations of the respective Projects can be separated (e.g., Spring Delta Outflow and Interim Operations Plan assumptions). To the degree that they cannot, the Draft EIR assigns a share of responsibility to the SWP (see, e.g., Section 6.3.2, Operations Effects). This may be appropriate for the purposes of CESA compliance but presents challenges for assessing the environmental impacts of changes to the coordinated operations of the SWP and CVP. An analysis of the combined operations is included in Section 10.1, Cumulative Impacts. However, the Proposed Project plus Cumulative scenario that is analyzed combines the additive effects of changes to CVP operations, which would generally increase the magnitude of impacts to aquatic biological resources, with the effects of tributary VAs, which would generally decrease the magnitude of these impacts. Thus, the structure of the analysis makes it difficult to determine impacts that would be likely to occur absent implementation of non-SWP and CVP VAs. The cumulative impact analysis should include consideration of a scenario that represents SWP and CVP coordinated LTO operations with and without VA contributions from other parties.	For a response to this comment, please see Common Response 1, "Scope of Analysis," regarding comments that relate to the treatment of the SWP/CVP operations. Please see Common Response 4, "CEQA and CESA Legal Standards," regarding the requirements for analyses under CEQA and CESA. Please see Common Response 7, "Relationship to Healthy Rivers and Landscapes Program," regarding the relationship of the Proposed Project to the Healthy Rivers and Landscapes Program (formerly Voluntary Agreements).
20	8	Voluntary Agreement Implementation Section 2.3.5.1 of the Draft EIR states, "DWR and CDFW will agree on appropriate accounting mechanisms, consistent with VA implementation, before implementation of these actions." The EIR	This EIR is not being used to support approval of the Healthy Rivers and Landscapes Program (formerly Voluntary Agreements) by the State Water Resources Control Board. Please see Common Response 7,

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		should identify that the VA accounting requires State Water Board approval. Section 2.3.22.2 outlines the organizational structure and collaborative teams. However, the Shasta Operation Team's (SHOT) role as it relates to VA asset management is unclear and should be clarified. Section 2.3.22.6 indicates that the Directors Group includes Directors from Reclamation, DWR, USFWS, NMFS, and CDFW. The State Water Board is not included in this group, despite the fact that the group will need to address overlapping regulatory issues that involve the State Water Board. Accordingly, it would be most efficient if the Board were also included in this group, particularly for issues that relate to VA implementation.	"Relationship to Healthy Rivers and Landscapes Program," for further discussion. Further, DWR evaluated default deployment of flows associated with the program. Therefore, description of the administrative procedures and specific time periods for deployment of each of the component flows are not necessary. Please see Common Response 1, "Scope of Analysis," for discussion of coordinated CVP and SWP operations. DWR is committed to coordinating with SHOT as it relates to coordinated operations but does not have authority to alter CVP operations. Therefore, the responsibility of SHOT as related to the implementation of flows associated with the Healthy Rivers and Landscapes Program is not described further in the EIR. Regarding inclusion of the State Water Board in the Directors Group, DWR is committed to working with the State Water Board and complying with all state regulatory requirements, including the Healthy Rivers and Landscapes Program, but does not intend to expand the Directors Group beyond the agencies that operate the SWP and CVP, and state and federal agencies that administer the state and federal endangered species acts.
20	9	Special Studies Section 2.3.19.4 of the Draft EIR identifies a list of possible food subsidy actions to augment Delta Smelt summer and fall habitat. This list includes the North Delta Food Subsidy (NDFS) Action, which has been implemented three times, has not been shown to be effective at enhancing food resources in Delta smelt habitat, and has been shown to increase pesticide loading in the food web (Davis et al. 2022 [Footnote 1: Davis et al. 2022. North Delta Food Subsidy Synthesis: Evaluating Flow Pulses from 2011-2019. Department of Water Resources, Division of Integrated Science and Engineering. Draft. 249 pp.].). The other two identified actions, managed wetland reoperations in Suisun Marsh and the Sacramento Deep Water Ship Channel Food Subsidy Action, have never been implemented to enhance food availability in Delta smelt summer and fall habitat. The EIR should include a description of the	With respect to Special Studies, as stated in Section 2. 3.19, "Special Studies," DWR is not seeking take coverage for these studies. Each of these studies, if they occur, will be evaluated under a separate consultation. No timeline for implementation of these studies is provided because DWR is continuing to evaluate the need and potential efficacy of the studies prior to undertaking them. With respect to NDFS, the development of managed foodweb actions in the North Delta continues to be adaptively managed and includes the exploration of alternative actions to generate food resources in the North Delta (see Appendix 2B, Attachment 2, "Adaptive Management Actions and Programs," for further discussion of these potential actions).

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		feasibility and possible timeline for implementing these latter two actions and development of other possible actions that may be more efficacious than the NDFS action.	
20	10	Head of Old River Barrier The Proposed Project does not include installation of the Head of Old River Barrier (HORB). For the reasons discussed below, the EIR should evaluate the impact of the discontinued installation of the HORB on juvenile salmonid migration and returning adults, and downstream water quality during the spring and fall, and should consider the south Delta Barriers Program that includes installation of the HORB to protect multiple life history strategies of San Joaquin River salmonids. Installation of the HORB has demonstrated benefits to the juvenile and adult salmonids migrating to and from the San Joaquin River basin through the south Delta to the Bay. Typically, the HORB was installed in spring to keep migrating San Joaquin Chinook salmon juveniles in the main San Joaquin River channel and away from the south Delta water export facilities and predators in the interior Delta. The HORB typically was installed again in the fall to improve low dissolved oxygen (DO) conditions in the Stockton Deep Water Ship Channel (DWSC) by increasing flow that would facilitate successful migration of adults. The State Water Board's Scientific Basis Report in support of updates to the Bay-Delta Plan for Lower San Joaquin River flows summarized multiple studies that found that the installation of the HORB contributes to increased survival of migrating San Joaquin River-origin juvenile salmonids. Scientific research conducted using acoustic tagging of juvenile salmonids has indicated that the HORB confers some level of protection for migrating salmonid juveniles and results in higher overall survival than the condition without the barrier (NMFS 2012 [Footnote 2: National Marine Fisheries Service (NMFS). 2012. Summary of the Expected Benefits to Salmonid Survival of a Rock Barrier at the Head of Old River & Preferential Use of the Central Valley Project Export Facility. Southwest Region. Available: https://baydelta.files.wordpress.com/2012/01/2012_horb_survival-_benefits_nmfs.pdf.]; Buchanan 2019 [Footnote 3: Buchanan, R. A. 2019. Expected survival difference attributable to the Head of Old River Barrier. A Report to the US Bureau of Reclamation. https://www.noaa.gov/sites/default/files/legacy/document/2020/Oct/07354626219.pdf.], Buchanan et al. 2018, [Footnote 4: Buchanan, R. A., P. L. Brandes, and J. R. Skalski. 2018. Survival of juvenile fall-run Chinook salmon through the San Joaquin	The EIR does not include analysis of the installation of the Head of Old River Barrier because the barrier is neither part of the CEQA environmental baseline nor part of the Proposed Project or any project alternatives. With respect to SWRCB comments provided on the 2020 LTO DEIR, please see responses to those comments in the 2020 LTO FEIR. The 2020 ITP analyzed the effect of discontinued installation of the Head of Old River Barrier in its Attachment 8 (California Department of Fish and Wildlife 2020). While not included as part of the Proposed Project, consideration of HORB alternatives, such as Fish Guidance Systems or juvenile Salmonid Migratory Barriers, and confounding factors may be further evaluated in collaboration with Reclamation to reduce entrainment of San Joaquin River juvenile salmonids while minimizing environmental impacts. References cited in this response: California Department of Fish and Wildlife. 2020. California Endangered Species Act Incidental Take Permit No. 2081-2019-066-00. Long-Term Operation of the State Water Project in the Sacramento-San Joaquin Delta. Sacramento, CA: Ecosystem Conservation Division.

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		River Delta, California, 2010-2015. North American Journal of Fisheries Management 38:663-679. DOI: 10.1002/nafm.10063.] 2021 [Footnote 5: Buchanan, R.A., E. Buttermore, and J. Israel. 2021. Outmigration survival of a threatened steelhead population through a tidal estuary. Canadian Journal of Fisheries and Aquatic Sciences 78: 1869-1886. https://doi.org/10.1139/cjfas-2020-0467.]). Direct mortality from entrainment at the south Delta export facilities is a risk for Chinook salmon and steelhead from the San Joaquin River basin and Delta eastside tributaries (USDOI 2010 [Footnote 6: U.S. Department of the Interior (USDOI). 2010. Comments Regarding the California SWRCB Notice of Public Information Proceedings to Develop Delta Flow Criteria for the Delta Ecosystem Necessary to Protect Public Trust Resources (Exhibit 1).]). When the HORB is not installed, approximately 50 percent of the San Joaquin River flow is directed into Old River on average; however, a higher proportion of the flow would be routed into Old River under lower flows (SJRGA 2013 [Footnote 7: San Joaquin River Group Authority (SJRGA). 2013. On Implementation and Monitoring of the San Joaquin River Agreement and the Vernalis Adaptive Management Plan (VAMP). Prepared for the California State Water Resources Control Board in compliance with D-1641.]). When installed, the HORB directs the majority of San Joaquin River flow down the mainstem of the San Joaquin River, reducing the amount of flow that enters Old River and preventing San Joaquin River salmonids from entering the Old River corridor, a direct route to the Project export facilities. Tagging studies and modeling have generally demonstrated that installation of the HORB improves the survival of emigrating juvenile Chinook salmon from the San Joaquin River basin in spring, [Footnote 8: See p. 3-47 of the State Water Board's 2023 draft Staff Report/Substitute Environmental Document in Support of Potential Updates to the Water Quality Control Plan for the San Francisco Bay/Sacramento- San Joaquin Delta Estuary for the Sacramento River and Its Tributaries, Delta Eastside Tributaries, and Delta.] attributable to higher survival rates on the San Joaquin River compared with Old River (Buchanan et al. 2021 [Footnote 5: Buchanan, R.A., E. Buttermore, and J. Israel. 2021. Outmigration survival of a threatened steelhead population through a tidal estuary. Canadian Journal of Fisheries and Aquatic Sciences 78: 1869-1886. https://doi.org/10.1139/cjfas-2020-0467.]). Survival of emigrating salmonids from the San Joaquin River has been declining since the 1990s (Perry et al. 2016 [Footnote 9: Perry, R., R.	

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		Buchanan, P. Brandes, J. Burau, and J. Israel. 2016. Anadromous Salmonids in the Delta: New Science 2006–2016. San Francisco Estuary and Watershed Science 14(2).]). In the recent low-survival condition, one study found that salmon that were salvaged at the CVP and trucked back to release points near Chipps Island had higher survival than fish that stayed in the San Joaquin River channel and migrated naturally through the Delta to Chipps Island (Buchanan et al. 2013, [Footnote 10: Buchanan, R., J. Skalski, P. Brandes, and A. Fuller. 2013. Route Use and Survival of Juvenile Chinook Salmon through the San Joaquin River Delta. North American Journal of Fisheries Management 33:216– 229.] 2019 [Footnote 4: Buchanan, R. A., P. L. Brandes, and J. R. Skalski. 2018. Survival of juvenile fall-run Chinook salmon through the San Joaquin River Delta, California, 2010-2015. North American Journal of Fisheries Management 38:663-679. DOI: 10.1002/nafm.10063.]). However, this result was observed with a nonphysical barrier at the head of Old River, and it is possible that the additional flow present in the San Joaquin River when the HORB is in place is needed to increase survival of juveniles emigrating through the San Joaquin River (Perry et al. 2016 [Footnote 9: Perry, R., R. Buchanan, P. Brandes, J. Burau, and J. Israel. 2016. Anadromous Salmonids in the Delta: New Science 2006–2016. San Francisco Estuary and Watershed Science 14(2).]). In 2019, the NMFS BiOp did not carry over the export restrictions in April and May based on the San Joaquin River inflows (Vernalis I:E) or installation of the HORB (NMFS 2019 [Footnote 11: National Marine Fisheries Services (NMFS). 2019. Biological Opinion on Long Term Operation of the Central Valley Project and the State Water Project.]). In 2020, CDFW did not concur with the 2019 federal BiOps that adequate protections were provided for listed species, electing to issue a separate ITP [incidental take permit] for the SWP that included the export restriction based on San Joaquin River inflows (CDFW 2020 [Footnote 12: California Department of Fish and Wildlife (CDFW). 2020. Incidental Take Permit for Long-Term Operation of the State Water Project in the Sacramento-San Joaquin Delta. Available at: https://water.ca.gov/-/media/DWR-Website/Web-Pages/Programs/State-Water%20Project/Files/ITP-for- Long-Term-SWP-Operations.pdf.]) but did not include HORB. In its January 30, 2020, letter on the Draft EIR for the LTO of the SWP, the State Water Board commented on the benefits of HORB and the need to evaluate the impact of discontinuation of HORB. However, the 2020 ITP and this Draft EIR do not evaluate the effect of	

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		discontinued installation of the HORB on juvenile and adult survival or water quality impacts downstream, for example DO in the Stockton DWSC. The State Water Board reiterates its prior recommendation that this issue be further evaluated, including the possible benefits and water supply related impacts, including cost considerations.	
20	11	Surface Water Hydrology Chapter 4 of the Draft EIR does not include a definition of "Baseline Conditions." Chapter 4 should include a concise description of the CEQA baseline conditions, including the regulatory and operational requirements considered in the baseline. Section 4.3.3.1 of the Draft EIR states that the Proposed Project would not result in an increase in the frequency of reverse flow conditions on the Sacramento River near Freeport compared to the Baseline Conditions (p. 4-14). It is unclear what could cause reverse flows at Freeport under existing conditions or as part of the Proposed Project. The EIR should clarify this analysis. Section 4.3.3.2 of the Draft EIR states that the Proposed Project would not substantially affect surface water resources relative to the Baseline Conditions (p. 4-15). It is unclear how this conclusion was reached from the information provided in this section. For example, elsewhere in the same section, it states, "[i]n Below Normal water years, Delta outflow under the Proposed Project would decrease by 1,084 cfs (6 percent) in May" (p. 4-15). Section 4.3.3.3 indicates that OMR flows would increase in most water year types in April and May, and decrease in February, March and June. However, because the Baseline Conditions are not clearly defined, it is unclear how significant the changes in OMR flows would be under the Proposed Project.	Please refer to Chapter 3, "Scope of Analysis," Section 3.3, "Environmental Baseline," for a description of existing physical conditions in the project's vicinity. Please see Appendix 4A, "Model Assumptions," Attachment 1, "Model Assumptions," for a description of assumptions between the Baseline Conditions and the Proposed Project. Please also see Common Response 2, "CEQA Environmental Baseline." Reverse flows are possible for the Sacramento River at Freeport when river flow is low and the tide from the ocean is high. Based on the minimal differences between the modeled representation of flows at Freeport under Baseline Conditions and the Proposed Project in Chapter 4, increases in the frequency of these conditions would not occur under the Proposed Project (i.e. because flows are similar under both scenarios, the frequency of reverse flows are expected to be similar). See Appendix 4B, "Model Results," Attachment 2, "Flow Results (CalSim 3)," and Attachment 5, "DSM2 Stage," for additional results for Sacramento River flow and stage at Freeport. Please refer to Appendix 3A, "Initial Study," Section 3A.3.10, "Hydrology and Water Quality," regarding discussion of surface water hydrology. Changes to surface water hydrology, by themselves, are not considered a significant impact based on the Initial Study. Please refer to Chapter 4, "Surface Water," Section 4.3.1, "Thresholds of Significance," for a description of factors, based on CEQA Guidelines, that would result in a potentially significant impact on surface water if any were to occur. Please also see Common Response 2, "CEQA Environmental Baseline."

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20	12	CalSim 3 Modeling The presentation of modeling assumptions and results in the Draft EIR are not clear. Several appendices contain assumptions and results for a subset of the model scenarios that the Draft EIR appears to rely upon to draw conclusions and provide inputs for other models. In particular, Chapter 10 includes comparisons between "Baseline Conditions (Updated)" and "Proposed Project + Cumulative" scenarios, which do not appear to be documented or presented in any of the modeling appendices (see Appendix 4F and Appendix 4G, which appear to provide the only documentation of cumulative model results). This may have resulted from a substitution of Alternative 1 for the Proposed Project. Additionally, although the differences in model assumptions between "Baseline Conditions" and "Baseline Conditions (Updated)" are described in Attachment 1 to Appendix 4G, the Draft EIR appears to contain no straightforward comparison between the two Baseline Conditions scenarios. This presents difficulties for interpreting the cumulative analysis in Chapter 10, since it appears to use a different Baseline than the analysis of the Proposed Project. For better clarity, more detailed model results for Delta outflow should be presented clearly in Chapter 4 rather than being found solely in an attachment to an appendix. The method in which land fallowing has been implemented in CalSim 3 by adding 50 TAF of water at Freeport in the spring may mask impacts associated with changes in streamflow on the Feather River, changes in land use, and changes in reservoir operation. The EIR should represent the land fallowing as it is proposed in the VAs, by reducing deliveries from the Feather River and representing the changes in reservoir operations to accomplish increased releases from the Oroville-Thermalito Complex. The CalSim 3 simulation assumes full San Joaquin Restoration flows in the Baseline Conditions and the Proposed Project. However, full San Joaquin Restoration flows have not yet been fully implemented. Furthermore, CalSim 3 does not appear to constrain the San Joaquin Restoration flows based on current channel capacity. It is unclear what assumptions were made in CalSim 3 for the Baseline Conditions scenario regarding export limits in the spring, especially for operations of the CVP. Page 4A-2-8 describes two separate sets of regulations that limit exports in the spring which are very similar, both	The Baseline Conditions and Baseline Conditions (Updated) scenarios have been merged for consistency and additional clarity in the interpretation of results across different scenarios. Detailed model results for Delta outflow are provided in attachments to appendices as results cover a minimum of 19 pages in each occurrence. Changes to long-term average Delta outflow and under each water year type are discussed in Chapter 4, "Surface Water Hydrology," Section 4.3.3.2, "Delta Outflow." As noted in Appendix 4A, "Model Assumptions," Attachment 1, "CalSim 3 Model Assumptions Callouts," the 50 TAF volume is introduced at Freeport for modeling purposes. The additional 50 TAF through water purchases north of the Delta would likely be made available through land fallowing. The purchases could be from sources in the Feather River watershed but could also be from sources on the Sacramento River watershed upstream of the confluence with the Feather. For a more explicit representation of the implementation of the SWP/CVP facilitated VA actions, including implantation of the Feather River VA, see Appendices 4E and 4G. The San Joaquin River Restoration Program (SJRRP) is a Reclamation managed project. The modeling, for the most part, implements Reclamation projects and facilities following Reclamation desired representations and operations. Though the SJRRP may not be fully implemented, the model representation is consistent throughout the scenarios. See Chapter 3, Section 3.5.5., "Appropriate Use of Modeling," and Appendix 4A, Attachment 8, "Model Limitations." Please see "Treatment of the Interim Operations Plan" in Common Response 2, "CEQA Environmental Baseline," for additional discussion. The DEIR included a typo in the assumptions for the IOP that has been addressed. As noted in Appendix 4A, "Model Assumptions," Attachment 2, "CalSim 3 Model Assumptions Callouts,"

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		of which appear to apply to the CVP. It would be helpful if the EIR clarified the assumptions on export limits based on San Joaquin inflow with a discussion, and potentially include figures to help readers understand spring export limits under Baseline Conditions and the Proposed Project. It is difficult to assess how the changes in OMR model assumptions affect modeled export limits in the winter. It would be helpful if the EIR provided a discussion in an appendix that shows with some example time periods how the changes in OMR assumptions result in different export limits in the model.	the Spring Outflow Requirement is met by both the SWP and CVP. The CVP is also modeled to operate to the IOP under the Baseline Conditions. The SWP does not operate to the IOP. Detailed CalSim 3 model results for SWP and CVP exports under the Proposed Project are provided in Appendix 4B, "Model Results," Attachment 3, "Diversion Results (CalSim 3)."
20	13	Water Quality Chapter 5 concludes that the Proposed Project would have less than significant impacts on surface water quality. However, Board staff have identified below several instances where additional quantitative analysis is needed to adequately evaluate the possible impacts of the Proposed Project on surface water quality, particularly on Delta cyanobacterial harmful algal blooms (CHABs). In addition, the impacts of the Proposed Project should be evaluated appropriately in reference to the water quality objectives identified in Tables 1–4 of the 2018 Bay-Delta Plan. In some instances, the incorrect objective is used as a basis for comparison between the Baseline Conditions and Proposed Project, as described below. Section 5.3.3.2 of the Draft EIR states that the Proposed Project could increase the frequency of exceeding the secondary maximum contaminant level of 250 mg/L for chloride concentrations in the San Joaquin River at Antioch during the months of September and October, but concludes, "the Proposed Project would not substantially degrade water quality with regard to chloride on a long-term average basis in the San Joaquin River at Antioch" (p. 5-25). The 2018 Bay-Delta Plan requirements for chloride concentrations in the San Joaquin River at Antioch are <150 mg/L, with the calendar year duration dependent on the water year type (as described in Table 5-4). Further, the CEQA significance thresholds identified in Section 5.3.1 do not define the threshold for significant impacts in terms of a "long-term average basis." The EIR should evaluate whether increases in chloride concentrations under the Proposed Project are expected to exceed water quality objectives at each location identified in the 2018 Bay-Dela Plan and how those exceedances could impact beneficial uses of municipal and	Regarding chloride, Table 5-4 in Chapter 5, "Surface Water Quality," presents the chloride objectives specified in the Bay-Delta WQCP. One of objective restricts chloride levels to 150 mg/L for a certain number of days per year, dependent on water year type. This objective applies to Contra Costa Pumping Plant #1 OR San Joaquin River at Antioch. In other words, the objective does not apply to both locations, but rather one or the other. Compliance is therefore assessed at Contra Costa Pumping Plant #1 in Chapter 5 (refer to the "Contra Costa Water Pumping Plant #1" subsection within the "Chloride" subsection of Section 5.3.3.2 and Table 5-15). The reference to the secondary drinking water maximum contaminant level of 250 mg/L in the discussion of effects of the project on chloride at Antioch is to provide context for the identified effects of the project relative to the city's standards it must meet for drinking water. Regarding the use of "long-term averages," the impact conclusions are consistent with the thresholds of significance in Section 5.3.1. The EC and chloride assessment discussions present effects of the project relative to existing conditions making use of both summary tables that present differences on a long-term average basis and exceedance plots in appendices of monthly average EC and chloride. The long-term average differences are one factor in determination of project effects. The CEQA impact conclusions are based on the entirety of the information presented in Chapter 5,

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		industrial water supply. Further, the impacts conclusions should be consistent with the thresholds for significance identified in Section 5.3.1. Section 5.3.3.2 also discusses the effects of the Proposed Project on Delta water temperatures. This discussion should be updated to consider recent literature [Footnote 13: Bashevkin SM, Mahardja B. 2022. Seasonally variable relationships between surface water temperature and inflow in the upper San Francisco Estuary. Limnology & Oceanography. 67:684–702. https://doi.org/10.1002/lno.12027.] regarding the relationship between Delta inflow and water temperatures. Section 5.3.3.2 concludes, "[b]ased on the changes in Sacramento River inflows modeled for the Proposed Project…channel velocities and associated turbulence and mixing in Delta channels would not be expected to change substantially relative to Baseline Conditions" (p. 5-26). Similarly, the Draft EIR states, "[m]inor changes in Delta inflows, outflows, and exports (Chapter 4) would indicate that residence times of water in the various Delta channels would not change substantially" (p. 5-27). Based in part on these evaluations, the Draft EIR concludes that the Proposed Project would have negligible effects on Delta CHABs. However, it is unclear how these conclusions were reached. The EIR should include quantitative analyses of the effects of the operational changes and changes in hydrology identified in Chapter 4 on the drivers of CHABs, including those identified in Kudela et. al, 2023. [Footnote 14: Kudela R, Howard M, Monismith S, and Paerl H. 2023. Status, Trends, and Drivers of Harmful Algal Blooms Along the Freshwater-to-Marine Gradient in the San Francisco Bay–Delta System. SFEWS. https://doi.org/10.15447/sfews.2023v20iss4art6.]	Section 5.3.3.2 and the supporting appendices, and the conclusions align with the thresholds of significance language. Section 5.3.3.2 was revised to include reference to Bashevkin SM, Mahardja B. 2022. Seasonally variable relationships between surface water temperature and inflow in the upper San Francisco Estuary. Limnology & Oceanography. 67:684–702. This addition is to provide additional information regarding factors that affect Delta water temperature and does not affect the impact assessment or conclusion. As stated in Chapter 5, "Surface Water Quality," effects of the Proposed Project on CHABs were determined by evaluating the direction and relative magnitude to which the five primary environmental factors that provide favorable conditions for CHABs would be affected by the Proposed Project, relative to Baseline Conditions. The environmental conditions that provide favorable conditions for CHABs are: (1) water temperatures, (2) residence times, (3) channel velocities and associated turbulence and mixing, (4) nutrient levels, and (5) water column irradiance and thus light penetration through the water column, as affected by turbidity. The potential for the Proposed Project to affect these five environmental factors was determined using CalSim 3 modeling output. Sacramento River and San Joaquin River flows, and Delta inflow and outflow modeling output from CalSim 3 for Baseline Conditions and the Proposed Project were compared to identify Proposed Project effects. Relatively small magnitude changes in these conditions would not be expected to cause substantial, if any, increases in the frequency or magnitude of CHABs in the Delta. It is clear from past research that water temperature and residence time are important variables affecting CHABs in the Delta. As such, blooms are typically more severe in drought years when water temperatures and residence times are substantially higher compared to non-drought years. However, the magnitude of changes seen in CalSim 3

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			output between the Proposed Project and Baseline Conditions for Sacramento River and San Joaquin River flows, Delta inflow, and Delta outflow would not be expected to cause substantial increases in Delta water temperatures or residence times. Moreover, the Proposed Project would not introduce new sources of nutrients, would not substantially reduce Delta channel turbulence and mixing, and would not substantially reduce in-Delta turbidity levels. These findings served as the basis for the CHAB impact determination in Chapter 5. References cited in this response: Bashevkin, S. M., and B. Mahardja. 2022. Seasonally Variable Relationships Between Surface Water Temperature and Inflow in the Upper San Francisco Estuary. Limnology & Oceanography 67:684–702.
20	14	Aquatic Biological Resources Chapter 6 of the Draft EIR concludes that the Proposed Project will have less than significant impacts on all aquatic biological resources considered, and accordingly identifies no mitigation measures. However, the quantitative analyses in the Draft EIR identify possible impacts to certain species. Given the degraded status of some of these species, the rationale for the EIR's determinations should be bolstered, potentially including mitigation measures. Delta Smelt Adult Delta Smelt Entrainment Protection Action (Turbidity Bridge) The Draft EIR indicates that the Turbidity Bridge avoidance action is intended to reduce the entrainment of adult Delta Smelt in Old and Middle Rivers near the export facilities that may result from elevated turbidity levels in the South Delta (p. 2-22). The Draft EIR proposes that when daily average turbidity exceeds 12 Formazin Nephelometric Units (FNU) at "each of three" turbidity sensors [Footnote 15: The three turbidity sensors are Old River at Franks Tract near Terminous (OSJ), Holland Cut (HOL), and Old River at Bacon Island (OBI).] in the OMR corridor, the Projects would limit the CVP and SWP combined exports to achieve a five-day average OMR index that is no more negative than -3,500 cfs until the average daily turbidity of at least "one of the three" turbidity locations is less than 12 FNU for two consecutive days.	With respect to the turbidity bridge management action, the inclusion of three total sensors was to provide redundancy in the event that one sensor station went down or provided erroneous results, as well as to ensure that the triggering of an OMR action reflected broader scale elevated turbidity conditions in the OMR corridor, as opposed to localized turbidity at one station. In the event that any station(s) data were not available, then triggering would be based on the stations that were deemed to be functioning appropriately. Additionally, the added turbidity stations are geographically further from the export facilities, extending consideration of potential OMR action triggers to the northern OMR corridor. The shift from the -2,000 cfs to the -3,500 cfs OMR action was to create consistency with the larval and juvenile Delta Smelt entrainment protection action in the 2020 ITP, Amendment 5 (since larval Delta Smelt are more susceptible to entrainment than adults). With respect to the 12C offramp, this temperature threshold indicates the beginning of peak spawning (Damon et al 2016) and aligns with the initiation

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		The 2020 ITP included a minimization measure (8.5.1 Turbidity Bridge Avoidance) that relied on turbidity values from one turbidity sensor to initiate the action located at Old River at Bacon Island (OBI). The OMR flow restriction for this action was -2,000 cfs when turbidity exceeded 12 FNU. The Draft EIR does not include the rationale or describe the benefits of including three turbidity sensor locations along the Old River corridor in comparison to the single sensor location that was implemented under the 2020 ITP. The EIR should include a contingent monitoring plan and describe how water operations would be modified if turbidity sensors at one or more locations malfunction or produce erroneous readings. In addition, the EIR should clearly describe the rationale to reduce the OMR flow criteria from no more negative than -2,000 cfs in the 2020 ITP to -3,500 cfs in the Proposed Project when the Turbidity Bridge is observed with the turbidity sensor(s). Further, the EIR should evaluate impacts to adult Delta Smelt based on these changes from -2,000 cfs in the Baseline Conditions to -3,500 cfs in the Proposed Project. The Draft EIR provides that the Adult Delta Smelt Entrainment Protection action ends when the three-day continuous average water temperature at Jersey Point or Rio Vista reaches 53.8 °F (12 °C). The Draft EIR should provide the rationale for this temperature-based offramp based on the Delta Smelt life history or habitat requirements. Increased Delta Smelt Entrainment Risk The frequency of negative OMR flows is expected to increase during May under the Proposed Project (Figure 6-6), which coincides with the "March–June period of concern for larval/juvenile Delta Smelt entrainment risk" (p. 6-41). In addition, the Draft EIR identifies that, "[t]he DSM2-PTM analysis suggests the potential for appreciable relative increases in larval and early juvenile Delta Smelt entrainment at Clifton Court Forebay in April and May under the Proposed Project Scenario compared to the Baseline Conditions Scenario (Table 6-4)" (p. 6-43). In particular, the negative impacts on juvenile Delta Smelt due to entrainment at Clifton Court Forebay in April and May under the Proposed Project compared to Baseline Conditions could be a concern for Delta Smelt given their degraded status. For example, during the month of May in Below Normal years, there is the potential for increased entrainment of up to 216% (Table 6-4). In addition, the Draft EIR suggests that Delta Smelt released through Delta Smelt Supplementation (Section 6.4.1.4) at the North Delta Arc	criteria for larval and juvenile Delta Smelt protection actions in the 2020 ITP, Amendment 5. With respect to analysis of the effects of OMR management, this was analyzed in the DEIR in the discussion of "Consideration of Old and Middle River Flows" in Section 6.4.1.1, showing that entrainment risk would be similar under the Proposed Project and Baseline Conditions. With respect to salvage of cultured Delta Smelt, very few individuals have been salvaged relative to overall release numbers and the estimated size of the population. In total, from 2022-2024, 28 fish from experimental releases have been detected at the salvage facilities, out of ~190,000 total released fish and 169 total recaptures. With respect to minimization of entrainment risk to Delta Smelt, the risk to larvae would be minimized by the real-time actions earlier in the season, as reflected in March PTM results and discussed in the "Particle Tracking Modeling" discussion in Section 6.4.1.1, thereby minimizing risk in subsequent months. With respect to food supply, the quantitative analyses provided in the "Food Availability" discussion in Section 6.4.1.1 indicate little difference in smelt prey availability between the Proposed Project and Baseline Conditions for any of the life stages examined. With respect to Longfin Smelt effects, the analysis used the best available information to inform the significance conclusions. As the comment notes, there is currently no life cycle model to evaluate the potential for effects, but such a model is in development by DWR and others to inform the adaptive management process (see Section 2.3.19.5, "Longfin Smelt Science Plan"). With respect to other aspects of the comment introducing issues related to Chinook Salmon, please see Response to Comment 20-15. References cited in this response: Damon, L. J., S. B. Slater, R. D. Baxter, and R. W. Fujimura. 2016. Fecundity and Reproductive Potential of Wild

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		would have limited potential for South Delta entrainment as broad-scale dispersal would be minimized (p. 6-38). However, there have been several cases of cultured Delta Smelt salvage at the South Delta export facilities during the last few experimental releases. The Draft EIR concludes that entrainment risk to Delta Smelt would be minimized with "real-time actions." However, given the expected impacts to Delta Smelt identified in the Draft EIR's quantitative analyses, this conclusion should be further supported. Delta Smelt Food Supply In describing the effects of food availability to Delta Smelt during the December through March period, the Draft EIR only evaluates the potential for food subsidies derived from the Yolo Bypass based on flow through the Bypass (p. 6-45). However, it is uncertain what proportion of the Delta Smelt population resides downstream of the Yolo Bypass and could benefit from the food supply. The Draft EIR also states that "Delta exports of water could affect food availability for larval Delta Smelt in spring" (p. 6-49). Longfin Smelt The Draft EIR indicates that the potential for salvage of juvenile Longfin Smelt is expected to increase during all water year types (e.g., up to 73.8% increase in salvage during Above Normal years), under the Proposed Project (Table 6-22) due to increases in negative OMR flows in April and May (pp. 6-95–6-96). The Draft EIR concludes that this level of entrainment loss likely represents a small proportion of the juvenile Longfin Smelt population; however, there is no quantitative analysis to assess how these losses might influence the population trajectory of Longfin Smelt, in part because there is no Longfin Smelt lifecycle model with which to evaluate the relative importance of juvenile losses on population size. The population dynamics modeling included in the Draft EIR estimating the Fall Midwater Trawl (FMWT) index as a function of Delta outflow shows considerable uncertainty in possible index values under Baseline Conditions and the Proposed Project (pp. 6-101–6-102), and therefore may not be appropriate to evaluate possible effects on the Longfin Smelt population, which should be further evaluated. As identified in Chapter 3 of the State Water Board's draft Staff Report in support of Sacramento/Delta updates to the Bay-Delta Plan, Longfin Smelt juveniles experience higher entrainment risk at OMR flows more	Female Delta Smelt in the Upper San Francisco Estuary, California. California Fish and Game 102(4):188-210.

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		negative than -1,500 cfs. [Footnote 16: See pp. 3-47–3-49 and pp. 3-58–3-61 of the State Water Board's 2023 draft Staff Report/Substitute Environmental Document in Support of Potential Updates to the Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary for the Sacramento River and Its Tributaries, Delta Eastside Tributaries, and Delta.] In addition, the 2020 ITP required that OMR flows fall between -1,250 cfs and -5,000 cfs to protect adult and juvenile Longfin Smelt during the OMR management season of December through June. The Draft EIR identifies OMR flow criteria of -2,500 cfs to -5,000 cfs for the protection of juvenile Longfin Smelt and -3,500 cfs to -5,000 cfs for the protection of adult Longfin Smelt (pp. 2-23–2-24). The EIR should provide the rationale for modifying the OMR flow criteria under the Proposed Project compared to Baseline Conditions. Chinook Salmon Consistent with the impacts analyses for Delta Smelt and Longfin Smelt, the Draft EIR identifies possible increases in entrainment of juvenile Chinook Salmon at the South Delta export facility during April and May. The Draft EIR also identifies the potential for lower through-Delta survival of outmigrating juvenile Chinook Salmon because of differences in channel routing under the Proposed Project. Moreover, the Proposed Project could increase the rate of straying adult Fall-Run Chinook Salmon from the Mokelumne River to the Sacramento River. Statements in the Draft EIR describing these possible impacts are highlighted below. Despite these possible impacts, the Draft EIR concludes that there will be less than significant impacts from the Proposed Project for all run types of Chinook Salmon. Given that the Draft EIR identifies the possibility of increased mortality for all run types, the rationale for these changes and the impact determination should be further described. Migrating Juvenile Salmon Survival Based on Delta Passage Model The Draft EIR describes that DWR will install and operate the Bio-Acoustic Fish Fence (BAFF) at the divergence of Georgiana Slough and the Sacramento River. The Draft EIR used the Delta Passage Model (p. 6-146) to evaluate effects of the Proposed Project (Section 6.4.3.1, Delta SWP Facility Operations) on migrating Winter-Run Chinook Salmon with the "Dynamic Operations" of the BAFF. Similar analyses for outmigrating juvenile Spring-Run Chinook Salmon (p. 6-168) and Fall-Run and Late-Fall-Run Chinook Salmon (p. 6-186) are provided in the Draft EIR. In	

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		these analyses, the Draft EIR assumed that the BAFF reduced flow-predicted entry of salmon into Georgiana Slough by either 50% or 67%.	
20	15	According to scientific literature, the effectiveness of the BAFF at Georgiana Slough is lower than the estimates assumed by the Draft EIR. Perry et al. (2014 [Footnote 17: Perry, R. W., J. G. Romine, N. S. Adams, A. R. Blake, J. R. Burau, S. V. Johnston, and T. L. Liedtke. 2014. Using a non-physical behavioural barrier to alter migration routing of juvenile Chinook salmon in the Sacramento-San Joaquin River Delta. River Research and Applications 30:192-203. https://doi.org/10.1002/rra.2628.]) evaluated the effectiveness of the BAFF in reducing entrainment of Late-Fall-Run Chinook Salmon juveniles as a surrogate for Winter-Run juveniles into Georgiana Slough. Based on experimental operations under different discharge conditions (23,000 cfs to 44,000 cfs), Perry et al. (2014) concluded that, when turned on, the Georgiana Slough BAFF could reduce entrainment by up to 40% near the critical streak line. However, the effectiveness of the BAFF declined with increasing river discharge (28% reduction in effectiveness at high discharge). The Delta Passage Model evaluation should capture this variation in effectiveness of the BAFF. In addition, the Draft EIR should evaluate the Delta Passage Model results on migrating juveniles separately for the BAFF on and off for the Proposed Project and Baseline Conditions. Winter-Run Chinook Salmon The Draft EIR identifies that the Proposed Project could increase the number of salvaged genetically identified Winter-Run Chinook Salmon juveniles (Table 6-33) and could increase the proportion of the juveniles entering the Delta that are salvaged (Table 6-34). Given the poor status of Winter-Run, the rationale for the proposed operations should be further described. Spring-Run Chinook Salmon The salvage-density method employed in the Draft EIR indicated that losses of juvenile Spring-Run Chinook Salmon at the South Delta export facility could increase substantially in all water year types under the Proposed Project, particularly in April and May, due to increased exports. For example, salvage could increase by 48% in Above Normal Years (Table 6-67). The Draft EIR states that the absolute number of genetically identified Spring-Run individuals in salvage is low, and therefore, the expected increase in salvage would have little impact on	With respect to the Bio-Acoustic Fish Fence (BAFF) at Georgiana Slough, the two effectiveness values used to illustrate potential BAFF effects reflected the overall effectiveness observed in the pilot years of implementation of 2011 (67%, the year analyzed in the Perry et al. paper cited in the comment) and 2012 (50%). As described in Section 2.3.12, "Georgiana Slough Salmonid Migratory Barrier Operations," preliminary data collected in 2024 suggest similar levels of efficiency as the prior studies (probability of staying in the mainstem between 82.1% and 91.6%). With respect to the suggestion that BAFF on and off scenarios should be run for the Delta Passage Model, the analysis accounted for the proposed operations in terms of a mixture of BAFF on and BAFF off according to assumed operations consistent with what is proposed. However insight into the relative effects of assuming BAFF on and BAFF off was provided by the results of the ECO-PTM model, for which dynamic BAFF operations cannot be simulated and therefore BAFF fully on or BAFF fully off conditions must be assumed. This illustrated that the relative difference between Proposed Project and Baseline Conditions scenarios in through-Delta survival would be similar (and low) regardless of BAFF assumption (see discussion of "Ecological Particle Tracking Modeling (ECO-PTM)" in Section 6.4.3.1.) With respect to winter-run Chinook Salmon and salvage/loss to SWP entrainment, the comment suggests that entrainment could increase, but the differences between Proposed Project and Baseline Conditions are small and generally similar per the results mentioned in the comment. The rationale for the proposed operations criteria is to limit the loss at or below historical levels, as described in detail in Appendix 2C, "Winter-run Chinook Salmon Juvenile Production Estimates." In addition, the level of permitted annual take would be less than

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		the overall abundance (p. 6-175). However, because there is no quantitative analysis to demonstrate the possible effects on the population growth rate, there is considerable uncertainty in how increased loss of outmigrating juveniles would impact the population trajectory. Fall-Run and Late-Fall-Run Chinook Salmon The Proposed Project includes the possibility of increasing the number of days that the Delta Cross Channel (DCC) Gates are open during the months of October and November, when adult Fall-Run Chinook Salmon are in the Delta (Table 6-71). The Draft EIR states that this could increase straying of Mokelumne River Chinook Salmon to the Sacramento River but that these effects would not be significant (p. 6-181). It is unclear how this conclusion was reached, since the Draft EIR does not quantitatively evaluate the number of salmon that could stray as a result of changes to DCC Gate operations. The Draft EIR also demonstrates that the number of Fall-Run Chinook Salmon juveniles lost at the South Delta export facility may increase across all water year types as a result of increasing exports during April and May. Salvage could increase by up to 87% during Below Normal years (Table 6-72).	currently permitted levels, reducing the potential for population level impacts to winter-run. As described in Chapter 6, Section 6.4.3, the salvage density method, "using historical loss density, provide some perspective on the absolute numbers of fish being entrained, but these data are more so a reflection of overall population abundance and prevailing entrainment management regimes in place at the time the data were collected," and does not take into account changes in routing and reduction in entrainment resulting from implementation of the Georgiana Slough Salmonid Migratory Barrier. This has the potential to reduce entrainment and loss of juvenile winter-run and spring-run Chinook Salmon at the South Delta export facility below the levels identified in this analysis when considered in isolation. With respect to spring-run Chinook Salmon, the analysis used the best available scientific information regarding salvage and loss of genetically identified spring-run Chinook Salmon. As described in Section 2.3.19.1, "Spring-Run Chinook Salmon Juvenile Production Estimate and Life Cycle Model," DWR and Reclamation will support continued development of Spring-Run Chinook Salmon Juvenile Production Estimate and a Spring-Run Chinook Salmon Life Cycle Model in order to inform management actions based on quantitative analysis, and adaptive management includes spring-run Chinook Salmon Old and Middle River flow management (see Appendix 2B, "Adaptive Management Program"). With respect to adult Mokelumne River fall-run Chinook Salmon straying, although the modeling results show similar or marginally higher mean number of days of Delta Cross Channel (DCC) open under the Proposed Project relative to Baseline Conditions during October and November, the analysis in Section 6.4.5.1 notes that Reclamation would continue to operate the DCC consistent with applicable laws and contractual obligations, and that the modeling does not account for DCC closure in association with Mokelumne River pulse

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			flows and as proposed for the ongoing consultation on CVP/SWP long-term operations; these efforts are not captured in the modeling. With respect to juvenile fall-run Chinook Salmon loss in the south Delta, as discussed in Section 6.4.5.11, overall, the Proposed Project includes various measures that would limit the potential for significant impacts on fall-run Chinook Salmon, including but not limited to entrainment protection for listed fish that provides ancillary protection, spring Delta outflow, and other measures such as Skinner Fish Facility improvements (see detailed descriptions in Chapter 2). Although there is greater potential for negative effects on fall-run Chinook Salmon under the Proposed Project relative to Baseline Conditions as a result of spring (April/May) entrainment, as noted in the comment, the various analyses indicated that this would have little effect on through-Delta survival, which generally would be similar under the Proposed Project and Baseline Conditions.
20	16	Cumulative Impacts Chapter 10 demonstrates that the Proposed Project plus Cumulative Scenarios would result in significant increases in negative OMR flows during March and April (Figures 10-4 and 10-5), a peak outmigration period for several native fish species. As discussed in the State Water Board's draft Staff Report, increasingly negative OMR flows could impact juvenile salmonids emigrating from the San Joaquin River basin and Delta eastside tributaries, increasing entrainment and salvage. The Proposed Project could also increase salvage of Delta Smelt and Longfin Smelt. Moreover, negative OMR flows result in a confusing environment for migrating juvenile salmonids leaving the San Joaquin River Basin that can result in predation and other impacts that contribute to mortality. Finally, net reverse flows alter the natural water quality gradients that native fish species rely upon for homing and other functions by drawing Sacramento River water into the interior Delta. [Footnote 18: See pp. 3-47–3-49 of the State Water Board's 2023 draft Staff Report/Substitute Environmental Document in Support of Potential Updates to the Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary for the Sacramento River and Its Tributaries, Delta	With respect to the cited figures, the figure for March shows similar or greater (less negative) Old and Middle River flows under the Proposed Project plus Cumulative scenario compared to Baseline Conditions. As described in Chapter 2, Section 2.3.3, " Old and Middle River Flow Management," the Proposed Project includes a variety of Old and Middle River flow management actions to limit the potential for entrainment risk on listed fish species.

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		Eastside Tributaries, and Delta.] These cumulative effects identified in the Draft EIR could potentially limit the environmental benefits of other measures included in the Proposed Project, including spring Delta outflow, that are intended to benefit native fish populations. The EIR should clarify how this will be avoided.	
20	17	Conclusion State Water Board staff appreciates the opportunity to provide comments on the Draft EIR. Board staff may have additional comments upon further review and release of the ITP application. If you would like to discuss these comments further, please contact me.	This is a concluding comment. Specific responses to the specific comments on the DEIR are provided herein. No additional responses is required.
21	1	CCWD's comments on DWR's Draft Environmental Impact Report for the Long-Term Operation of the State Water Project in the Sacramento-San Joaquin Delta, Suisun Marsh, and Suisun Bay are attached. Please confirm receipt of our comments. Please do not hesitate to reach out if you have any questions or would like to discuss our comments.	This information describes the structure or organization of the comment letter, the background of the organization or individual commenter, clarification on the submittal of the comment letter, or general introductory text. It is not a comment on the contents of the DEIR. DWR has reviewed all comments and will consider all comments in its decision-making process.
21	2	Subject: Contra Costa Water District Comments on May 2024 Draft Environmental Impact Report for Long-Term Operation of the California State Water Project Thank you for the opportunity to provide comments on the May 2024 Draft Environmental Impact Report for Long-Term Operation of the California State Water Project (SWP LTO Draft EIR) by the California Department of Water Resources (DWR).	This comment is introductory text. It is not a comment on the contents or the DEIR. DWR has reviewed all comments and will consider all comments in its decision-making process.
21	3	Once finalized, the EIR is intended to be used to support DWR's [Department of Water Resources] decision regarding ongoing SWP operations and the decision by the California Department of Fish & Wildlife on DWR's application for a California Endangered Species Act (CESA) Incidental Take Permit (ITP) under Section 2081 of the Fish and Game Code.	This text is introductory and therefore does not require a response.
21	4	Contra Costa Water District (CCWD) serves water from its intakes in the Sacramento-San Joaquin Delta for residential, commercial, and industrial uses in eastern and central Contra Costa County and so has a vital interest in the environmental effects of the proposed action. CCWD is an in-Delta diverter – its service area lies within or immediately adjacent to the Delta, and its return flows contribute to Delta outflow. CCWD relies on the Delta for 100% of its water supply, including Central Valley	This comment is primarily introductory text. See Response 21-5 regarding the project's potential effects to CCWD operations and Response 21-35 regarding the sensitivity analysis in Appendix 4M.

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		Project contract deliveries, diversions under CCWD's own water rights, and diversions under East Contra Costa Irrigation District's pre-1914 water right. CCWD's operation of its diversion, storage, and conveyance facilities meets the permitting requirements of the Endangered Species Act and CESA through biological opinions issued by the National Marine Fisheries Service and the United States Fish & Wildlife Service and an Incidental Take Permit from CDFW, collectively referred to in these comments as the "CCWD-specific BOs and ITP". The CCWD-specific BOs and ITP are separate and distinct from the BOs for the coordinated long-term operation of the CVP and SWP and from the ITP for ongoing operation of the SWP. The CCWD-specific BOs and ITP include terms and conditions that fully mitigate for the effects of CCWD's diversions on covered species. CCWD, DWR, and the United States Department of Interior Bureau of Reclamation (Reclamation) currently coordinate operations so that in-Delta standards and fishery regulations are met without additional limitations or restrictions on CCWD's operations beyond what is necessary to fully mitigate for CCWD's effects as identified in the CCWD-specific BOs and ITP. The SWP LTO Draft EIR uses modeling that is based on the assumption that CCWD would continue to be governed by the CCWD-specific Bos and ITP, without new or additional restrictions or limitations as a result of the implementation of the SWP LTO project. However, while the SWP LTO Draft EIR incorporates this assumption for purposes of assessing potential impacts, the Draft EIR does not make it clear that this important assumption is part of DWR's proposed project and the alternatives. To the contrary, the Draft EIR incorporates actions that suggest that implementation of the SWP LTO project might in fact result in the imposition of new and additional restrictions on CCWD operations beyond the CCWD-specific Bos and ITP. If this occurs, the SWP LTO project could cause significant adverse impacts on water supply, water quality, operational costs, and aquatic resources, as described in the attached detailed comments. These potential significant adverse environmental effects have not been adequately disclosed, analyzed or mitigated in the SWP LTO Draft EIR.	
21	5	In the Final EIR, DWR should make a firm and clear commitment that CCWD's [Contra Costa Water District] facilities will continue to be	This is not a comment on the content or analyses conducted in the EIR.

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		operated and maintained according to the CCWD-specific BOs [Biological Opinions] and ITP [Incidental Take Permit] that specifically apply to those facilities, and that the implementation of the SWP LTO project will not create new or additional limitations or restrictions on CCWD operations beyond the requirements set forth in those separate CCWD-specific BOs and ITP – thereby ensuring that CCWD will have opportunities to fill Los Vaqueros Reservoir that are at least comparable to the current conditions. Reclamation made such an assurance as part of its 2019 federal action for the coordinated long-term operation of the CVP and SWP and is planning to do so as part of its 2024 federal action; we hope DWR will make a similar assurance as part of its project.	The comment requests that the EIR make a commitment that new or additional restrictions on CCWD operations would not occur as a result of actions that could occur under the Proposed Project (e.g., OMR management). The DEIR did not identify any new or additional restrictions or limitations on CCWD operations. DWR is not proposing to alter any of CCWD's biological opinions or incidental take permit. If DWR is required to reduce exports to meet OMR management criteria based on the triggers identified in Chapter 2, Section 2.3.3, "Old and Middle River Flow Management," CCWD diversions would continue to be governed by the existing biological opinions and incidental take permit and water right priorities. If CCWD is diverting from their Old River or Middle River diversion locations when OMR requirements are controlling SWP and CVP operations, adjustments to the SWP or CVP exports or CCWD diversions would likely be required to meet the required OMR management criteria. The modeling assumptions described in Appendix 4A, Attachment 1, "CalSim 3 Model Assumptions Callouts," are the same under the Proposed Project and Baseline Conditions for CCWD, indicating that the modeling does not assume any changes to CCWD operations or the underlying regulatory constraints on CCWD operations (e.g., existing biological opinions governing CCWD operations). DWR included a sensitivity analysis in the FEIR to better reflect the water right priorities for the Projects and CCWD, specifically, that the Projects' water rights are senior and would not be restricted by CCWD's diversions into Los Vaqueros. Please see Appendix 4M for further information about the sensitivity analysis. DWR will continue to work with CCWD and Reclamation on operations to identify periods where OMR is constraining SWP and CVP operations and coordinating on the relationship to CCWD's diversions to Los Vaqueros.
21	6	Incorporating this important component [DWR making a firm and clear commitment that Contra Costa Water District (CCWD) facilities will	The commenter summarized their comments. Please see the specific responses to the specific comments on the

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		continue to be operated and maintained according to CCWD-specific biological opinions and incidental take permits] into the Final EIR's project description for the SWP LTO and the alternatives will help to resolve CCWD's concerns, avoid any confusion about the scope and nature of the project's impacts, and serve to eliminate, or at least substantially reduce, the potential significant adverse effects that are described in the attached comments.	DEIR made in this comment letter, including Response to Comment 21-5. Please also see Common Response 1, "Scope of Analysis."
21	7	If you have any questions, please do not hesitate to get in touch with me at [phone number redacted] or [email redacted]. We look forward to working with DWR to resolve the issues described above to our mutual benefit.	This is a concluding comment. Specific responses to the specific comments on the DEIR are provided herein. No additional response is required.
21	8	Contra Costa Water District Comments on the California Department of Water Resources' May 2024 Draft Environmental Impact Report for Long-Term Operation of the State Water Project August 5, 2024	This information describes the structure or organization of the comment letter, the background of the organization or individual commenter, clarification on the submittal of the comment letter, or general introductory text. It is not a comment on the contents of the DEIR. DWR has reviewed all comments and will consider all comments in its decision-making process.
21	9	Contents 1. Introduction....1 1.1. Framework for Contra Costa Water District Comments....1 1.2. Contra Costa Water District....3 1.2.1. Background....3 1.2.2. CCWD Operations....4 1.2.3. CCWD-specific Biological Opinions and Permits....5 1.3. Operational Coordination....8 1.3.1. Need for Coordination....8 1.3.2. Existing Coordination....9 1.3.3. Proposed Project and Alternatives....10 2. Incomplete Project Description and Alternatives Analysis....11 2.1. OMR Index....11 2.2. Spring Delta Outflow....14 2.2.1. Early Voluntary Agreement Implementation....14 2.2.2. Voluntary Agreement Implementation....15 2.3. Summary of Project Description Deficiencies....16	This information describes the structure or organization of the comment letter, the background of the organization or individual commenter, clarification on the submittal of the comment letter, or general introductory text. It is not a comment on the contents of the DEIR. DWR has reviewed all comments and will consider all comments in its decision-making process.

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21	10	1. Introduction 1.1. Framework for Contra Costa Water District Comments The California Department of Water Resources (DWR) operates the State Water Project (SWP) in coordination with the operation of the Central Valley Project (CVP) by the U.S. Department of Interior Bureau of	This comment is primarily introductory text. See Responses 21-5 and 21-35 regarding the project's relationship to CCWD operations.

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		Reclamation (Reclamation). Existing coordinated long-term operation of the CVP and SWP meets the requirements of the federal Endangered Species Act (ESA) through biological opinions (BOs) issued in 2019 by the National Marine Fisheries Service (NMFS) and the U.S. Fish and Wildlife Service (USFWS) (collectively referred to as "2019 CVP/SWP LTO BOs"). Further, DWR's long-term operation of the SWP meets the requirements of the California Endangered Species Act (CESA) through an incidental take permit issued in 2020 by CDFW (2020 SWP LTO ITP). The CVP/SWP LTO BOs and the SWP LTO ITP are separate and distinct from the ESA and CESA coverage for Contra Costa Water District (CCWD) (see Section 1.2.3 below). CCWD has its own BOs and ITP, which fully mitigate for CCWD's operations on aquatic species. During development of the existing operational criteria for the 2019 CVP/SWP LTO BOs and the application for the 2020 SWP LTO ITP, DWR and Reclamation proposed an operational criterion [Footnote 1: The development of the OMR Index is discussed in Section 1.3.] known as the Old and Middle River (OMR) Index, the effect of which would be to limit CVP and SWP exports using an equation that includes the amount of water that CCWD diverts at two of its Delta intakes. CCWD expressed concerns that use of this equation to limit CVP and SWP exports could create a conflict between CCWD diversions and CVP and SWP exports that might cause or create new or additional limitations or restrictions on CCWD's operations, beyond the separate requirements in the CCWD-specific BOs and ITP. Reclamation responded to CCWD's concerns regarding the significant adverse impacts that could result from the implementation of the 2019 CVP/SWP LTO BOs with that operational criterion by including in the final proposed action and biological assessment submitted to USFWS and NMFS a clear commitment that "implementation of the proposed action will not restrict CCWD operations beyond the restrictions of the separate [CCWD-specific] biological opinions, allowing CCWD to have opportunities to fill Los Vaqueros Reservoir that are at least comparable to the [then-current] current conditions." (Reclamation 2019b, at p. 4-59). This commitment was incorporated into the environmental analysis in the biological assessment (BA) for compliance with ESA (Reclamation 2019b), in Reclamation's Environmental Impact Statement (EIS) for compliance with the National Environmental Protection Act (NEPA) (Reclamation 2019a; Reclamation 2019c), and in DWR's Environmental	

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		Impact Report for compliance with the California Environmental Quality Act (CEQA) (DWR 2020), which was also relied upon when DWR secured its operating permit (ITP) under CESA (CDFW 2020). Specifically, the modeling for the proposed action in the BA and for all the action alternatives in the EIS and EIR was based on the assumption that CCWD's operations would continue to be governed by its own biological opinions and incidental take permit, without any new or additional restrictions or limitations as a result of the implementation of the 2019 CVP/SWP LTO BOs and the 2020 SWP LTO ITP. The commitment was also included in Reclamation's Record of Decision regarding the 2019 CVP/SWP LTO BOs (Reclamation 2020). Currently, the above commitment is implemented through ongoing operational coordination between Reclamation, DWR, and CCWD (see Section 1.3).	
21	11	DWR's May 2024 Draft Environmental Impact Report for Long-Term Operation of the SWP (Draft EIR) uses modeling that is also based on the assumption that CCWD [Contra Costa Water District] would continue to be governed by its own biological opinion, without new or additional restrictions or limitations as a result of the implementation of the 2024 SWP LTO project. However, while the Draft EIR incorporates this assumption about CCWD's operations into the modeling for purposes of assessing potential impacts, the Draft EIR does not clearly state that this important assumption is part of DWR's Proposed Project and the alternatives.	The comment is correct in stating that the modeling assumptions described in Appendix 4A, Attachment 1, "CalSim 3 Model Assumptions Callouts," are the same under the Proposed Project and Baseline Conditions for the CCWD, indicating that the modeling does not assume any changes to CCWD operations or the underlying regulatory constraints on CCWD operations (e.g., existing biological opinions governing CCWD operations). DWR included a sensitivity analysis in the FEIR to better reflect the water right priorities for the Projects and CCWD, specifically, that the Projects' water rights are senior and would not be restricted by CCWD's diversions into Los Vaqueros. Please see Appendix 4M for further information about the sensitivity analysis. See Response to Comment 21-35 for additional information. .
21	12	To the contrary, the Draft EIR incorporates actions that suggest that implementation of the SWP LTO project might in fact result in the imposition of new and additional restrictions on CCWD [Contra Costa Water District] operations beyond the separate requirements in the separate biological opinions and incidental take permit that already have been established for CCWD operations. If this is the case, there is a real potential for the SWP LTO project to cause significant adverse environmental impacts as discussed in Sections 3 and 4.	Please see Response to Comments 21-24 and 21-35.

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21	13	In the Final EIR, DWR should make a firm and clear commitment that CCWD's [Contra Costa Water District] facilities will continue to be operated and maintained under the biological opinions [Bos] and incidental take permit [ITP] that specifically apply to those facilities, and that the implementation of the SWP LTO project will not create new or additional limitations or restrictions on CCWD operations beyond the requirements set forth in those separate biological opinions and ITP – thereby ensuring that CCWD will continue to have opportunities to fill Los Vaqueros Reservoir that are at least comparable to the current conditions. CCWD requests that DWR make an assurance similar to the commitment in the 2019 CVP/SWP LTO Bos as part of the SWP LTO project. Incorporating this important component into the Final EIR's project description for the SWP LTO and the alternatives will help to resolve CCWD's concerns, avoid any confusion about the scope and nature of the SWP LTO project's impacts, and serve to eliminate, or at least substantially reduce, the potential significant adverse effects that are described in these comments.	See Response to Comments 21-5 and 21-35.
21	14	CCWD's [Contra Costa Water District] comments on the Draft EIR are structured as follows: • Section 1 provides background on CCWD and the ongoing operational coordination between CCWD, Reclamation, and DWR. • Section 2 describes the issues regarding the Project Description and alternatives analysis in the Draft EIR that prevent a clear understanding about whether the project could cause the significant impacts that CCWD has raised, or whether these impacts would be eliminated or substantially reduced. Sections 3 and 4 describe the potential adverse environmental effects on water supply, water quality, operational costs, and aquatic resources that could occur if DWR does not include as a component of the SWP LTO project a firm and clear commitment that the project will not cause or create any new or additional limitations or restrictions on CCWD's ability to fill its Los Vaqueros Reservoir, beyond the separate CCWD-specific Bos [biological opinions] and ITP [incidental take permit] that already apply.	This information describes the structure or organization of the comment letter, the background of the organization or individual commenter, clarification on the submittal of the comment letter, or general introductory text. It is not a comment on the contents of the DEIR. Specific responses to the specific comments on the DEIR are provided herein. DWR has reviewed all comments and will consider all comments in its decision-making process.
21	15	1.2. Contra Costa Water District 1.2.1. Background	This information describes the structure or organization of the comment letter, the background of the organization or individual commenter, clarification on

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		CCWD serves drinking water to 550,000 people and industries in central and eastern Contra Costa County. CCWD is an in-Delta diverter – its service area lies within or immediately adjacent to the Delta, and its return flows contribute to Delta outflow. CCWD relies on the Delta for 100% of its water supply, including CVP contract [Footnote 2: CCWD obtains its CVP water supply under Water Service Contract I75r-3401A-LTR1-P with Reclamation. Pursuant to that contract, Reclamation relies on seventeen water rights permits to supply CVP water to CCWD: Permits 12721, 11967, 12722, 12723, 12725, 12726, 11315, 11316, 16597, 11968, 11969, 11971, 11973, 12364, 13776, 16600, and 15735, issued pursuant to Applications 5626, 5628, 9363, 9364, 9366, 9367, 13370, 13371, 14858, 15374, 15375, 16767, 17374, 17376, 18115, 19304 and 22316.] deliveries, diversions under CCWD's own water rights, and diversions under East Contra Costa Irrigation District's pre-1914 water right.	the submittal of the comment letter, or general introductory text. It is not a comment on the contents of the DEIR. DWR has reviewed all comments and will consider all comments in its decision-making process.
21	16	Over the last 30 years, CCWD has invested approximately $1.5 billion (in 2024 U.S. dollars) to improve its delivered water quality while providing environmental benefits to the Delta with projects that include: • Construction of the Los Vaqueros Reservoir, which provides storage of high-quality Delta water and allows CCWD to cease Delta diversions during time periods when fish are most at-risk; • Construction of two new Delta intakes at locations that improve CCWD's ability to access high quality water for larger portions of the year; • Installation of state-of-the-art positive barrier fish screens at all CCWD intakes; and • Water quality projects to improve local conditions within Delta waters (i.e., Veale Tract Water Quality Improvement Project and Byron Tract Water Quality Improvement Project) and within CCWD's conveyance system (i.e., Contra Costa Canal Replacement Project). As a result of these significant investments, CCWD delivers high quality water to its customers throughout the year, even in drought years, by using high-quality stored water in Los Vaqueros Reservoir. The use of Los Vaqueros Reservoir does not increase CCWD's Delta diversions; it is used to shift the timing of diversions to provide year-round delivery of high-quality water (as described below in Section 1.2.2, CCWD Operations), rather than to increase supply. The use of Los Vaqueros Reservoir also allows CCWD to reduce its diversion of Delta water	This information describes the structure or organization of the comment letter, the background of the organization or individual commenter, clarification on the submittal of the comment letter, or general introductory text. It is not a comment on the contents of the DEIR. DWR has reviewed all comments and will consider all comments in its decision-making process.

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		during droughts. For instance, CCWD reduced its Delta diversions by a total of 29,000 acre-feet in the 2014-2015 drought and 42,000 acre-feet in the 2020-2022 drought, relying on releases from Los Vaqueros Reservoir instead of diverting from the Delta. Furthermore, CCWD's infrastructure investments enhance its operational flexibility, which allows CCWD to more easily coordinate its operations with the CVP and SWP so that in-Delta standards and fishery regulations are met with reduced impacts to water supply (as discussed below in Section 1.3, Operational Coordination). 1.2.2. CCWD Operations CCWD diverts water from four intakes in the Delta – Mallard Slough Intake, Rock Slough Intake, Old River Intake and Middle River Intake on Victoria Canal – for treatment and/or delivery to CCWD's customers. Additionally, CCWD diverts water from two of its intakes – Old River and Middle River – to storage in Los Vaqueros Reservoir, an off-stream reservoir that is owned and operated by CCWD and was built to improve water quality and provide drought and emergency storage for CCWD's customers.	
21	17	CCWD operates its intakes, together with Los Vaqueros Reservoir, to meet its delivered water quality goals and to protect listed species. The choice of which intake to use at any time is based largely on water quality at the intakes, consistent with fish protection requirements specified in separate biological opinions and permits that govern operation of CCWD's intakes and Los Vaqueros Reservoir (as described below in Section 1.2.3, CCWD-specific Biological Opinions and Permits). When Delta water quality is good (i.e., salinity and algae are low), CCWD diverts Delta water directly for delivery to its customers and fills Los Vaqueros Reservoir with high-quality Delta water (at a rate of up to 200 cfs) for later use. When Delta water quality degrades (typically in late summer and fall or during droughts), CCWD releases high-quality water from storage to blend with water pumped directly from the Delta; blending the two water sources allows CCWD to meet its water quality goals. When water is released from Los Vaqueros Reservoir, CCWD concurrently reduces its Delta diversions. The reservoir is then re-filled when high-quality water is available in the Delta again, typically during winter and spring. In this way, Los Vaqueros Reservoir allows CCWD to ameliorate the typical seasonal changes in Delta water quality and continually provide high-quality water to its customers. Additionally, the	To the extent the commenter provided this context for reference purposes in support of their comments, responses to those comments are addressed herein. This comment does not raise an environmental issue associated with the 2024 SWP LTO. No further response is required.

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		water stored in Los Vaqueros Reservoir serves as an emergency and drought water supply should CCWD's Delta water supply be limited or unavailable.	
21	18	1.2.3. CCWD-specific Biological Opinions and Permits CCWD's [Contra Costa Water District] operation of its diversion, storage, and conveyance facilities meets the requirements of the federal ESA through biological opinions (BOs) issued by NMFS and USFWS and meets the requirements of the California Endangered Species Act (CESA) through incidental take permits (ITP) issued by CDFW (previously called the California Department of Fish & Game, or CDFG). (NMFS 1993, NMFS 2007, NMFS 2010, NMFS 2017; USFWS 1993, USFWS 2000, USFWS 2007, USFWS 2010, USFWS 2017; CDFW 2024). These are collectively referred to as the "CCWD-specific BOs and ITP." The CCWD-specific BOs and ITP are separate and distinct from the BOs for the coordinated long-term operation of the CVP and SWP (LTO BOs). The CCWD-specific BOs and ITP also are separate and distinct from the ITP for the continued operation of the SWP (SWP LTO ITP). The CCWD-specific BOs and ITP cover all water diverted at CCWD's intakes, including water diverted pursuant to CCWD's CVP water service contract as well as water diverted under other water rights. The CCWD-specific BiOps and ITP require protection of aquatic resources, as set forth below, by minimizing entrainment at CCWD's intakes and minimizing CCWD's effect on Delta hydrodynamics. Minimizing Entrainment at CCWD's Intakes All four Delta intakes used to serve CCWD's service area are equipped with positive barrier fish screens to minimize entrainment. Based on analysis of twenty years of fish monitoring data at CCWD's intakes, CDFW concluded that CCWD's fish screens minimize entrainment of screenable-sized fish (CDFW 2019; CDFW 2024). CCWD's ITP does not allow diversions at CCWD's intakes unless the protective fish screens are installed and fully operational. Further, the intakes are operated to an approach velocity of 0.2 feet per second (fps) to minimize entrainment and impingement of delta smelt and longfin smelt when they are determined to be present in the Delta. CCWD's fish screens at the Mallard Slough Intake, Rock Slough Intake, and Middle River Intake were all designed for a maximum screen approach velocity of 0.2 fps at full pumping capacity. However, CCWD's Old River Intake was designed and constructed before any fish screen	This comment does not raise an environmental issue associated with the 2024 SWP LTO. No further response is required.

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		criteria had been developed by the fishery agencies to protect delta smelt. Therefore, CCWD's Old River Intake is built to meet the salmonid criteria (0.33 fps) while pumping full capacity at the lowest neap ebb tide (and 0.29 fps at full capacity for the average ebb tide) (USFWS 1993). When delta smelt or longfin smelt may be present in the Delta, CCWD's Old River Intake must meet the 0.2 fps approach velocity; one method to meet the approach velocity would be to limit diversions at CCWD's Old River Intake to about 170 cubic feet per second (cfs). Minimizing CCWD's effect on Delta Hydrodynamics While "[n]et Old and Middle River flow provides a surrogate indicator for how export pumping at Banks and Jones Pumping Plants influence hydrodynamics in the south Delta" (NMFS 2019), CCWD diversions are too small to measurably affect Old and Middle River (OMR) flow. CCWD's maximum effect (when pumping at full capacity) on water velocity at the USGS OMR gages is 0.016 fps, which is approximately 4 times lower than the error in calibration for each of the instruments that measure OMR (Reclamation 2019b). Since CCWD's operations cannot be detected at the OMR flow gages, changes in CCWD operations would not be capable of influencing OMR. Instead, the CCWD-specific BiOps and ITP include operational criteria that directly limit CCWD operations, which reduce the effects of CCWD's diversions on reverse flows and fully mitigate CCWD's impacts to the listed species. The CCWD-specific BOs include annual 75-day "No-Fill" period and a concurrent 30-day "No-Diversion" period. During the No-Fill period, CCWD does not fill Los Vaqueros Reservoir, which limits CCWD's diversions from the Delta to the amount necessary to meet its customer demand. During the No-Diversion period, CCWD minimizes diversions from the Delta [Footnote 3: Rock Slough intake may continue minimum diversions during the no-diversion period to prevent water quality degradation due to agricultural drainage and groundwater interactions in the vicinity of the Rock Slough intake.] and meets customer demand by releasing water from Los Vaqueros Reservoir. The No-Fill and No-Diversion requirements in the CCWD-specific BOs were originally established before the efficacy of fish screens was proven. CCWD constructed and operated the first state-of-the-art positive barrier fish screen in the Delta and adopted these operational rules prior to operation and monitoring at the fish screens. The CCWD-specific BOs include default timing for the No-Fill and No-Diversion periods but allow modifications to the requirements with approval from the fishery	

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		agencies. Since 2013, CCWD and Reclamation have requested that the fish agencies allow CCWD's No-Fill and No-Diversion periods to be modified to allow coordination with CVP and SWP operations. CCWD's ITP includes restrictions on diversion rates at CCWD's intakes that were developed using particle tracking model (PTM) simulations to reduce the effect that CCWD diversions have on transport and fate of particles in Delta, such that entrainment of particles at CCWD intakes would be less than 10% of total particles released at locations in the central Delta, measured 30 days after release of the particles. CDFW determined that OMR is an indicator of how long particles remain in the central Delta in the region where CCWD's diversions may have an influence on particle transport and fate; thus, the restrictions on CCWD diversions depend on the OMR value, even though CCWD's diversions are too small to measurably affect OMR. During the OMR management season, if larval delta smelt or larval longfin smelt may be present in the Central Delta, CCWD's diversions are limited as shown in Table 1-1 [Exhibit 1].	
21	19	[Exhibit 1: Table 1-1 Diversion Restriction in the Contra Costa Water District-specific Incidental Take Permit]	The commenter provided this attachment for reference purposes in support of their comments. Those comments are addressed in these responses to the commenter's letter. DWR has reviewed all comments and will consider all comments in its decision-making process.
21	20	In sum, the CCWD [Contra Costa Water District]-specific BOs [biological opinions] and ITP [incidental take permit] include operational criteria that fully mitigate CCWD's impacts to the listed species (CDFW 2024). The CCWD-specific BOs and ITP do not require CCWD to influence OMR because CCWD's diversions are too small to measurably affect OMR and CCWD's diversions do not affect entrainment at the CVP and SWP export facilities.	This comment does not raise an environmental issue associated with the 2024 SWP LTO. Please see the specific responses to the specific comments on the DEIR made in this comment letter for a response, including Response to Comment 21-5.
21	21	1.3. Operational Coordination 1.3.1. Need for Coordination In 1994, CCWD [Contra Costa Water District] obtained a water right permit from the State Water Resources Control Board (Application 20245; Permit 20749) to fill its Los Vaqueros Reservoir during excess conditions, and Reclamation amended 17 of the CVP water rights to allow diversion of CVP water at CCWD's Old River Intake and filling of Los Vaqueros Reservoir (see State Water Resources Control Board Water	This is not a comment on the content or analyses included in the EIR. The commenter provides background information for other comments, but implies that use of an Old and Middle River Index (OMRI) would cause impacts to CCWD operations. The use of the OMRI for compliance with OMR requirements is appropriate for real-time operations.

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		Rights Decision 1629 (D-1629)). The water right permits listed in D-1629 were amended again in 2010 to allow direct diversion and diversion to storage from CCWD's Middle River Intake on Victoria Canal. CCWD's initial water right permit has a seniority date of June 5, 1961, and includes the following term regarding CVP and SWP water rights: "No diversion is authorized that would adversely affect the operation of the Central Valley Project or State Water Project under permits and licenses for the Projects in effect on the date of this Order. An adverse effect shall be deemed to result from Permittee's diversion at any time Reclamation and DWR have declared the Delta to be in balanced water conditions under the Coordinated Operation Agreement or at any other time that such diversion would directly or indirectly require the Central Valley Project or the State Water Project to release water from storage or to reduce their diversion or rediversion of water from the Delta to provide or assure flow in the Delta required to meet any applicable provision of state or federal law." (Term 23) CCWD, Reclamation, and DWR have been coordinating operations since the initial filling of Los Vaqueros Reservoir in 1997. Prior to the flow requirements on Old and Middle Rivers, this coordination primarily focused on the determination of whether the Delta was in Balanced Condition. Based upon correlations with salvage of fish at the SWP Skinner Delta Fish Protective Facility and the CVP Tracy Fish Collection Facility, the 2008/09 LTO BOs and 2009 SWP LTO ITP required Reclamation and/or DWR to operate to meet criteria for OMR as measured by the United States Geological Survey (USGS) in Old and Middle Rivers. Reducing CVP and SWP exports to change measured OMR reduced the direct impacts of salvage and predation at the CVP and SWP facilities as well as the indirect effects associated with changes to Delta hydrodynamics. Since the combined effect of CCWD's maximum physical capacity to divert water is below the measurement threshold at the USGS gages, if Reclamation and DWR used measured OMR flows to assess compliance with OMR criteria, CCWD's operations would not have any effect on such compliance or the amount of water that CVP and SWP exports are allowed to divert. However, the USGS daily OMR values are not available in real-time because tidal filtering [Footnote 4: Tidal filtering is a method to average high-frequency data to remove the tidal fluctuations.] requires 72 hours of data for each of the USGS stations. Due to this lag in	Using multiple flow gauges and tidal averages were plagued with problems. The OMRI equation adopted in the 2019 BiOps and proposed in the Proposed Project, and consistent with the Proposed Action on the ongoing Section 7 consultation on the long-term operations of the CVP and SWP, was developed based on what is essentially a free body diagram that encapsulates the diversions that occur between the head of Old River and the physical USGS gauges located in Old and Middle Rivers. Two diversion points for CCWD are located within the conceptual free body diagram and were included in the development of the OMRI equation. DWR, Reclamation, and CCWD regularly coordinate on operations where SWP/CVP controlling factors are discussed and if CCWD diversions would be inconsistent with the state term in CCWD's water right. DWR intends to continue to coordinate with CCWD and Reclamation into the future.

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		available data, an alternative methodology was developed to facilitate operations under real-time conditions. At Reclamation's request, CCWD developed a flow index that could be used for real-time operations and demonstrated that the use of flow index would be just as protective of fish as using the USGS measured OMR flow (CCWD 2012). However, Reclamation and DWR chose to use an estimate of OMR, using an equation that includes real-time values for CCWD diversions and approximated values of other in-Delta diversions and is based on one-dimensional hydrodynamic modeling of the Delta (Hutton 2008) (hereafter "OMR Index"). The choice to use an equation that includes real-time CCWD diversions when other options have demonstrated to be just as protective of fish, created an artificial situation under which CCWD's diversions affect the calculation of an OMR index that then could be deemed to affect how much water the CVP and SWP are allowed to export. Reclamation and DWR began using the OMR Index informally in 2012 and proposed that the OMR Index replace the USGS measured OMR requirements in the 2019 proposed action for the CVP and SWP LTO, upon which the 2019 CVP/SWP LTO BOs are based. The 2019 proposed action avoided any impacts on CCWD's operations by including the commitment that implementation of the proposed action would not restrict CCWD operations and would allow CCWD to have opportunities to fill Los Vaqueros Reservoir that are at least comparable to the then-current conditions (see Section 1.1)	
21	22	1.3.2. Existing Coordination Under the existing regulatory regime, and despite the use of an OMR [Old and Middle River] index that includes CCWD's [Contra Costa Water District] operations, CCWD, Reclamation, and DWR have worked together to successfully coordinate operations so that in-Delta objectives and fishery regulations are met without curtailments to CCWD's water right permit to fill Los Vaqueros Reservoir. Since 2013, CCWD and Reclamation have requested that fishery agencies allow CCWD's No-Diversion period and No-Fill period to be modified to allow coordination with CVP and SWP operations. CCWD and Reclamation have provided sufficient evidence from monitoring at CCWD's intakes that this modification does not harm listed species, such that the fishery agencies have approved these requests. Typically, CCWD's No-Diversion period has been waived by the fishery agencies and the timing of CCWD's No-	This information describes the background of the organization or individual commenter or general introductory text. It is not a comment on the contents of the DEIR. DWR has reviewed all comments and will consider all comments in its decision-making process.

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		Fill period has been allowed to be implemented flexibly such that CCWD does not divert to storage in Los Vaqueros Reservoir for at least 75 days between January 1 and June 30 each year. The default timing of CCWD's No-Fill period is March 15 through May 31, and the modification to allow the timing of the No-Fill period to be implemented flexibly has allowed smoother coordination with CVP and SWP operations, while maintaining the same level of protection to listed species. These modifications to CCWD operational requirements are expected to continue annually due to the successful nature of the operational coordination between CCWD, Reclamation, and DWR and the coordination commitment that was formalized in the 2019 CVP/SWP LTO BOs (see Section 1.1 above).	
21	23	1.3.3. Proposed Project and Alternatives The SWP LTO Draft EIR does not provide any information about operational coordination with CCWD under the Existing Conditions, the Proposed Project, or any of the action alternatives. However, the Draft EIR for the SWP LTO raises two issues that could affect the existing coordination between DWR and CCWD, and thus could result in new or additional restrictions on CCWD operations beyond the requirements set forth in the CCWD-specific BOs and ITP. As described more fully below, the first issue is the proposed use of an OMR Index that includes CCWD's diversions as part of the SWP LTO project instead of using net OMR flow as measured by the USGS. The second issue involves potential changes to SWP operational criteria that would eliminate or weaken the current SJR IE restriction. Both of these issues could result in new or additional restrictions on CCWD operations as a result of the SWP LTO project, which in turn would have the potential to cause significant adverse environmental impacts that have not been adequately disclosed, evaluated, or mitigated in the Draft EIR. Section 2 below describes the problems these two issues raise under CEQA in relation to the project description and the analysis of alternatives. Sections 3 and 4 then describe the potential adverse impacts that could occur in terms of negative effects on water supply, operational costs, and aquatic resources. 2. Incomplete Project Description and Alternatives Analysis The project description lacks vital information about how SWP operations would be coordinated with CCWD operations, making it impossible to determine whether the full range of potential impacts	Please see Response to Comment 21-5 regarding DWR's coordination with CCWD and Reclamation. Please see Response to Comment 21-21 regarding use of the OMR Index.

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		from the SWP LTO project has been evaluated. The Draft EIR thus fails to include sufficient detail about the whole of the project and its potential impacts to foster meaningful public participation and informed governmental decision-making.	
21	24	The modeling used for the impact assessment in the Draft EIR is based on the assumption that CCWD [Contra Costa Water District] operations would continue to be governed by its own biological opinions and incidental take permit, without new or additional restrictions or limitations as a result of the SWP LTO project – just as they are under the existing baseline condition. But at the same time, the Draft EIR raises the prospect that such new or additional restrictions or limitations on CCWD could in fact occur as a result of the project, for example, due to the use of an OMR [Old and Middle River] Index that includes CCWD operations or due to changes in SWP operational criteria for Spring Delta Outflow, which are discussed further below. This lack of a clear, consistent and stable approach poses an important CEQA issue for the project description and for the analysis of the alternatives.	The comment suggests that the EIR indicates that new or additional restrictions on CCWD operations could occur under the Proposed Project (e.g., OMR management). DWR is not proposing to alter any legal requirements related to Los Vaqueros Reservoir, including CCWD's biological opinions or incidental take permit. If DWR is required to reduce exports to meet OMR management criteria based on the triggers identified in Chapter 2, Section 2.3.3, "Old and Middle River Flow Management," CCWD diversions would continue to be governed by the existing biological opinions and incidental take permit and water right priorities. The OMR management actions described in Chapter 2 only govern joint SWP and CVP operations. Therefore, OMR requirements will be met by SWP and CVP operations, regardless of whether CCWD is diverting or not. If CCWD is diverting from their Old River or Middle River diversion locations when OMR requirements are controlling SWP and CVP operations, adjustments to the SWP or CVP exports or CCWD diversions would likely be required to meet the required OMR management criteria. The modeling assumptions described in Appendix 4A, Attachment 1, "CalSim 3 Model Assumptions Callouts," are the same under the Proposed Project and Baseline Conditions for CCWD, indicating that the modeling does not assume any changes to CCWD operations or the underlying regulatory constraints on CCWD operations (e.g., existing biological opinions governing CCWD operations). DWR included a sensitivity analysis in the FEIR to better reflect the water right priorities for the Projects and CCWD, specifically, that the Projects' water rights are senior and would not be restricted by CCWD's diversions into Los Vaqueros. Please see Appendix 4M for further information about the sensitivity analysis.

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			DWR will continue to work with CCWD and Reclamation on operations to identify periods where OMR is constraining SWP and CVP operations and coordinating on the relationship to CCWD's diversions to Los Vaqueros.
21	25	2.1. OMR [Old and Middle River] Index Incomplete Project Description The Proposed Project in the Draft EIR includes "OMR flow management" to address entrainment of delta smelt, longfin smelt, winter-run Chinook Salmon, and spring-run Chinook Salmon. As stated in the Draft EIR, "OMR flows provide a surrogate indicator for how export pumping at Banks and Jones pumping plants influence hydrodynamics in the south Delta. An OMR flow index will be used to determine export limitations as described in the sections below, [sic] and will be calculated using the equation provided in Hutton (2008)." (Draft EIR Section 2.3.3, p. 2-20) The sections referenced in the quote above indicate that Reclamation and DWR will reduce CVP and SWP exports to minimize entrainment and salvage at the CVP and SWP salvage facilities and to minimize SWP and CVP influence on the movement of listed fish species into the south Delta (see for example Draft EIR Section 2.3.3.1 and 2.3.3.2). While the paper that defines the calculation for the OMR Index (Hutton 2008) includes diversions at two of CCWD's intakes in the calculation of the OMR Index, the Proposed Project does not mention any modification to CCWD [Contra Costa Water District] operations in response to OMR Index criteria. The existing operational criteria for compliance with the federal Endangered Species Act are included in the 2019 Proposed Action for the CVP/SWP LTO, which specifies that Reclamation and DWR would operate to the OMR Index defined by Hutton 2008, and also includes a commitment that implementation of the 2019 CVP/SWP LTO Proposed Action (i.e., the current Existing Condition) would not restrict CCWD operations beyond the restrictions of the separate CCWD-specific biological opinions, allowing CCWD to have opportunities to fill Los Vaqueros Reservoir that are at least comparable to the then-current conditions. Further, as discussed above in Section 1.3, CCWD, Reclamation, and DWR currently coordinate operations such that the 2019 CVP/SWP LTO Bos and 2020 SWP LTO ITP in-Delta objectives and fishery regulations are met without placing any additional restrictions	See Response 21-24 regarding DWR's potential effects to CCWD operations and Response 21-21 regarding the use of OMR Index.

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		on CCWD beyond what is included in the CCWD-specific BiOps and ITP. Although the Draft EIR's modeling, and the analysis derived from this modeling, is consistent with this commitment, the Draft EIR does not expressly affirm this commitment either in the description of Existing Conditions or in the Proposed Project or any action alternatives.	
21	26	Despite the lack of any explicit information in the Project Description related to CCWD's [Contra Costa Water District] operations, DWR staff have informally claimed that CCWD would not be able to exercise its water right when the OMR Index that includes CCWD's diversions is limiting exports. This appears to be DWR's interpretation [Footnote 5: As discussed in Section 1.3, CCWD does not agree with DWR's interpretation that this water right term would apply to implementation of OMR Index, which is a calculation that was specifically designed by DWR to self-impose restrictions on SWP operations merely because DWR developed the OMR Index uses a formula that includes CCWD's operations. The purpose of OMR management is to limit the entrainment of fish at Banks and Jones pumping plants, and CCWD's diversions do not affect entrainment at the export facilities.] of the term in CCWD's water right permit to fill Los Vaqueros Reservoir from its intakes in the Delta (State Water Resources Control Board, Water Right Permit Number 20749), which states that "[n]o diversion is authorized that would adversely affect the operation of the Central Valley Project or State Water Project under permits and licenses for the Projects in effect on the date of this Order. An adverse effect shall be deemed to result from Permittee's diversion at any time Reclamation and DWR have declared the Delta to be in balanced water conditions under the Coordinated Operation Agreement or at any other time that such diversion would directly or indirectly require the Central Valley Project or the State Water Project to release water from storage or to reduce their diversion or rediversion of water from the Delta to provide or assure flow in the Delta required to meet any applicable provision of state or federal law." (SWRCB, 2010, Term 23, pp. 5-6, emphasis added). In essence, DWR has designed a component of its project (included in the Proposed Project and all action alternatives) to curtail CCWD's water right without disclosing this information in the Project Description or including any analysis or mitigation of the resulting environmental effects. As mentioned previously, the analysis in the Draft EIR is based on the assumption that CCWD would continue to be governed by its own biological opinions and incidental take permit, without new or	This is not a comment on the content or analyses included in the EIR. The commenter implies that implementation of the Proposed Project would cause impacts to CCWD operations. Please see Responses to Comments 21-24, 21-21, and 21-35. CCWD and Reclamation have an operations agreement "Los Vaqueros Reservoir Coordinated Operations Agreement" (LVE COA), dated April 28, 2011 that describes actions that CCWD must take during OMR restricted periods. DWR has a separate agreement with Reclamation "Agreement Between the United States of America and the State of California for Coordinated Operations of the Central Valley Project and the State Water Project" (COA) signed in 1986 and amended in 2018. DWR will continue to coordinate with Reclamation and CCWD on identifying when OMR restricted periods are occurring or are projected to occur, but look to Reclamation to work with CCWD on the implementation of the LVE COA.

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		additional restrictions or limitations as a result of the implementation of the SWP LTO project. In other words, the analysis in the Draft EIR is based on the assumption that CCWD's water right permit is not curtailed by implementation of the SWP LTO project. Accordingly, if CCWD's water right permit is in fact curtailed, this would not be consistent with the modeling of environmental impacts in the Draft EIR and could lead to significant impacts that have not been adequately analyzed, disclosed or mitigated, as described in the Section 4 and Section 5 below.	
21	27	Incomplete Alternatives Analysis Furthermore, the SWP LTO Draft EIR does not consider alternative approaches to meeting the purpose of the OMR Index: to address entrainment of listed species and provide a surrogate indicator for how export pumping at Banks and Jones pumping plants influence hydrodynamics in the south Delta. Rather, the alternatives analysis simply assumes that the OMR Index will be included as a component of each alternative. For this reason, it is not clear that the analysis of alternatives in the SWP LTO Draft EIR is sufficient to meet CEQA's requirements [Footnote 6: A fundamental requirement of CEQA is that a public agency may not approve a project as proposed if there is a feasible alternative that would substantially lessen the project's significant environmental impacts. Cal. Pub. Res. Code § 21002. Thus, as the CEQA Guidelines explain, an EIR must evaluate alternatives that could avoid or reduce the project's significant impacts, even if the alternatives would impede to some degree the attainment of the project objectives. CEQA Guidelines § 15126.6(b). Further, the evaluation of alternatives must "include sufficient information about each alternative to allow meaningful evaluation, analysis, and comparison with the proposed project." Id. § 15126.6(d).]. An alternative entrainment index that provides fish protection equivalent to the measured OMR flow but does not include CCWD's [Contra Costa Water District] diversions would meet the requirements of ESA and CESA without unnecessarily curtailing CCWD's diversions and without causing the negative environmental impacts that could result from such a curtailment. Since CCWD's diversions have been fully mitigated by the operational requirements that specifically apply to CCWD operations (CDFW 2024; NMFS 1993, 2007, 2010, 2017; and USFWS 1993, 2000, 2007, 2010, 2017) and are too small to affect	Please see Responses 21-5, 21-21, 21-24, 21-26, 21-30, and 21-35 regarding OMR management and a discussion of the project's potential effects on CCWD operations. Please see Chapter 11, Section 11.2, "Range of Alternatives Considered," and Common Response 3, "The CEQA Process," for a discussion on the range of alternatives considered and the development of alternatives.

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		measured flow, DWR could have chosen to use an alternative entrainment index that does not include CCWD diversions. CCWD proposed such an alternative index in 2012 in response to a request for information by the State Water Resources Control Board (CCWD 2012). To evaluate whether an alternative flow index would provide equivalent protection of listed fish species in the Delta, CCWD conducted analyses similar to the analyses in the 2008/09 CVP/SWP LTO BOs and the 2009 SWP LTO ITP, comparing ecological indicators using both CCWD's alternative flow index and measured OMR by the USGS. No such analysis has been performed for DWR's proposed OMR Index. In 2017, DWR submitted a report to an independent review panel assembled by the Delta Science Program (DWR 2017). The 2017 report documents the differences between DWR's proposed OMR Index and the USGS OMR measurements for 2011 through 2017. However, the report did not evaluate whether DWR's proposed index would be protective of fish. The independent review panel noted systematic shifts in the prediction errors over time and lack of an ecological assessment of the differences between DWR's proposed OMR Index and the USGS measured values (Gore et al 2018). In short, the SWP LTO Draft EIR proposes the use of an OMR Index without any commitment not to impact CCWD operations, without any analysis of the significant environmental effects that could be caused by this the change from current regulations, and without any consideration of feasible alternative indices or other mitigation measures that could reduce these significant effects. CCWD's 2012 index is a feasible method to avoid impacts to CCWD while protecting fish and should be adopted as part of the project.	
21	28	2.2. Spring Delta Outflow The Proposed Project and all the alternatives include Spring Delta Outflow to be provided by a variety of methods (Draft EIR Section 2.3.5). The Project Description recognizes that Spring Delta Outflow is also a component of the Voluntary Agreements [Footnote 7: "Voluntary Agreements are a package of flow and non-flow measures proposed by a diverse range of interests for adoption by the State Water Resources Control Board as an approach to implement the Bay-Delta Water Quality Control Plan (Bay-Delta Plan)." SWP LTO Draft EIR, Appendix 2B Adaptive Management Program], as described in the Memorandum of Understanding (MOU) Advancing a Term Sheet for the Voluntary	Please refer to Common Response 7, "Relationship to Healthy Rivers and Landscapes Program," regarding the Proposed Project's relationship to the Healthy Rivers and Landscapes Program which has not yet been approved by the State Water Resources Control Board. Please see Response to Comments 21-21, 21-24, and 21-35 regarding the potential effects to CCWD operations as a result of using the OMR Index or other accounting method. DWR has appropriately described potential Spring Delta Outflow in The Project Description and has examined potential environmental effects pursuant to CEQA. The DEIR did not identify any significant impacts

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		Agreements to Update and Implement the Bay-Delta Water Quality Control Plan, and Other Related Actions, which was executed by DWR, CDFW, Reclamation, and various water users including CVP and SWP contractors in 2022, hereafter referred to as the 2022 VA MOU. (Voluntary Agreement Parties 2022). To the extent Project operations will be carried out before Voluntary Agreements obtain all necessary approvals, the Proposed Project [Footnote 8: The Proposed Project has three methods to produce Spring Delta Outflow. The default implementation appears to be via the Voluntary Agreements, but two other "Early Voluntary Agreement Implementation" methods are likely to apply in the time period between when the Project is approved and when the Voluntary Agreements are approved.] incorporates an approach to Spring Delta Outflow described as "Early Voluntary Agreement Implementation." 2.2.1. Early Voluntary Agreement Implementation Prior to full approval of the Voluntary Agreements, the Proposed Project would implement Spring Delta Outflow either through (1) implementation of Condition of Approval 8.17 of the 2020 SWP LTO ITP or (2) actions (i.e., "cuts to SWP export of unstored water") to "generate flow volumes that are on average equivalent to implementation of the 2020 ITP Condition of Approval 8.17." The first option (i.e., 2020 SWP LTO ITP Condition of Approval 8.17) would require DWR to reduce SWP exports from April 1 to May 31 to achieve the SWP proportional share of a designated San Joaquin River Inflow to Export requirement (commonly referred to as SJR IE). Condition of Approval 8.17 is defined such that SWP export reductions will be based on San Joaquin River inflow at Vernalis, which does not implicate CCWD [Contra Costa Water District] operations in any way (unlike the OMR Index discussed in Section 2.1). This implementation of spring outflow is consistent with existing regulations. The second option would allow the SJR IE to be replaced with unspecified actions that are not fully defined in the Draft EIR. In this case, the Project Description simply states that "DWR and CDFW will meet and confer on the final operational plan that considers hydrology and accounting methods." The lack of information in the Project Description makes it impossible to determine whether the unspecified accounting method might implicate CCWD operations through the inclusion of an OMR Index or other method. This lack of a clear approach poses an important CEQA issue for the project description and for the	that require mitigation here. DWR would continue to operate the SWP consistent with applicable laws and permits, including water rights.

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		analysis of the alternatives for the same reasons discussed in Section 2.1 above. At a minimum, if this concept is retained, the Final EIR should include a performance standard mitigation measure such as "the final operational plan developed by DWR and CDFW shall not result in significant water supply impacts to CCWD or any other water right holder."	
21	29	2.2.2. Voluntary Agreement Implementation After the Voluntary Agreements (also known as "VAs") are approved, the Project Description incorporates components of the Voluntary Agreements to implement Spring Delta Outflow. The Project Description states that "DWR will provide for Delta outflow under this proposed project through SWP export reductions and collection of diversion fees from SWP contractors to purchase water for Delta outflow per the terms of the Voluntary Agreements" (hereafter VA flows). These actions are evidently in lieu of the SJR IE requirement that is encompassed within the Existing Conditions and also incorporated into the Early Voluntary Agreement Implementation discussed above. The 2022 VA MOU included a "Term Sheet (Term Sheet) for the Voluntary Agreements to Update and Implement the Bay-Delta Water Quality Control Plan" that specified that the Voluntary Agreement flows are additive to the Delta outflows required by Revised Water Rights Decision 1641 (Revised D-1641) and the 2019 SWP/CVP LTO BOs, the latter of which include the commitment that CCWD's intakes will be operated consistent with the CCWD [Contra Costa Water District]-specific Bos [Biological opinions] and ITP [Incidental take permit] and implementation of the 2019 CVP/SWP LTO will not restrict CCWD operations beyond the restrictions of the separate CCWD-specific biological opinions. (Term Sheet p. 5) With the elimination of the SJR IE requirement, the Draft EIR does not specify whether implementation of the Voluntary Agreements would reduce the opportunities for CCWD to fill the Los Vaqueros Reservoir. The VAs will be implemented mainly through foregone CVP and/or SWP exports as compared to a reference condition. The Draft EIR does not state the "reference condition" upon which the VA flows will be additive. However, the modeling for the SWP LTO Proposed Project sets the reference condition as how much the SWP could export under the Proposed Project without the Spring Delta Outflow provision. With the SJR IE regulation eliminated in the Proposed Project, OMR management	Please refer Response to Comment 21-28 regarding the Proposed Project's relationship to the Healthy Rivers and Landscapes Program (previously referred to as voluntary agreements), which has not yet been approved by the State Water Resources Control Board, and the modeling performed and reported in the EIR.

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		is most likely to control CVP and SWP exports between March and May in the reference condition upon which the VA flows are additive. Given that DWR staff have previously suggested that CCWD should curtail its use of its own water right permit to fill Los Vaqueros Reservoir during times when exports for the CVP and SWP are limited due to the OMR Index (as discussed above), DWR may seek the same limits on CCWD when the OMR Index would have limited SWP exports in the reference condition.	
21	30	Under the existing regulatory regime and despite the use of an OMR index that includes CCWD's operations, CCWD, Reclamation, and DWR have worked together to successfully coordinate operations so that in-Delta objectives and fishery regulations are met without curtailments to CCWD's water right permit to fill Los Vaqueros Reservoir (see Section 1.3 of these comments). However, with the elimination of the SJR IE, any increase in the amount of time that OMR flow management limits exports in the reference condition for VA implementation means that the combination of the Proposed Project and the implementation of the VAs could result in significant adverse environmental impacts, including impacts to CCWD's operations. These potentially significant adverse environmental effects have not been adequately identified or evaluated in the EIR. 2.3. Summary of Project Description Deficiencies In sum, use of an OMR calculation that includes CCWD's diversions together with elimination of the SJR IE restriction could eliminate CCWD's current operational flexibility and restrict CCWD's filling of Los Vaqueros Reservoir, effectively forcing CCWD to reduce its diversions to mitigate the effects of the CVP and SWP export facilities. This is contrary to CEQA, which requires that DWR, not CCWD, mitigate the impacts of DWR's Proposed Project on CCWD. If the SWP LTO project results in new or additional restrictions on CCWD operations, the Proposed Project could cause significant adverse water supply impacts affecting more than half a million people (see Section 3 below). This scenario also could cause adverse impacts on aquatic resources by reducing CCWD's diversions at screened intakes where fish are not taken (as shown in Table 4-2 below), in order to allow increased diversions at the SWP export pumps, which have a much greater impact on fish (see Section 4).	The comment suggests that the Proposed Project could cause significant adverse environmental impacts, including impacts to CCWD's operations that have not been adequately identified or evaluated in the EIR. The EIR evaluated SWP operations in Chapters 4 through 8, and combined SWP and CVP in Chapter 10, "Other CEQA Discussions," and concluded that the Proposed Project would result in less than significant impacts. The EIR provides a sensitivity analysis in Appendix 4M that evaluates the effects of the SWP Proposed Project on CCWD diversions for filling Los Vaqueros under two different operating conditions and applied to comparable scenarios. One that limits CCWD diversions for filling Los Vaqueros when OMR is controlling the SWP/CVP Exports, consistent with water rights priorities, CCWD's agreement with Reclamation in the "Los Vaqueros Agreement" and with real-time implementation. The other allows fill during OMR control periods. The results of both comparisons indicate that there will be minimal effects on CCWD from the Proposed Project. CCWD diversions would continue to be governed by the existing biological opinions and incidental take permit and water right priorities. The OMR management actions described in Chapter 2 only govern joint SWP and CVP operations. DWR will continue to work with CCWD and Reclamation on coordinating operations to identify periods where OMR is constraining SWP and CVP operations.

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			Please also see Responses to Comments 21-24 and 21-35.
21	31	DWR can avoid these issues by making a firm and clear commitment as part of the project description that the SWP LTO will not cause or create such new or additional restrictions that would negatively affect CCWD's operations, thereby ensuring CCWD has opportunities to fill Los Vaqueros Reservoir that are at least comparable to current conditions. This commitment would avoid or substantially reduce these potential significant environmental impacts on CCWD. The project description and the discussion of the alternatives should be revised to state explicitly what the proposed approach is for coordination of SWP operations with CCWD operations, so that it is clear whether there are potential significant environmental impacts from DWR's project that have yet to be adequately disclosed, analyzed or mitigated.	See Response 21-5 regarding DWR's regarding the potential effects to CCWD operations.
21	32	3. Potential Impacts to Contra Costa Water District CCWD [Contra Costa Water District] operates its facilities to deliver high-quality water to its customers year-round. The Los Vaqueros Reservoir and the Old River and Middle River intakes were built for this specific purpose. When Delta water quality is good (e.g., salinity and algae are low), CCWD diverts Delta water directly for delivery to its customers and fills Los Vaqueros Reservoir with high-quality Delta water for later use. When Delta water quality degrades (typically during droughts), CCWD releases some high-quality water from storage to blend with water pumped directly from the Delta; blending the two water sources allows CCWD to meet its delivered water quality goals. When water is released from Los Vaqueros Reservoir, CCWD concurrently reduces its Delta diversions. The reservoir is then re-filled when high quality water is available in the Delta again. In this way, operation of Los Vaqueros Reservoir allows CCWD to ameliorate seasonal and drought-related changes in Delta water quality and continually provide high quality water to its customers. Additionally, the water stored in Los Vaqueros Reservoir serves as an emergency and drought water supply should CCWD's Delta water supply be limited or unavailable. This operation of CCWD's facilities to meet delivered water quality goals means that water quality and water supply are inter-related. If a project impacts Delta water quality, it will impact the quality of water delivered	This information describes the structure or organization of the comment letter, the background of the organization or individual commenter, or general introductory text. It is not a comment on the contents of the DEIR. DWR has reviewed all comments and will consider all comments in its decision-making process.

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		to CCWD's customers as well as the amount of water stored in Los Vaqueros Reservoir (i.e., CCWD's emergency and drought water supply). If a project impacts the ability to fill Los Vaqueros Reservoir, it not only impacts CCWD's water supply, but also water supply in upstream CVP reservoirs (e.g., Shasta Reservoir) as CCWD will need to call upon CVP supplies to replace the impacted Los Vaqueros Reservoir water supplies and it will also impact the water quality delivered to CCWD's customers. While we have separated these impacts in the sections that follow, there is an inter-relationship between these impacts.	
21	33	3.1. Analysis of Impacts to CCWD in the SWP LTO Draft EIR The environmental impacts disclosed in the SWP LTO Draft EIR rely upon assumptions implemented in specific modeling tools. Although the operation of CCWD's [Contra Costa Water District] facilities depends on Delta water quality as described above, the modeling tools used for the environmental analysis assume that the Delta water quality available at CCWD's intakes does not change between the Existing Condition and the Proposed Action. Therefore the impacts to CCWD in response to the impacts to Delta water quality are not evaluated or disclosed in the Draft EIR. Additionally, the modeling used to evaluate alternatives in the SWP LTO Draft EIR is based on the assumption that CCWD would have opportunities to fill Los Vaqueros Reservoir that are at least comparable to the current conditions. Specifically, the CalSim 3 modeling for the Existing Conditions and the Proposed Project both assume that CCWD would continue to meet the terms and conditions of the CCWD-specific Bos [Biological opinions] and ITP [Incidental Take permit] and would not be required to reduce diversions in response to use of an OMR Index, VA implementation, or any other export limitations. The modeling is consistent with the existing conditions in which the implementation of 2019 CVP/SWP LTO Bos and 2020 SWP ITP does not restrict CCWD operations beyond the restrictions of the CCWD-specific Bos and ITP. However, as discussed in Section 2 of these comments, the text of the Draft EIR does not include such a specific commitment and also raises at least two issues (i.e., the use of the DWR-proposed OMR Index and changes to SWP operational criteria) that suggest that the SWP LTO project might in fact result in new and additional restrictions on CCWD operations. If this occurs, the Proposed Project could cause a variety of significant environmental impacts that have not been analyzed or disclosed in the SWP LTO Draft EIR.	Please see Responses to Comments 21-5, 21-24, 21-30, and 21-35.

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21	34	Further, CCWD has already mitigated all of the effects of its diversions under the applicable laws. Reducing CCWD's diversions to allow SWP to increase its exports pursuant to an OMR Index criterion that DWR has included in its Proposed Project would effectively require CCWD to mitigate for the cumulative effects DWR has caused. That is contrary to the law, which imposes the burden of mitigation on the lead agency that creates the impacts, not third parties who suffer the impacts. The following sections describe specific potential impacts that have not been analyzed or disclosed. These impacts would be eliminated, or substantially reduced, if DWR makes a firm and clear commitment (either as part of the project description or in a mitigation measure or alternative) to ensure that the project will not cause or create new or additional restrictions on CCWD operations, such that CCWD will have opportunities to fill Los Vaqueros Reservoir that are at least comparable to existing conditions.	If DWR is required to reduce exports to meet OMR management criteria based on the triggers identified in Chapter 2, Section 2.3.3, "Old and Middle River Flow Management," CCWD diversions would continue to be governed by the existing biological opinions and incidental take permit and water right priorities. The OMR management actions described in Chapter 2 only govern joint SWP and CVP operations. If CCWD is diverting from their Old River or Middle River diversion locations when OMR requirements are controlling SWP and CVP operations, adjustments to the SWP or CVP exports or CCWD diversions would likely be required to meet the required OMR management criteria. DWR will continue to work with CCWD and Reclamation on coordinating operations to identify periods where OMR is constraining SWP and CVP operations.
21	35	3.2. Water Supply As discussed in Section 1.2 above, CCWD [Contra Costa Water District] relies on the Delta for 100% of its water supply, including diversions pursuant to its CVP contract, diversions under CCWD's own water rights, and diversions under East Contra Costa Irrigation District's pre-1914 water right. The SWP LTO Proposed Project could reduce CCWD's ability to fill Los Vaqueros Reservoir through the use of an OMR Index that includes CCWD's diversions while also relaxing SWP operating criteria (as discussed in Section 2), which would increase the amount of time when the DWR-proposed OMR Index limits CVP and SWP exports. Absent a commitment from DWR, increasing the amount of time that the DWR-proposed OMR Index limits CVP and SWP exports will impact CCWD's ability to fill Los Vaqueros Reservoir. Using results from water operations modeling released by DWR for the SWP LTO Draft EIR, CCWD estimated that the Proposed Project would increase the number of days that the OMR Index would limit CVP and SWP exports by approximately 37 days per year, which corresponds to an increase of 31% as compared to Existing Conditions. The Draft EIR modeling and analysis does not restrict CCWD's operations to meet the OMR Index. However, if the SWP LTO Proposed Project reduces CCWD's ability to fill Los Vaqueros Reservoir during	The comment suggests that the Proposed Project could affect CCWD operations. Please see Response to Comment 21-24, explaining that DWR is not proposing to alter any legal requirements related to Los Vaqueros Reservoir, including CCWD's biological opinions or incidental take permit. Response to Comment 21-24 also explains that the FEIR includes a sensitivity analysis (Appendix 4M) to better reflect the water right priorities for the Projects and CCWD. The sensitivity analysis provided in Appendix 4M demonstrates that by not allowing CCWD diversions for filling Los Vaqueros Reservoir when OMR is controlling, consistent with water right priority and past practice, that there are minimal differences in Delta flows and south Delta exports as a result of the different assumptions, indicating that the quantitative results described in the FEIR are representative of the Proposed Project in relation to Baseline Conditions. (See Section 4.3.4, "Comparison of SWP Banks Pumping Plant Exports," and Section 6.3.2, "Operations Effects.") In addition, Appendix 4M evaluates the effects of the SWP Proposed Project on CCWD diversions for filling Los Vaqueros under two different operating conditions and applied to

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		OMR management, CCWD would alter its operations in an effort to fill Los Vaqueros Reservoir at other times using its CVP supply. The result could be an impact to storage in Los Vaqueros Reservoir (see Section 3.2.1), an impact to CVP water supplies available to other CVP contractors (see Section 3.2.2), an impact to aquatic species (see Section 4), or a combination of all of the above. 3.2.1. CCWD's Water Supply in Los Vaqueros Reservoir With the potential reduction in CCWD's ability to fill its Los Vaqueros Reservoir, storage in Los Vaqueros Reservoir could be reduced, leaving less water available to blend with Delta supplies when Delta water quality degrades and less water available for emergency supplies. Further, the reduction in available blending water will, in turn, affect the delivered water quality to CCWD's customers. The subsequent impact to CCWD's water supply is not disclosed in the SWP LTO Draft EIR because the modeling is based upon an assumption that CCWD's ability to fill Los Vaqueros Reservoir is restricted by the CCWD-specific Bos [Biological opinions] and ITP [Incidental take permit] but not restricted by limits on CVP and SWP exports to meet OMR Index (as described in Section 3.1 above). Based on the modeling used for the SWP LTO Draft EIR, the Proposed Project could limit CCWD's ability to fill Los Vaqueros Reserve for an average of 37 days each year. Since CCWD is permitted to fill Los Vaqueros Reservoir at approximately 400 acre-feet per day, the Proposed Project could impact storage in Los Vaqueros Reservoir by an average of 14,800 acre-feet each year, which is about 9.25% of the storage capacity of Los Vaqueros Reservoir (160,000 acre-feet). Since this impact to water supply would occur annually, it would compound over time. For example, if the long-term average impact occurs in every year, after 5 years of implementation of the Proposed Project, CCWD's storage in Los Vaqueros Reservoir could be impacted by 74,000 acre-feet or 46% of the capacity of the reservoir. This impact would be devastating to CCWD's emergency and drought supply [Footnote 9: In response to such an impact, CCWD would attempt to acquire other water supplies to fill Los Vaqueros Reservoir, including CVP water supply (see Section 3.2.2) and transfer supplies.], yet the impact is not analyzed or disclosed in the SWP LTO Draft EIR.	comparable scenarios. One that limits CCWD diversions for filling Los Vaqueros when OMR is controlling the SWP/CVP Exports, consistent with water rights priorities, CCWD's agreement with Reclamation in the "Los Vaqueros Agreement" and with real-time implementation. The other allows fill during OMR control periods. The results of both comparisons indicate that there will be minimal effects on CCWD from the Proposed Project. Please see the section titled Geographic Scope, in Common Response 1, "Scope of Analysis." DWR considered whether the long-term operations of the SWP would result in changes in CVP operations outside the SWP zone of influence. As explained in Appendix 2D, "Geographic Scope of Project's Influence of Flow," DWR and Reclamation independently decide how to operate the SWP and CVP to meet applicable requirements. Please see the section titled "Treatment of Coordinated SWP/CVP Operations" in Common Response 1, "Scope of Analysis," for further discussion. Please also refer to Responses 21-5, 21-25, and 21-26.
21	36	A revision to the project description or inclusion of a mitigation measure expressing a firm and clear commitment by DWR that implementation of	See Response 21-5 regarding DWR's potential effects to CCWD operations.

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		the SWP LTO would not create new or additional restrictions on CCWD's ability to fill Los Vaqueros Reservoir would be consistent with the modeling and analysis of environmental effects in the Draft EIR and would reduce many of the impacts discussed in these comments.	
21	37	3.2.2. CVP Water Supply If CCWD's ability to fill Los Vaqueros Reservoir using its own water right is impacted by the Proposed Project as shown above, CCWD would need to increase its CVP deliveries to offset the lost water supplies so it could continue to meet customer demand. The SWP LTO Draft EIR CalSim 3 modeling indicates that additional CVP deliveries would be available under CCWD's CVP water supply allocation. Any increases to CCWD's CVP deliveries during Balanced Conditions would alter CVP operations, either increasing releases from upstream storage (e.g., Shasta Reservoir) or reducing CVP exports. This potential impact to CVP storage or CVP South of Delta deliveries is not evaluated in the SWP LTO Draft EIR.	Please see the section titled "Geographic Scope," in Common Response 1, "Scope of Analysis." DWR considered whether the long-term operations of the SWP would result in changes in CVP operations outside the SWP zone of influence. As explained in Appendix 2D, "Geographic Scope of Project's Influence of Flow," DWR and Reclamation independently decide how to operate the SWP and CVP to meet applicable requirements. Please see the section titled "Treatment of Coordinated SWP/CVP Operations" in Common Response 1, "Scope of Analysis," for further discussion. Please see Response to Comment 21-30 discussing the effect on CCWD's diversions.
21	38	Further, an increase in releases from upstream reservoirs could impact CVP's ability to manage temperature on the Sacramento River or American River, impacting listed steelhead and Chinook salmon in these rivers. Such impacts are not evaluated or disclosed in the SWP LTO Draft EIR.	Please refer to Response to Comments 21-30, 21-35, and 21-37.
21	39	Although DWR's modeling for the Draft EIR assumes that CCWD's CVP allocation cannot be cut below 50% of CCWD's contract amount (or 97,500 acre-feet), CCWD's CVP allocation has been cut below this amount in three of the last ten years (2015, 2021, and 2022). During times of shortage, CCWD may not have sufficient CVP allocation to fill Los Vaqueros Reservoir, impacting the amount of water stored in Los Vaqueros Reservoir as discussed in Section 3.2.1, and subsequently impacting CVP water supplies during droughts.	Please refer to Common Response 12, "Drought Conditions," for additional discussion related to the modeling of drought conditions. Please also refer to Responses 21-5 and 21-30.
21	40	During droughts, CCWD reduces its diversions from the Delta, taking less water than is necessary to meet public health and safety needs and relying instead on water that was previously stored in Los Vaqueros Reservoir to meet part of its customers' demand during droughts. For example, CCWD reduced its Delta diversions by a total of 29,000 acre-feet in the 2014-2015 drought and 42,000 acre-feet in the 2020-2022 drought, relying on releases from Los Vaqueros Reservoir instead of diverting from the Delta. This voluntary action by CCWD allows the SWP	The comment describes a hypothetical scenario in which the Proposed Project indirectly reduces storage in Los Vaqueros Reservoir, which subsequently causes CCWD to increase diversions from the Delta, which further reduces storage in CVP reservoirs. The comment is correct that the reduction in storage in CVP reservoirs in this scenario is not evaluated in the EIR because it is a speculative scenario for which the timing, magnitude,

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		and CVP to export more water from the Delta and/or retain more water in upstream storage in dry years than they would otherwise be able to do. However, if the Proposed Project impacts storage in the Los Vaqueros Reservoir, CCWD would be more reliant on CVP water supply and Delta diversions to meet its demand during the droughts. This potential impact to increased Delta diversions and potentially increased CVP storage releases and/or reduced CVP exports during dry and critical years is also not evaluated or disclosed in the SWP LTO Draft EIR.	and duration of storage reductions cannot be accurately identified. In addition, as this comment notes, CCWD's past reductions in Delta diversions during drought were voluntary, not at the discretion of DWR. DWR coordinated with Reclamation to identify appropriate modeling assumptions for Reclamation's long-term operations, which were analyzed in the Cumulative analyses conducted in Chapter 10, "Other CEQA Discussions," in the EIR. Please also see Common Response 1, "Scope of Analysis," for further discussion of coordinated SWP and CVP operations. For additional information regarding drought conditions, see Common Response 12, "Drought Conditions." Please also refer to Responses 21-5, 21-24, 21-26, and 21-30. DWR will continue to work with CCWD and Reclamation to identify periods where OMR is constraining SWP and CVP operations and coordinating on the relationship to CCWD's diversions to Los Vaqueros.
21	41	The project description should be revised, or a mitigation measure should be included, to express a firm and clear commitment by DWR that implementation of the SWP LTO will not create new or additional restrictions on CCWD's ability to fill Los Vaqueros Reservoir. Such a statement is consistent with the modeling and analysis of environmental effects in the Draft EIR and would support the conclusion that DWR has reduced or avoided the project's potential impact on CCWD and CVP water supply.	See Response 21-5 regarding DWR's regarding the potential effects to CCWD operations.
21	42	3.3. Water Quality The Draft EIR presents long-term average changes to electrical conductivity (EC) and chloride, both of which are measures of salinity, at each of CCWD's [Contra Costa Water District] Delta intakes. Critical information about how the Proposed Project impacts salinity at a finer temporal scale, including by month and by water year type is buried in the appendices. This information should be brought forward to provide decision makers with a more accurate evaluation of the impacts. Impacts to Delta water quality can compound the impacts to water supply described above because CCWD's operations depend on Delta water quality. Historically, CCWD has filled Los Vaqueros Reservoir primarily in the months of January through July when Delta salinity is	Regarding placement of modeling results for EC and chloride in the EIR, Appendix 5A, "Chloride," contains 89 pages of plots and tables, and Appendix 5B, "Electrical Conductivity," contains 200 pages of plots and tables. As such, placement of these results into Chapter 5 would not been practical for readability. Though not located within the chapter, the EC and chloride impact assessments in Chapter 5, Surface Water Quality, relied on the information contained in Appendix 5A and 5B, in addition to the summary tables presented in Chapter 5. Hence, the impact determination made for chloride and EC considered all the information contained in the DEIR

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		low. If the SWP LTO Proposed Project limits CCWD's ability to fill Los Vaqueros Reservoir through its use of an OMR Index that includes CCWD's diversions, CCWD may need to shift its filling outside of the OMR management season into the summer and fall of wetter years when salinity in the Delta is relatively low. To continue to meet the purpose of the Los Vaqueros Reservoir (to store high-quality water for use in CCWD's service area at times when Delta water quality is poor), CCWD only fills Los Vaqueros Reservoir when Delta water quality is high and salinity is less than about 50 mg/L Chloride.	in order to make accurate impact determinations. These appendices were posted online with the main chapters of the DEIR and referenced in Chapter 5. Please refer to Response to Comments 21-24, 21-30, and 21-35 regarding the Proposed Project operations, OMR index requirements, and DWR's continued commitment to work with CCWD and Reclamation to identify conditions where OMR is controlling SWP and CVP operations.
21	43	3.3.1. Water Quality Impacts at CCWD's Delta Intakes Figure 3-1 [Figure 3-1: Monthly Average Chloride Concentration in Old River Highway 4 charts] shows the monthly average salinity at one of CCWD's [Contra Costa Water District] intakes for the months of August and September in both the Existing "Baseline" Conditions and the Proposed Project. In both months, the monthly average salinity is less than 50 mg/L Chloride about 40% of the time (from 100% to 60% on the x-axes of Figure 3-1). The Proposed Project increases salinity during these fresh periods. If CCWD shifts filling from the OMR management season to the summer, this increase in Delta salinity would lower the quality of water that can be used to fill Los Vaqueros Reservoir, increasing the salinity within the reservoir. Since water stored in Los Vaqueros Reservoir is used to blend with Delta water when Delta salinity is high in order to meet CCWD's delivered water quality goal of 65mg/L Cl, this increase of salinity within the reservoir would result in the need to release more water from the Los Vaqueros Reservoir to blend with higher salinity Delta water to achieve the salinity goal for the water delivered to CCWD customers. Further, as shown in Figure 3-1, the Proposed Project often increases salinity at times when the baseline salinity is greater than 65 mg/L, which is CCWD's delivered water quality goal. When Delta salinity is greater than this goal, CCWD releases water from Los Vaqueros Reservoir to blend with its Delta diversions to reduce the salinity delivered to CCWD's customers. During such times, any increase in Delta salinity would require additional water to be released from Los Vaqueros Reservoir to blend with Delta water and reduce the salinity before delivery to CCWD customers. The need for additional water to be released from the reservoir due to these water quality impacts would further reduce the amount of water	As the comment notes, the Proposed Project would increase Chloride concentration during the August and September period when Chloride concentrations are less than 50 mg/L, but would only increase Chloride concentrations above 50 mg/L when they otherwise would have been below 50 mg/L approximately 1 percent of the time during September (see CCWD comment letter Figure 3-1b at 60% exceedance probability). Therefore, if CCWD diversions shifted to the August-September time period and would occur when Chloride concentrations are at or below 50 mg/L, CCWD diversions would not be affected and would be affected approximately 1 percent of the time if diversions could occur below 50 mg/L and not above 50 mg/l. Similarly, when Chloride concentration is above 50 mg/L under Baseline Conditions, it also is above 50 mg/L under the Proposed Project. The portion of the comment regarding increased releases from Los Vaqueros Reservoir for blending with Delta water is not a comment on the analyses or impact conclusions presented in the EIR. Nonetheless, DWR is committed to continued coordination with Reclamation and continuing to implement the Coordinated Operations Agreement. Please see responses to Comments 21-24 and 21-30.

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		stored in Los Vaqueros Reservoir, compounding the water supply impacts described in Section 3.2.1.	
21	44	3.3.2. Water Quality Impacts associated with the SWP LTO Proposed Project's Adaptive Management Plan It is worth noting that the Proposed Project provides for Adaptive Management of the Summer-Fall Habitat action for Delta Smelt (see SWP LTO Draft EIR Section 2.3.18 Adaptive Management), which includes the Fall X2 action. The Fall X2 action reduces Delta salinity in the Fall of wetter years. The effects of the Fall X2 action, which occurs in both the Existing Conditions and the Proposed Project, is shown in Figure 3-2 [Figure 3-2 Monthly Average Chloride Concentration in Old River at Highway 4, illustrating possible effect of relaxing Fall X2], where the data lines indicate a step change around the 60% exceedance probability; this area has been shaded yellow to better illustrate the effect. While the Fall X2 action requires SWP and CVP to meet a 30-day average salinity criterion in September and October, the action freshens the Delta as early as August (as operational adjustments are necessary in August to meet the September criterion) and as late as December (as the fresh water in the Delta takes a while to mix with saltier Bay water). The Draft EIR does not analyze or disclose the effects of adaptively managing Fall X2, which could have significant impacts on Delta water quality. If DWR intends to adaptively manage Fall X2, the analysis and impacts (direct, indirect, and cumulative) should be identified and disclosed in the EIR.	CalSim 3 model assumptions for the Fall X2 action are the same for both the Baseline Conditions and Proposed Project because it is speculative to identify specific adaptive management actions that could occur. Adaptive management of the Fall X2 action would be conducted in coordination with Reclamation and state and federal regulatory agencies, would comply with state and federal law, and would comply with DWR's contractual obligations. Further, adaptive management of specific actions described in Chapter 2, "Project Description," of the EIR, including the Fall X2 action, would be subject to further environmental review and may require amendment of the Incidental Take Permit issued by CDFW for the Proposed Project. As such, changes to the Fall X2 action as it is described in the Project Description would be evaluated prior to implementation.
21	45	3.3.3. Cumulative Impacts on Water Quality The Draft EIR dismisses the Proposed Project's cumulative impacts on water quality, apparently because the Draft EIR assumes that DWR's future operations will always meet the water quality standards imposed on the CVP and SWP under D-1641. This analysis does not answer the question whether the Proposed Project, in combination with other projects, results in potentially significant adverse changes to Delta water quality conditions. Further, historical operations of the CVP and the SWP have not always met the water quality standards imposed under D-1641; there have been a number of "exceedances" as well as the need to obtain Temporary Urgency Change Orders, particularly in drier conditions. The EIR should evaluate the Proposed Project's incremental contribution to cumulative Delta water quality conditions in this context.	The cumulative impact analysis in Chapter 10, Section 10.1.5 addresses the effects of past, present, and reasonably foreseeable future projects on Clean Water Act Section 303(d)-listed constituents, including salinity, and concludes that the effect is significant. The analysis then determined whether the contribution of the Proposed Project to these cumulatively significant water quality impacts would be cumulatively considerable. The fact that DWR and Reclamation are obligated to meet D-1641 objectives in the Delta under their water rights was considered in determining whether the Proposed Project's contribution to the cumulatively significant salinity impact in the Delta, for example, would be considerable. As such, the DEIR assessed the Proposed Project's incremental contribution to

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			cumulative Delta water quality conditions. For additional information regarding drought conditions including potential TUCPs, see Common Response 12, "Drought Conditions."
21	46	[Exhibit 2: Figure 3-1. Monthly Average Chloride Concentration in Older River at Highway 4. Exceedance chart of (a) August and (b) September monthly average chloride concentration (adapted from SWP LTO Draft EIR, Appendix 4B, Attachment 7, Figures 4B-7-7q and 4B-7-7r)]	The commenter provided this exhibit for reference purposes in support of their comments. Those comments are addressed in these responses to the commenter's letter.
21	47	[Exhibit 3: Figure 3-2 Monthly Average Chloride Concentration in Old River at Highway 4, illustrating possible effect of relaxing Fall X2. Exceedance chart of (a) August and (b) September monthly average chloride concentration (adapted from SWP LTO Draft EIR, Appendix 4B, Attachment 7, Figures 4B-7-7q and 4B-7-7r). Yellow shading indicates the years that Fall X2 is implemented in the Existing Conditions and Proposed Project, and red solid line illustrates an estimate of salinity if Fall X2 is relaxed through use of the SWP LTO Adaptive Management Program.]	The commenter provided this exhibit for reference purposes in support of their comments. Those comments are addressed in these responses to the commenter's letter.
21	48	3.4. Operational Costs Resulting From Environmental Impacts Changes in water quality and use of Los Vaqueros Reservoir under the SWP LTO Proposed Project and alternatives would result in an economic impact on CCWD [Contra Costa Water District] and its customers through increased water and power costs. 3.4.1. Water cost and Impact on Disadvantaged Communities CCWD diverts water from the Delta under its CVP contract, under its own water right permits and license issued by the SWRCB, and under East Contra Costa Irrigation District's pre-1914 water right. If the SWP LTO project creates new or additional restrictions on CCWD's ability to fill Los Vaqueros Reservoir, the amount of water that CCWD would be able to divert under its own water right permits and license would be reduced and CCWD would need to purchase more CVP water supply. The shift in water supplies available to CCWD resulting from the SWP LTO project would thereby create an economic impact on CCWD and its customers, since CCWD's CVP water cost is significantly higher than the cost of water diverted under CCWD's own water rights. This impact will fall most heavily on the urban disadvantaged communities CCWD serves, which are more price-sensitive.	Please see Common Response 1, "Scope of Analysis," for discussion of CVP operations and the speculative nature of analyzing potential changes to CVP operations that could potentially cause increased costs to CCWD customers. DWR does not control CVP operations and has no influence over CCWD's pricing for its customers. Please also see Response to Comment 21-24 for discussion of CCWD's diversions under OMR management, and Responses to Comments 21-30 and 21-35 addressing concerns about impacts associated with CCWD's water diversions to Los Vaqueros Reservoir. Please see Chapter 8 for a discussion of environmental justice. Furthermore, DWR has committed to identifying periods where such OMR constraints would occur to facilitate further coordination with CCWD and Reclamation regarding CCWD's diversions to Los Vaqueros. For comments related to shifts in water supply, please see Chapter 4, "Surface Water Hydrology," Section 4.3.3.4, "CEQA conclusion," which states surface water

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			hydrology would remain within the range of historical operations under the proposed long-term operation of the SWP. Therefore, shifts in water availability would also be within the range of historical operations and would not be expected to drive changes in water cost to CCWD.
21	49	3.4.2. Power cost and Potential Impact on Power Grid If the SWP LTO project restricts CCWD [Contra Costa Water District] from using its own water right when OMR limits exports, CCWD would have less opportunity to fill Los Vaqueros Reservoir in the spring, which would shift a larger portion of CCWD's filling operations to the summer. In summer months, power costs are greater. Based on the 2024 electric rate from Pacific Gas and Electric, the unit-filling cost for the Los Vaqueros Reservoir in the summer is approximately 40% greater than the unit filling cost in the spring and winter. Additionally, shifting CCWD's filling operations to the summer would increase energy consumption during periods when power may be scarce, potentially affecting the electric grid and increasing the risk of rolling brownouts.	The Proposed Project does not include any additional restrictions or limitations on CCWD operations, and no mitigation measures were identified in the DEIR that would restrict or limit CCWD operations. DWR has no control over PG&E's operations or pricing for its customers See Response to Comments 21-5, 21-24, 21-30, 21-35, and 21-48.
21	50	The modeling used to evaluate alternatives in the SWP LTO Draft EIR assumes that CCWD [Contra Costa Water District] operations will not be restricted beyond the restrictions of the CCWD-specific BOs [Biological opinions] and ITP [Incidental take permit]. But if DWR attempts to prevent CCWD from exercising its water rights to fill Los Vaqueros Reservoir, beyond the restrictions in the CCWD-specific Bos and ITP that fully mitigate the impacts on species from CCWD's operations, the SWP LTO Alternatives could have additional effects that have not been disclosed in the SWP LTO Draft EIR.	Please see Response to Comments 21-24 and 21-35.
21	51	4. Potential Impacts on Aquatic Resources All of CCWD's intakes are equipped with positive barrier fish screens. CCWD [Contra Costa Water District] diversions in the Old and Middle River corridor have minimal impacts on aquatic species. As shown in Table 4-1 [Table 4-1. Total Fish collected behind the fish screens at CCWD Intakes for 1999-2019], no juvenile or adult listed fish species have been collected behind the fish screens during 20 years of operation and monitoring. Only 16 larval fish have been collected, averaging less than one larval fish per year of operation. Based on these fish monitoring data, the 2019 Amendment No.3 to ITP 2081-2009-013-03 concluded that "[CCWD] has shown that the fish screens are effective at	Please see Response to Comment 21-24, 21-30, and 21-35. Please also see Chapter 6 of the FEIR for analysis of the Proposed Project on aquatic biological resources. The FEIR did not identify any significant impacts on aquatic biological resources. With respect to the comment's suggestion that the Proposed Project could impact CCWD's ability to fill Los Vaqueros Reservoir, DWR will continue to work with CCWD and Reclamation on operations to identify periods where OMR is constraining SWP and CVP operations and coordinating on the relationship to

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		screening screenable-sized fish and keeping them from being diverted into their water control system." (CDFW 2019.) (Fish monitoring has not been performed behind CCWD's fish screens since 2019 because CDFW eliminated the fish monitoring requirement in 2019 based on the data collected showing no impact.) Table 4-2 [Table 4-2. Entrainment of Delta fish species at Contra Costa Water District's Old and Middle River intake facilities and the CVP and SWP export facilities for 1998-2018] summarizes the entrainment of listed species that are larger than 20 mm [Footnote 10: Since only fish greater than 20 mm in length are counted at the CVP and SWP export facilities, the entrainment numbers in Table 4-2 are limited to fish greater than 20 mm.] at CCWD's intakes and, for comparison, the entrainment of fish as reported through the salvage operations at the CVP and SWP export facilities for 1998-2018. The entrainment numbers in Table 4-2 do not take into account pre-screen loss or louver efficiency at the CVP and SWP export facilities or the loss of fish due to predation within and near the facilities. There is no evidence of increased predation near CCWD's intake facilities, but the predation in Clifton Court Forebay (CCFB) and in front of the CVP trash racks and primary louvers has been estimated as shown in Table 4-3 [Table 4-3. Predation mortality at Contra Costa Water District's Old and Middle River intake facilities and the CVP and SWP export facilities]. If DWR implements the project in a way that limits CCWD's use of its water right to fill Los Vaqueros Reservoir, beyond the restrictions in the CCWD-specific BOs [Biological opinions] and ITP [Incidental take permit] that fully mitigate for CCWD's effects, CCWD's diversions could be reduced up to 200 cfs with a corresponding increase of 200 cfs additional exports at the SWP Banks pumping plant. Reducing diversions at facilities that have minimal impacts in order to increase diversions at facilities that impact a significant fraction of the fish that encounter the facility would constitute a significant impact on Delta fish that is not evaluated or disclosed in the SWP LTO Draft EIR. Additional impacts to aquatic resources would be anticipated if the Proposed Project impacts CCWD's ability to fill Los Vaqueros Reservoir during the SWP LTO's OMR management season (approximately November through June) as described in Section 3.2 above by (1) shifting CCWD's operations to become more dependent on releases from CVP reservoirs during the summer and early fall, which would create CVP water supply impacts and potentially impact temperature	CCWD's diversions to Los Vaqueros (please see also Response to Comment 21-24.) SWP/CVP operational criteria would limit the potential for additional negative effects such as those suggested by the comment, regardless of whether there would need to be shifting of operations between facilities. The OMR criteria are intended to reduce entrainment into the Old and Middle River corridor, this is a hydrodynamic driven effect and shifting between locations in the south Delta is expected to have little effect on changes to entrainment.

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		management on the upper Sacramento River and American River and (2) increasing CCWD's reliance on Delta diversions during droughts, which would potentially reduce Delta outflow and/or further lower CVP upstream storage during droughts.	
21	52	[Exhibit 4: Table 4-1. Total fish collected behind the fish screens at Contra Costa Water District 1999-2019]	The commenter provided this attachment for reference purposes in support of their comments. Those comments are addressed in these responses to the commenter's letter. DWR has reviewed all comments and will consider all comments in its decision-making process.
21	53	[Exhibit 5: Table 4-2. Entrainment of Delta fish species at Contra Costa Water District's Old and Middle River intake facilities and the CVP and SWP export facilities for 1998-2018]	The commenter provided this attachment for reference purposes in support of their comments. Those comments are addressed in these responses to the commenter's letter. DWR has reviewed all comments and will consider all comments in its decision-making process.
21	54	[Exhibit 6: Table 4-3. Predation mortality at Contra Costa Water District's Old and Middle River intake facilities and the CVP and SWP export facilities]	The commenter provided this attachment for reference purposes in support of their comments. Those comments are addressed in these responses to the commenter's letter. DWR has reviewed all comments and will consider all comments in its decision-making process.
21	55	To eliminate or at least reduce the CEQA issues described in these comments, DWR should make a firm and clear commitment, as a component of the SWP LTO and the alternatives or a specific mitigation measure, that implementation of the Proposed Project would not create new or additional restrictions on CCWD's [Contra Costa Water District] ability to fill Los Vaqueros Reservoir beyond the requirements of the CCWD-specific BOs [Biological opinions] and ITP [Incidental take permit] that already apply. This commitment would ensure that CCWD would continue to have opportunities to fill the Reservoir that are at least comparable to existing conditions. Such a commitment also would be consistent with the modeling and analysis of environmental effects in the Draft EIR.	See Responses 21-5, 21-30, and 21-35 regarding DWR's regarding the potential effects to CCWD operations and resource areas.
21	56	Perhaps more importantly, though, such a commitment by DWR is necessary to serve the fundamental project purpose, which is the coordinated long-term operation of the CVP and the SWP. Reclamation's environmental documents, like DWR's, assume that the existing	The DEIR did not identify any significant impacts that require mitigation. Nonetheless, DWR is committed to maintaining operational alignment with Reclamation and continuing to implement the Coordinated

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		commitment to CCWD [Contra Costa Water District] that was embodied in the 2019 LTO Biological Opinions will be continued. If DWR does not continue to implement this commitment, it would be creating a conflict between the operating conditions for the CVP and the operating conditions for the SWP. Obviously, if the CVP and the SWP each had a different standard on this issue, the conflict would preclude Reclamation and DWR from attaining joint, coordinated operations. Since both Reclamation and DWR's environmental documents assumed the continuance of the commitment to CCWD, and Reclamation has indicated its intent to continue the commitment, DWR should likewise adopt this feasible mitigation measure, consistent with the purpose of the SWP LTO project.	Operations Agreement. Please also see Response to Comment 21-5.
21	57	5. References CCWD (Contra Costa Water District), 2012. Use of an Index for Old and Middle River Flow Objectives. Submitted for State Water Resources Control Board Comprehensive (Phase 2) Review and Update to the Bay-Delta Plan, Workshop 2: Bay-Delta Fishery Resources. September 14, 2012. CDFW (California Department of Fish and Wildlife), 2019. California Endangered Species Act Incidental Take Permit No. 2081-2009-013-03. Contra Costa Water District Maintenance and Operation of the Los Vaqueros Project and Alternative Intake Project. Amendment No. 3. Signed October 30, 2019. _____, 2020. California Endangered Species Act Incidental Take Permit No. 2081-2019- 066-00. Long-Term Operation of the State Water Project in the Sacramento San Joaquin Delta. Signed March 31, 2020. _____, 2024. California Endangered Species Act Incidental Take Permit No. 2081-2023- 036-03. Contra Costa Water District Phase 2 Los Vaqueros Reservoir Expansion Project – Water Operations. Signed March 1, 2024. DWR (California Department of Water Resources), 2017. Old and Middle River Flow Review: USGS Gauge Readings versus Index Calculations for 2011 through 2017. Prepared by: Export Management Section, Water Operations Office, Division of Operations & Maintenance. October 2017 _____, 2020. Final Environmental Impact Report for Long-Term Operation of the California State Water Project. State Clearinghouse No. 2019049121. March 27, 2020. Gore, James A., Kennedy, Brian P., Kneib, Ronald T., Monsen, Nancy E., Van Sickle, John, Tullow, Desirée D., 2018.	This is a list of references cited in the comment letter. It is not a comment on the contents of the DEIR. All substantive comments have been responded to herein. DWR has reviewed all comments and will consider all comments in its decision-making process.

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		Independent Review Panel Report for the 2017 Long-term Operations Biological Opinions (LOBO) Biennial Science Review. January 2018. Hutton, P., 2008. A Model to Estimate Combined Old & Middle River Flows. Metropolitan Water District of Southern California. Final Version. April 2008. NMFS (National Marine Fisheries Service), 1993. Biological Opinion for the Los Vaqueros Reservoir Project. Number 5004. Southwest Region, Long Beach, California. Issued March 18, 1993. _____, 2007. Biological Opinion for the Contra Costa Water District's Alternative Intake Project. NOAA (National Oceanic and Atmospheric Administration), National Marine Fisheries Service. Issued July 13, 2007. _____, 2010. Letter of concurrence to U.S. Bureau of Reclamation in response to Reclamation's request for concurrence that the Los Vaqueros Reservoir Expansion (LVE) Project is not likely to affect covered species or critical habitat. October 15, 2010. _____, 2017. Endangered Species Act (ESA) Section 7(a)(2) Biological Opinion and Magnuson-Stevens Fishery Conservation and Management Act Essential Fish Habitat (EFH) Response for Rock Slough Fish Screen Facilities Improvement Project NMFS Consultation Number: ARN 151422WCR2014-SA00018 / PCTS# WCR-2017-6161. Issued June 29, 2017. _____, 2019. Endangered Species Act (ESA) Section 7 Biological Opinion. Biological Opinion on Long-term Operation of the Central Valley Project and the State Water Project. Consultation Tracking Number: WCRO-2016-00069. Issued October 21, 2019. Reclamation (U.S. Department of Interior Bureau of Reclamation), 2019a. Reinitiation of Consultation on the Coordinated Long-Term Operation of the Central Valley Project and State Water Project. Draft Environmental Impact Statement. July 2019. _____, 2019b. Reinitiation of Consultation on the Coordinated Long-Term Operation of the Central Valley Project and State Water Project. Final Biological Assessment. October 2019. _____, 2019c. Reinitiation of Consultation on the Coordinated Long-Term Operation of the Central Valley Project and State Water Project. Final Environmental Impact Statement. December 2019. _____, 2020. Reinitiation of Consultation on the Coordinated Long-Term Operation of the Central Valley Project and State Water Project. Record of Decision. February 2020.	

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		SWRCB (State Water Resources Control Board), 2010. Permit for Diversion and Use of Water. Amended Permit 20749. Application 20245 of Contra Costa Water District. July 8, 2010. USFWS (U.S. Fish and Wildlife Service), 1993. Formal Consultation on Effects of the Proposed Los Vaqueros Reservoir Project on Delta Smelt, Contra Costa County, California. Service File Number 1-1-93-F-35. Issued September 9, 1993. _____, 2000. Formal Consultation Pursuant to Section 7 of the Endangered Species Act of 1973; as Amended, on Contra Costa Water District's Construction of a Multipurpose Pipeline and Future Water Supply Implementation Program, Contra Costa County, California. Service File Number 1-1-99-F-93. Issued April 27. _____, 2007. Formal Consultation on the Contra Costa Water District Alternative Intake Project, Contra Costa County, California. Service File Number 1-1-07-F-044. Issued April 27. _____, 2010. Concurrence on the Los Vaqueros Reservoir Expansion Project is Not Likely to Adversely Affect the Delta Smelt (File MP-730 ENV -7.0). File Number 81410-2011-1-0001. Dated November 1. _____, 2017. Amendment of the 2005 Biological Opinion on the Operations and Maintenance Program Occurring on Bureau of Reclamation Lands within South-Central California Area Office (Service File No: 1-1-04-F-036S) to include the Rock Slough Fish Screen Facility Improvement Project (Bureau of Reclamation File No: 423 ENV 7.00). Service File Number 08FBDT00-2017-F-0072. November 2. _____, 2019. Biological Opinion for the Reinitiation of Consultation on the Coordinated Operations of the Central Valley Project and State Water Project. Service File No. 08FBTD00-2019-F-0164. Signed October 21, 2019. Voluntary Agreements Parties, 2022. Memorandum of Understanding Advancing a Term Sheet for the Voluntary Agreements to Update and Implement the Bay-Delta Water Quality Control Plan, and Other Related Actions. Available: https://resources.ca.gov/-/media/CNRA-Website/Files/NewsRoom/Voluntary-Agreement-Package-March-29-2022.pdf.	
22	1	County: Sacramento - The Department of Water Resources (DWR) Chris Wilkinson P.O. 942836, Sacramento, CA 94236-0001, USA SWPDeltaOps@water.ca.gov Construction Site Well Review (CSWR) ID: 1013035	This information describes the structure or organization of the comment letter, the background of the organization or individual commenter, clarification on the submittal of the comment letter, or general introductory text. It is not a comment on the contents of

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		Assessor Parcel Number(s): Multiple Property Owner(s): The Department of Water Resources Project Location Address: The CA legal Delta, Suisun Marsh, and Suisun Bay California Project Title: EIR for Long-Term Operations of the State Water Project - SCH:2023060467	the DEIR. DWR has reviewed all comments and will consider all comments in its decision-making process.
22	2	Public Resources Code (PRC) § 3208.1 establishes well reabandonment responsibility when a previously plugged and abandoned well will be impacted by planned property development or construction activities. Local permitting agencies, property owners, and/or developers should be aware of, and fully understand, that significant and potentially dangerous issues may be associated with development near oil, gas, and geothermal wells. The California Geologic Energy Management Division (CalGEM) has received and reviewed the above referenced project dated 6/4/2024. To assist local permitting agencies, property owners, and developers in making wise land use decisions regarding potential development near oil, gas, or geothermal wells, the Division provides the following well evaluation. The project is located in the CA legal Delta, Suisun Marsh, and Suisun Bay which is within the boundaries of the multiple oil and gas fields. CalGEM records indicate there are hundreds of known oil and gas wells located within the project boundary. Due to the size and scope of this project, individual well reviews were not performed at this stage of the Construction Site Well Review. The Division recommends reevaluation of individual projects on a well by well basis when specific site related work is to be performed in areas containing oil and gas wells. As site specific project documents are provided to the division, the wells in the project area will be reviewed and a specific Construction Site Well Review letters will be generated to indicate the well statuses and impacts to wells in the area. As indicated in PRC § 3106, the Division has statutory authority over the drilling, operation, maintenance, and abandonment of oil, gas, and geothermal wells, and attendant facilities, to prevent, as far as possible, damage to life, health, property, and natural resources; damage to underground oil, gas, and geothermal deposits; and damage to underground and surface waters suitable for irrigation or domestic purposes. In addition to the Division's authority to order work on wells	The scope of the DEIR for the Long-Term Operations of the State Water Project does not include any construction activities, therefore evaluations relating to construction are not required. See Common Response 1, "Scope of Analysis," and Chapter 1, "Introduction," for more information on the Project Objectives.

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		pursuant to PRC §§ 3208.1 and 3224, it has authority to issue civil and criminal penalties under PRC §§ 3236, 3236.5, and 3359 for violations within the Division's jurisdictional authority. The Division does not regulate grading, excavations, or other land use issues. If during development activities, any wells are encountered that were not part of this review, the property owner is expected to immediately notify the Division's construction site well review engineer in the Northern district office, and file for Division review an amended site plan with well casing diagrams. The District office will send a follow-up well evaluation letter to the property owner and local permitting agency.	
22	3	Should you have any questions, please contact me at [redacted phone number] or via email at [redacted email address].	This is a concluding comment. Specific responses to the specific comments on the DEIR are provided herein. No additional response is required.
23	1	Please see attached.	This is not a comment on the content of the DEIR. No response is required.
23	2	To Who It May Concern California Department of Water Resources I would like to send the following comments about the effects of the proposed tunnel under the Delta would have on endangered Chinook salmon species such as the winter and spring runs. It would extirpate them!	This comment is introductory text. It is not a comment on the contents or the DEIR. DWR has reviewed all comments and will consider all comments in its decision-making process.
24	1	In furtherance of its duty to protect and preserve the contractual and individual rights of constituent landowners in the North Delta to a dependable water supply of suitable quality, North Delta Water Agency (the "Agency") submits these comments on the 2024 Draft Environmental Impact Report ("Draft EIR") for the Long-Term Operations of the California State Water Project (SWP). The Agency appreciates this opportunity to continue to provide feedback on the proposed Project and scope of the analysis. These comments are submitted in addition to the Agency's July 17, 2023 comment letter on the Notice of Preparation of this Environmental Impact Report.	This information describes the structure or organization of the comment letter, the background of the organization or individual commenter, clarification on the submittal of the comment letter, or general introductory text. It is not a comment on the contents of the DEIR. DWR has reviewed all comments and will consider all comments in its decision-making process.
24	2	I. Background The Agency was formed in 1973 by a special act of the Legislature to represent northern Delta water users in negotiating a water supply and quality contract with the United States Bureau of Reclamation and California Department of Water Resources (DWR) in order to mitigate the water rights impacts of the Central Valley Project (CVP) and SWP. In	To the extent this comment is stating background information, no response is required. Please see Chapter 2, Section 2.1.1, "Project Objectives," for a description of DWR's continuing commitment to operate the State Water Project in compliance with all contractual obligations and state and federal water quality and

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		1981, the Agency and DWR executed the Contract for the Assurance of a Dependable Water Supply of Suitable Quality ("1981 Contract"), which guarantees that DWR will maintain a suitable supply of water to satisfy all agricultural and other reasonable and beneficial uses in all channels within the Agency's boundaries. Specifically, the State is obligated to furnish "such water as may be required within the Agency to the extent not otherwise available under the water rights of water users." (1981 Contract, Art. 8(a)(ii).) The 1981 Contract contains specific minimum water quality criteria to be maintained year-round and obligates DWR to avoid or repair damage from hydrological changes resulting from the operation of the SWP. California law also requires that the operation of the CVP and SWP comply with area-of-origin water right priority. The water quality criteria contained in the 1981 Contract were developed to assure the lands and water uses within the Agency are protected from ocean salinity intrusion associated with the operation of the Projects. (Id. At Art. 2.) The criteria provide year-round protections for agricultural as well as municipal and industrial water uses within the Agency. The seven monitoring locations identified in the 1981 Contract allow DWR and the Agency to monitor salinity and assure compliance with the water quality criteria. The 1981 Contract also prohibits DWR from conveying State Water Project water if doing so would cause a decrease in natural flow, increase in natural flow, reversal of natural flow direction, or alteration of water surface elevations in Delta channels to the detriment of Delta channels or water users within the Agency. (Id. At Art. 6.) The State must either repair or alleviate damage, improve the channels as necessary, or provide diversion facility modifications required for any seepage or erosion damage to lands, levees, embankments, or revetments adjacent to Delta channels within the Agency associated with conveyance of State Water Project water supply. (Id.) The Agency has a mandate under its enabling legislation to take all actions necessary to assure that the lands within the North Delta have a dependable supply of water of suitable quality sufficient to meet present and future needs. It is with this background that the Agency submits these comments on the Draft EIR. II. The analysis for the EIR should include changes in water quality within the North Delta at all monitoring locations identified in the 1981	environmental laws. In addition to DWR's commitment to comply with all contractual obligations, including the North Delta Water Agency's 1981 Contract for the Assurance of a Dependable Water Supply of Suitable Quality, DWR conducted a detailed analysis of flows and water surface elevations at various locations (see Chapter 4, "Surface Water Hydrology," and Appendix 4B, Attachment 2 and Attachment 5), and exceedance of water quality objectives at several locations (see Chapter 5, "Surface Water Quality," and Appendices 5A and 5B). These analyses conclude that the Proposed Project would have no impacts to hydrology and less than significant impacts to water quality, and no mitigation would be required. DWR's Project Objectives also include a commitment to operate the SWP consistent with applicable laws, contractual obligations, and agreements. DWR acknowledges the multiple legal references, including legislative history, to area of origin laws. The legal term "area of origin" dates back to 1931 in California. At that time, concerns over water transfers prompted enactment of several area of origin statutes. Area of origin statutes were intended to protect local areas against export of water. In particular, counties in Northern California had concerns about the state tapping their water to develop California's supply. Early statutes prohibited depriving a "county in which the water…originates of any such water necessary for the development of the county." The major area-of-origin laws are: • The 1931 County of Origin Law (Water Code Sections 10500–10506) • The 1933 Watershed Protection Statute (Water Code Sections 11460–11465) • The 1959 Delta Protection Act (Water Code Sections 12200–12205) A fourth area-of-origin statute, enacted in 1984, designated specific "protected areas," all in northern

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		Contract and DWR should evaluate compliance with the year-round water quality criteria established in the 1981 Contract. An EIR is to meant serve as an "environmental 'alarm bell' whose purpose it is to alert the public and its responsible officials to environmental changes before they have reached ecological points of no return." (Santiago County Water Dist. V. County of Orange (1981) 118 Cal.App.3d 818, 822.) It is intended "to demonstrate to an apprehensive citizenry that the agency has, in fact, analyzed and considered the ecological implications of its action." (No Oil, Inc., v. City of Los Angeles (1974) 13 Cal.3d 68, 86; CEQA Guidelines, § 15003(d).) To serve that purpose, the project description must provide the necessary detail to allow the public and decision-makers to make an informed decision about a project's impacts. (San Joaquin Raptor Rescue Center v. County of Merced (2007) 149 Ca1.App.4th 645, 672.) When a project will cause potentially significant environmental impacts, the EIR must propose and describe mitigation measures to minimize or avoid those effects. (East Sacramento Partnership for a Livable City v. City of Sacramento (2016) 5 Cal. App. 5th 281, 303, citing Pub. Resources Code, §§ 21002.1(a), 21100(b)(3); CEQA Guidelines, § 15126.4(a)(1).) To comply with CEQA, an EIR must contain an adequate analysis of the potential impacts to water supply and quality, water diversion infrastructure, or water channels and embankments. The lead agency must also provide adequate, enforceable mitigation measures and monitoring programs to minimize or avoid those impacts. Currently, the Draft EIR does not consider the 1981 Contract in its analysis of potential impacts to water supply and water quality in the North Delta. DWR is therefore unable to conclude that there will be no significant impacts under the proposed long-term operation of the SWP.	California, and prohibited water exporters from depriving those areas "of the prior right to all the water reasonably required to adequately supply the beneficial needs of the protected area." These laws seek to grant areas in which water originates an adequate water supply for present and future needs. An important distinction related to these laws, recently clarified in Tehama-Colusa Canal Authority v. U.S. Dept. of the Interior, 819 F. Supp. 2d 956 (E.D. Cal. 2011) and affirmed by the Ninth Circuit in an appeal (721 F.3d 1086 (9th Cir. 2013)), is that these laws generally apply to protect water users within the area of origin against previous appropriations for export. In other words, water users within an area where water originates may apply for new diversions by seeking a water right from the State Water Board and may obtain priority for such diversions ahead of already existing diversions for export uses by the CVP and the SWP. However, when water is acquired and stored in CVP or SWP reservoirs, area-of-origin laws do not control how the stored water is allocated, which is determined by individual water service contracts. Water contractors located in an area of origin cannot assert preferential allocation of acquired and stored water simply because of their location within a watershed. Please see Common Response 10, "Public Trust," for further discussion of DWR's consideration of the public trust.
24	3	A. The Project Description Needs to Identify the 1981 Contract. The Agency is concerned that DWR's proposal to update the long-term operations of the SWP will alter water quality, water surface elevations, and velocities in the North Delta to the detriment of water users. Such impacts must be fully analyzed and mitigated in the EIR. The Project Description in the Draft EIR states that the underlying purpose of the proposed project is to obtain incidental take authorization from the California Department of Fish and Wildlife (CDFW) pursuant to CESA for five fish species, so that DWR can continue to store, divert, and convey	Please see Chapter 2, Section 2.1.1, "Project Objectives," for a description of DWR's continuing commitment to operate the State Water Project in compliance with all state and federal water quality and environmental laws. As discussed in Chapter 2, the long-term operations of the SWP would continue to meet its contractual obligations. DWR will continue to comply with terms of the 1981 contract as applicable, the 1981 contract is a document that speaks for itself.

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		water for deliveries to its SWP contractors, while optimizing water supply and improving operational flexibility. (Draft EIR, 2.1.1, p. 2-1.) DWR claims its proposed actions will be conducted in compliance with "applicable laws, contractual obligations, and agreements." (Id.) However, the Project Description in the Draft EIR fails to acknowledge or describe DWR's specific contractual obligations under the 1981 Contract. Nowhere in the Draft EIR does DWR expressly state it will operate the SWP in accordance with the terms of the 1981 Contract. (See Draft EIR, Appx. 4A, at 4A-8-3 [describing delta salinity compliance only in the context of meeting Water Right Decision ("D-") 1641 salinity standards, which do not govern Delta water quality year-round].) The Project Description and each alternative considered should include express provisions that the long-term SWP operations will fully comply with the year-round water quality criteria and other terms and conditions of the 1981 Contract. The final Project Description and alternatives should include a comprehensive description of the 1981 Contract; identify the 1981 Contract as a significant legal constraint on the long-term operation of the SWP; and identify how proposed long-term coordinated operations will assure water supply reliability, availability, and quality for all water users in the North Delta, and avoid erosion and seepage impacts to channels and embankments.	
24	4	B. The EIR Needs to Consider the Effects of Operating the State Water Project in Compliance with the 1981 Contract. DWR's compliance with the 1981 Contract is not discretionary. Therefore, while CEQA requires DWR to implement feasible mitigation measures to reduce significant impacts of projects to less-than-significant levels, the 1981 Contract still forbids DWR from choosing not to comply with the specific requirements of the 1981 Contract based on a determination of infeasibility, or otherwise. The EIR should address thresholds of significance for water quality impacts, including any potentially significant impacts if the Project would exceed a water quality standard or substantially degrade water quality, including addressing compliance with the water quality criteria of the 1981 Contract. For instance, the Draft EIR indicates increases in electrical conductivity at Threemile Slough over baseline conditions in the months of June, July, August, September, and October. (Draft EIR, Ch. 5, Table 5-10, p. 5-17.) The irrigation season for crops grown within the	Please see Chapter 2, Section 2.1.1, "Project Objectives," for a description of DWR's continuing commitment to operate the State Water Project in compliance with all contractual obligations and state and federal water quality and environmental laws. DWR's water quality analysis evaluated the potential for simulated changes in water quality to causing exceedance of applicable state or federal numeric or narrative water quality objectives/criteria, or other relevant water quality effects thresholds by frequency, magnitude, and geographic extent that would result in adverse effects to one or more beneficial uses within affected water bodies; or degrade water quality by a sufficient magnitude, duration, and geographic extent that would cause a substantial risk of adverse effects to one or more beneficial uses. DWR's water quality analysis showed that electrical conductivity (EC) would increase under

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		Agency is typically from about mid-March through September, depending on the water year type. Water may also be applied during other times of the year for pre-irrigation, weed control, leaching, and habitat uses. The application of water with higher salinity levels than those allowed in the Contract may result in reduced crop yields and potential soil damage that causes longer-term adverse impacts on the lands with the Agency. The salinity criteria of the 1981 Contract are separate and distinct from D-1641 standards and are year-round. The Draft EIR concludes that the differences in modeled salinity "would not substantially degrade water quality" on a long-term average basis, but that qualitative determination does not confirm whether the increased salinity would cause or contribute to additional exceedances of 1981 Contract criteria. (Id. At p. 5-19.) The EIR should include DWR's nondiscretionary obligation to abide by the terms of the 1981 Contract and analyze the impacts of the project operating relative to DWR's compliance with those terms, not simply the relative magnitude of the potential increases. All hydrological and hydraulic modeling undertaken to analyze the alternatives must assume that the terms and conditions of the 1981 Contract, including but not limited to its water quality requirements in the fall and winter months (August 16 through April 30), will remain in full force and effect.	the Proposed Project at Threemile Slough during some months of the irrigation season and would decrease in March and April, and remain the same as Baseline Conditions during May. Overall, the analysis concluded that the Proposed Project would not substantially degrade water quality with regard to EC on a long-term average basis in the Sacramento River at Threemile Slough and Rio Vista. Although these changes would occur and are considered less than significant, DWR remains committed to operate the State Water Project in compliance with all contractual obligations (Chapter 2, Section 2.1.1, "Project Objectives").
24	5	The Agency makes the following additional comments to the Draft EIR: 1. The Draft EIR does not evaluate or quantify its ability to continue meeting its contractual obligations to the Agency. 4. The EIR needs to analyze whether the flows necessary for DWR to comply with water quality criteria obligations in the 1981 Contract will be assured in the long-term operations of the State Water Project. 5. The EIR should incorporate any mitigation measures committing DWR to the repair, modification, or replacement of existing landowner diversion facilities and levees as required under Article 6 of the 1981 Contract if there are any proposed long-term modifications of the operations of the State Water Project. III. Conclusion The Agency has long been a stakeholder and highly engaged participant in DWR's operations of the SWP. It is not readily apparent from the Draft EIR that DWR has sufficiently analyzed whether the long-term operation of the SWP will comply with the 1981 Contract. Meaningful public	The Coordinated Operations Agreement (COA) governs how the State Water Project (SWP) and federal Central Valley Project (CVP) share water under their water rights and operate to meet specific water quality and outflow requirements in the Delta. The long-term operations of the SWP assume the continued implementation of the COA. Please see Chapter 2, Section 2.1.1, "Project Objectives," for a description of DWR's continuing commitment to operate the State Water Project in compliance with all state and federal water quality and environmental laws. Also see Chapter 2 for more information on mitigation and minimization measures included as part of the Proposed Project. Please see Chapter 4, "Surface Water Hydrology," and its accompanying appendices for a detailed analysis of the Proposed Project's effects on flows. Please see Chapter 5, "Surface Water Quality," and its associated appendices for a detailed analysis of the Proposed Project's effects

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		review is the strongest assurance of the adequacy of the EIR. For the reasons laid out above, we urge DWR to address the Agency's comments.	on surface water quality. Please refer to Common Response 4, "CEQA and CESA Legal Standards," for an explanation of DWR's legal requirements regarding the CEQA Process.
24	6	2. The EIR needs to meaningfully address or quantify the economic, health, and agriculture impacts due to identified and unidentified water quality exceedances and other changes in water surface elevation.	The EIR has been prepared in accordance with CEQA and adequately discloses the scope, severity, and magnitude of potential impacts for the environmental resources analyzed in this EIR. The project would not cause exceedance of water quality standards, as described in Chapter 5, "Surface Water Quality." The State Water Project would continue to be operated consistent with regulatory requirements, including State Water Board Water Right Decision 1641, which implements responsibilities for meeting Bay-Delta WQCP water quality objectives. Also, please refer to Chapter 1, "Introduction," Section 1.1, "Purpose of the Draft Environmental Impact Report," regarding the purpose of the project. Please see Chapter 1, "Introduction," for a description of the State Water Project and background information regarding how water supply has been developed and managed in California. Please also refer to Common Response 3, "The CEQA Process," regarding the project's purpose and objectives, including DWR's continuing commitment to operate the State Water Project. Finally, please see Chapters 4-9 and Appendix 3A, "Initial Study," regarding an analysis of environmental impacts on multiple environmental resources, including agriculture, public health, as well as socioeconomics.
24	7	3. The EIR needs to consider the individual diversion intakes, primarily agricultural siphons, located in the North Delta. The EIR must analyze and mitigate any adverse impacts to surface water elevation and water quality where these diversions are located.	The EIR has been prepared in compliance with CEQA and evaluates the full range of potential environmental impacts that may result from the Proposed Project and its alternatives. Please refer to Chapter 3, "Scope of Analysis," and Common Response 1, "Scope of Analysis," regarding the geographic scope of the analysis. Please see Chapter 4, "Surface Water Hydrology," and Chapter 5, "Water Quality," regarding analysis of the Proposed Project and the effects on hydrology and water quality.

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			Please see Common Response 3, "The CEQA Process," regarding CEQA alternative analysis.
25	1	In accordance with the California Department of Water Resources' ("DWR's") July 12, 2024 notice extending the period for public comment on DWR's 2024 Draft Environmental Impact Report ("DEIR") on Long-Term Operation ("LTO") of the State Water Project ("SWP")("Project"), we submit the following comments on behalf of the California Sportfishing Protection Alliance ("CSPA"), North Coast Rivers Alliance ("NCRA"), Pacific Coast Federation of Fishermen's Associations ("PCFFA"), Winnemem Wintu Tribe ("WWT"), Institute for Fisheries Resources ("IFR") and San Francisco Crab Boat Owners Association ("SFCBOA").	This information describes the structure or organization of the comment letter, the background of the organization or individual commenter, clarification on the submittal of the comment letter, or general introductory text. It is not a comment on the contents of the DEIR. No response is required. DWR has reviewed all comments and will consider all comments in its decision-making process.
25	2	In brief, DWR's LTO DEIR fails because it: (1) fails to provide an adequate description of the environmental setting by omitting operation of Oroville Reservoir – the lynchpin of the State Water Project; (2) artificially narrows the Project objectives; (3) omits the required range of reasonable alternatives that would reduce impacts; (4) segments its environmental analysis; (5) fails to disclose and analyze the Project's significant adverse environmental impacts including those of the State Water Project that this Project would enable; (6) omits analysis of the Project's interrelationships with closely related water projects; (7) fails to assess an appropriate range of mitigation measures; (8) omits adequate tribal consultation including with the Winnemem Wintu Tribe; (9) ignores the Project's conflicts with the Delta Reform Act and the Sacramento-San Joaquin River Delta Plan prepared thereunder, the Public Trust Doctrine and the California Endangered Species Act; and (10) understates the Project's impacts during foreseeable sea level rise and droughts. These deficiencies, discussed below, require recirculation of a corrected DEIR and changes to the Project to remedy its violations of environmental law.	This is an introductory comment. Specific responses to the specific comments on the DEIR are provided herein, please refer to those. No additional response is required. Please see also the Common Responses, particularly Common Response 6, "Other State Efforts."

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25	3	I. THE DEIR FAILS TO PROVIDE AN ADEQUATE DESCRIPTION OF THE ENVIRONMENTAL SETTING AND THE PROJECT BY OMITTING OPERATION OF OROVILLE RESERVOIR An EIR must include an adequate description of the environmental setting and an accurate, stable and consistent description of the proposed project. Both descriptions must contain sufficient specific information about the project to allow a complete evaluation and review of its environmental impacts. 14 Cal. Code Reg. ("CEQA Guidelines") §§15125, 15124. Contrary to this directive, the DEIR omits disclosure and analysis of the operation of Oroville Reservoir, the main source of water used in the State Water Project and the facility whose operation and adjustments therein are the primary means by which the Project's impacts can be managed and mitigated. The DEIR states that it need not provide a detailed discussion of the operation of Oroville Reservoir because: "DWR is not requesting an ITP [Incidental Take Permit] from CDFW [California Department of Fish and Wildlife] for the following actions: . . . Oroville Dam and Feather River operations . . . These facilities and operations activities are or will be covered under separate permits or addressed by other legal authorities." DEIR, p. 2-18 (emphasis added.) The DEIR's factual premise is in error. The State Water Project's water supply operations for Oroville Dam and the Feather River are not conditioned under the existing FERC license for the hydropower operations of the "Oroville Facilities," nor under the State Water Board's water quality certification for the license. Nor are the Oroville Reservoir operations specifically covered under the CDFW's 2020 ITP for Long-Term Operation of the CVP and the SWP. Nor do the SWP's consumptive water rights (applications 5630 and 14443) for the operation of Oroville Reservoir place specific conditions on the storage operation other than maximum annual diversion and season of diversion. And, according to the State Water Board's eWRIMS database, the power generation water rights for Oroville Reservoir (application numbers 5629 and 14444) likewise place no restrictions on storage other than maximum annual diversion and season of diversion.	Regarding the exclusion of Oroville Reservoir, please see Appendix 2D, "Geographic Scope," and Common Response 1, "Scope of Analysis." The statement that the State Water Project's water supply operations for Oroville Dam and the Feather River are not conditioned under the existing FERC license for the hydropower operations of the "Oroville Facilities," nor under the State Water Board's water quality certification for the license is misleading. The annual FERC licenses, water quality certification, Biological Opinion for Relicensing the Oroville Facilities Hydroelectric Project (NMFS 2016), and DWR's EIR for the Relicensing of the Oroville Facilities (DWR 2008) evaluated the effects of Oroville Operations on a suite of resources, including water quality and ESA-listed species, and constrain operations of the Oroville Facilities. Regardless of whether these operations are constrained because of FERC requirements, water quality requirements, or threatened or endangered species requirements, water supply operations are also required to remain within the operational criteria evaluated under these regulatory processes. Therefore, water supply operations have been evaluated and potential impacts have been disclosed and mitigated under the FERC, State Water Board, and Endangered Species Act requirements. References cited in this response: California Department of Water Resources. 2008. Oroville Facilities Relicensing Final Environmental Impact Report. Available: https://water.ca.gov/-/media/DWR-Website/Web-Pages/Programs/State-Water-Project/Power/HLPCO/Relicensing/2---FIER/2100-Oroville-Final-Environmental-Impact-Report-FEIR-Cvr-and-Table-Contents-FERC- Relicensing---072220.pdf. National Marine Fisheries Service. 2016c. Endangered Species Act Section 7(a)(2) Biological Opinion, and Magnuson-Stevens Fishery Conservation and

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			Management Act Essential Fish Habitat Response and Fish and Wildlife Coordination Act Recommendations for Relicensing the Oroville Facilities Hydroelectric Project, Butte County California (FERC Project No. 2100-134). December 5. Sacramento, CA: National Marine Fisheries Service, West Coast Region.
25	4	The absence of any existing independent regulatory control over the operations of Oroville Reservoir is echoed by the lack of any independent environmental review of those operations. Neither the State Water Board, DWR, nor any other agency has ever prepared a CEQA analysis addressing the SWP's water supply operations for Oroville Dan and the Feather River. Consequently, there is no analysis of baseline conditions, let alone quantification of existing operations and analysis of how they have changed in the past and could reasonably be expected to change in the future. Without that information, the DEIR cannot begin to disclose and assess the impacts of the Proposed Project on the water supply operations of Oroville Reservoir and, in turn, the Feather and Sacramento Rivers downstream. Of course, the DEIR does not even attempt to provide that essential evaluation because it does not even recognize that it is required by CEQA. The DEIR's legal premise, that it can rely on permits and accompanying environmental reviews that "will be" issued and prepared in the future, is also incorrect. The DEIR cannot lawfully rely upon environmental reviews anticipated to be prepared in the future to guide the State Water Board's present approval of the Project's Long-Term Operation of the State Water Project. As the California Supreme Court explained in Vineyard Area Citizens for Reasonable Growth v. City of Rancho Cordova ("Vineyard") (2007) 40 Cal.4th 412: "CEQA's demand for meaningful information "is not satisfied by simply stating information will be provided in the future." (Santa Clarita [Organization for the Environment v. County of Los Angeles (2003)], 106 Cal.App.4th [715], 723) . . . .Tiering does not excuse the lead agency from adequately analyzing reasonably foreseeable significant environmental impacts of the project and does not justify deferring such analysis to a later tier EIR or negative declaration. (Cal.Code Regs., tit. 14, § 15152, subd. (b).)" Vineyard, 40 Cal.4th at 431.	The comment provides case law as support for requesting inclusion of the Oroville Facilities and operations in the Baseline Conditions and analyses presented in the DEIR. Please see Common Response 1, "Scope of Analysis," and Appendix 2D, "Geographic Scope," regarding the inclusion of the Oroville Facilities in the geographic scope analyzed in the EIR. Please see Common Response 2, "CEQA Environmental Baseline," regarding the baseline. Description of the environmental setting and potential impacts to all resource categories identified in Appendix G of the CEQA Guidelines is provided in Appendix 3A, "Initial Study." Detailed description of the environmental setting and environmental review of potential impacts of the Proposed Project on Hydrology, Water Quality, Aquatic Biological Resources, and Tribal Cultural Resources is provided in EIR Chapters 4 through 7, which include analyses of impacts to imperiled salmonids and other special status fish species (see Chapter 6, "Aquatic Biological Resources"). Please see Response to Comment 25-3 regarding DWR's EIR for the Oroville Facilities Relicensing and the analyses therein of operations-related impacts and the relationship of FERC operations to water supply operations.

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		As here, the Vineyard Court was faced with the task of evaluating whether an EIR had to address a water management project's long-term impacts on freshwater flows and water quality in a river that supported an imperiled run of salmonids. Id., 40 Cal.4th at 447-449. The high court set aside the EIR because it failed to address the impacts of the project's proposed water use on river flows required for the survival of imperiled salmonids. Id. Further, the required environmental review must be searching and detailed, and explain the relationship between upstream diversions to reservoir storage, management of that storage, and downstream river flows, and how all three aspects of water management impact fish and wildlife. For that reason, California courts have repeatedly overturned water agency approvals of water diversion, storage and release programs that fail to examine all three aspects of this interrelated whole. For example, in County of Amador v. El Dorado County Water Agency ("County of Amador") (1999) 76 Cal.App.4th 931, the court rejected the water agency's deficient EIR, explaining: "We agree that a mere recitation of end-of-month [reservoir] lake levels does not provide an adequate description of the existing environment or how PG&E determined [reservoir] water releases. The hydrologist himself referred to this data as 'a presentation of historical observations, rather than an operational analysis.' The month-end water level is only one element of the operation. Just as important to fisheries, river habitation, and recreational users is how those lake levels were determined. When were releases made and at what rate? What were the factors that determined when releases would be made? Are those factors equally applicable for purposes of power generation and inelastic consumptive use? . . . . Reliance on lake levels alone is insufficient to describe the current release program or to assess the impacts of the proposed project. Nor does the FERC license describe existing conditions. Minimum stream flow requirements do not describe actual water releases. An EIR must focus on impacts to the existing environment, not hypothetical situations. . . . The fact that water flow must be kept at a certain minimum level does not reveal what flows were actually maintained; higher flows would comport with FERC requirements, but might adversely affect lake levels and/or the downstream environment. County of Amador, 76 Cal.App.4th at 955-956.	

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		So too in Friends of the Eel River v. Sonoma County Water Agency ("Friends of the Eel River") (2003), 108 Cal.App.4th 859, the court overturned a water agency's EIR for a water diversion project because it failed to provide a sufficiently detailed description of the project's environmental setting, including the operation of a related FERC-licensed water diversion project (the Eel/Russian River Project) that – like Oroville Reservoir in this case – provided the majority of the project's water supply, explaining: "An EIR must contain an accurate description of the project's environmental setting. An EIR 'must include a description of the physical environmental conditions in the vicinity of the project. . . From both a local and regional perspective. This environmental setting will normally constitute the baseline physical conditions by which a lead agency determines whether an impact is significant.' (Guidelines, § 15125, subd.(a).) There is good reason for this requirement: 'Knowledge of the regional setting is critical to the assessment of environmental impacts. . . . . The EIR must demonstrate that the significant environmental impacts of the proposed project were adequately investigated and discussed and it must permit the significant effects of the project to be considered in the full environmental context.' (Guidelines, Â§ 15125, subd. ©.) We interpret this Guideline broadly in order to â€˜afford the fullest possible protection to the environment.' (Kings County Farm Bureau, supra, 221 Cal.App.3d 692, 720.) In so doing, we ensure that the EIR's analysis of significant effects, which is generated from this description of the environmental context, is as accurate as possible." Friends of the Eel River, 108 Cal.App.4th at 874. A fortiori where, as here, the required environmental review of the Feather River Project's key reservoir that supplies most of the SWP's water supply – Oroville Dam – has not occurred in the past and is not being conducted in the State Water Board's ongoing CEQA review, the Board cannot defer this essential analysis on the unsubstantiated grounds that it "will" occur in the future. The required environmental assessment must be conducted now, as part of the current CEQA review, before the Project may be approved. Vineyard, 40 Cal.4th at 431, 447-449; County of Amador, 76 Cal.App.4th at 955-956; Friends of the Eel River, 108 Cal.App.4th at 874. Much like the deficient environmental reviews that failed to address the water management projects' potential environmental impacts on fisheries in Vineyard, County of Amador and	

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		Friends of the Eel River, the DEIR here likewise fails to provide information essential to informed public review.	
25	5	A. The FERC Relicensing of the Oroville Facilities Does Not Address Water Supply Operations at Oroville Reservoir. The Federal Energy Regulatory Commission's (FERC's) relicensing of the Oroville Facilities (FERC Project No. 2100) expressly excluded the water supply operations of Oroville Dam and Reservoir and the Feather River downstream to the Sacramento River. The Final Environmental Impact Statement for the Oroville relicensing ("Oroville FEIS") explains this critical omission by stating: "Water rights in California are regulated under the Water Board's Division of Water Rights. The Commission does not have jurisdictional authority to resolve California's water rights issues." FERC FEIS (May 18, 2007), p. 98. The Oroville FEIS therefore concludes: "The Proposed Action would slightly increase flows in the low flow channel; however, such changes would not be expected to produce a major shift in flows downstream of the Oroville Facilities. Under all the alternatives, we would expect average annual Feather River service area deliveries under existing conditions and year 2020 conditions to remain 994,000 acre-feet, and average annual South Delta deliveries to increase from the existing 3,051,000 acre-feet to 3,247,000 acre-feet in year 2020." FERC FEIS, p. 98. Content with this brief summary, the FERC FEIS never addressed the many variables involved in managing the water supply operation of Oroville Reservoir, including draw down release schedules, lower Feather River stream flow minimums and maximums, storage requirements by water year type and date, and of course perhaps the most important parameter, carryover storage. FERC arrived at this "hands-off" position because the State Water Board has insisted for decades that only it has "jurisdictional authority" to determine water rights to California rivers and to determine how it will manage the lynch-pin of the Feather River Project, Oroville Reservoir. Having persuaded FERC to refrain from performing this environmental review, it ill behooves the Board to now claim that it need not conduct this analysis because other agencies such as FERC will one day do so. As shown, because it is the lead agency controlling and approving operation of the State Water Project, the Board has the clear CEQA duty to perform this analysis. Vineyard, 40 Cal.4th at 431, 447-449; County of	The bulk of the comment provides case law as background for requesting analysis of the Oroville Reservoir water supply operations in the EIR. Please see Common Response 1, "Scope of Analysis," and Appendix 2D, "Geographic Scope," regarding the inclusion of the Oroville Facilities in the geographic scope analyzed in the EIR. Please see Response to Comment 25-3 regarding DWR's EIR for the Oroville Facilities Relicensing and the analyses therein of operations-related impacts and the relationship of FERC operations to water supply operations.

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		Amador, 76 Cal.App.4th at 955-956; Friends of the Eel River, 108 Cal.App.4th at 874. DWR's failure to address how the Project requires continued operation of the Oroville Facilities, and how that operation impacts river flows and dependent fish and wildlife, violates CEQA. Guidelines § 15126.2; Friends of the Eel River, 108 Cal.App.4th at 869-871 (EIR set aside because it failed to address the upstream watershed impacts from river diversions to supply downstream consumptive uses); County of Amador, 76 Cal.App.4th at 952-956 (EIR set aside because it failed to address adequately the effects on upstream reservoirs of downstream diversion of water for consumptive uses); Vineyard, 40 Cal4th at 448-449 (EIR set aside because it failed to address impacts on aquatic and riparian species including salmon from increased pumping of groundwater tributary to river used for salmon spawning and rearing).	
25	6	DWR may not claim that it already examined Oroville Reservoir's water supply operations by participating in the State Water Board's water quality certification for the FERC relicensing. To the contrary, the operations model that DWR developed for use in that relicensing did not include carryover storage as a variable input. Consequently, relicensing participants were unable to model different possible carryover requirements. The Draft Environmental Impact Report ("Oroville DEIR") prepared for the relicensing and in support of the State Water Board's water quality certification for the licensing hid disclosure of Oroville's actual water supply operation behind a veil of undisclosed operating agreements, stating: "The objective of the Proposed Project is the continued operation and maintenance of the Oroville Facilities for electric power generation, including implementation of any terms and conditions to be considered for inclusion in a new FERC hydroelectric license. As an integral part of the SWP, water stored in Lake Oroville is released from the Oroville Facilities to meet a variety of statutory, contractual water supply, flood management, and environmental commitments. These contractual, flood management, fishery, water quality, and other environmental obligations are defined in numerous operating agreements that specify timing, flow limits, storage amounts, and/or constraints on water releases. The Proposed Project is consistent with	This is not a comment on the content or analyses contained in the DEIR. This comment provides background information for the commenter's overall request to include water supply operations of Oroville Reservoir in the EIR. Please see Common Response 1, "Scope of Analysis," and Appendix 2D, "Geographic Scope," regarding the inclusion of the Oroville Facilities in the geographic scope analyzed in the EIR. Please see Response to Comment 25-3 regarding DWR's EIR for the Oroville Facilities Relicensing and the analyses therein of operations-related impacts and the relationship of FERC operations to water supply operations.

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		these existing commitments and no changes to the contractual obligations or to the general pattern of these releases are anticipated." Oroville DEIR, p. ES-2. The subsequent Final Environmental Impact Report ("Oroville FEIR") that was prepared in support of the State Water Board's water quality certification for the relicensing likewise did not address changes in water supply operations. Instead, it maintained the same impenetrable facade of generalities behind the excuse that there would be no effect on "net flow releases into the Feather River:" "The principal actions in the SA and analyzed in the DEIR are potential physical changes to the Oroville Facilities, environmental restoration actions in the lower Feather River, and recreational improvements in the Project area. None of the SA actions analyzed in the DEIR would affect net flow releases into the Feather River, and thus could be considered independent of OCAP.	
25	7	Oroville FEIR (June 2008), p. 6-15. Like the DEIR, the FEIR declined to address the current and foreseeable water supply operations of Oroville Reservoir, explaining that "[a]nalysis of future changes to the State Water Project (SWP) statewide operations is outside the scope of this EIR." Id., p. 4-51. The National Marine Fisheries Service's 2016 Biological Opinion for the relicensing of the Oroville Facilities ("Oroville Relicensing BiOp") likewise confirms that NMFS and its BiOp did not address the reservoir's water supply operation: "The proposed action analyzed in this Opinion is FERC's proposed relicensing of the Oroville Facilities (FERC Project No. 2100-134). The Oroville Facilities were developed as part of the SWP, a water storage and delivery system of reservoirs, aqueducts, power plants and pumping plants. The SWP stores and distributes water to supplement the needs of urban and agricultural water users in Northern California, the San Francisco Bay Area, the San Joaquin Valley, Central Coast, and Southern California. As part of the SWP, the Oroville Facilities are also operated for flood management, power generation, water quality improvement in the Delta, recreation, and fish and wildlife enhancement. The FERC relicensing only applies to the facilities and operations authorized under the Federal Power Act. The operations and features that are only for the	The bulk of this comment is not a comment on the content or analyses contained in the DEIR but provides background information for the commenter's overall request to include water supply operations of Oroville Reservoir in the EIR. Please see Common Response 1, "Scope of Analysis," and Appendix 2D, "Geographic Scope," regarding the inclusion of the Oroville Facilities in the geographic scope analyzed in the EIR. Please see Response to Comment 25-3 regarding DWR's EIR for the Oroville Facilities Relicensing and the analyses therein of operations-related impacts and the relationship of FERC operations to water supply operations.

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		delivery of water are not part of the FERC relicensing, and therefore are not part of the proposed action analyzed in the Opinion." NMFS, Oroville Relicensing BiOp, p. 5 (emphasis added). In sum, no agency – state or federal – has conducted a detailed CEQA or NEPA environmental review of the water supply operations of the Oroville Facilities as part of any FERC licensing or relicensing process. The DEIR's omission of the required detailed review based on its erroneous premise that this review already exists or will be done in the future is incorrect as a matter of fact and law.	
25	8	B. The State Water Board Has Placed No Condition on Operations of Oroville Reservoir Other Than Maximum Annual Diversion to Storage and Season of Diversion. The State Water Board's water quality certification for the relicensing of the Oroville Facilities does not address the water supply and storage operations of Oroville Reservoir. It places no conditions on the storage operations of Oroville Reservoir. To the contrary, the certification simply acknowledges the "normal operation" of the Project, stating: "Normal operation is the operation of the State Water Project (SWP) based on standard factors such as hydrology, storage, routine maintenance and SWP obligations. Changes in operation that are the result of unusual events such as flood control releases, accidents, project failures, and major or unusual maintenance are not considered normal operation." State Water Board, Final Water Quality Certification for the Relicensing of the Oroville Facilities, p. 10. The water rights that give DWR the right to store water for water supply operation at Oroville Reservoir (Applications 5630 and 14443) contain no restrictions on storage operations other than maximum annual diversion to storage and season of diversion. Of particular relevance, they include no explicit carryover storage requirements. Consequently, the corresponding water rights for power generation at Oroville Reservoir place no condition on carryover storage (Applications 5629 and 14444).	The bulk of this comment is not a comment on the content or analyses contained in the DEIR but provides background information for the commenter's overall request to include water supply operations of Oroville Reservoir in the EIR. Please see Common Response 1, "Scope of Analysis," and Appendix 2D, "Geographic Scope," regarding the inclusion of the Oroville Facilities in the geographic scope analyzed in the EIR. Please see Response to Comment 25-3 regarding DWR's EIR for the Oroville Facilities Relicensing and the analyses therein of operations-related impacts and the relationship of FERC operations to water supply operations. DWR has reviewed all comments and will consider all comments in its decision-making process. To the extent that this comment is regarding the Proposed Project's water rights, please see Common Response 13, "Water Rights Time Extension."
25	9	Accordingly, the DEIR's implication that the past, current (or baseline) and foreseeable future water supply operations of the Oroville Facilities have been analyzed in a CEQA or NEPA document is incorrect. As shown, the DEIR's failure to provide this essential information as part of the environmental setting and the project description violates CEQA. CEQA	The bulk of this comment is not a comment on the content or analyses contained in the DEIR but provides background information for the commenter's overall request to include water supply operations of Oroville Reservoir in the EIR. Please see Common Response 1,

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		Guidelines sections 15124, 15125; Vineyard, 40 Cal.4th at 431, 447-449; County of Amador, 76 Cal.App.4th at 955-956; Friends of the Eel River, 108 Cal.App.4th at 874. Because this error is fundamental the DEIR must be corrected and recirculated. "CEQA requires a lead agency to recirculate an EIR for public comment and consultation with other agencies when it adds "significant new information" to the final EIR before certifying it. Not recirculating such information deprives the public of a meaningful opportunity to comment on the new information." Save Our Capitol! v. Department of General Services ("Save Our Capitol!") (2023) 87 Cal.App.5th 655, 703-705, citing Guidelines § 15088.5(a) and Laurel Heights Improvement Assn. v. Regents of University of California (1993) 6 Cal.4th 1112, 1124-1125.	"Scope of Analysis," and Appendix 2D, "Geographic Scope," regarding the inclusion of the Oroville Facilities in the geographic scope analyzed in the EIR. Please see Response to Comment 25-3 regarding DWR's EIR for the Oroville Facilities Relicensing and the analyses therein of operations-related impacts and the relationship of FERC operations to water supply operations.
25	10	II. THE DEIR ARTIFICIALLY NARROWS PROJECT OBJECTIVES "'[A] lead agency may not give a project's purpose an artificially narrow definition.'" North Coast Rivers Alliance v. Kawamura ("NCRA") (2015) 243 Cal.App.4th 647, 668, quoting In re Bay–Delta Programmatic Environmental Impact Report Coordinated Proceedings ("In re Bay-Delta") (2008) 43 Cal.4th 1143, 1166. Doing so unduly narrows the project's range of reasonable alternatives, thwarting CEQA's purpose to force agencies to consider better approaches to accomplishing project objectives that will achieve most of the basic objectives with less environmental harm. NCRA, 243 Cal.App.4th at 666-669. As the NCRA Court explained, "[t]he Guidelines provide: "An EIR shall describe a range of reasonable alternatives to the project . . . Which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives." Id., 243 Cal.App.4th at 666 (quoting Guidelines section 15126.6(a), emphasis in original). Contrary to this CEQA rule, the DEIR adopts an artificially narrow definition of the Project's objectives that restricts the Project to "deliver[ing] water pursuant to water contracts and agreements up to full contract quantities." But the DEIR's stated objective of delivering the "full contract quantities" is illusory because the State Water Project is substantially over-contracted and cannot deliver such a high volume of water in the vast majority of years.	The EIR has been prepared in accordance with CEQA and does not artificially narrow project objectives. The bulk of this comment is not a comment on the content or analyses contained in the DEIR but provides background information for the commenter's overall request to expand the project objectives. The project objectives do not require delivery of full contract quantities of water, the project objective recognizes that operations must be carried out consistent with legal requirements which in typical circumstances requires a reduction in deliveries below full contract volumes. Please see Chapter 11, Section 11.2, "Range of Alternatives Considered," and Common Response 3, "The CEQA Process," for a discussion on the range of alternatives considered and the development of alternatives. Please see Chapter 2, "Project Description," Section 2.1.4 "Description of Existing SWP Water Service Contracts," and Section 2.1.6 "SWP Allocation and Forecasting," for more information on the processes for Table A water deliveries and undelivered water supply. Please also see Chapter 2, Section 2.1.1, "Project Objectives," for a description of DWR's continuing commitment to operate the State Water Project in compliance with all applicable laws, contractual obligations, and agreements.

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25	11	As originally envisioned, the State Water Project would have included additional dams and diversions that would have destroyed the free-flowing rivers of California's North Coast and removed additional essential spawning and rearing habitat for salmon and steelhead – on top of the habitat removed upstream from the Sacramento-San Joaquin River Delta by the State Water Project and Central Valley Project. The unbuilt portion of the State Water Project was expected to provide between five and 10 million acre feet of water each year to the SWP system. Thus, the annual "Table A amount" – "the maximum annual amount of water that may be requested to be delivered" in DWR's existing SWP contracts – contemplates delivery of much more water than can be delivered in all but the wettest of water years. Because of this profound disconnect between the water contractors' so-called "paper water" under their contracts and the quantities that can realistically be delivered, the courts have required DWR to disclose this imbalance in its environmental impact reports on the State Water Project. For example, in Planning and Conservation League v. Department of Water Resources ("PCL") (2000) 83 Cal.App.4th 892, the court stated: "The original long-term contracts between DWR and the water contractors were predicated on the state's contractual obligation to build out the SWP so as to deliver 4.23 maf [million acre feet] of water to the contractors annually. Each of the contractors is allocated a percentage of the 4.23 maf in table A of the long-term contracts. The allocation is referred to as an entitlement. Therefore, cumulatively, the contractors are "entitled" to 4.23 maf of water annually. The SWP, however, has never been completed and the state cannot deliver 4.23 maf of water annually. The entitlements represent nothing more than hopes, expectations, water futures or, as the parties refer to them, "paper water." Actual, reliable water supply from the SWP is more in the vicinity of 2 to 2.5 maf of water annually. Consequently, there is a huge gap between what is promised and what can be delivered." Id., 83 Cal.App.4th at 908, fn. 5 (emphasis added). Contrary to this controlling authority, the DEIR never informs the public that the Project cannot reasonably be expected to deliver anything near "full contract quantities." Nor does it explore alternatives that reflect that indisputable reality. Instead, the DEIR predicates its entire examination of the Project – and restricts its correspondingly narrow	The bulk of this comment is not a comment on the content or analyses contained in the DEIR but provides background information for the commenter's overall request to expand the project objectives. The EIR has been prepared in accordance with CEQA and does not artificially narrow project objectives. Please refer to Response 25-10 for information about water contracts. Please see Chapter 2, "Project Description," Section 2.1.4, "Description of Existing SWP Water Service Contracts," and Section 2.1.6, "SWP Allocation and Forecasting," for more information on the process for Table A water deliveries and undelivered water supply. Please also see Chapter 2, Section 2.1.1, "Project Objectives," for a description of DWR's continuing commitment to operate the State Water Project in compliance with all applicable laws, contractual obligations, and agreements.

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		range of alternatives – based on the false premise that the State Water Project can and should be managed to deliver "up to full contract quantities." The DEIR states: "The underlying purpose of the proposed project is to obtain incidental take authorization from the California Department of Fish and Wildlife (CDFW) pursuant to CESA [the California Endangered Species Act] for five fish species to allow DWR to continue long-term operation of the SWP consistent with applicable laws, contractual obligations, and agreements. Consistent with this underlying purpose, DWR's project objectives are to store, divert, and convey water in accordance with DWR's existing water rights to deliver water pursuant to water contracts and agreements up to full contract quantities and to optimize water supply and improve operational flexibility while protecting fish and wildlife [sic] based on the best available scientific information." DEIR, p. 2-1 (emphasis added). Because the DEIR included delivery of "up to full contract quantities" within its definition of the Project's objectives despite the fact that there is a "huge gap" between those quantities and what can be delivered, it adopted an artificially narrow definition of those objectives. PCL, 83 Cal.App.4th at 908, fn. 5. Because it gave this "'[P]roject's purpose an artificially narrow definition,'" the DEIR violated CEQA. NCRA, 243 Cal.App.4th at 668. This error, in turn, led the DEIR to fail to provide the public with the required range of reasonable alternatives, as discussed next. Because this error is fundamental, the DEIR must be withdrawn, corrected and recirculated. Save Our Capitol!, 87 Cal.App.5th at 703-705.	
25	12	III. THE DEIR OMITS THE REQUIRED RANGE OF REASONABLE ALTERNATIVES THAT WOULD REDUCE IMPACTS. Under CEQA, an EIR must focus on alternatives that would lessen significant effects, even if they "would impede to some degree the attainment of the project objectives, or be more costly." Guidelines § 15126.6(b). CEQA requires an EIR to "include sufficient information about each alternative to allow meaningful evaluation, analysis, and comparison with the proposed project." Guidelines § 15126.6(d). This essential CEQA procedure also serves CEQA's substantive mandate that agencies must prevent "significant, avoidable damage to the environment" through the use of feasible alternatives or mitigation measures. (Guidelines § 15002(a)(3); PRC §§ 21002, 21002.1, 21081.)	Although the DEIR did not identify significant impacts to any resources evaluated in Appendix 3A, "Initial Study," or the DEIR, DWR considered a wide range of alternatives that included several alternatives with reduced exports in Chapter 11, Table 11-1. DWR did not conduct detailed analyses on alternatives that did not meet most of the project objectives or could not be feasibly implemented for health and safety reasons. The EIR has been prepared in accordance with CEQA and adequately examines a reasonable range of alternatives to achieve the project's objectives. Please see Chapter 11, Section 11.2, "Range of Alternatives Considered," and

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		Project approval must be set aside where such measures or alternatives exist, but are, as here, ignored. (PRC §§ 21002, 21002.1, 21081; Guidelines § 15021(a)(2).) These CEQA directives are vigorously enforced because the "'The core of an EIR is the mitigation and alternatives sections. The Legislature has declared it the policy of the State to 'consider alternatives to proposed actions affecting the environment.' [Citations.] . . . [¶] In determining the nature and scope of alternatives to be examined in an EIR, the Legislature has decreed that local agencies shall be guided by the doctrine of 'feasibility.' '[I]t is the policy of the state that public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental effects of such projects. . . .'" Habitat and Watershed Caretakers v. City of Santa Cruz ("HAWC") (2013) 213 Cal.App.4th 1277, 1302 (quoting Citizens of Goleta Valley v. Board of Supervisors (1990) 52 Cal.3d 553, 564-565 (emphasis in original)). Applying this long-standing principle of CEQA jurisprudence, the HAWC Court set aside a city's extension of water service to enable a massive expansion of the U.C. Santa Cruz campus despite the impact on the city's scarce water supplies. The court overturned this project approval because the city had failed to analyze an alternative that would reduce the project's water consumption, stating: "A potentially feasible alternative that might avoid a significant impact must be discussed and analyzed in an EIR so as to provide information to the decisionmakers about the alternative's potential for reducing environmental impacts. Without analysis, the theory posited by the City and the Regents is purely speculative and is not supported by any facts discussed in the draft EIR or the final EIR. Since, as Habitat points out, the draft EIR and the final EIR neither discussed nor analyzed a limited-water alternative, the decision makers were not provided with any information about the effect that such an alternative might have on water supply impacts or other impacts. CEQA does not permit a lead agency to omit any discussion, analysis, or even mention of any alternatives that feasibly might reduce the environmental impact of a project on the unanalyzed theory that such an alternative might not prove to be environmentally superior to the project. The purpose of an EIR is to provide the facts and analysis that would support such a conclusion so that the decision maker can evaluate whether it is correct.	Common Response 3, "The CEQA Process," for a discussion on the range of alternatives considered and the development of alternatives. Refer to Common Response 4, "CEQA and CESA Legal Standards." Please see Chapter 2, Section 2.1.1, "Project Objectives," for a description of DWR's continuing commitment to operate the State Water Project in compliance with all applicable laws, contractual obligations, and agreements.

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		By failing to mention, discuss, or analyze any feasible alternatives, the draft EIR and the final EIR failed to satisfy the informational purpose of CEQA, which included providing LAFCO with relevant information. HAWC, 213 Cal.App.4th at 1304-1305 (emphasis added)..	
25	13	So too here, the DEIR fails to present a range of reasonable alternatives that includes an alternative that analyzes reduction in the Project's reliance on the continued excessive exports that have caused the Delta's ecological collapse. Instead, it presents three minor variations of the same Project. Alternative 1 "modifies the Spring Delta Outflow component of the Proposed Project by limiting flows deployed from the Voluntary Agreement program (implemented through tributary inflow from the fallowing program) to the month of May rather than March, April or May under the Proposed Project). All other components of the Proposed Project are included in Alternative 1." DEIR §11.4, pp. 11-8 to 11-9 (emphasis added). Alternative 2 "modifies the Spring Delta Outflow component of the Proposed Project by limiting the portion of the Voluntary Agreement program that allows flow purchases acquired through SWP diversion fees (implemented through tributary inflow from the fallowing program) to May (rather than March, April, or May under the Proposed Project). [¶] Additionally, DWR will seek a new Section 10 Rivers and Harbors Act permit from the U.S. Army Corps of Engineers to expand to December 1 through March 31 [rather than December 15 to March 15] the period when diversions into CCF [Clifton Court Forebay] may be increased by one-third of the San Joaquin River flow at Vernalis to December 1 through March 31 [sic] when those flows exceed 1,000 cfs [cubic feet per second]. . . . All other components of the Proposed Project are included in Alternative 1." DEIR §11.5, p. 11-44 (emphasis added). Alternative 3 "is a variation of the Proposed Project that modifies seasonal operations . . . and keeps the period during which increased diversions from the CCF can occur the same as Baseline Conditions. This keeps operations to a U.S. Army Corps of Engineers notice that allows for CCF diversions to increase above 6,680 cfs from mid-December to mid-March (assumed December 15 to March 15). During this window the CCF diversions can increase by one-third of the San Joaquin River flow at Vernalis. All other components of the Proposed Project are included in Alternative 3. . . ." DEIR § 11.6, p. 11-58 (emphasis added).	Please see Response to Comment 25-12 regarding alternatives. Please also see Section 2.3.5, "Spring Delta Outflow," for discussion regarding increased outflow up to 167.5 thousand acre feet for the benefit of native fish populations, including listed species.

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		None of the alternatives proposes a reduction in the level of diversions by the State Water Project, let alone the substantial reduction that would be necessary to begin to repair the severe harm to the Delta ecosystem caused by the State Water Project's excessive level of diversions over the past five decades. As the State Water Board reported in its seminal analysis – mandated by Water Code section 85086, subdivision (c)(1) – confirming the need to restore natural flows in the Delta to prevent the extirpation of its fish and wildlife: "[r]ecent Delta flows are insufficient to support native Delta fishes for today's habitats." State Water Board, "Development of Flow Criteria for the Sacramento-San Joaquin Delta Ecosystem," August 3, 2010, p. 5 (emphasis added).	
25	14	In light of the State Water Board's authoritative finding that the State Water Project's existing levels of diversion deprive the Delta of flows required "to support native Delta fishes," it is imperative that DWR consider an alternative that would restore flows that would rectify this deficiency. Instead, the DEIR continues business as usual. DWR has failed to heed CEQA's command that the DEIR must "describe a range of reasonable alternatives to the project . . . which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives." Guidelines § 15126.6(a) (emphasis added). The reasonableness of this request for consideration of an alternative that reduces diversions is shown by the Legislature's specific command that agencies including DWR do exactly that. In adopting the Delta Reform Act in 2009, the Legislature declared that the Delta was "in crisis" and commanded all state agencies that manage the Delta to "reduce reliance on the Delta in meeting California's future water supply needs." Water Code § 85021. This statutory command means that water management agencies that divert from the Delta must reduce the unsustainable level of diversions that has caused severe harm to the Delta's ecosystem. The endangered species whose survival is hanging in the balance – including no fewer than five Delta fish species – demand no less. "Meaningful analysis of alternatives in an EIR requires an analysis of meaningful alternatives." Save Our Capitol!, 87 Cal.App.5th at 703-705. "CEQA . . . requires the public agency to consider feasible alternatives to the project that would lessen any significant adverse	Please see Responses to Comments 25-12 and 25-13 regarding alternatives. Please also see Common Response 5, "Delta Reform Act," regarding discussion of the Delta Reform Act and the requirements of the Delta Plan.

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		environmental impact. ([PRC] §§ 21002, 21081 . . . .)." Mountain Lion Foundation v. Fish and Game Commission (1997) 16 Cal.4th 105, 123 (emphasis added). But contrary to these statutory commands and settled caselaw requiring DWR to "discuss and analyze" the alternative of reducing the level of diversions, DWR has done the opposite. HAWC, 213 Cal.App.4th at 1304-1305. As shown, none of the three alternatives are sufficiently different from the Project to provide a reasonable range of alternatives under CEQA. Most importantly, none considers reducing water deliveries to avoid or mitigate the adverse environmental impacts of the Project, as CEQA intends. PRC § 21002; Guidelines §§ 15002(a)(3), 15126.6.	
25	15	DWR's decision to exclude from its analysis any alternative that substantially reduced exports contravenes the Legislature's express mandate that agencies reduce reliance upon the Delta. Water Code § 85021. None of the DEIR's alternatives would achieve any of the habitat restoration goals of the Delta Reform Act, including "[r]estore large areas of interconnected habitats within the Delta" (Water Code §85302(e)(1)), "[e]stablish migratory corridors for fish, birds, and other animals along selected Delta river channels" (id.,(e)(2)), "[p]romote self-sustaining, diverse populations of native and valued species by reducing the risk of take and harm from invasive species" (id., (e)(3)), "[r]estore Delta flows and channels to support a healthy estuary and other ecosystems" (id., (e)(4)), "[i]mprove water quality to meet . . . ecosystem long-term goals" (id., (e)(5)), and "[r]estore habitat necessary to avoid a net loss of migratory bird habitat and, where feasible, increase migratory bird habitat to promote viable populations of migratory birds" (id., (e)(6)). Because the DEIR failed to analyze any alternatives that would effectively reduce diversions from the Delta (Water Code § 85021) and thereby achieve these habitat restoration goals of the Delta Reform Act (Water Code § 85302(e)), it failed to analyze a reasonable range of alternatives as CEQA requires. Cleveland National Forest Foundation v. San Diego Assn. of Governments (2017) 17 Cal.App.5th 413, 436 (agency's failure to study alternative that reduces vehicle miles traveled in transportation plan constituted prejudicial abuse of discretion in light of policy goals); HAWC, 213 Cal.App.4th at 1305 (agency's failure to analyze any alternative that would reduce a project's water supply impacts violated CEQA).	Please see Response to Comments 25-12 and 25-13 regarding alternatives considered in the EIR and CEQA requirements for alternatives, DWR's Delta Outflow flow-related commitments, and the Delta Reform Act. Please see Section 2.3.8, "Habitat Restoration," regarding the status of DWR's restoration commitments.

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		Because this error is fundamental, the DEIR must be withdrawn, corrected and recirculated. Save Our Capitol!, 87 Cal.App.5th at 703-705.	
25	16	IV. THE DEIR SEGMENTS ITS ENVIRONMENTAL ANALYSIS It is likewise hornbook law that CEQA's commands may not be evaded by segmenting analysis of the project under review and ignoring its cumulative effects. For fifty years courts have agreed that "It is abundantly clear from [CEQA] (e.g., §§ 21083, subd. (b), 21090, 21100, subd. (g)) and the guidelines (e.g., §§ 15069, 15070, 15143, subd. (g)) that careful consideration must be given to the cumulative effect of projects proposed to be undertaken. The courts are enjoined to construe the statute liberally in light of its beneficent purposes. (Friends of Mammoth v. Board of Supervisors [1972] 8 Cal.3d 247, 259.) The highest priority must be given to environmental considerations in interpreting the statute (County of Inyo v. Yorty [1973] 32 Cal.App.3d 795, 804). Its requirements cannot be avoided by chopping up proposed projects into bite-size pieces which, individually considered, might be found to have no significant effect on the environment or to be only ministerial. Plan for Arcadia, Inc. v. City Council (1974) 42 Cal.App.3d 712, 726 (emphasis added). Contrary to this core CEQA duty, the DEIR includes only the following waters and facilities within the declared "geographic scope of the analysis:" • Sacramento River from its confluence with the Feather River to the Delta • SWP facilities in the Delta • Waters of the Delta • SWP facilities in Suisun Marsh and Suisun Bay Suisun Marsh and Suisun Bay"	This EIR evaluates the project as a whole and does not segment or piecemeal its environmental analysis as the comment claims. For a response to this comment, including a discussion on the assertation of segmenting or piecemealing please see Common Response 6, "Other State Efforts," focusing in on other state efforts and explaining the independent utility of the Proposed Project. Please see Chapter 2, Section 2.1.1, "Project Objectives," for a description of DWR's continuing commitment to operate the State Water Project in compliance with all applicable laws, contractual obligations, and agreements. Please see Chapter 10, "Other CEQA Discussions," for a comprehensive discussion of the cumulative impacts of the Long-Term Operations of the State Water Project. See also Response to Comment 25-17 regarding the geographic scope of analysis in the EIR.
25	17	What the DEIR fails to inform its readers is that by siloing the Project's "geographic scope of analysis" into such an artificially constrained area, the DEIR necessarily excludes from consideration vast portions of the affected watershed, including, among other areas excluded: (1) management of the Trinity River system – despite the fact that much of the water that enters the Delta each spring and summer via the Sacramento River originates in (and whose diversion severely dewaters) that highly degraded river and its imperiled salmonids;	Please refer to Common Response 1, "Scope of Analysis," regarding how DWR determined the geographic scope of the analysis in the DEIR, which considered: (1) the geographic scope of SWP operations' influence (i.e., the "zone of influence"), particularly with respect to the operations affected by the Proposed Project; and (2) whether, in light of SWP and CVP coordinated operations, the Proposed Project would cause a reasonably foreseeable response by the U.S. Bureau of

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			Reclamation that could result in changes in CVP operations outside the SWP zone of influence. DWR concluded that the analysis of flow-related impacts was appropriately focused on the SWP zone of influence (the Sacramento River below the confluence of the Feather River, the legal Delta, and the Suisun Marsh and Bay) and does not include areas that are affected only by CVP actions.
25	18	What the DEIR fails to inform its readers is that by siloing the Project's "geographic scope of analysis" into such an artificially constrained area, the DEIR necessarily excludes from consideration vast portions of the affected watershed, including, among other areas excluded: (2) management of the Sacramento River system upstream of its confluence with the Feather River, despite the fact that this system includes the highly productive tributaries that supply the State's largest reservoir, Shasta Dam – the Upper Sacramento, McCloud and Pit Rivers – and other vitally important tributaries that supply critical habitat for winter and spring run salmon or are proposed to be dammed by massive reservoirs such as Sites Reservoir whose development would foreseeably alter how the SWP is operated;	Please refer to Response to Comment 25-17 regarding the geographic scope of analysis in the EIR.
25	19	What the DEIR fails to inform its readers is that by siloing the Project's "geographic scope of analysis" into such an artificially constrained area, the DEIR necessarily excludes from consideration vast portions of the affected watershed, including, among other areas excluded: (3) management of the Feather River upstream of its confluence with the Sacramento River, including the "Feather River Facilities" – i.e., "Oroville Reservoir and related facilities" – that the DEIR admits are "the principal facilities of the SWP," despite the fact that their operation determines how much water the entire SWP receives and when (DEIR §2.1, p. 2-1);	Please refer to Response to Comment 25-17 regarding the geographic scope of analysis in the EIR.
25	20	What the DEIR fails to inform its readers is that by siloing the Project's "geographic scope of analysis" into such an artificially constrained area, the DEIR necessarily excludes from consideration vast portions of the affected watershed, including, among other areas excluded: (4) management of the Delta's central and southern tributaries draining the Sierra Nevada mountains including the Yuba River, American River, Cosumnes River, Mokelumne River, San Joaquin River (and its tributaries including the Stanislaus, Tuolumne, Merced and Upper San Joaquin	Please refer to Response to Comment 25-17 regarding the geographic scope of analysis in the EIR.

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		River) upstream of their confluence with the Delta, despite the fact that their management is the subject of a recently approved water planning and CEQA process whose implications for management of the SWP are likewise profound.	
25	21	But as the courts in the County of Amador and Friends of the Eel River have made clear, an EIR for a water management project must include the entire watershed upstream of the project to assure that both upstream and downstream management options and their respective and cumulative effects are considered together. County of Amador, 76 Cal.App.4th at 955-956; Friends of the Eel River, 108 Cal.App.4th at 874. And as Vineyard similarly holds, the EIR on a project that removes water needed by imperiled salmon must fully address that impact. Vineyard, 40 Cal.4th at 447-449. Moreover, inclusion of the entire affected watershed as CEQA requires, in turn, means that ongoing and foreseeable future water management projects within the entire watershed must likewise be addressed in the EIR's comprehensive and integrated analysis. But instead, the DEIR turns a blind eye to the vast majority of the Delta's watershed that is located outside the narrow boundaries of DWR's artificial silo. This is not a trivial mistake, and must be rectified. Because this error is fundamental, the DEIR must be withdrawn, corrected and recirculated. Save Our Capitol!, 87 Cal.App.5th at 703-705.	The EIR has been prepared in accordance with CEQA and adequately discloses the scope, severity, and magnitude of potential impacts for the environmental resources analyzed in this EIR. Appendix 2D, "Geographic Scope of Project's Influence on Flow," explains how the Department of Water Resources (DWR) identified the geographic scope of flow changes associated with the project described in the Environmental Impact Report for the Proposed Project. In making this determination, DWR considered: (1) the geographic scope of SWP operations' influence (i.e., the "zone of influence") particularly with respect to the operations described in the Proposed Project; and (2) whether, in light of SWP and CVP coordinated operations, the Proposed Project would cause a reasonably foreseeable response by United States Bureau of Reclamation that could result in changes in CVP operations outside the SWP zone of influence. Please see Appendix 2D for a comprehensive discussion. Please also see Common Response 1, "Scope of Analysis," for additional discussion of the geographic scope of the project. Appendix 2D, Attachment 1 is a technical memorandum describing results from the Upstream Screening-Level Analysis for Fish and Aquatic Resources. The memo provides analysis of CalSim 3 results in the Feather River upstream of the Delta for potential effects on fish and aquatic resources to support the scope of analysis used for Chapter 6, "Aquatic Biological Resources," in the Environmental Impact Report for Long-Term Operations of the State Water Project. See Chapter 10, "Other CEQA Discussions," for a detailed analysis of the cumulative effects of the Proposed Project. Additionally, please see Chapter 2, Section 2.1.1, "Project Objectives," for a description of DWR's

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			continuing commitment to operate the State Water Project in compliance with all state and federal water quality and environmental laws.
25	22	[Uncodable Table of Contents]	This information describes the structure or organization of the comment letter, the background of the organization or individual commenter, clarification on the submittal of the comment letter, or general introductory text. It is not a comment on the contents of the DEIR. No response is required. DWR has reviewed all comments and will consider all comments in its decision-making process.
25	23	DWR also improperly concludes that "[t]he Proposed Project would have negligible, if any, effects on most cumulatively significant Delta water quality impacts because the Proposed Project has no direct effects on their watershed origins and loads to the Delta." DEIR § 10.1.5, p. 10-24. But as explained, DWR has failed to consider the demonstrably adverse impacts of the State Water Project on Delta flows and the fish and wildlife dependent on them. Even if the State Water Project were considered a separate project – which it plainly is not – DWR would nonetheless have to address its past, current, and foreseeable future effects on the environment as part of the required examination of cumulative effects.	The EIR has been prepared in accordance with CEQA and adequately discloses the scope, severity, and magnitude of potential impacts for the environmental resources analyzed in this EIR. Regarding the baseline used in this EIR, see Common Response 2, "CEQA Environmental Baseline." Please see Chapter 10, "Other CEQA Discussions," for a comprehensive discussion of the cumulative impacts of the Long-Term Operations of the State Water Project. Please also see Chapter 2, Section 2.1.1, "Project Objectives," for a description of DWR's continuing commitment to operate the State Water Project in compliance with all applicable laws, contractual obligations, and agreements.
25	24	CEQA requires examination of a project's cumulative effects on the environment. Guidelines §§ 15355(b), 15126.2(a). "Environmental impacts of probable future projects must be analyzed because 'consideration of the effects of a project or projects as if no others existed would encourage the piecemeal approval of several projects that, taken together, could overwhelm the natural environment and disastrously overburden the man-made infrastructure and vital community services. This would effectively defeat CEQA's mandate to review the actual effect of the projects upon the environment." Golden Door Properties, LLC v. County of San Diego (2020) 50 Cal.App.5th 467, 527 (quoting Las Virgenes Homeowners Fed'n v. County of Los Angeles (1986) 177 Cal.App.3d 300, 306). As discussed above, DWR has improperly piecemealed and segmented its consideration of the Project, when it should have considered the Project in conjunction with the	The EIR has been prepared in accordance with CEQA and adequately discloses the scope, severity, and magnitude of potential impacts for the environmental resources analyzed in this EIR. See Response 25-16 regarding cumulative impacts and piecemealing. Please also see Common Response 1, "Scope of Analysis," for information on the treatment of coordinated SWP/CVP operations.

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		impacts of the State Water Project which it continues and facilitates. Had DWR also examined the impacts of the State Water Project and the Central Valley Project (which is operated in conjunction with the State Water Project) as CEQA requires, it would have had to disclose that in conjunction with the Proposed Project, they collectively pose many significant impacts on the environment including in particular the Delta's imperiled fisheries.	
25	25	Most fundamentally, the DEIR ignores the fact that the State Water Project's past and current operation – which the Project proposes to continue with little change – has for decades caused and is causing massive degradation of the Delta's water quality through reduced flows, increased temperatures, diminished dissolved oxygen, elevated turbidity, reduced riverine and wetland habitat, and increased pollutants including toxics such as selenium. This fact is well documented by many authoritative studies including the State Water Board's definitive analysis, "Development of Flow Criteria for the Sacramento-San Joaquin Delta Ecosystem," published in 2010 as noted above, the Biological Opinions prepared by the National Marine Fisheries Service and the U.S. Fish and Wildlife Service in 2009, and the decisions of these agencies in the 1990s and 2000s to list the Delta's previously abundant salmonid and pelagic fisheries as threatened or endangered under the federal Endangered Species Act. The Delta's ecological collapse is a well-recognized and indisputable ongoing crisis. An unsustainable portion of the Delta's freshwater flows has been diverted for decades by the State Water Project and the federal Central Valley Project. Agricultural diverters have discharged subsurface drainage and surface run-off contaminated with salt, selenium, and other toxic substances into groundwater and the rivers that are tributary to the Delta. This one-two punch of diminished freshwater flows and increased temperature, salinity, herbicides, pesticides, and heavy metals has pushed the Delta ecosystem into a downward spiral of shrinking and degrading habitat and declining and disappearing fish and wildlife populations. Many species of fish endemic to the Delta have been extirpated, including the Sacramento perch, formerly one of the most abundant fishes of the Delta, which disappeared in the 1970s. Those indigenous species that remain are in grave danger. Since the SWP and CVP began operation, the Sacramento River winter and spring run Chinook salmon, Central Valley steelhead, North American green sturgeon and Delta	The EIR has been prepared in accordance with CEQA and adequately discloses the scope, severity, and magnitude of potential impacts for the environmental resources analyzed in this EIR. Please see Common Response 7, "Relationship to Healthy Rivers and Landscapes Program." For information on the baseline in this EIR, see Common Response 2, "CEQA Environmental Baseline."

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		smelt have been driven perilously close to extirpation, as documented in the Federal Register notices explaining why each of these species have been placed on the federal Endangered Species Act lists. Winter run Chinook salmon were declared threatened under the federal Endangered Species Act ("ESA"), 16 U.S.C. section 1531, et seq., in 1990 (55 Fed.Reg. 46515), and then due to continuing population declines, declared endangered in 2005 (70 Fed.Reg. 37160). Their critical habitat in the Sacramento River and its tributaries was designated in 1993. 58 Fed.Reg. 33212. Spring run Chinook salmon were declared threatened, and their critical habitat designated under the ESA, in 2005. 70 Fed.Reg. 37160, 52488. Central Valley steelhead were declared threatened in 1998 and their critical habitat was designated in 2005 (70 Fed.Reg. 52488). The Southern distinct population segment ("DPS") of North American green sturgeon was declared threatened in 2006 (71 Fed.Reg. 17757) and its critical habitat was designated in 2009 (74 Fed.Reg 52299). Delta smelt were declared endangered in 1993 (58 Fed.Reg. 12854) and their critical habitat was designated in 1994 (59 Fed.Reg. 65256).	
25	26	In addition to harming many fish species in the Delta, the excessive use of Delta water exports to irrigate contaminated soils in the Central Valley pollutes ground and surface waters that flow into the Delta. Irrigation leaches pollutants from the toxic soils underlying many of the areas irrigated with Delta water in the San Joaquin Valley. The subsurface drainage and surface run off from these contaminated soils contain pollutants including selenium, arsenic, boron, mercury, uranium, chromium, molybdenum, pesticides, nitrates, sodium chlorides and sulfates. The resulting pollution of the Delta and its tributaries, particularly the San Joaquin River, threatens the Delta's water quality and the fish and wildlife dependent on them.	This project would have no effect on which lands farmers irrigate using Delta water supplies or irrigation practices. Moreover, the Central Valley Regional Water Quality Control Board regulates the effects of agricultural practices on groundwater and surface water quality. Please see Common Response 1, "Scope of Analysis," for further information on the project's geographic scope.
25	27	This Project's threatened environmental harm to the Delta resulting from its continuation and facilitation of the State Water Project would exacerbate a long-standing and critical shortage of water desperately needed to restore imperiled fish and wildlife in the Delta. Yet the DEIR erroneously concludes that this Project has no significant impacts on water hydrology, water quality, aquatic biological resources, Tribal Cultural Resources, aesthetics, and recreation, among dozens of other categories of potential impacts the DEIR claims will not occur. DEIR, pp. ES10-12.	This comment summarizes the commenter's comments in this letter. Specific responses to the specific comments on the DEIR are provided herein. No additional response is required. DWR has reviewed all comments and will consider all comments in its decision-making process. The EIR has been prepared in accordance with CEQA and adequately discloses the scope, severity, and

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		Because this error is fundamental, the DEIR must be withdrawn, corrected and recirculated. Save Our Capitol!, 87 Cal.App.5th at 703-705.	magnitude of potential impacts for the environmental resources analyzed in this EIR.
25	28	VI. THE DEIR OMITS ANALYSIS OF THE PROJECT'S INTERRELATIONSHIPS WITH CLOSELY RELATED PROJECTS A. The DEIR's Analysis Is Improperly Segmented CEQA requires agencies to prepare EIRs regarding the impacts of "projects" that may have significant environmental impacts. Guidelines § 15064(a)(1). CEQA defines "project" to mean "the whole of an action." Guidelines § 15378(a). The term 'project' refers to the activity which is being approved and which may be subject to several discretionary approvals by governmental agencies. The term 'project' does not mean each separate governmental approval." Guidelines § 15378(c). Accordingly, agencies "must consider the whole of an action, not simply its constituent parts, when determining whether [the action] will have a significant environmental effect (Citizens Assoc. for Sensible Development of Bishop Area v. County of Inyo (1985) 172 Cal.App.3d 151)." Guidelines § 15003(h), see also Guidelines § 15378(a), (c). CEQA's "requirements cannot be avoided by chopping up proposed projects into bite-size pieces which, individually considered, might be found to have no significant effect on the environment or to be only ministerial." Plan for Arcadia, Inc. v. City Council of Arcadia, supra, 42 Cal.App.3d at 726; Association for a Cleaner Environment v. Yosemite Com. College Dist. (2004) 116 Cal.App.4th 629, 638. "It is "improper" for an agency to divide a project into separate parts to avoid CEQA review." California Farm Bureau Federation v. California Wildlife Conservation Board (2006) 143 Cal.App.4th 173, 191. Thus, CEQA intends to ensure "that environmental considerations do not become submerged by chopping a large project into many little ones – each with a minimal potential impact on the environment – which cumulatively may have disastrous consequences. Bozung v. Local Agency Formation Com. (1975) 13 Cal.3d 263, 283-284. Yet DWR did just that here. Instead of studying all of its interdependent actions together, DWR has improperly segmented its analysis. It isolated this Project--its application to "obtain incidental take authorization from [CDFW] pursuant to CESA for five fish species to allow DWR to continue the long-term operation of the SWP. . ." from all its closely related projects affecting the same watershed, including most notably, the State Water Project. DEIR § 2.1.1, p. 2-1. It did so despite this Project™s	This EIR evaluates the project as a whole and does not segment or piecemeal its environmental analysis as the comment claims. For a response to the comment asserting segmenting or piecemealing please see Common Response 6, "Other State Efforts," focusing in on other efforts and explaining the independent utility of the Proposed Project. Please see Chapter 2, Section 2.1.1, "Project Objectives," for a description of DWR's continuing commitment to operate the State Water Project in compliance with all applicable laws, contractual obligations, and agreements. Refer to Chapter 10, "Other CEQA Discussions," for a detailed analysis of the Proposed Project's cumulative effects on Surface Water Hydrology, Surface Water Quality, Aquatic Biological Resources, Tribal Cultural resources, Environmental Justice, and Climate Change Resiliency and Adaptation.

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		obvious inextricable connection to the State Water Project that it continues and facilitates. DWR™s separation of interrelated components of the same overall project into different CEQA reviews is the epitome of improper segmentation. DWR's segmentation violates CEQA's demand for unified and comprehensive environmental review: "Theoretical independence is not a good reason for segmenting the environmental analysis of the two matters. Doing so runs the risk that some environmental impacts produced by the way the two matters combine or interact might not be analyzed in the separate environmental reviews. Furthermore, if the two matters are analyzed in sequence . . . And the combined or interactive environmental effects are not fully recognized until the review of the second matter, the opportunity to implement effective mitigation measures as part of the first matter may be lost. This could result in mitigation measures being adopted in the second matter that are less effective than what would have been adopted if the matters had been analyzed as a single project." Tuolumne County Citizens for Responsible Growth, Inc. v. City of Sonora (2007) 155 Cal.App.4th 1214, 1230. DWR's segmented review subverts CEQA's informational purposes. By separating--"segmenting"-- its approval of the Proposed Project from its operation of the State Water Project, DWR has precluded a full consideration of the impacts of its actions and potential mitigations that would otherwise be available through, for example, reexamination of its existing contracts with water districts that receive water from the State Water Project, including reduction in the unrealistic and excessive Table A delivery volumes. In summary, CEQA requires that DWR analyze the impacts of this Project together with those of the State Water Project of which it is an integral part in a coordinated and integrated manner. Guidelines § 15378(a) ("'Project' means the whole of an action . . . ."), © ("The term 'project' does not mean each separate governmental approval"). DWR ignored CEQA's command that EIRs must address the "incremental impact of the project when added to other closely related past, present and reasonably foreseeable probable future projects." Guidelines § 15355(b). Because this error is fundamental, the DEIR must be withdrawn, corrected and recirculated. Save Our Capitol!, 87 Cal.App.5th at 703-705.	
25	29	VII. THE DEIR FAILS TO ASSESS AN APPROPRIATE RANGE OF MITIGATION MEASURES	The EIR has been prepared in accordance with CEQA and adequately discloses the scope, severity, and

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		CEQA directs that each "EIR shall describe feasible measures which could minimize significant adverse impacts . . . ." Guidelines § 15126.4(a)(1). "Mitigation measures must be fully enforceable through permit conditions, agreements, or other legally-binding instruments." Guidelines § 15126.4(a)(2). However, the DEIR effectively sidesteps this required CEQA procedure because it claims that the Project has no significant environmental impacts. DEIR pp. ES-10 to ES-12. To reach this conclusion, the DEIR sharply narrows its scope of review by "eliminat[ing] from detailed consideration in this DEIR" the Project's impacts on 18 categories of environmental harm including aesthetics, cultural resources, and recreation. DEIR § 3.2. Its analysis of the six remaining categories – including impacts on surface water hydrology and quality, aquatic biological resources, Tribal Cultural Resources, and climate change resiliency and adaptation – is likewise artificially circumscribed because in examining each of these categories, the DEIR fails to address the impacts of closely related projects including the State Water Project, as discussed below. Because this Project continues and enables the State Water Project, it should have addressed the effects of the State Water Project, and analyzed mitigation of those effects. Because the DEIR failed to provide this discussion and analysis, it violates CEQA's requirement that EIRs "shall describe feasible measures which could minimize significant adverse impacts . . . ." Guidelines § 15126.4(a)(1). Because this error is fundamental, the DEIR must be withdrawn, corrected and recirculated. Save Our Capitol!, 87 Cal.App.5th at 703-705.	magnitude of potential impacts for the environmental resources analyzed in this EIR. The effects analysis of the Proposed Project for the Long-Term Operations of the State Water Project can be found in Chapters 4-9 of the EIR and Appendix 3A, "Initial Study." The analyses found no significant impacts as a result of the Proposed Project; therefore, mitigation measures are not required under CEQA. The EIR is, however, incorporating mitigation actions from the 2020 FEIR that were required as part of the 2020 ITP. A description of these actions can be found in Chapter 2, "Project Description," Section 2.3.21, "Additional Actions Retained from 2020 ITP." See also Common Response 2, "CEQA Environmental Baseline," for information on the project's baseline. Please also see Chapter 2, Section 2.1.1, "Project Objectives," for a description of DWR's continuing commitment to operate the State Water Project in compliance with all applicable laws, contractual obligations, and agreements.
25	30	VIII. THE DEIR OMITS ADEQUATE TRIBAL CULTURAL RESOURCE CONSULTATION INCLUDING WITH THE WINNEMEM WINTU TRIBE The Legislature amended CEQA in 2014 to require agencies to give specific consideration to tribal cultural resources that may be affected by a proposed project. PRC §§ 21074, 21084.2. Tribal cultural resources are defined to include both "[s]ites, features, places, cultural landscapes, sacred places, and objects with cultural value to a California Native American tribe" that are either included or determined to be eligible for inclusion in the California Register of Historical Resources or included in a local register of historical resources, and "[a] resource determined by the lead agency . . . to be significant pursuant to criteria set forth in [PRC] section 5024.1" after considering "the significance of the resource to a California Native American Tribe." PRC § 21074, subd. (a). Under	The commenter quotes the CEQA Guidelines relating to Tribal cultural resources and Tribal consultation. Please refer to Chapter 7, "Tribal Cultural Resources," and Common Response 14, "Tribal Consultation," regarding the consultation process with Tribes and impacts to Tribal cultural resources. The Winnemem Wintu Tribe was invited to consult on the Proposed Project via letter on June 2, 2023, as they had requested formal notification of proposed projects from DWR under CEQA and were in the Proposed Project Tribal area of interest. The Winnemem Wintu Tribe did not request consultation for the Proposed Project.

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		this legislation, DWR "shall, when feasible, avoid damaging effects to any tribal cultural resource." PRC § 21084.3, subd. (a). Where, as here, a proposed project "may cause a substantial adverse change to a tribal cultural resource, and measures are not otherwise identified in the consultation process provided in [PRC] Section 21080.3.2," DWR must consider a variety of mitigation measures that avoid or minimize the project's potential adverse changes to the resource. PRC § 21084.3, subd. (b). The Winnemem Wintu Tribe is a "California Native American Tribe" whose tribal cultural resources are directly impacted by the Project. Foremost among those resources are the chinook salmon that historically migrated through the Delta, the Sacramento River, and ultimately the McCloud River in the heart of the Winnemem Wintu's historic and traditional territory. The chinook salmon of the Sacramento and McCloud Rivers form a cornerstone of the Winnemem Wintu Tribe's culture and sacred relationship with the natural world. The Project relies upon and facilitates continued operation of the State Water Project. As noted above, that operation has contributed, along with the Central Valley Project (which dammed the Sacramento River, preventing salmonid migration to the McCloud River) and other water diversion projects, massive degradation of salmonid habitat and a resulting sharp decline in the population of chinook salmon, including in the Sacramento and McCloud Rivers. Yet the DEIR asserts that "DWR has not identified any individual Tribal cultural resources during Tribal consultation to date." DEIR § 7.1.1, p. 7-2. This conclusion is directly refuted by the fact that the Project depends upon and implements the State Water Project's continued excessive water diversions that have caused and will foreseeably continue to cause significant harm to salmon habitat and populations in the Delta and the Sacramento River. Restoration of the historic chinook salmon migration to the McCloud River within the heart of the Winnemem Wintu's traditional territory requires restoration of healthy, viable populations of chinook salmon in the Delta and the Sacramento River. Yet the DEIR fails to even recognize this fact, let alone consider mitigation measures that would avoid or minimize the Project's adverse impacts to this imperiled fishery, contrary to DWR's duty to do so under CEQA. PRC § 21084.3, subd. (b). Because this error is fundamental, the DEIR must be withdrawn, corrected and recirculated. Save Our Capitol!, 87 Cal.App.5th at 703-705.	Restoration of the McCloud River is outside the scope of the EIR. Please see Common Response 1, "Scope of Analysis," regarding the project's geographic scope and location. Please see Common Response 2, "CEQA Environmental Baseline," regarding the existing conditions of the State Water Project (SWP) analyzed in the EIR. Please see Chapter 6, "Aquatic Biological Resources," regarding impacts to salmon and other fish species from the Proposed Project. Through consultation with the Tribes information presented in other resource chapters (Surface Water Quality, Surface Water Hydrology, etc.) was summarized and provided to the Tribes for consideration. Upon receiving a summary of the information, Tribes did not identify or express concerns for impacts to culturally important waterways or fish species.

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25	31	IX. THE DEIR IGNORES THE PROJECT'S CONFLICTS WITH THE DELTA REFORM ACT AND THE SACRAMENTO-SAN JOAQUIN RIVER DELTA PLAN PREPARED THEREUNDER, THE PUBLIC TRUST DOCTRINE, AND THE CALIFORNIA ENDANGERED SPECIES ACT The CEQA Guidelines direct that "[t]he EIR shall discuss any inconsistencies between the proposed project and applicable general plans, specific plans and regional plans." Guidelines §15125(d). Contrary to this mandate, the DEIR fails to acknowledge and address the Project's conflicts with the Delta Reform Act and the Delta Plan prepared thereunder, the Public Trust Doctrine, and the California Endangered Species Act. A. DWR's Threatened Approval of the Project Would Violate the Delta Reform Act 1. The Delta Reform Act Applies to the Project The Delta Reform Act was passed by the Legislature in recognition of the fact that the "[t]he Sacramento-San Joaquin Delta watershed and California's water infrastructure are in crisis" and that "[r]esolving the crisis requires fundamental reorganization of the state's management of Delta watershed resources." Water Code § 85001(a). The Legislature's goal was "to provide for the sustainable management of the Sacramento-San Joaquin Delta ecosystem, to provide for a more reliable water supply for the state, to protect and enhance the quality of water supply from the Delta, and to establish a governance structure that will direct efforts across state agencies to develop a legally enforceable Delta Plan." Id. § 85001(c). The Delta Reform Act declares that "[t]he Sacramento-San Joaquin Delta watershed and California's water infrastructure are in crisis and existing Delta policies are not sustainable. Resolving the crisis requires fundamental reorganization of the state's management of Delta watershed resources." Water Code § 85001(a). To address this crisis, the Delta Reform Act establishes "co-equal goals" of "providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem." Water Code §§ 85054, 85300. To achieve these goals, it requires agencies proposing projects that would impact the Delta's public trust resources and thereby conflict with these goals to submit a certification that the project is consistent with the Delta Stewardship Council's Delta Plan. Id. § 85225. Substantively, it establishes a statewide policy, fully applicable to DWR, to "[r]estore the	Please refer to Common Response 5, "Delta Reform Act," for more information on DWR's compliance with the Delta Reform Act, including the application of the Delta Reform Act to DWR and the SWP operations, Delta Plan requirements for covered actions subject to consistency review by the Delta Stewardship Council, and the Delta Reform Act policy goal of "reduced reliance" and the role of water conservation. Chapter 2, Section 2.1.1, "Project Objectives," states that DWR's project objectives are "to store, divert, and convey water in accordance with DWR's existing water rights to deliver water pursuant to water contracts and agreements up to full contract quantities and to optimize water supply and improve operational flexibility while protecting fish and wildlife based on the best available scientific information." Consistent with these objectives DWR's Proposed Project inherently includes the "project goal" of mitigation or avoidance of impacts and balancing competing societal goals by including updated operating criteria that maximize the ability to provide a safe and reliable water supply to millions of Californians while minimizing and avoiding impacts to fish and wildlife species, environmental justice communities, and Tribal Cultural Resources, while meeting Delta water quality objectives. Chapters 4 through 8 of the EIR provide detailed analyses of hydrology, water quality, aquatic resources, Tribal Cultural Resources, and environmental justice communities. Appendix 3A, "Initial Study," evaluates all other resources identified in Appendix G of the CEQA guidelines. Please see Common Response 10, "Public Trust," for discussion of DWR's consideration of the public trust. Please see Common Response 11, "Application of CESA Standards," for a discussion of how the California Endangered Species Act and Fish and Game Code requirements apply to the Proposed Project.

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		Delta ecosystem, including its fisheries and wildlife, as the heart of a healthy estuary and wetland ecosystem." Water Code § 85020(c). Particularly pertinent here is the Legislature's finding that "existing Delta policies are not sustainable." Water Code § 85001(a) (emphasis added). It found that "'the Delta' . . . is a critically important natural resource for California and the nation. It serves Californians concurrently as both the hub of the California water system and the most valuable estuary and wetland ecosystem on the west coast of North and South America." Water Code § 85002. The Act was meant to advance the "coequal goals" of restoring the Delta ecosystem and ensuring water supply reliability. Water Code § 85054. The Legislature found that eight "objectives" were inherent in those coequal goals: (a) Manage the Delta's water and environmental resources and the water resources of the state over the long term. (b) Protect and enhance the unique cultural, recreational, and agricultural values of the California Delta as an evolving place. (c) Restore the Delta ecosystem, including its fisheries and wildlife, as the heart of a healthy estuary and wetland ecosystem. (d) Promote statewide water conservation, water use efficiency, and sustainable water use. (e) Improve water quality to protect human health and the environment consistent with achieving water quality objectives in the Delta. (f) Improve the water conveyance system and expand statewide water storage. (g) Reduce risks to people, property, and state interests in the Delta by effective emergency preparedness, appropriate land uses, and investments in flood protection. (h) Establish a new governance structure with the authority, responsibility, accountability, scientific support, and adequate and secure funding to achieve these objectives. Water Code Â§ 85020 (emphasis added). The Legislature also declared that: The policy of the State of California is to reduce reliance on the Delta in meeting California's future water supply needs through a statewide strategy of investing in improved regional supplies, conservation, and water use efficiency. Each region that depends on water from the Delta watershed shall improve its regional self-reliance for water through investment in water use efficiency, water recycling, advanced water	

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		technologies, local and regional water supply projects, and improved regional coordination of local and regional water supply efforts. Water Code § 85021 (emphasis added). The Delta Reform Act requires any state agency "that proposes to undertake a covered action" to "prepare a written certification of consistency with detailed findings as to whether the covered action is consistent with the Delta Plan" and submit that written finding to the Delta Stewardship Council. Water Code § 85225. The Act defines "[c]overed action" as "a plan, program or project" as defined by Public Resources Code section 21065 that: (1) Will occur, in whole or in part, within the boundaries of the Delta or Suisun Marsh. (2) Will be carried out, approved, or funded by the state or a local public agency. (3) Is covered by one or more provisions of the Delta Plan. (4) Will have a significant impact on achievement of one or both of the coequal goals or the implementation of government-sponsored flood control programs to reduce risks to people, property, and state interests in the Delta. Water Code § 85057.5(a). Here, the Project meets these criteria. It is indisputable that the SWP's diversions occur within the boundaries of the Delta, and will be carried out by DWR, a state agency. DEIR § 2.1.2, p. 2-3, Figure 2-1 (Map showing the Clifton Court Forebay and Banks Pumping Plant within the Delta). The Delta Plan itself specifically addresses water exports through the Delta. Lastly, the Project would have "a significant impact on achievement of one or both of the coequal goals" of the Delta Reform Act. The State Water Project that is continued and enabled by the Project allows continued excessive diversions from the Delta, with resulting impacts on its ecological health. The Project therefore conflicts with the Delta Reform Act's "co-equal" goal of "protecting, restoring, and enhancing the Delta ecosystem." Water Code § 85054. And while the Delta Reform Act states that "[r]outine maintenance and operation of the State Water Project" is not a covered action, the Project should not qualify for that exemption because it is neither routine maintenance nor routine operation of the SWP. Water Code § 85057.5(b) (emphasis added).	

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		The Project continues and enables operation of the State Water Project in the face of the Delta's sharply declining ecological health due in no small measure to DWR's decades of excessive Delta diversions. For these reasons, it is apparent that the Project has sweeping environmental impacts on the Delta that qualify it as a covered action. It would allow continued excessive water diversions from the Delta in conflict with the Delta Reform Act's mandate that DWR reduce its contractors' reliance upon the Delta in meeting future water needs. Water Code § 85021. The Project fails to implement any conservation requirements or take any other action to address the Delta Reform Act's co-equal goals.	
25	32	2. DWR Failed to Make the Mandatory Consistency Determination Required by the Delta Reform Act DWR has not prepared a written certification of consistency with detailed findings as to whether the covered action is consistent with the Delta Plan. Under the Act, DWR cannot approve the Project without first making a determination of consistency with the Delta Plan. Water Code § 85225. Because approval of the Project continues DWR's excessive diversion of Delta water to the State Water Project without any attempt to address the Project's conflict with the Act's coequal goals, the Project is inherently inconsistent with both the Delta Reform Act and the current Delta Plan. The Delta Reform Act unambiguously directs that any "state or local public agency that proposes to undertake a covered action . . . shall prepare a written certification of consistency with detailed findings as to whether the covered action is consistent with the Delta Plan." Water Code section 85225 (emphasis added). The word "shall" is mandatory, not permissive. Common Cause v. Board of Supervisors (1989) 49 Cal.3d 432, 443; Puerta v. Torres (2011) 195 Cal.App.4th 1267, 127-1273. Because the Project meets the criteria for a "covered action" under Water Code section 85057.5(a) as discussed above, DWR had a mandatory duty to prepare and submit to the Delta Stewardship Council a determination of the Project's consistency with the Council's Delta Plan. It failed to do so. DWR's failure to prepare this certification before Project approval, as required by the Delta Reform Act, is directly contrary to the Act's mandates. Water Code §85225. Because the DEIR fails to acknowledge and address this conflict, it violates CEQA. CEQA Guidelines § 15125(d).	As more fully explained in Common Response 5, "Delta Reform Act," DWR has made a reasonable and good-faith determination that the long-term operations of the SWP, as analyzed in the FEIR for CEQA purposes, is not a covered action. Please also refer to Response to Comment 25-31 in reference to the Delta Reform Act as well as Common Response 5, "Delta Reform Act."

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25	33	B. DWR'S THREATENED PROJECT APPROVAL WOULD VIOLATE THE PUBLIC TRUST DOCTRINE 1. The Public Trust Doctrine Applies to the Project The Public Trust Doctrine protects the Delta's imperiled fish and wildlife – the state's public trust resources – from avoidable harm whenever it is feasible to do so. National Audubon Society v. Superior Court ("National Audubon") (1983) 33 Cal.3d 419, 426. The Legislature has determined that the Public Trust Doctrine has particular relevance to management of the Delta. It declared in the Delta Reform Act that "the public trust doctrine shall be the foundation of state water management policy and [is] particularly important and applicable to the Delta." Water Code § 85023. The Public Trust Doctrine mandates that "before state courts and agencies approve" actions that may harm public trust resources, they consider the potential impact "upon interests protected by the public trust, and attempt, so far as feasible, to avoid or minimize any harm to those interests." National Audubon, 33 Cal.3d at 426. "[T]he pivotal fact is not whether water is diverted or extracted or the fact that it is water itself adversely impacting the water within the public trust. Rather, the determinative fact is the impact of the activity on the public trust resource." Environmental Law Foundation v. State Water Resources Control Board (2018) 26 Cal.App.5th 844, 859 (emphasis added). In National Audubon,33 Cal.3d at 426, the court explained: "Just as the history of this state shows that appropriation may be necessary for efficient use of water despite unavoidable harm to public trust values, it demonstrates that an appropriative water rights system administered without consideration of the public trust may cause unnecessary and unjustified harm to trust interests. As a matter of practical necessity the state may have to approve appropriations despite foreseeable harm to public trust uses. In so doing, however, the state must bear in mind its duty as trustee to consider the effect of the taking on the public trust, and to preserve, so far as consistent with the public interest, the uses protected by the trust." Id., citations omitted. "Public trust easements are traditionally defined in terms of navigation, commerce and fisheries. They have been held to include the right to fish, hunt, bathe, swim, to use for boating and general recreation purposes the navigable waters of the state, and to use the bottom of the navigable	Chapter 2, Section 2.1.1, "Project Objectives," states that DWR's project objectives are to store, divert, and convey water in accordance with DWR's existing water rights to deliver water pursuant to water contracts and agreements up to full contract quantities and to optimize water supply and improve operational flexibility while protecting fish and wildlife based on the best available scientific information. Consistent with these objectives DWR's Proposed Project inherently includes the "project goal" of mitigation or avoidance of impacts and balancing competing societal goals by including updated operating criteria that maximize the ability to provide a safe and reliable water supply to millions of Californians while minimizing and avoiding impacts to fish and wildlife species, environmental justice communities, and Tribal Cultural Resources, while meeting Delta water quality objectives. Chapters 4 through 8 of the EIR provide detailed analyses of hydrology, water quality, aquatic resources, Tribal Cultural Resources, and environmental justice communities. Appendix 3A, "Initial Study," evaluates all other resources identified in Appendix G of the CEQA guidelines. These analyses show that DWR has considered potential effects to public trust resources. Please see Common Response 10, "Public Trust," for discussion of DWR's consideration of the public trust.

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		waters for anchoring, standing, or other purposes." Marks v. Whitney (1971) 6 Cal.3d 251, 259-260. For more than 50 years it has been settled law in California that public trust values also "encompass[] . . . The preservation of those lands in their natural state, so that they may serve as ecological units for scientific study, as open space, and as environments which provide food and habitat for birds and marine life, and which favorably affect the scenery and climate of the area." Id. Although compliance with CEQA "may assist an agency in complying with its duties under the public trust doctrine . . .[,] CEQA review of a project does not necessarily or automatically satisfy the agency's affirmative duties to take the trust into account and protect public trust uses whenever feasible." San Francisco Baykeeper Inc. v. State Lands Commission ("Baykeeper II") (2018) 29 Cal.App.5th 562, 571. "[A] public trust use is not any use that may confer a public benefit, but rather a use that facilitates public access, public enjoyment, or public use of trust land." Id. At 570. By continuing and enabling the State Water Project, the Project will adversely affect numerous public trust resources, including flows and habitat necessary for fish, wildlife, and recreation, as shown above. Indeed, in 2010 the State Water Board concluded that much higher flows are necessary to protect public trust resources throughout the Delta. State Water Board, "Development of Flow Criteria for the Sacramento-San Joaquin Delta Ecosystem," August 3, 2010, p. 5. Yet despite broad public comment asking that DWR address the State Water Project's massive adverse impacts to public trust resources, DWR declined to do so in the DEIR.	
25	34	Under the Public Trust Doctrine, DWR has an affirmative duty to not only consider the impacts of its Project (including the State Water Project that it continues and enables) on the interests protected by the public trust, but moreover, to "attempt, so far as feasible, to avoid or minimize any harm to those interests." National Audubon, 33 Cal.3d at 426. In approving water diversions such as the State Water Project "despite foreseeable harm to public trust [resources]. . . . the state must bear in mind its duty as trustee to consider the effect of the taking on the public trust. . . and to preserve, so far as consistent with the public interest, the uses protected by the trust." National Audubon, 33 Cal.3d. at 426 (internal citation omitted).	Please see Chapter 11, Section 11.2, "Range of Alternatives Considered," and Common Response 3, "The CEQA Process," for a discussion on the range of alternatives considered and the development of alternatives. Please refer to Common Response 10, "Public Trust," for more information on the consideration of the Public Trust for the Proposed Project. Please also see Chapter 2, Section 2.1.1, "Project Objectives," for a description of DWR's continuing commitment to operate the State Water Project in compliance with all state and federal water quality and environmental laws.

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		Therefore DWR has a duty under the Public Trust Doctrine to consider feasible alternatives and mitigations that would mitigate or avoid the Project's significant impacts, including in particular those impacts caused by continuation of the State Water Project's excessive levels of diversion. Those alternatives include, for example, a reduced Table A alternative, and an alternative that incorporates water conservation goals. Such alternatives would reduce diversions, have beneficial effects on fish and wildlife, and still attain most of the Project's basic objectives – securing an incidental take permit for the Project's impacts on species listed under and protected by CESA. Accordingly, the DEIR should be revised to address the Project's conflicts with the Public Trust Doctrine.	
25	35	2. DWR Failed to Comply With the Public Trust Doctrine By approving the Project despite the fact that feasible alternatives exist that would preserve public trust resources to a greater extent than the Project, DWR failed to discharge its affirmative statutory and constitutional "duties to take the trust into account and protect public trust uses whenever feasible," based on a fair and fully informed balancing of the impacts of these alternatives on public trust resources. Baykeeper II, 29 Cal.App.5th at 571.36.	Please refer to Response to Comment 25-34 for a response to the comment regarding the Public Trust Doctrine.
25	36	3. DWR's CEQA Review Cannot Cure Its Public Trust Failure DWR's evaluation of the Project in its DEIR is insufficient to discharge its responsibilities under the Public Trust Doctrine because the DEIR is itself severely flawed, as shown above. Even assuming contrary to the facts that the DEIR might otherwise pass CEQA muster, complying with CEQA does not satisfy the requirements of the Public Trust Doctrine. Although preparing CEQA documents "may assist an agency in complying with its duties under the public trust doctrine . . .[,] CEQA review of a project does not necessarily or automatically satisfy the agency's affirmative duties to take the trust into account and protect public trust uses whenever feasible." San Francisco Baykeeper Inc. v. State Lands Commission ("Baykeeper II") (2018) 29 Cal.App.5th 562, 571. That is certainly the case here. As shown, DWR did not perform its affirmative duties to "protect public trust uses whenever feasible." Id. Instead DWR failed to address the impacts of the State Water Project that this Project continues and enables, failed to consider a reasonable range of alternatives that would include substantially reduced diversions by the State Water Project to protect public trust resources, and dismissed feasible alternatives that would restore and protect those	Please refer to Response to Comment 25-34 for a response to the comment regarding the Public Trust Doctrine. Please also refer to Common Response 5, "Delta Reform Act," for more information on the Delta Reform Act and the requirements of the Delta Plan. The EIR has been prepared in accordance with CEQA and adequately discloses the scope, severity, and magnitude of potential impacts for the environmental resources analyzed in this EIR.

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		resources as discussed above. And DWR never prepared the determination of the Project's consistency with the Delta Plan that is specifically required under the Delta Reform Act. DWR's neglect of its mandatory statutory duty to provide "detailed findings" regarding the Project's impacts on the Delta and its public trust resources demonstrates DWR's failure to perform its affirmative duty under the Public Trust Doctrine to "take the trust into account and protect public trust uses whenever feasible." Baykeeper II, 29 Cal.App.5th at 571. For each of these reasons, DWR failed to comply with the Public Trust Doctrine. Its failure to address the Project's inconsistency with the Public Trust Doctrine is fundamental. Therefore the DEIR should be withdrawn, corrected and recirculated. Save Our Capitol!, 87 Cal.App.5th at 703-705.	
25	37	B. DWR'S THREATENED PROJECT APPROVAL WOULD VIOLATE THE ENDANGERED SPECIES ACT 1. The Endangered Species Act Applies to the Project DWR concedes that CESA applies to the Project. Its DEIR states that "DWR is seeking a new ITP [Incidental Take Permit] from CDFW, pursuant to Section 2081 of the California Fish and Game Code" for four currently listed fish species, the Delta Smelt, Longfin Smelt, Bay-Delta Winter Run Chinook Salmon, and Central Valley Spring Run Chinook Salmon, and a candidate species, the White Sturgeon. DEIR, p. ES-4.	Please refer to Common Response 9, "Relationship to the 2023 Biological Assessment and NEPA," Common Response 11, "Application of CESA Standards," and Common Response 4, "CEQA and CESA Legal Standards," for more information on the Proposed Project compliance with CESA. Please see Chapter 2, Section 2.1.1, "Project Objectives," for a description of DWR's continuing commitment to operate the State Water Project in compliance with all state and federal water quality and environmental laws.
25	38	2. DWR Has a Duty Under CESA and CEQA to Give Special Consideration to Protection of Listed Species. CESA declares that "it is the policy of the state that public agencies should not approve projects as proposed which would jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat essential to the continued existence of those species, if there are reasonable and prudent alternatives available consistent with conserving the species or its habitat which would prevent jeopardy." Fish & Game Code § 2053, subd. (a). The Legislature directed further that "it is the policy of this state and the intent of the Legislature that reasonable and prudent alternatives shall be developed by the department [of Fish and Game], together with the project proponent and the state lead agency, consistent with conserving the species, while at the same time maintaining the project purpose to the greatest extent possible." Id. at	Common Response 11, "Application of CESA Standards," and Common Response 4, "CEQA and CESA Legal Standards," regarding the comment on CEQA and CESA. Please refer to Chapter 6, "Aquatic Biological Resources," and Appendix 3A, "Initial Study," for detailed analyses of aquatic and terrestrial biological resources. Both the chapter and the appendix provide comprehensive scientific support for the findings of less than significant or no impact as a result of the Proposed Project. Please see Chapter 11, Section 11.2, "Range of Alternatives Considered," and Common Response 3, "The CEQA Process," for a discussion on the range of alternatives considered and the development of alternatives.

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		subd. (b) (emphasis added). The California Supreme Court recognized in Mountain Lion Foundation v. Fish and Game Com., supra, 16 Cal.4th at 125, that "CESA establishes a policy adding significant weight to the CEQA balancing scale on the side favoring protection of a listed species over projects that might jeopardize them or their habitats." Id., citing Fish & Game Code § 2053. CEQA echoes this policy, directing that it is state policy to "[p]revent the elimination of fish or wildlife species due to man's activities, insure that fish and wildlife populations do not drop below self-perpetuating levels, and preserve for future generations representations of all plant and animal communities . . . ." PRC §21001, subd. © (emphasis added).	
25	39	3. The DEIR Fails to Implement These Policies to Protect Listed Species Contrary to the foregoing state policies requiring CDFW and DWR to "develop reasonable and prudent alternatives . . . consistent with conserving [listed] species," and to "insure that fish and wildlife populations do not drop below self-perpetuating levels," the DEIR fails to develop any alternative consistent with conserving the Delta fish species that are listed under CESA. As shown, the DEIR fails to even recognize that the Project continues, and enables, the State Water Project, let alone that doing so poses a well-documented threat to maintaining their habitat and populations at self-sustaining levels. Consequently, the DEIR falls short of the requirements of CESA and CEQA to conserve listed species and their habitat to prevent jeopardy to their survival. Therefore the DEIR should be withdrawn, corrected and recirculated. Save Our Capitol!, 87 Cal.App.5th at 703-705.	Please see Common Response 3, "The CEQA Process," and Responses to Comments 25-23, 25-25, and 25-38 regarding protection of species.
25	40	X. THE DEIR UNDERSTATES THE PROJECT'S IMPACTS DURING FORESEEABLE SEA LEVEL RISE AND DROUGHTS CEQA's mandate that DWR must disclose and analyze the Project's foreseeable environmental impacts is not relaxed just because global warming and sea level rise will foreseeably change the environment impacted by the Project. Despite the emergence of climate change as a significant driver of future changes in the environment and consequently, of a degree of uncertainty regarding projects' potential environmental impacts, Guidelines section 15144 has remained unchanged. It commands that, "[w]hile forecasting the unforeseeable is not possible, an agency must use its best efforts to find out and disclose all that it reasonably can." Id., quoted in Vineyard, 40 Cal.4th at 428. Likewise, although CEQA and its Guidelines have been amended to	The EIR has been prepared in accordance with CEQA and adequately discloses the scope, severity, and magnitude of potential impacts for the environmental resources analyzed in this EIR. DWR selected the climate change assumptions after careful consideration and several exploratory modeling iterations. The DEIR evaluated one sea level rise (SLR) scenario upon determination that this was most appropriate to analyze in consideration of many factors (see further discussion in Appendix 4D, Part 1, "Climate Change Projections Development"). This EIR analyzes the effects of SWP operations over the anticipated duration of the Incidental Take permit DWR is seeking from CDFW,

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		recognize the need to address projects' greenhouse gas emissions and their impacts on global warming, none of those amendments allow an agency to evade its continuing duty to "use its best efforts to find out and disclose all that it reasonably can." PRC §§ 21083.05, 21100, subd. (b) - (d); Guidelines §§ 15064.4, 15126.4(c), 15144. Contrary to this mandate, the DWR did not "use its best efforts" to disclose and analyze the Project's impacts during foreseeable sea level rise and droughts. The DEIR states that the foreseeable "sea level at the San Francisco (Golden Gate) tide gage may increase by as much as 1.8 feet (0.55 meter, H++ scenario, which is an extreme modeling scenario resulting from loss of the West Antarctic ice sheet) by 2040 and 10.2 feet (3.11 meters; H++ scenario) by 2100 (California Natural Resources Agency and California Ocean Protection Council 2018:18)." DEIR § 9.2.3.1, p. 9-13 (emphasis added); see also, Table 9-2, p. 9-14. Based on this information, a "best efforts" disclosure would explain to the public what the Project's impacts might be with a 1.5-foot increase in sea level by 2040 and a 10.2-foot increase by 2100. Guidelines § 15144. But instead, the DEIR only provides a projection of the Project's impacts based on a "15 centimeter" – i.e., 6 inch – sea level rise. DEIR § 9.4.1, p. 9-24 ("modeled climate change conditions account for 15 cm of sea-level rise"). A 6-inch rise is just one-third of the 1.5-foot increase that could occur by 2040, and less than one-twentieth of the increase in sea level that could occur by 2100. Obviously, there is a huge – twenty-fold – difference between the actual sea level rise that might occur by 2100, and that modeled for the Project and its impacts. No reason is given for this disparity. Most people would view a "6-inch" rise as inconsequential. But a 10.2-foot rise would garner immediate attention and concern. Why? Because it is more than the typical height of a building story, and twice the typical height of a vehicle, or a person of modest stature. This failure to inform the public of the Project's likely impacts during foreseeable sea level rise is not a minor, technical discrepancy. To the contrary, it obscures an enormous potential impact: that the intakes for the State Water Project's Delta diversions might be rendered useless due to high salinity. If that occurred, it is foreseeable that maintaining the level of Delta diversions assumed for the Project would require a massive new diversion project – probably by tunnel or tunnels to protect	which is anticipated to be 10 years. Based on the duration of the project, as well as DWR's historical policy of not evaluating the largest or smallest extreme SLR scenarios, the selected SLR scenario is not unreasonable, especially considering the divergence in climate model scenarios occurs more rapidly after 2050. For more information, please refer to Common Response 8, "Climate Change." Further analysis to determine impacts beyond the 10-year project period (such as salt water near the intakes) is beyond the scope of this EIR.

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		the intake water from the surrounding saltwater – that would move the existing intakes many miles upstream. At a minimum, the DEIR must alert the public to the risks that the Project's Delta Facilities would have to be moved at significant environmental cost. The public is left to wonder whether the DEIR's entire analysis of the Project's claimed "Climate Change Resiliency and Adaptation" (DEIR, Chapter 9) is useless because it assumes just a 6-inch sea level rise. For example, the DEIR's discussion of the "[s]ea level-rise driven saltwater intrusion in the Delta" (DEIR § 9.4.1, pp. 9-22 to 9-24) portrays a "modeled location of the gradient between saline, brackish, and fresh water in the San Francisco Bay and Delta"–commonly known as the "X-2" line – somewhere between 45 and 90 kilometers east of the Golden Gate Bridge in the fall. Id. And it does so based on a stated "sea-level rise" of just "15 cm." DEIR , p. 9-24. But if sea level rise was 20-times greater as the DEIR elsewhere admits it might be – say, 3100 cm (3.1 meters) – would this X-2 line jump many kilometers more to the east? Would it reach the intakes for the State Water Project? If so, what would that portend for the State Water Project's viability? This is an important question left unanswered.	
25	41	Similarly, the DEIR's discussion of the Project's impacts on "State Water Project Exports" (DEIR § 9.4.2, pp. 9-24 to 9-27) estimates that the Project would "generally limit the largest export reductions due to climate change." DEIR p. 9-25. But what happens if saltwater had entered the intakes for the State Water Project? Are the State Water Project's exports shut down? If that happens, what alternate sources of water are proposed to make up the shortfall in the communities dependent on the State Water Project, and at what environmental cost? The same questions could be asked regarding the scenario in which the maximum foreseeable sea level rise is coupled with "more extreme drought events" – a likeihood the DEIR admits. DEIR § 9.4.1, p. 9-22. Because the DEIR does not answer these questions, it fails to provide informed public review, the primary and essential purpose of the CEQA process. Guidelines § 15002(a). Accordingly, the DEIR is inadequate and must be withdrawn, substantially revised, and recirculated. CONCLUSION For each of these reasons, the DEIR is fatally flawed and must be withdrawn, revised and expanded to rectify the CEQA and other	Please see Response to Comment 25-40 for discussion of the selection of the SLR assumption used in the analysis provided the EIR in Chapter 9, "Climate Change Resiliency and Adaptation." Further, it is speculative and beyond the scope of the EIR to evaluate the questions posed by the comment regarding DWR's responses to hypothetical situations, such as "what happens if saltwater had entered the intakes for the State Water Project?" and "what alternate sources of water are proposed to make up the shortfall in the communities dependent on the State Water Project, and at what environmental cost?" No further response is required.

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		deficiencies identified above, and recirculated. Thank you for your attention.	
26	1	Thank you for the opportunity to comment on the Draft Environmental Impact Report (DEIR) for the Long-Term Operation of the State Water Project (SWP) in the Sacramento-San Joaquin Delta, Suisun Marsh, and Suisun Bay. Save California Salmon understands that the California Department of Water Resources (DWR) is seeking approval of long-term operations of the SWP facilities in the Delta, Suisun Marsh, and Suisun Bay to continue to provide water supply for agricultural, municipal, and industrial uses, and that SWP operations will be coordinated with DWR's implementation of the Voluntary Agreements. As policy representatives at Save California Salmon, we are dedicated to policy change and community advocacy for Northern California's salmon and fish dependent people. We support the fisheries and water protection work of the local communities, and advocate for effective policy change for clean water, restored fisheries, and vibrant communities. The DEIR analyzes the following topics of interest and concern: Aquatic Biological Resources, Tribal Cultural Resources, Environmental Justice, and Climate Change Resilience and Adaptation. In addition to these areas, we also have concern for the Voluntary Agreement process.	This information describes the structure or organization of the comment letter, the background of the organization or individual commenter, clarification on the submittal of the comment letter, or general introductory text. It is not a comment on the contents of the DEIR. DWR has reviewed all comments and will consider all comments in its decision-making process.
26	2	Voluntary Agreements Within the 2022 Memorandum of Understanding (MOU) Advancing a Term Sheet for the Voluntary Agreements (VAs), it is stated that the regulatory and private parties recognize that execution of Voluntary Agreements will not occur until required environmental review has been completed and that the ultimate terms in those agreements will reflect the results of that review. Currently, adequate environmental review has not been completed and the science that the VAs are relying on is not the best available science. For example, the "blocks of water" method that the VAs propose will result in lower flows for fish than other alternatives propose. The VAs also depend on the USFWS and NMFS 2019 Biological Opinion which has "not been fully implemented due to litigation, and … are currently under consultation due in part to the litigation." [Footnote 1: State Water Resources Control Board. Bay Delta Plan Draft Staff Report, Ch. 1 Executive Summary, p. 1-16. https://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/_docs/2023/staff-report/_ch01-execsumm.pdf]	Please refer to Common Response 7, "Relationship to Healthy Rivers and Landscapes Program," regarding the Proposed Project's relationship to the Healthy Rivers and Landscapes Program (previously referred to as voluntary agreements) which has not yet been approved by the State Water Resources Control Board. Please also refer to Chapter 3, "Scope of Analysis," Chapter 4, "Surface Water Hydrology," Chapter 5, "Surface Water Quality," Chapter 6, "Aquatic Biological Resources," Appendix 4A, "Model Assumptions" and attachments, and Appendix 6B, "Biological Modeling Methods and Selected Results," regarding the use of the best available science in the analyses of impacts to hydrology, water quality, and aquatic biological resources. The data sets and methods used in these analyses are scientifically supported and meet the

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		The Voluntary Agreement process is both exclusionary and detrimental to environmental justice communities, Tribes, and the species and ecosystems that are impacted through the decision-making process. The VAs have been promulgated by a group of special interests that have been negotiating in confidential meetings, without community engagement or transparency. Other VAs have failed the delta tributaries over the last 15 years and just a handful of spring chinook remain in the watershed. Similarly, massive fisheries declines have occurred in Deer, Antelope, and Mill Creek. Salmon are a vital part of the culture of the California tribes whose traditional lands surround the waterways that salmon travel. The severe loss of salmon has had extreme health and cultural impacts on California's Native peoples who have already suffered having land and water rights taken from them through colonization. California's water rights system was created to support miners and large landowners, not tribes. Now, Voluntary Agreements are threatening to further exclude California tribes, the original water rights holders of the state, which means they must fight harder for their water rights and for the rights of their salmon relatives. The DEIR should not be considered through the Voluntary Agreement process until analysis with the best available science is included and tribes and environmental justice communities have been adequately consulted and included.	requirements of the CEQA guidelines for evaluation of impacts. The EIR has been prepared in compliance with CEQA and evaluates the full range of potential impacts that may result from the Proposed Project and its alternatives. Further, the EIR used sound, reasonable science and methods, supported by evidence to analyze potential impacts. Please refer to Chapter 7, "Tribal Cultural Resources," and Chapter 8, "Environmental Justice," regarding analysis of the Proposed Project and the effects on Tribal cultural resources (and DWR's engagement with Tribes in consultation) and on environmental justice communities.
26	3	Aquatic Biological Resources The DEIR proposes incorporating low flows (and other associated drier-year conditions such as higher temperature) which will negatively affect fish and aquatic species. The fish and aquatic species of particular concern that will potentially be affected by the proposed project include winter, spring, and fall run chinook salmon, steelhead in the Central Valley, Delta smelt, longfin smelt, green and white fin sturgeon, Pacific and river lamprey, Sacramento Hitch and Splittail (all of which have special state and federal statuses as well as tribal, commercial, or recreational importance). Of particular importance are salmon, which is on the brink of extinction in tributaries of the Lower Sacramento River and other inland waterways across the state. Salmon are a keystone species in California ecosystems, playing a vital role in the food chain, supplying important ocean nutrients to upstream habitats, and indicating a healthy	It is unclear what the comment means by the suggestion that the EIR proposes incorporating low flows and other associated drier year conditions such as higher temperature. The Project Description can be reviewed in Chapter 2 of this EIR. The Proposed Project would be operated to meet regulatory requirements and includes elements of greater flow than currently required, such as described in Chapter 2, Section 2.3.5, "Spring Delta Outflow." There would be little influence of the Proposed Project on water temperature, as noted in the discussion of "Cyanobacteria Harmful Algal Blooms" in Section 5.3.3.2 of Chapter 5. With respect to upstream operations, please see Common Response 1, "Scope of Analysis." To the extent this comment is stating background information, no response is required.

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		ecosystem. Salmon are one of the species that struggle to survive in warm waters as salmon eggs are no longer viable when water temps are over 55° F. The current Water Plan has led to a 60-98% decrease in salmonid species and yearly commercial fishing shut-downs. The DEIR is part of the state's analysis of operations and is done in tandem with federal water resource operations. Dozens of watersheds and dam operations will be impacted by the DEIR.	
26	4	There are 300 species that call the Bay Delta home, and many species of birds use it as a critical stopping point on their migration journey. The Bay Delta relies on an abundance of cool water flows but because of water diversions, now gets trickles of cool water. This leaves the watershed unlivable for many species and turns the ecosystem into a breeding ground for Harmful Algal Blooms (HABs). In addition to significant impacts to fauna, a long-term decline in phytoplankton biomass (represented by chlorophyll a) and phytoplankton primary productivity to historically low levels is expected to occur in Suisun Bay region and the Delta. Shifts in nutrient concentrations, such as high levels of ammonium and nitrogen relative to phosphorus may contribute to the phytoplankton reduction and to changes in algal species composition in the San Francisco Estuary, much of which is a result from big agricultural farming operations.	Before beginning preparation of the DEIR, an Initial Study was prepared and provided in Appendix 3A of the DEIR. Based on this Initial Study, it was determined that the Proposed Project would not have significant impacts on terrestrial biological resources, and thus this resource category was not carried forward for further analysis in the DEIR. Chapter 6, "Aquatic Biological Resources," assessed the effects of the Proposed Project on aquatic organisms. Chapter 5, "Surface Water Quality," assessed the effects of the Proposed Project on CHABs within the study area, including the Delta. Shifts in nutrient concentrations mentioned in the comment have historically been primarily a function of land uses, particularly agriculture and discharges of treated municipal wastewater. The Proposed Project would have minor, if any, effects on nutrients in the Delta, as identified in the CHAB analysis in Chapter 5. In addition, the project would not affect point and non-point source discharges into the Delta.
26	5	Tribal Cultural Resources During Tribal consultations that have occurred so far, Tribes expressed that salmon, smelt, water flow, and quality of the Delta is very important to their culture and livelihood. More consultations still need to occur to ensure Tribal consultation protocol is followed. DWR staff should not treat consultations as boxes that need to be checked, but rather opportunities to create policies designed to protect these resources and the Tribes that depend on them. More specifically, Tribes have an interest in the criteria, timing, and volume of water for operations coinciding with Tribal ceremonies. These ceremonies may take place during certain fish runs. The Tribes would like to be included in future discussions about the timeframe of	The comment paraphrases content from Chapter 7, "Tribal Cultural Resources," of the EIR. Please see Chapter 7, "Tribal Cultural Resources," Appendix 7A, "Tribal Consultation and Engagement Log," and Common Response 14, "Tribal Consultation," regarding the Tribal consultation activities for the Proposed Project. The comment quotes content from Chapter 7, "Tribal Cultural Resources," of the EIR. This comment quotes content from Chapter 7, "Tribal Cultural Resources, " of the EIR. Please refer to Common Response 14, "Tribal Consultation," as well as Chapter 4,

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		operations/flows to consider Tribal ceremonies. Each Tribe's goal is to protect Tribal cultural resources both in the short-term and long-term. The DWR has determined the Delta TCL (Tribal Cultural Landscape) is a Tribal Cultural Resource which overlaps with most of the Proposed Project study area. Although the United Auburn Indian Community (UAIC) has identified Tribal cultural resources in the project area, UAIC initially confirmed that because the proposed project does not include construction, there would be no impact on their Tribal cultural resources. However, this is not true. Construction is not the only impact that can negatively affect Tribal Cultural Resources. The proposed redistribution of water would harm Tribal Cultural Resources by lowering flows for fish, creation of harmful algal blooms, and destruction of ecosystems. While "the Proposed Project would have no impact on individual Tribal cultural resources" [Footnote 2: Department of Water Resources. Long-Term Operations of the State Water Project Draft Environmental Impact Report, Ch. 7 Tribal Cultural Resources, p. 7-15. https://files.ceqanet.opr.ca.gov/288788-2/attachment/K21Njyo884dVtdMnLWPv48w9HDmGA1WgGc2daIN-xwWBsSLq3GjTLFxuyPY-iRmtPhompK0n6igMbXZd0] based on consultation and input received by the Tribes to date, there are still many cultural resources that will be significantly impacted by construction and operation. Consultation with Tribes should continue beyond the release of the Final EIR to ensure Tribes have adequate consultations and opportunities to protect tribal cultural resources.	"Surface Water Hydrology"; Chapter 5, Surface Water Quality"; and Chapter 6, "Aquatic Biological Resources regarding impacts to flow, harmful algal blooms and fish, respectively. Through consultation with the Tribes information presented in other resource chapters (Surface Water Quality, Surface Water Hydrology, etc.) was summarized and provided to the Tribes for consideration. Upon receiving a summary of the information, Tribes did not identify or express concerns for impacts to culturally important waterways or fish species. This comment does not raise a significant environmental issue associated with the 2024 SWP LTO. Please refer to Common Response 14, "Tribal Consultation," and Chapter 7, "Tribal Cultural Resources," regarding Tribal consultation activities for the Proposed Project. AB 52 consultation and consultation for the CEQA process concluded with DWR sending consultation closure letters via certified mail and email (as detailed in Appendix 7A, "Tribal Consultation and Engagement Log") to the five consulting Tribes dated September 11, 2024. DWR is committed to ongoing consultation under the CNRA and DWR Tribal policies for the Proposed Project.
26	6	Environmental Justice As stated above, using Voluntary Agreement instead of the established administrative process is exclusionary and unfair to Tribal and Environmental Justice communities that are negatively impacted by the poor flow allocations leading to extremely poor water quality and dwindling fisheries, upon which these communities depend. The VAs only benefit older water rights holders and not the environment or downstream water users. The Bay Delta relies on an abundance of cool water flows but because of water diversion, now gets very little cool water. This leaves the watershed unlivable for many species and turns the ecosystem into a breeding ground for toxic algae blooms. Analysis on how flows impact the formation of HABs in the Delta must be completed and the DEIR	The EIR provides analysis of the environmental resources raised by the comment. Please refer to Chapter 8, "Environmental Justice," Chapter 5, "Surface Water Quality," Chapter 6, "Aquatic Biological Resources," and Chapter 7, "Tribal Cultural Resources," for the analysis of the environmental impacts on the environmental resources mentioned in the comment. Please refer to Chapter 5, "Surface Water Quality," Sections 5.3.3.2 and 5.3.3.3 for an analysis of the factors, including water temperatures, that influence cyanobacterial harmful algal blooms (CHABs) in the Delta and Suisun Marsh and Bay. This analysis concludes that the Proposed Project would not affect water

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		must address the concerns, safety, and health of Delta environmental justice communities. As stated in DWR's Racial Equity Action Plan (REAP), "Government systems at the local, state, and national level have played a role in creating and maintaining racial inequities. The repercussions of past racist laws, regulations, and policies are maintained by historic legacies and structures that repeat patterns of exclusion. Certain communities have experienced an outsized impact from water management decisions - greater risk of flooding, higher exposure to toxic water substances, and increased water shortages. Government has an opportunity and responsibility to correct the racial inequities it has created and maintained for centuries." Historical water rights matters have proven to be racist and upheld by white supremacist ideals, and the Voluntary Agreements are a mechanism for continuing these ideals. The DWR has committed to address these issues in their Racial Equity Action Plan and can do so by including tribes in decision making processes and ensuring that Voluntary Agreements are based on the best available science, including tribal ecological knowledge.	temperature, channel turbulence and mixing, residence time, nutrients, water clarity, or salinity in ways that would create conditions more conducive to CHAB formation relative to Baseline Conditions. Any small changes in these conditions that may potentially occur for the Proposed Project would not be of sufficient frequency and magnitude to cause CHABs to form more frequently, or grow to larger levels, than would occur for Baseline Conditions. Because the Proposed Project would not result in substantial increases CHABs, CHAB-related effects on environmental justice communities would be expected to the same under both the Proposed Project and Baseline Conditions. Please also see Response to Comment 26-4. Please refer to Chapter 6, "Aquatic Biological Resources," for discussion of impacts to special status and recreationally and commercially important fish species. The best available scientific information was used to analyze the Proposed Project's impacts to special status and recreationally and commercially important fish species, which were found to be less than significant. Therefore, the Proposed Project's impacts to fish availability for recreational or subsistence fishing in environmental justice communities would also be less than significant. Further, these analyses conclude that the Delta unlivable for these fish species. Please see Chapter 8, "Environmental Justice," Section 8.3.2, "Impact Analysis," which concludes that no impacts were identified on resource topics evaluated in the Initial Study and impacts on surface water quality and aquatic biological resources were considered less than significant, which would result in no impacts or similar impacts to environmental justice communities under the Proposed Project, compared to Baseline Conditions. Further, evaluation of State Water Project exports from Banks Pumping Plant over the long-term in Chapter 4, "Surface Water Hydrology," Section 4.3.4, "Comparison of SWP Banks Pumping Plant Exports," show an increase in exports of 57 thousand acre feet

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			compared to Baseline Conditions, which is a 2 percent increase. These increases would be expected to slightly improve water supply reliability for environmental justice communities in the SWP service areas. Please refer to Chapter 7, "Tribal Cultural Resources," in the DEIR which details DWR's tribal consultation efforts including the DEIR's compliance to DWR's Tribal Engagement Policy adopted in 2016 to guide Tribal consultation and to strengthen and sustain collaboration with Tribes, consistent with Executive Order B-10-11, the CNRA Tribal Consultation Policy, and the previously enacted PRC sections addressing Tribal cultural resources and Tribal consultation. The analysis in this chapter in Section 7.3.3, "Impact Analysis," found no impacts would occur to the Delta's tribal cultural landscape or individual tribal cultural resources.
26	7	Climate Change Resilience and Adaptation The DEIR should consider and plan for projected impacts of climate change including reduced instream water availability resulting in difficulty meeting regulatory standards, and negative effects on upstream aquatic species, including coldwater pool resources, that are critical for salmonid rearing. Reduced water availability would also affect reliability for agricultural, municipal, and industrial water supplies and result in associated loss in productivity or other economic costs. The study area experiences periodic droughts that will be intensified by climate change. A study conducted by the U.S. Bureau of Reclamation identified that a majority of drought periods experienced in the Sacramento and San Joaquin rivers had deficits (negative differences between the annual flow and the long-term mean annual flow) as well as runoffs classified as "dry" or "critical" which had important agricultural consequences given the level of agricultural production in the Central Valley. These droughts contribute to warm water temperatures and heightened risks from harmful algal blooms, which not only negatively impact aquatic species but pose risks to surrounding environmental justice communities.	DWR's analysis of the Proposed Project is based on a 100-year period of record of input hydrology to the CalSim 3 model, which includes several severe and multi-year drought periods. Chapter 4, "Surface Water Hydrology," Chapter 5, "Surface Water Quality," and Chapter 6, "Aquatic Biological Resources," evaluate operations-related effects and concluded no impacts or less than significant impacts on hydrology, water quality, and special status and commercially or recreationally important fish species. Based on these conclusions, Chapter 8, "Environmental Justice," concluded that the Proposed Project would have less than significant impacts to environmental justice communities. The analyses provided in Chapter 9, "Climate Change Adaptation and Resiliency," used a synthetic hydrology that was based on historical observed hydrology with associated changes in runoff and sea level rise, which were selected based on the best available climate change representations.
26	8	Additional Points of Concern	Please refer to Chapter 10, "Other CEQA Discussions," for more information on the cumulative effects of the Long-

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		The DWR must address the consequences of the proposed water projects, including the Sites Reservoir and the Delta Conveyance Project. These projects will have major impacts on the Bay Delta ecosystem. There are a lot of concerns regarding the overlapping processes that are occurring, all of which involve water that is meant for the Bay Delta. The DWR should provide some clarity regarding these concerns in the future.	Term Operations of the State Water Project, including Sites Reservoir and the Delta Conveyance Project. Please refer to Appendix 4G to view the cumulative model results for Alternative 1 with cumulative projects. Please see Common Response 1, "Scope of Analysis," regarding to the EIR's scope.
26	9	Again, thank you for the opportunity to comment on the Draft Environmental Impact Report for the Long-Term Operation of the State Water Project in the Sacramento-San Joaquin Delta, Suisun Marsh, and Suisun Bay.	This is a concluding comment. Specific responses to the specific comments on the DEIR are provided herein. No additional responses is required.
27	1	On July 15, 2024, our Sierra Club California et al. public interest organizations transmitted our written comments to you on DWR's 2024 Draft EIR for Long-Term Operation of the SWP [refer to Comment Letter 28]. At page 8 of those comments we referred to the September 28, 2023, State Water Resources Control Board (Water Board) Draft, Staff Report/Substitute Environmental Document (Staff Report/SED) in Support of Potential Updates to the Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary for the Sacramento River and its Tributaries, Delta Eastside Tributaries, and Delta. We also said on page 8 we were furnishing the Water Board's Staff Report/SED to you with the comments. Here is the link to the folder containing the Staff Report/SED for your Record. Https://centerforbiologicald-my.sharepoint.com/personal/trettinghouse_biologicaldiversity_org/_layouts/15/onedrive.aspx?id=%2Fpersonal%2Ftrettinghouse%5Fbiologicaldiversity%5Forg%2FDocuments%2FState%20Water%20Control%20Board%20documents&ga=1&LOF=1	This information describes the structure or organization of the comment letter, the background of the organization or individual commenter, clarification on the submittal of the comment letter, or general introductory text. It is not a comment on the contents of the DEIR. DWR has reviewed all comments and will consider all comments in its decision-making process.
28	1	Please find attached the July 15, 2024 written comments of our 8 public interest organizations including Sierra Club California on DWR's Draft EIR that was issued on May 19, 2024, for long-term operation of the State Water Project. We will transmit separately to DWR the 5 exhibits due to volume. We will transmit the 5 exhibits to any other recipient of these comments upon request. We request someone at DWR to reply confirming receipt of our comment letter. I would do my best to answer any questions you may have.	This information describes the structure or organization of the comment letter, the background of the organization or individual commenter, clarification on the submittal of the comment letter, or general introductory text. It is not a comment on the contents of the DEIR. DWR has reviewed all comments and will consider all comments in its decision-making process.

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28	2	By this letter our public interest organizations comment, pursuant to the California Environmental Quality Act (CEQA), on the Department of Water Resources (DWR) 2024 Draft Environmental Impact Report (Draft EIR) for Long-Term Operation of the State Water Project (SWP) in the Sacramento-San Joaquin Delta, Suisun Marsh and Suisun Bay. Our public interest organizations: Sierra Club California, AquAlliance, California Water Impact Network, California Sportfishing Protection Alliance, Center for Biological Diversity, Environmental Water Caucus, Friends of the River, and Planning and Conservation League object to approval of the project and object to certification of a Final EIR for the project. The Draft EIR was issued for public review on May 29, 2024.	This information describes the structure or organization of the comment letter, the background of the organization or individual commenter, clarification on the submittal of the comment letter, or general introductory text. It is not a comment on the contents of the DEIR. DWR has reviewed all comments and will consider all comments in its decision-making process.
28	3	Our Table of Contents starts on the next page: TABLE OF CONTENTS INTRODUCTION 5 1. DWR's DRAFT EIR FAILS TO DISCLOSE AND ANALYZE THE SIGNIFICANT ADVERSE ENVIRONMENTAL IMPACTS OF THE PROJECT 5 A. DWR's Draft EIR Fails to Disclose and Analyze the Adverse Impacts of Diversions of Freshwater Flows for the State Water Project On Endangered and Listed Fish Species 5 B. DWR's Draft EIR is Legally Deficient Because it Fails to Address the Adverse Impacts of State Water Project Diversions of Freshwater from Endangered and Threatened Fish Species. 16 C. Draft EIR Deficiencies Pertaining to Habitat Restoration 18 D. Draft EIR Deficiencies Pertaining to the Voluntary Agreements 19 2. A REVISED DRAFT EIR MUST BE RECIRCULATED FOR PUBLIC REVIEW AND COMMENT 20 3. DWR FAILED TO MAKE THE REQUIRED FULL ENVIRONMENTAL DISCLOSURE IN ITS DRAFT EIR 22 4. THE DRAFT EIR FAILS TO INCLUDE CONSIDERATION OF ALL SIGNIFICANT ENVIRONMENTAL IMPACTS IN VIOLATION OF CEQA 22 5. THE DRAFT EIR ANALYSIS OF THE ENVIRONMENTAL IMPACTS OF THE SEVERAL OTHER RESOURCE TOPICS ADDRESSED INCLUDING CYANOBACTERIA HARMFUL ALGAL BLOOMS IS ALSO DEFICIENT UNDER CEQA 24 6. THE DRAFT EIR FAILS TO INCLUDE THE REQUIRED RANGE OF EASONABLE ALTERNATIVES 27	This information describes the structure or organization of the comment letter, the background of the organization or individual commenter, clarification on the submittal of the comment letter, or general introductory text. It is not a comment on the contents of the DEIR. DWR has reviewed all comments and will consider all comments in its decision-making process.

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		A. The Draft EIR Fails to Include a California Endangered Species Act(CESA) Focused Alternative 28 B. The Draft EIR Fails to Include a Delta Reform Act Focused Alternative 29 C. The Public Trust Was Not Central to the Draft EIR's Consideration of Alternatives 30 D. The Principle of Reasonable Use was Ignored in the Development of Alternatives in the Draft EIR 31 7. DWR's ARTIFICIALLY NARROW PROJECT OBJECTIVES VIOLATE CEQA 32 8. DWR REJECTED FROM THE BEGINNING REASONABLE ALTERNATIVES PRESENTED TO DWR BY COMMENTS DURING DWR'S SCOPING 34 9. DWR HAS UNLAWFULLY SEGMENTED ENVIRONMENTAL ANALYSIS 35 10. DWR MUST INTEGRATE THE SWP EIR PROCESS WITH THE OTHER RELATED ENVIRONMENTAL REVIEW PROCESSES 36 11. DWR HAS LIMITED THE DRAFT EIR TO COVER A PERIOD OF 10 YEARS TO FACILITATE ITS UNLAWFUL SEGMENTATION OF, AND FAILURE TO INTEGRATE, ENVIRONMENTAL REVIEW AND ANALYSIS, AND FAILURE TO ADDRESS CUMULATIVE ENVIRONMENTAL IMPACTS 37 12. DWR's DRAFT EIR FAILS TO DISCLOSE THE DEFECTS IN ITS CLIMATE CHANGE ANALYSES FOUND BY THE STATE AUDITOR 38 13. THE CONCLUSIONS IN THE DRAFT EIR ARE NOT SUPPORTED BY SUBSTANTIAL EVIDENCE 39 CONCLUSION 40 Exhibit List 42 End Notes 42	
28	4	INTRODUCTION According to DWR's Draft EIR, "The underlying purpose of the proposed project is to obtain incidental take authorization from the California Department of Fish and Wildlife (CDFW) pursuant to CESA [the California Endangered Species Act] for five fish species to allow DWR to continue the long-term operation of the SWP consistent with applicable laws, contractual obligations, and agreements." (Draft EIR, Ch. 2, Project	The first part of this comment is introductory text. It is not a comment on the contents or the DEIR. DWR has reviewed all comments and will consider all comments in its decision-making process. The EIR has been prepared in accordance with CEQA and adequately discloses the scope, severity, and magnitude of potential impacts for the environmental resources analyzed in this EIR. A comprehensive effects

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		Description, p. 2-1.) So, these comments will largely focus on the Draft EIR's deficiencies with respect to the subject endangered fish species. 1. DWR's DRAFT EIR FAILS TO DISCLOSE AND ANALYZE THE SIGNIFICANT ADVERSE ENVIRONMENTAL IMPACTS OF THE PROJECT The SWP conveys "an annual average of 2.9 million acre-feet (maf) of water." (Draft EIR 2-1.) Yet the Draft EIR concludes the proposed project has either "No Impact" or "Less Than-Significant Impact" on every single resource topic and impact category assessed by the Draft EIR. (Draft EIR, Executive Summary, Table ES-2, pp. ES-10-12.) That includes conclusions of "Less-Than-Significant Impact" on endangered and threatened fish species. That also includes, for example, conclusions of "No-Impact" on Surface Water Hydrology including Delta Outflow. (Id. P. ES-10). DWR's Draft EIR fails to disclose and analyze the significant adverse environmental impacts of the Project.	analysis was completed on the resource topics required by CEQA. These detailed analyses and conclusions can be found in EIR Resource Chapters 4-9 and their associated appendices, and Appendix 3A, "Initial Study." The EIR also includes an effects analysis of each Alternative in Chapter 11, "Alternatives to the Proposed Project," and a cumulative analysis in Chapter 10, "Other CEQA Discussions." See also Common Response 2, "CEQA Environmental Baseline," for information on the project's baseline. Please see Chapter 2, Section 2.1.1, "Project Objectives," for a description of DWR's continuing commitment to operate the State Water Project in compliance with all state and federal water quality and environmental laws.
28	5	DWR's Draft EIR Fails to Disclose and Analyze the Adverse Impacts of Diversions of Freshwater Flows for the State Water Project On Endangered and Listed Fish Species According to Chapter 6 of the Draft EIR on "Aquatic Biological Resources," endangered and threatened fish species "Potentially Affected by the Proposed Project" include Winter-run Chinook Salmon (federal and state status endangered), Spring-run Chinook Salmon (federal and state status threatened), Central Valley Steelhead (federal status threatened), Delta Smelt (federal status threatened, state status endangered), Longfin Smelt (federal status proposed endangered, state status threatened), Green Sturgeon (federal status threatened, state status species of special concern), White Sturgeon (federal status none, state status species of special concern.) (Draft EIR p. 6-2.) [Footnote 1: White Sturgeon was proposed for state status of threatened by the California Fish and Game Commission on June 19, 2024.] White Sturgeon "could obtain protection under CESA as a candidate species in 2024 and may become a CESA-listed species in 2025." (Draft EIR, Ch. 2, p. 2-1.) The Executive Summary of the Draft EIR made the preposterous conclusions of "Less-Than-Significant Impact" on Delta Smelt, Longfin Smelt, Winter-run Chinook Salmon, and Spring-run Chinook Salmon. (p. ES-10.) Those same preposterous conclusions are made in chapter 6 of the Draft EIR on "Aquatic Biological Resources." That includes conclusions of less than significant impact on Delta Smelt (Draft EIR p.	The conclusions of less than significant impacts for aquatic biological resources, including endangered and listed fish species, are supported by the quantitative and qualitative analysis of the Proposed Project's actions including diversions of flows, among others, presented in Chapter 6, "Aquatic Biological Resources." No mitigation is required for less than significant impacts. With respect to Green Sturgeon, the impact conclusion is presented in Section 6.4.7.11, "Significance of Impacts on North American Green Sturgeon." Please note that the status of White Sturgeon has been updated in Chapter 6 (Table 6-1) and Appendix 6A, Section 6A.1.8, "White Sturgeon," to reflect the CESA listing candidacy, which was accepted in June 2024.

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		6-88), Longfin Smelt (Draft EIR p. 6-107), Winter-run Chinook Salmon (Draft EIR p. 6-163), Spring-run Chinook Salmon (Draft EIR p. 6-175), Central Valley Steelhead (Draft EIR p. 6-202), and White Sturgeon (p. 6-212.) On the other hand, chapter 6 did not actually state a conclusion as to Green Sturgeon (p. 6-202.) At the end of chapter 6, the Draft EIR states as to Aquatic Biological Resources, "No mitigation is necessary because the Proposed Project would not have significant impacts on aquatic biological resources." (Chapter 6, p. 6-248.) The statement "No mitigation is required" is included at the end of the specific discussions of Delta Smelt, Longfin Smelt, Winter-run Chinook Salmon, Spring-run Chinook Salmon, Central Valley Steelhead, and White Sturgeon, on the same pages as set forth in the previous paragraph of this comment letter. Likewise, according to the Draft EIR Executive Summary, as to each of these resources, the Draft EIR states with respect to Mitigation Measures, "None Required." (Draft EIR, p. ES-10.) The Draft EIR conclusions that the proposed project has either no impact at all or no significant impact on any resource whatsoever are false. CEQA requires, "' While foreseeing the unforeseeable is not possible, an agency must use its best efforts to find out and disclose all that it reasonably can.' (CEQA Guidelines, §15144." (Banning Branch Conservancy v. City of Newport Beach (2017) 2 Cal.5th 918, 938.) Instead of finding out and disclosing all that it reasonably can about the adverse environmental impacts of its diversion of substantial quantities of freshwater from endangered and threatened fish species DWR's Draft EIR simply lies that the SWP water diversions either have no impact or less than significant impact on all relevant resources.	
28	6	California's Water Resilience Portfolio issued July 28, 2020, by California state agencies explains, Over the last 200 years, human engineering to capture and divert flows has altered the natural functions of most major rivers and water dependent habitat in the state. Reclamation has eliminated most of the state's historical wetlands. These changes have impaired our overall resilience as a state and impacted fish and wildlife, threatening the existence of several native fish species including distinct runs of salmon and steelhead that support tribal communities, the commercial and sport-fishing industry, and marine species.	The comment summarizes information from various sources. Relative to these sources, the EIR includes updated information on species status (see, for example, Appendix 6A, "Environmental Setting Background Information.") The Proposed Project includes actions to address species status such as Delta Smelt supplementation (see Chapter 2, Section 2.3.9, "Delta Smelt Supplementation."

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		Reduced stream flows, increased temperatures, lack of habitat, and proliferation of invasive species have impacted many fish species across the state. Native fish and wildlife evolved to cope with drought, but dry periods are increasingly stressful given reduced habitat and river flow in recent decades. During extended drought, many streams already diminished by diversions warm, lessen, or dry up completely. Pollution compounds the stress. Many species are declining, and the number of fish species considered highly vulnerable to extinction rose from nine in 1975 to 31 species today. State and federal laws enacted to protect against reduced river flows and loss of habitat have been unevenly applied and only partially successful. (Water Resilience Portfolio p. 12.) The Water Resilience Portfolio recognizes conditions will worsen for the "natural ecosystems on which fish and wildlife depend. Climate change further threatens these ecosystems as air and water temperatures increase and dry periods become more punishing." (Water Resilience Portfolio p. 21.) The Congressional Research Service has explained just how bad things are getting, No Delta smelt were found in the annual September midwater trawl survey in 2021,marking four years in a row with no Delta smelt found in the September survey. This has caused some scientists to assert that Delta smelt may disappear from the wild in 2021 or 2022. [Footnote 2: Congressional Research Service, Central Valley Project: Issues and Legislation at p. 17 (Updated March 8, 2022.)] Also, according to the Congressional Research Service, In addition to Delta smelt, multiple anadromous salmonid species found in the Bay-Delta ecosystem have been listed under the ESA since 1991. These species include the endangered Sacramento River winter-run Chinook salmon, the threatened Central Valley spring-run Chinook salmon, the threatened Central Valley steelhead, threatened Southern Oregon/Northern California Coast coho salmon, and the threatened Central California Coast steelhead. Certain runs of chinook salmon are also faced with population declines in the Bay-Delta; scientists estimate that 2% of winter-run juvenile chinook salmon survived the summer of 2021, largely due to drought and warming temperatures. [Footnote 3: Congressional Research Service, Central Valley Project: Issues and Legislation at p. 17 (Updated March 8, 2022.)]	

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28	7	On September 28, 2023, the State Water Resources Control Board (Water Board) issued its Draft, Staff Report/Substitute Environmental Document in Support of Potential Updates to the Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary for the Sacramento River and its Tributaries, Delta Eastside Tributaries, and Delta. The Water Board Document will hereafter be referred to as the Staff Report/SED. DWR had the Water Board's Staff Report/SED. Here is all DWR's Draft EIR disclosed to the public about the Staff Report/SED, In September 2023, the State Water Board issued a Staff Report/Substitute Environmental Document in support of the Phase Two updates. The Board anticipates finalizing its Phase Two Staff Report and considering specific Phase Two amendments to the Delta Plan in late 2024. (Draft EIR, Ch. 6, p. 6-35.) DWR did not even include the Water Board's Staff Report/SED, in the Draft EIR's References for Chapter 6 on "Aquatic Biological Resources." So, DWR hid everything that follows that was set forth in the Water Board's extensive information from public reviewers of DWR's Draft EIR. The Staff Report/SED is also furnished to DWR with these comments. The Staff Report/SED is also available online at https://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/staff_report.html The Water Board's Staff Report/SED proposed Delta Plan amendments require substantial increases in Delta outflows to protect the environment including prevention of extinctions of endangered and threatened fish species. "The last major update to the flow objectives for the protection of fish and wildlife beneficial uses in the Sacramento River watershed and Delta occurred in 1995." (Staff Report/SED, Ch. 5, p. 5-3.) "The current Bay-Delta Plan is primarily implemented through water right requirements included in State Water Board Water Right Decision 1641 (D-1641)." (Id.) D-1641 dates back to 1999 and 2000. Despite D-1641 being drastically out of date especially given the endangered and threatened fish species listings since then, coupled with worsening conditions resulting from climate change, DWR's Draft EIR is based on attempting to comply with D-1641. (Draft EIR, Ch. 2, 2.1.3.1, p. 2-4, 2.2.2, p. 2-15, Ch. 3, Scope of Analysis, 3.3, p. 3-3.) DWR's Draft EIR states, "in sum, Delta flow and salinity requirements continue to be governed by the 1995	Please see Common Response 7, "Relationship to Healthy Rivers and Landscapes Program," for a response to this comment.

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		WQCP water right requirements included in State Water Board Water Right Decision 1641 (D-1641)." (Draft EIR, Ch. 5, Surface Water Quality, p. 5-3.)	
28	8	Chapter 7 of the Staff Report/SED sets forth the Environmental Analysis for the Document. The Chapter explains, "The Sacramento/Delta update to the Bay-Delta Plan is critically important to the health and survival of the Bay-Delta ecosystem. Native species in the Bay-Delta ecosystem are experiencing an ecological crisis." (Ch. 7.12, Hydrology and Water Quality, 7.12.1 Surface Water, p. 7.12.1-1) (Emphasis added.) The Chapter goes on to explain the quality of water in the channels has been degraded and, There has been a substantial overall reduction in flows and significant changes in the timing and distribution of those flows, and species have been cut off from natal waters. These issues have led to severe declines, and in some cases extinction, of native fish and other aquatic species. The overall health of the estuary for native species is in trouble, and expeditious action is needed on the watershed level to address the crisis, including actions by the State Water Board, fisheries agencies, water users, and others to address the array of issues affecting the watershed. (Id.) Chapter 7.23 of the Environmental Analysis explains in similar fashion, The Delta is experiencing an ecological crisis in the watershed and the prolonged and precipitous decline in numerous native species of spring-run and winter-run Chinook salmon, longfin smelt, Delta smelt, Sacramento splittail, and other species, and the factors involved in those declines…. Failing to take actions proposed by the proposed Plan amendments could result in the loss of Delta function beyond restoration of its original function and, therefore, would result in a significant irreversible environmental change. (Ch. 7.23, Cumulative Impact Analysis, Growth-Inducing Impacts, and Significant Irreversible Environmental Changes, p. 7.23-69.) Chapter 7.6.2 of the Environmental Analysis explains, "Anadromous salmonids, which use habitat in the Bay-Delta estuary and upstream tributaries, have also exhibited substantial declines in population abundance in recent decades." (Ch. 7.6.2, Aquatic Biological Resources, p. 7.6.2-4.) The Chapter goes on to explain,	The Proposed Project includes flow-related actions such as described in Chapter 2, Sections 2.3.5, "Spring Delta Outflow," and 2.3.6, "Delta Smelt Summer-Fall Habitat." Cumulative effects illustrate additional flow-related action potential effects for the combination of the Proposed Project plus Central Valley Project (see Chapter 10, Section 10.1.6.1, "Water Supply, Water Management, and Water Quality Projects and Actions.") The Proposed Project includes various actions to limit the potential effects of south Delta exports (see Chapter 2, Section 2.3.3, "Old and Middle River Flow Management.") Regarding updates to the Bay-Delta Plan, please see Common Response 7, "Relationship to Healthy Rivers and Landscapes Program."

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		It is estimated that the average annual natural production of Sacramento River winter-run Chinook salmon, Sacramento River spring-Chinook salmon, Sacramento River fall-run Chinook salmon (mainstem), and Sacramento River late fall-run Chinook salmon (mainstem) decreased between 1967 and 1991 and between 1992 and 2015 by 89, 61, 43, and 52 percent, respectively (see Table 3.4-3 in Chapter 3). Available data also show a long-term decline in escapement of steelhead from the Sacramento and San Joaquin River basins (McEwan 2001). Hatcheries now provide most of the salmon and steelhead caught in the commercial and recreational fisheries. (Id. p. 7.6.2-4.) "The population abundance of Sacramento splittail, Delta smelt, and longfin smelt have declined by 98, 98, and 99 percent, respectively, since sampling began in 1967." (Ch. 3, Scientific Knowledge to Inform Fish and Wildlife Flow Recommendations, p. 3-134.) Chapter 7.6.2 explains how the proposed increases in Delta inflows and outflows would improve flow and habitat conditions for anadromous, estuarine, and resident fish conditions to support their life stage needs. (Ch. 7.6.2, p. 7.6.2-36 and pp. 7.6.2-35-39.) Escapement of winter-run Chinook salmon was 100,000 fish in the 1960s, as high as 35,000 fish in 1976, since declining to a few thousand. (Ch. 3, p. 3-23.) Spring-run Chinook salmon runs were as large as 600,000 fish from 1880 to 1940 but now average around 14,500 fish. (Id. p. 3-25.) Higher flows are protective of all Central Valley Chinook salmon and steelhead as they migrate through the Delta as juveniles. (Id. p. 3-42.) "Delta outflow also affects biological resources in San Francisco Bay and the nearshore coastal ocean." (Id. p.3-10.) "Increased Delta outflows provide higher water quality and habitat complexity, leading to positive effects on native fish species and foodwebs." (Id.) "The abundance, reproductive success, and mortality rate of Orca whales that migrate and specialize in feeding on salmon outside the Golden Gate have been affected by the major salmon declines in recent years (Ford and Ellis 2006; Ford et al. 2010; Ward et al 2009). Their populations are limited by the availability of salmon prey, highlighting the importance of Delta outflow all the way to the top of the aquatic chain." (Id.) The abundance of longfin smelt is positively correlated to Delta outflow. (Id. p. 3-56.) Chapter 2 of the Staff Report/SED explains,	

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		The combined effects of water exports and upstream diversions have contributed to reduce the average annual net outflow from the Delta by 33% and 48% during the 1948 through 1968 and 1986 through 2005 periods, respectively, compared with unimpaired conditions (Fleenor et al. 2010). Dayflow data also show a trend for decreasing Delta outflow through time. Since the 1990s, there has been a reduction in spring outflow and a reduction in the variability of Delta outflow throughout the year (Figure 2.4-7) due largely to the combined effects of exports, diversions, and variable hydrology. (Ch. 2, Hydrology and Water Supply, p. 2-106.) "The species evaluations indicate that multiple aquatic species in the Bay-Delta estuary are in crisis. Recovery of native species would require both habitat restoration and increased flow in Central Valley tributaries and the Delta. Successful recovery of native species is not possible without parallel investment in both efforts." (Id. p. 3-134.) Most of the fish species mentioned so far are listed as endangered or threatened under the federal Endangered Species Act (ESA) and/or the California Endangered Species Act (CESA.) "Based on available information regarding several proposed water diversion and conveyance projects and pending water right applications that propose surface water diversions during the wet season, it is assumed that streamflows may be reduced during the winter and spring under the no project alternative, which could result in potentially significant impacts on aquatic and terrestrial species and habitats in the Sacramento/Delta watershed." (Ch. 7.24, Alternatives Analysis, p. 7.24-9.) So, Delta outflows must be increased. That means exports must be reduced. DWR's Project instead of reducing exports will actually increase exports for all water year types other than Dry and Critically Dry years. (Draft EIR, Ch. 9, Climate Change, p. 9-24.) DWR's Project will actually increase the maximum daily diversion limits from July through September. (Draft EIR, Ch. 2, p. 2-5, 2-19), and expand the Winter Diversion Window to December 1 through March 31 increasing by one-third diversions of the San Joaquin River flow (Draft EIR, Ch. 2, p. 2-17, 2-20.)	
28	9	On January 19, 2024, the U.S. Environmental Protection Agency (EPA) issued a Comment Letter ("EPA Letter") to the California Water Resources Control Board on the Board's "Sacramento/Delta Draft Staff	The EIR references published studies and reports. The EPA Letter is a comment to the State Water Resources Control Board on their Draft Staff Report, and not a

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		Report." A copy of EPA's letter and its 14 page Enclosure, EPA Comments on the September 28, 2023 Draft Staff Report in support of updates to the Water Quality Control Plan for the San Francisco Bay-Sacramento-San Joaquin Delta Estuary for the Sacramento River and Delta watersheds, ("EPA Comments") is attached as Exhibit 1 [Attachment 1] to this comment letter. DWR's Draft EIR does not mention the EPA letter at all in Chapter 6 on "Aquatic Biological Resources." DWR's Draft EIR also does not include EPA's letter in its References for Chapter 6. According to the expert EPA, Delta flows and outflows must be significantly increased to protect endangered and threatened fish species and also to protect public health. According to the EPA, "The State Water Board identified the need to comprehensively review and, if necessary, amend flow objectives in response to growing concern over deteriorating aquatic life conditions, climate change, and pelagic organism decline." (EPA Letter at 1.) Also, "EPA notes that water quality standards for the waterbodies covered in this Staff Report were last updated in 1995, despite a Clean Water Act requirement that States consider and as appropriate, make such updates at least once every three years. CWA § 303(c)(1)." (EPA Letter at 1 fn. 1.) EPA said with respect to fish species needs, The Staff Report along with previous State Water Board reports in which the State Water Board compiled and analyzed a significant amount of comprehensive scientific information, recognize that substantially more flow is needed in the Delta and Sacramento-San Joaquin watersheds to support aquatic life. Currently, six fish species (Delta smelt, longfin smelt, green sturgeon, Sacramento River winter-run Chinook salmon, Central Valley spring-run Chinook salmon, Central Valley steelhead) are listed or proposed as threatened or endangered under the Endangered Species Act. Scientific consensus indicates that native fish population abundance is positively associated with flow volumes (e.g., Jassby et al. 1995, Sommer et al. 1997, Mac Nally et al. 2010, Tamburello et al. 2019) and that largescale increases in both flow and habitat restoration are needed to recover and protect these and other native species. (EPA Comments at 1) (Emphasis added.) EPA added, EPA recommends the State Water Board consider scientific studies published since the State Water Board's 2017 Final Scientific Basis Report was released in the final Staff Report to support draft plan	comment on this EIR. Please see Response to Comment 28-8 and Common Response 7, "Relationship to Healthy Rivers and Landscapes Program."

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		amendments. Studies published after 2017 may refine the State Water Board's identification of critical flow thresholds that benefit native fish species and estuarine habitat. For example, recent studies on flow-survival relationships for Chinook salmon in the Sacramento River and Delta provide scientific support for the positive relationship between flow and outmigration survival and recruitment of Chinook salmon, including for late-fall, fall, and winter-run salmon (Michel, 2019), late-fall run and spring-run smolts (Cordoleani et al., 2018; Henderson et al., 2019; Michel et al., 2021; Perry et al., 2018), wild origin salmon fry (Munsch et al., 2020), and winter-run juveniles (Hassrick et al., 2022). Furthermore, since the 2016 draft Scientific Basis Report and the 2017 Final Scientific Basis Report identified a flow range of 11,400-29,200 cfs as protective of fish and wildlife uses for the February-June period, recent research has demonstrated that even greater flow magnitudes over a period longer than February-June are needed to be protective of zooplankton populations (Hassrick et al. 2023), which are a foundational group in the food web to support species at higher trophic levels, including listed salmonids.(EPA Comments at 3-4)(Emphasis added.)	
28	10	On January 19, 2024, the U.S. Environmental Protection Agency (EPA) issued a Comment Letter ("EPA Letter") to the California Water Resources Control Board on the Board's "Sacramento/Delta Draft Staff Report." [Regarding EPA's letter discussing native fish species and estuarine habitat.] There is more. EPA also said, As cautioned by the State Water Board: "flow and physical habitat interact in many ways, but they are not interchangeable. The best available science suggests that current flows are insufficient to protect public trust resources." Further, scientific consensus indicates that native fish population abundance is positively associated with increasing flow volumes (e.g., Jassby et al. 1995, Sommer et al. 1997, Mac Nally et al. 2010, Tamburello et al. 2019) and that largescale increases in both flow and habitat restoration are needed to recover and protect these and other native species. Clearly, flow is a critically important driver of the health of the Bay-Delta watershed. (EPA Comments at 6) (Emphasis added.)	Please see Common Response 7, "Relationship to Healthy Rivers and Landscapes Program," for a response to this comment.

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28	11	According to EPA, habitat restoration is not sufficient, This Staff Report does not demonstrate that suitable habitat area in the Sacramento and Delta watersheds is a limiting factor on estuarine and anadromous fish population growth, nor does the Staff Report provide an adequate scientific rationale to demonstrate that habitat restoration assets will increase fish abundance without meaningful increases in tributary flows protected as Delta outflows. Any improvements in habitat will likely be achieved only if pursued alongside substantial increases in flow rates, because flow is strongly and positively correlated with many indicators of native fish survival, including for salmon survival out-migrating from natal tributaries (Michel, 2019, Henderson et al. 2019), salmon survival in and through the Delta (Perry et al. 2018), and Delta Smelt post-larval survival (Polansky et al. 2021). Targeted habitat restoration with insufficient flow, on the other hand, is associated with low salmonid inhabitation (Munsch et al. 2020). (EPA Comments at 9)(Emphasis added.)	Please see Responses to Comments 28-6 and 28-8, which describe flow-related and other actions in the Proposed Project and provide cumulative context as to other actions. Please also see Common Response 7, "Relationship to Healthy Rivers and Landscapes Program."
28	12	Exhibit 2 [Attachment2] is a Notice published in the Federal Register at 87 Fed.Reg. 60957-60975, by the U.S. Fish and Wildlife Service on October 7, 2022, of its proposed listing of the Bay-Delta longfin smelt distinct population segment (DPS) as an endangered species under the Endangered Species Act of 1973. DWR's Draft EIR does not disclose the Notice in Chapter 6 on "Aquatic Biological Resources" and does not include the Notice in its References for Chapter 6. The U.S. Fish and Wildlife Service Federal Register Notice said, The operation of the State Water Project and Central Valley Project and the many large reservoirs that store and supply water to agricultural and municipal beneficial uses modify the flow regime and affect the volume and timing of Delta freshwater inflow and outflow. (87 Fed.Reg. 60963.) The Notice added, We consider reduced and altered freshwater flows resulting from human activities and impacts associated from current climate change conditions (increased magnitude and duration of drought and associated increased temperatures) as the main threat facing the Bay-Delta longfin smelt due to the importance of freshwater flows to maintaining the life-history functions and species needs of the DPS. However, because the Bay-Delta longfin smelt is an aquatic species and the needs of the species are closely tied to freshwater input into the estuary, the impact of many of	The status of Longfin Smelt as federally proposed to be listed as endangered was noted in Table 6-1 in Chapter 6 of the DEIR and has subsequently been updated in the FEIR given that listing occurred in June 2024; information in Appendix 6A, Section 6A.1.2.1, "Legal Status," has also been updated accordingly.

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		the other threats identified above are influenced by the amount of freshwater inflow into the system (i.e., reduced freshwater inflows reduce food availability, increase water temperatures, and increase entrainment potential). (Id.) (Emphasis added.) The Notice also said, under the heading "Threats Influencing the Bay-Delta Longfin Smelt" and subheading "Reduced and Altered Freshwater Flows," It is estimated that the State and Federal water projects annually reduce an average of about 5 million acre-feet (MAF) of freshwater into the Delta, while other municipal or private reservoirs or diverters annually decrement an additional 8 MAF of potential freshwater into the Delta (Hutton et al. 2017, fig.4, p. 8). (Id.) The threat section of the Notice concluded, In the case of Bay-Delta longfin smelt, the amount of low-salinity habitat available for optimal growth and rearing conditions (food and water conditions (salinity, turbidity)), especially for early life stage fish, is directly linked to freshwater inflow. (87 Fed.Reg. 60963-60964.)	
28	13	Exhibit 3 [Attachment 3] is the California Department of Fish and Wildlife Memorandum of January 25, 2024, reporting the 2023 Fall Midwater Trawl annual fish abundance and distribution summary. DWR's Draft EIR does not disclose the summary in Chapter 6 on "Aquatic Biological Resources." DWR's Draft EIR does not include the summary in its References for Chapter 6. The summary reported at p. 2, Delta Smelt (Hypomesus transpacificus) No Delta Smelt were collected at any stations from September through December. The 2023 September-December index (0) is tied with 2018-2022 as the lowest index in FMWT history. An absence of Delta Smelt catch in the FMWT is consistent among other surveys in the estuary during this period. For example, the Enhanced Delta Smelt Monitoring (EDSM) survey of the U.S. Fish and Wildlife Service (USFWS) caught only 6 Delta Smelt among 16 sampling weeks (between 9/4 & 12/19) comprised of 2054 tows (U.S. Fish and Wildlife Service 2023). he California Department of Fish and Wildlife Memorandum of December 29, 2022, reporting the 2022 Fall Midwater Trawl annual fish abundance and distribution summary, reported with respect to Delta Smelt, "The 2022 abundance index was zero and continues the trend of no catch in the FMWT (Fall Midwater Trawl Survey) since 2017."	The DEIR included Delta Smelt abundance information up to 2022 in Section 6A.1.1.3, "Distribution and Abundance," which has been updated to 2023 per the comment.

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		DWR's Draft EIR does not disclose the 2022 or 2023 summaries in Chapter 6 on "Aquatic Biological Resources" and does not include them in the References for Chapter 6.	
28	14	B. DWR's Draft EIR is Legally Deficient Because it Fails to Address the Adverse Impacts of State Water Project Diversions of Freshwater from Endangered and Threatened Fish Species. The SWP diversions of freshwater flows are causing the listing of fish species as endangered or threatened, and in the case of Delta Smelt, already driving the listed fish species into virtual extinction. Native fish species have declined precipitously since the SWP began diverting freshwater flows from the Delta for export. Delta smelt were declared threatened in 1993 (58 Fed. Reg. 12854) and critical habitat was designated in 1994. (59 Fed. Reg. 65256.) Central Valley steelhead were declared threatened in 1998 and their critical habitat was designated in 2005. (70 Fed. Reg. 52488.) Winter run Chinook salmon were declared threatened in 1990, and then endangered in 2005. (55 Fed. Reg. 46515; 70 Fed. Reg. 37160.) Their critical habitat in the Sacramento River and tributaries was designated in 1993. (58 Fed. Reg. 33212.) Spring run Chinook salmon were declared threatened, and critical habitat designated in 2005. (70 Fed. Reg. 37160, 52488.) The Southern distinct population segment of North American green sturgeon was declared threatened in 2006 (71 Fed. Reg. 17757) and its critical habitat was designated in 2009. (74 Fed. Reg. 52299.) CEQA establishes State policy to "take all action necessary" not only to protect, but also to "rehabilitate and enhance" the environmental quality of the state. (Pub. Res. Code § 21001(a).) CEQA established state policy is to "Prevent the elimination of fish or wildlife species due to man's activities, insure that fish and wildlife populations do not drop below self-perpetuating levels, and preserve for future generations representations of all plant and animal communities…" (Pub. Res. Code § 21001(c).) CEQA in Public Resources Code section 21100 prescribes the content of EIRs on state projects. The EIR "shall include a detailed statement setting forth all of the following:" (Pub. Res. Code § 21100(b).) That includes, "All significant effects on the environment of the proposed project. (Pub. Res. Code § 21100(b)(1).) That also includes, "Any significant effect on the environment that cannot be avoided if the project is implemented." (Pub. Res. Code § 21100(b)(2)(A).) And the	Contrary to the comment's suggestion that all the EIR does is claim that impacts on listed fish species would be less than significant, the EIR bases its conclusions on the various qualitative and quantitative analyses for each species, which include the effects of diversions among other factors. Please also see Common Response 7, "Relationship to Healthy Rivers and Landscapes Program."

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		required content includes "Any significant effect on the environment that would be irreversible if the project is implemented." (Pub. Res. Code § 21100(b)(2)(B), emphasis added.) Both the plain language of section 21100 as well as the requirements for interpreting CEQA mean that the impacts of SWP diversions of freshwater for SWP operations including the impacts on endangered and threatened fish species had to be honestly and accurately disclosed and evaluated in DWR's Draft EIR. The freshwater flows being diverted for the SWP are the critical habitat for the fish. The California Supreme Court determined that pursuant to CEQA Guidelines section 15065(a)(1), a "potential substantial impact on endangered, rare or threatened species is per se significant." (Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova (2007) 40 Cal.4th 412, 449.) [Footnote 4: The CEQA Guidelines are codified at 14 Cal. Code Regs § 15000 et seq.] It is beyond any doubt that diversions of freshwater flows for the SWP have at minimum a "potential substantial impact" on endangered and threatened fish species. That means that contrary to the Draft EIR, the impacts are per se significant. The California Supreme Court said in Mountain Lion Foundation v. Fish and Game Com. (1997) 16 Cal.4th 105, 125, "For example, CESA [California Endangered Species Act] establishes a policy adding significant weight to the CEQA balancing scale on the side favoring protection of a listed species over projects that might jeopardize them or their habitats. (Fish & G. Code, § 2053.)" Fish and Game Code section 2053 states "Legislative findings and declarations; alternative state agency projects" as follows, (a) The Legislature further finds and declares that it is the policy of the state that public agencies should not approve projects as proposed which would jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat essential to the continued existence of those species, if there are reasonable and prudent alternatives available consistent with conserving the species or its habitat which would prevent jeopardy. (b) Furthermore, it is the policy of this state and the intent of the Legislature that reasonable and prudent alternatives shall be developed by the department, together with the project proponent and the state lead agency, consistent with conserving the species,	

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		while at the same time maintaining the project purpose to the greatest extent possible. (Emphasis added.) DWR's Draft EIR fails to disclose the adverse impacts of diversions of freshwater for the SWP on endangered and listed fish species. Instead of honest and accurate evaluation of the impacts on listed fish species, all the Draft EIR does is falsely claim that any impacts on listed fish species would be less than significant.	
28	15	C. Draft EIR Deficiencies Pertaining to Habitat Restoration DWR's Draft EIR touts habitat restoration projects as mitigating operations-related impacts on Delta Smelt, Longfin Smelt, and also providing benefits to winter-run and spring-run Chinook Salmon. (Draft EIR, Ch. 2, pp. 2-36, 37; Ch. 9, p. 9-21.) The EPA in its January 19, 2024, Comment Letter on the Staff Report/SED explained, This Staff Report does not demonstrate that suitable habitat area in the Sacramento and Delta watersheds is a limiting factor on estuarine and anadromous fish population growth, nor does the Staff Report provide an adequate scientific rationale to demonstrate that habitat restoration assets will increase fish abundance without meaningful increases in tributary flows protected as Delta outflows. Any improvements in habitat will likely be achieved only if pursued alongside substantial increases in flow rates, because flow is strongly and positively correlated with many indicators of native fish survival, including for salmon survival out-migrating from natal tributaries (Michel, 2019, Henderson et al. 2019), salmon survival in and through the Delta (Perry et al. 2018), and Delta Smelt post-larval survival (Polansky et al. 2021). Targeted habitat restoration with insufficient flow, on the other hand, is associated with low salmonid inhabitation (Munsch et al. 2020). (EPA Comment Letter, p. 9.) DWR in its Draft EIR hides from the public information that increased flows are what is necessary to save the endangered and threatened fish species.	Please see Common Response 7, "Relationship to Healthy Rivers and Landscapes Program."
28	16	D. Draft EIR Deficiencies Pertaining to the Voluntary Agreements The Draft EIR asserts it will provide Delta outflow "per terms of the Voluntary Agreements." (Draft EIR, Ch. 2, 2.3.5.1, p. 2-31; Ch. 9, 9.4.4, p. 9-30.) The EPA, however, explained in its January 19, 2024 Comment Letter on the Staff Report/SED,	Please see Common Response 7, "Relationship to Healthy Rivers and Landscapes Program."

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		Clearly, flow is a critically important driver of the health of the Bay-Delta watershed. However, the VA [Voluntary Agreement] alternatives, as currently proposed, do not provide flow to ensure year-round protection or protection in critical dry years. Rather, flow assets provided by the proposed VAs are concentrated January through June, with priority in April and May, during Dry, Below Normal, and Above Normal water years (Staff Report p. 9-5). As noted in the Staff Report, one or more life stages of native estuarine and anadromous fish, including threatened and endangered Chinook salmon and steelhead, require access to habitats across the entire watershed at all times of the year (Staff Report Table 3.4-1 and footnote 4). For this reason, it is important that the State Water Board include provisions to ensure adequate flow is available for year-round protection of designated uses in its Bay-Delta Plan amendments. Native salmonids are particularly at-risk during drought conditions. However, potential VA flow assets are not required for critical dry years on most tributaries, the Sacramento River, and the Delta (Staff Report Table 9.3-1). Further, the Staff Report indicates that during critical dry years the proposed VA alternative will result in a decrease of flows from baseline (Tables 9.5-2 to 9.5-5). (EPA Comment Letter pp. 6-7.) DWR's Draft EIR fails to disclose to the public the EPA's information that the Voluntary Agreements are insufficient to protect the endangered and listed fish species.	
28	17	2. A REVISED DRAFT EIR MUST BE RECIRCULATED FOR PUBLIC REVIEW AND COMMENT The California Supreme Court held in Mountain Lion Foundation v. Fish and Game Com. (1989) 214 Cal.App.3d 1043, 1052, We do not reach the question of whether the final EID, which was not considered by the trial court, clears up some of the deficiencies of the draft. The cumulative impact analysis contained in the final EID has never been subjected to public review and criticism. If we were to allow the deficient analysis in the draft EID to be bolstered by a document that was never circulated for public comment, we would not only be allowing appellants to follow a procedure which deviated substantially from the terms of the writ, but we would be subverting the important public purposes of CEQA. Only at the stage when the draft EID is circulated can the public and outside agencies have the opportunity to analyze a proposal and submit comment. No such right exists upon issuance of a	The EIR must be adequate, complete, and a good faith effort at full disclosure (CEQA Guidelines Section 15151). The DEIR for longterm operations of the SWP provides an adequate, complete, and good faith effort at full disclosure of the physical environmental impacts and the conclusions are based upon substantial evidence in light of the whole record. Development of the Proposed Project description and analysis of the potential environmental impacts utilized a wide range of relevant data, literature, and tools. DWR used the best available scientific information to produce analyses of the effects of the Proposed Project, drawing on a number of scientific and engineering disciplines that include geology, hydrology, biology, ecology, chemistry, engineering, and climatology. The data, models, and literature are publicly available, and the

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		final EID unless the project is substantially modified or new information becomes available. (See Cal. Code Regs., tit. 14, § 15162.) To evaluate the draft EID in conjunction with the final EID in this case would only countenance the practice of releasing a report for public consumption that hedges on important environmental issues while deferring a more detailed analysis to the final EID that is insulated from public review. [Footnote 5: "EID" means environmental impact document. The Court decision applies to EIRs.] CEQA Guideline section 15088.5(a) requires recirculation when, (1) A new significant environmental impact would result from the project or from a new mitigation measure proposed to be implemented. (2) A substantial increase in the severity of an environmental impact would result unless mitigation measures are adopted that reduce the impact to a level of insignificance. (3) A feasible project alternative or mitigation measure considerably different from others previously analyzed would clearly lessen the significant environmental impacts of the project, but the project's proponents decline to adopt it. (4) The draft EIR was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded. (Mountain Lion Coalition v. Fish & Game Com.(1989) 214 Cal.App.3d 1043)(Emphasis added.) Preparation of a revised Draft EIR and recirculation are required by CEQA Guideline § 15088.5(a)(1) because the Project will result in significant adverse environmental impacts on the endangered and threatened fish species. Again, a "potential substantial impact on endangered, rare or threatened species is per se significant." (Vineyard Area Citizens for Responsible Growth, 40 Cal.4th 412, 449.) A revised and recirculated Draft EIR are also required by CEQA Guideline § 15088.5(a)(4) because the Draft EIR was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded. As shown above, the Draft EIR bases its conclusions of less than significant impact or no impact on compliance with a water quality control plan developed by the Water Board in 1995 and compliance with the requirements of the Water Board's D-1641 which dates back to 1999 and 2000. The Draft EIR fails to include any let alone all of the	methodologies used to apply these tools and information are described in the analyses in DEIR Chapters 4 through 9 and the associated appendices. The data and information sources utilized to evaluate the Proposed Project are cited in the EIR and also listed in the bibliographies provided at the end of the EIR and each accompanying appendix. The data, models, literature, and analyses have been subjected to review either as part of the customary practices of scientific publication or as part of legal and regulatory processes. The modeling conducted for the EIR is based on reasonable assumptions and appropriate, widely accepted modeling tools. CEQA provides that the public review period for a DEIR shall not be less than 30 days nor should it be longer than 60 days except under unusual circumstances (CEQA Guidelines § 15105(a)). Therefore, the DEIR was initially made available on May 29, 2024, for a 47-day public review period, ending July 15, 2024. In response to commenter requests, DWR extended the public review period by 21 days. On July 12, 2024 DWR announced the public review period would be extended by 21 days, ending August 5, 2024. As a result, the total public review period duration was 68 days. The total public review period duration exceeded the CEQA requirement and allowed sufficient time for reviewers to submit meaningful comments on the DEIR. See Common Response 7, "Relationship to Healthy Rivers and Landscapes Program," regarding the State Water Board Water Quality Control Plan Update.

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		information in the Water Board's September 28, 2023 Staff Report/SED about how freshwater flows need to be increased by reducing exports in an attempt to keep the SWP and other projects from driving the endangered and threatened fish species into extinction. The information in the Water Board's Staff Report/SED, the EPA's January 19, 2024 Comment Letter on the Staff Report/SED, the U.S. Fish and Wildlife Service Notice, and the California Department of Fish and Wildlife summary regarding no finding of any Delta Smelt had to be included in DWR's Draft EIR. In the absence of such profoundly important information from expert agencies DWR's Draft EIR was so inadequate as to preclude meaningful public review and comment.	
28	18	3. DWR FAILED TO MAKE THE REQUIRED FULL ENVIRONMENTAL DISCLOSURE IN ITS DRAFT EIR A CEQA goal is "transparency in environmental decision-making." (Save Tara v. City of West Hollywood (2008) 45 Cal.4th 116, 136) "CEQA requires full environmental disclosure…" (Communities for a Better Environment v. City of Richmond (2010)184 Cal.App.4th 70, 88.) The title of Guideline § 15151 is "Standards for Adequacy of an EIR." The last sentence of that Guideline section states, "The courts have looked not for perfection but for adequacy, completeness, and a good faith effort at full disclosure." (Emphasis added.) "'While foreseeing the unforeseeable is not possible, an agency must use its best efforts to find out and disclose all that it reasonably can.' (Guidelines, § 15144.)" (Banning Ranch Conservancy v. City of Newport Beach (2017) 2 Cal. 5th 918, 938) (Emphasis added.) DWR's Draft EIR has done the opposite of providing full environmental disclosure. DWR's Draft EIR has done the opposite of using best efforts to find out and disclose all that it reasonably can about the impacts of SWP diversions on endangered and listed fish species. Instead of disclosing and addressing the information in the Water Board's recent Staff Report/SED, the Draft EIR simply includes one sentence saying it exists. DWR's Draft EIR does not even do that with respect to the EPA's January 19, 2024 Comment Letter on the Staff Report/SED. Likewise, DWR's Draft EIR does not disclose the U.S. Fish and Wildlife Service Notice proposing the listing of Longfin Smelt, and the California Department of Fish and Wildlife not finding any Delta Smelt in its annual searches for them over the past seven years.	See Responses 28-5 regarding impact conclusions, 28-9 regarding the State Water Board Staff Report, 28-12 regarding longfin smelt listing, and 28-17 regarding environmental disclosure.

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		DWR's Draft EIR hides from the public the Water Board and EPA information and findings that current standards are inadequate and must be strengthened to increase freshwater flows by reducing diversions and exports in order to keep water projects such as the SWP from completing the extirpation of the endangered and listed fish species. DWR has provided an environmental cover-up of the impacts of SWP diversions on endangered and threatened fish species instead of the full environmental disclosure required by CEQA.	
28	19	4. THE DRAFT EIR FAILS TO INCLUDE CONSIDERATION OF ALL SIGNIFICANT ENVIRONMENTAL IMPACTS IN VIOLATION OF CEQA CEQA in Public Resources Code section 21100 prescribes the content of EIRs on state projects. The EIR "shall include a detailed statement setting forth all of the following:" (Pub. Res. Code § 21100(b).) That includes, "All significant effects on the environment of the proposed project. (Pub. Res. Code § 21100(b)(1).) That also includes, "Any significant effect on the environment that cannot be avoided if the project is implemented." (Pub. Res. Code § 21100(b)(2)(A).) And the required content includes "Any significant effect on the environment that would be irreversible if the project is implemented." (Pub. Res. Code § 21100(b)(2)(B), emphasis added.) The Legislature's repeated use of the term "all" is controlling. Like the word "any" when used in a statute, "all" literally means "all," without limitation, unless an express exception is made. (See Lopez v. Sony Electronics, Inc. (2018) 5 Cal.5th 627, 635 (construing the term "any" as synonymous with "all".) In violation of the plain language of section 21100, DWR's Draft EIR says, "the scope of this the EIR has been focused on those environmental resources that potentially would be significantly affected by the Proposed Project, and the following environmental topics been eliminated from detailed consideration in this the DEIR: Aesthetics, Agriculture and Forestry Resources, Air Quality, Biological Resources (Terrestrial), Cultural Resources, Energy, Geology and Soils, Greenhouse Gas Emissions, Hazards and Hazardous Materials, Land Use Planning, Mineral Resources, Noise, Population Housing, Public Services, Recreation, Transportation/Traffic, Utilities Service Systems, Wildfire." (Draft EIR, Ch. 3, Scope of Analysis, 3.2, pp. 3-1,-2, in the Draft EIR these environmental topics are listed with bullets in a vertical column.)	As summarized in Chapter 1, "Introduction," and Chapter 3, "Scope of Analysis," an Initial Study was prepared prior to the preparation of the EIR to consider the wide range of environmental resource topics contained in Appendix G of the State California Environmental Quality Act (CEQA) Guidelines. In addition, please refer to Executive Summary, Table: Summary of Findings, starting on page ES-2 for a list of CEQA impact determinations for all CEQA topics. The Initial Study is provided in Appendix 3A. Based on this Initial Study, the scope of this DEIR was focused on those environmental resources that potentially would be significantly affected by the Proposed Project. The environmental topics that were eliminated from detailed consideration can be found in Section 3A.1.3, "Summary of Findings." The Initial Study includes complete analysis of the environmental topics excluded from the EIR which complies with CEQA under Section 15063(c)(3) of the State CEQA Guidelines. Therefore, this EIR is compliant to CEQA guidelines and does adequately address all Appendix G environmental topics.

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		According to the Draft EIR, "The following environmental topics are addressed in this DEIR; Surface Water Hydrology, Surface Water Quality, Aquatic Biological Resources, Tribal Cultural Resources, Environmental Justice, Climate Change Resiliency and Adaptation." (Draft EIR, Ch. 3, Scope of Analysis, 3.2, p. 3-2, in the Draft EIR these environmental topics are listed with bullets in a vertical column.) By excluding numerous potential environmental effects at the outset from disclosure and analysis in the Draft EIR, DWR has violated the express, plain language of CEQA section 21100. Moreover, CEQA must be interpreted "in such manner as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language."□ (Protecting our Water and Environmental Resources v. County of Stanislaus (2020) 10 Cal.5th 479, 496.) "œWe also consider the Legislature's objectives: to reduce or avoid environmental damage by requiring project changes when feasible."□ (Id) DWR's exclusion of numerous potential effects from any consideration in the Draft EIR constituted failure to proceed in the manner required by CEQA. The deliberate omission requires DWR to prepare a revised Draft EIR including consideration of all potential environmental effects and recirculation of the revised Draft EIR for public review and comment. (CEQA Guideline § 15088.5(1) and (4.))	
28	20	5. THE DRAFT EIR ANALYSIS OF THE ENVIRONMENTAL IMPACTS OF THE SEVERAL OTHER RESOURCE TOPICS ADDRESSED INCLUDING CYANOBACTERIA HARMFUL ALGAL BLOOMS IS ALSO DEFICIENT UNDER CEQA DWR's Draft EIR also purports to address the environmental impacts of SWP operations on surface water hydrology, surface water quality, tribal cultural resources, environmental justice, and climate change resiliency and adaptation. The Draft EIR's inadequacies and failure to disclose the adverse environmental impacts with respect to aquatic biological resources was explained in detail in sections 1-3 of these comments. The Draft EIR likewise is inadequate with respect to these other resources. The Draft EIR claims "No Impact" on Surface Water Hydrology. (Draft EIR, Executive Summary, p. ES-11.) That is preposterous. The Draft EIR admits the Proposed Project would alter existing hydrology. (Draft EIR, Ch. 3, Scope of Analysis, 3.2, p. 3-2.) Moreover, the reduction of freshwater flows by way of diversions for the SWP clearly result in adverse impacts on surface water hydrology.	Please refer to Appendix 3A, "Initial Study," Section 3A.3.10, "Hydrology and Water Quality," regarding discussion of surface water hydrology. Changes to surface water hydrology, by themselves, are not considered a significant impact based on the Initial Study. Please refer to Chapter 4, "Surface Water," Section 4.3.1, "Thresholds of Significance," for a description of factors, based on CEQA Guidelines, that would result in a potentially significant impact on surface water if any were to occur. SWP diversions are a part of historical SWP operations. Please see Common Response 2, "CEQA Environmental Baseline," for a discussion of treatment of historical conditions.

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28	21	This section of these comments focuses on cyanobacteria harmful algal blooms (CHABs.) DWR's Draft EIR states the project impacts on CHABs are "Less-Than-Significant Impact." (Draft EIR, Executive Summary, p. ES-10. The Draft EIR admits, "The term CHABs refers to Cyanobacteria harmful algal blooms that have the potential to harm human health or aquatic biota. CHABs are a widespread problem in water bodies worldwide." (Draft EIR, Ch. 5, Surface Water Quality, p. 5-9.) The Draft EIR also admits Delta CHAB and cyanotoxin monitoring has generally been inconsistent and incomplete in terms of geographic coverage, which makes it difficult to assess changes over time. Nevertheless, the California Cyanobacteria and Harmful Bloom Network's Harmful Algal Bloom Incident Report Portal and published studies suggest that cyanotoxins are increasing since they were first detected in the Delta. (Id. p. 5-11.) The EPA's January 19, 2024 comment letter (Exhibit 1 [Attachment 1]) on the Staff Report/SED said The Bay-Delta and its watersheds have also experienced increased frequency of harmful algal blooms (HABs) affecting aquatic life and human health. Restoration of higher flow volumes may address key drivers of HABs, including increased stream temperature and water residence time (Kudela et al. 2023; Berg & Sutula 2015, Lehman et al. 2013). EPA reiterates that swift action is needed to address the imperiled state of the Delta and the species, communities, and economies that depend on this ecosystem for survival. (EPA Comment Letter, pp. 1-2.) Stockton urban waterways are stagnant and thick with algal scum and toxins. Algae blooms are regularly found from Stockton to Discovery Bay with smaller ones becoming visible in sloughs between the cities. The CHABs public health situation also involves environmental justice. According to a Restore the Delta Report, Percentage-wise, the Delta region has the largest environmental justice community in California, with parts of Stockton hitting the 95th percentile for economic distress, and small Delta towns comprised of 52% of residents for whom English is not their first language. The economic distress of many Stockton environmental justice communities exceeds that of all other environmental justice communities of California. [Footnote 6: Climate Equity and Seismic Resilience for the San Francisco Bay-Delta Estuary, p.6, Restore the Delta (2019).]	The majority of the comment discusses concerns over CHABs for existing conditions, and that CHABs have worsened in the Delta over past levels. The purpose of the CHAB impact analysis in Chapter 5, "Surface Water Quality," was to determine whether implementation of the Proposed Project would make Baseline Conditions for CHABs significantly worse. Based upon the current scientific understanding of the primary drivers affecting CHABs (i.e., water temperature, residence time, nutrient levels, turbulence and mixing of the water column, and irradiance) and how the Proposed Project would affect those drivers, the Proposed Project's effects on CHABs was determined to be less than significant.

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		Men and women, girls and boys, in economic distress do not have swimming pools and do not belong to clubs that have swimming pools. Many do not have air-conditioning at home. The Delta region is extremely hot in the summer. Residents in economic distress are the most likely to cool off in Delta waters. Some of these residents fish in Delta waters for part of their food supply. Reducing freshwater flows for State Water Project exports is worsening over time and is now reaching the level of a public health and environmental emergency. On July 9, 2024, the Water Board posted a "danger" advisory "after testing of water samples collected from multiple locations of Discovery Bay in Contra Costa County confirmed the presence of harmful algal blooms, according to the State Water Resources Control Board and Central Valley Regional Water Quality Control Board. HABs can pose a threat to people and pets, and the advisory urges people to avoid swimming, boating and other activities to keep pets out of the water until further notice." (Water Boards News Advisory, Exhibit 5 [Attachment 5].) The "danger" advisory also explained, Cyanobacteria, a group of organisms that form HABs, can produce potent toxins. Health risks are associated with HABs, as they produce dermatoxins that can cause itching skin and rashes, as well as gastrointestinal distress, headaches, agitation and weakness, or abnormal breathing if HAB material is swallowed while swimming. Dogs and children are most susceptible to exposure because of their smaller body size, increased potential to swallow water while swimming and tendency to stay in the water longer. If you suspect exposure, wash your children and dog immediately. (Id,) So, DWR's Draft EIR is consistent. The Draft EIR hides instead of discloses the dangers of not increasing freshwater flows by reducing exports to prevent the extinction of listed fish species. The Draft EIR likewise hides instead of discloses the dangers to public health of Delta residents and users including children of not increasing freshwater flows by reducing exports to keep harmful algal blooms from worsening throughout the Delta. The court held in Gray v. County of Madera (2008) 167 Cal.App.4th 1099, 1116-1117, "Law is not required to abandon common sense. Here, our common sense informs us that the mitigation measures will not	

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		effectively replace the water that could be lost to the neighboring landowners." The court rejected the argument it should defer to the Board of Supervisors' finding that the mitigation measures were effective, saying "we decline to do so where the Board's findings are not supported by substantial evidence or defy common sense." (Gray, 167 Cal.App.4th at 1116) (Emphasis added.) It defies common sense to conclude that the continued diversion for years of large quantities of freshwater flows has no impact on surface water hydrology. The same is true with respect to the conclusions in the Draft EIR that the diversions of freshwater for the SWP would have less-than-significant impact on surface water quality including electrical conductivity, chloride, and cyanobacteria harmful algal blooms. (Draft EIR, Executive Summary, p. ES-10.) The same is true with respect to the conclusions in a Draft EIR that the diversions of freshwater for the SWP would have no impact on tribal cultural resources and environmental justice. (Draft EIR, Executive Summary, p. ES-10.)	
28	22	6. THE DRAFT EIR FAILS TO INCLUDE THE REQUIRED RANGE OF REASONABLE ALTERNATIVES State policy established by CEQA includes, "Require governmental agencies at all levels to consider qualitative factors as well as economic and technical factors and long-term benefits and costs, in addition to short-term benefits and costs and to consider alternatives to proposed actions affecting the environment." (Pub. Res. Code § 21001(g))(Emphasis added.) "Evaluation of project alternatives and mitigation measures is 'the core of an EIR.'" (Banning Ranch Conservancy v. City of Newport Beach (2017) 2 Cal.5th 918, 937.) "'The purpose of an environmental impact report is to provide public agencies and the public in general with detailed information about the effect which a proposed project is likely to have on the environment; to list ways in which the significant effects of such a project might be minimized; and to indicate alternatives to such a project.' (§ 21061; see § 21002.1, subd. (a).) CEQA procedures 'are intended to assist public agencies in systematically identifying both the significant effects of proposed projects and the feasible alternatives or feasible mitigation measures which will avoid or substantially lessen such significant effects.' (§ 21002; see Guidelines, §§ 15126.4, 15126.6.)" (Banning Ranch Conservancy, 2 Cal.5th at 937.) The Banning Ranch Conservancy decision also explained,	Although the DEIR did not identify significant impacts to any resources evaluated in Appendix 3A, "Initial Study," or the DEIR, DWR considered a wide range of alternatives that included several alternatives with reduced exports. DWR did not conduct detailed analyses on alternatives that did not meet most of the project objectives or were not feasibly implemented for health and safety reasons. The DEIR analyzed three alternatives in detail in the DEIR in Chapter 11, "Alternatives." Please see Common Response 3, "The CEQA Process," for a discussion on the range of alternatives considered, the development of alternatives, and the purpose of discussing alternatives when there are no significant impacts identified in the EIR. Refer to Common Response 4, "CEQA and CESA Legal Standards." Please see Chapter 2, Section 2.1.1, "Project Objectives," for a description of DWR's continuing commitment to operate the State Water Project in compliance with all applicable laws, contractual obligations, and agreements.

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		An EIR must 'describe a range of reasonable alternatives to the project,' or to its location, that would 'feasibly attain' most of its basic objectives but will 'avoid or substantially lessen' its significant effects. (Guidelines, § 15126.6, subd. (a).) Among the factors relevant to the feasibility analysis are 'other plans or regulatory limitations, [and] jurisdictional boundaries (projects with a regionally significant impact should consider the regional context).' (Id. subd. (f)(1).) (Banning Ranch Conservancy, 2 Cal.5th 918 at 936-937.) "While the lead agency may ultimately determine that the potentially feasible alternatives are not actually feasible due to other considerations, the actual infeasibility of a potential alternative does not preclude the inclusion of that alternative among the reasonable range of alternatives." (Watsonville Pilots Assn. v. City of Watsonville (2010) 183 Cal.App.4th 1059, 1087.) (See Habitat and Watershed Caretakers v. City of Santa Cruz (2013) 213 Cal.App.4th 1277, 1300-1306 (no feasible water alternatives considered.") The California Supreme Court also held in Banning Ranch Conservancy v. City of Newport Beach (2017) 2 Cal.5th 918, 936-937, The Guidelines [§ 15126.6(f)(1)] specifically call for consideration of related regulatory regimes, like the Coastal Act, when discussing project alternatives…Thus, the regulatory limitations imposed by the Coastal Act's ESHA provisions should have been central to the Banning Ranch EIR's analysis of feasible alternatives. Contrary to the requirements of CEQA as confirmed by the Banning Ranch Conservancy decision, regulatory limitations imposed by CESA and the Delta Reform Act should have been, but were not, central to the Draft EIR's analysis of feasible alternatives.	
28	23	A. The Draft EIR Fails to Include a California Endangered Species Act (CESA) Focused Alternative The California Supreme Court said in Mountain Lion Foundation v. Fish and Game Com. (1997) 16 Cal.4th 105, 125, "For example, CESA establishes a policy adding significant weight to the CEQA balancing scale on the side favoring protection of a listed species over projects that might jeopardize them or their habitats. (Fish & G. Code, § 2053.)" Fish and Game Code section 2053 states "Legislative findings and declarations; alternative state agency projects" as follows, (a) The Legislature further finds and declares that it is the policy of the state that public agencies should not approve projects as proposed	Please see Response to Comment 28-22 regarding the inclusion of alternatives in the EIR. Please also see Chapter 2, "Project Description," for a discussion of the Project Objectives, which includes the objective of protecting fish and wildlife based on the best available scientific information. The Project Description also includes a suite of measures that are that are specifically intended to reduce impacts of SWP Operations on fish species listed under the state and federal endangered species acts compared to historical operations. For example, Section 2.3.3, "Old and Middle River Flow

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		which would jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat essential to the continued existence of those species, if there are reasonable and prudent alternatives available consistent with conserving the species or its habitat which would prevent jeopardy. (b) Furthermore, it is the policy of this state and the intent of the Legislature that reasonable and prudent alternatives shall be developed by the department, together with the project proponent and the state lead agency, consistent with conserving the species, while at the same time maintaining the project purpose to the greatest extent possible. (Emphasis added.) CEQA establishes the policy of the state to, "Prevent the elimination of fish or wildlife species due to man's activities, insure that fish and wildlife populations do not drop below self-perpetuating levels, and preserve for future generations representations of all plant and animal communities and examples of the major periods of California history." (Pub. Res. Code § 21001(c).) Despite the listing of endangered and threatened fish species, and their ever worsening condition including the California Department of Fish and Wildlife not being able to find any Delta Smelt in its searches for them over the past seven years, the Draft EIR does not include any alternative devoted to conserving the listed fish species and their habitat which would prevent jeopardy.	Management," includes limits on export operations to protect listed fish species based on detection of these species at the salvage facilities. In addition, as stated in the EIR, the underlying purpose of the Proposed Project is to obtain an Incidental Take Permit from CDFW pursuant to CEQA, and CDFW may not issue the incidental take permit without considering whether "issuance of the permit would jeopardize the continued existence of the species." Therefore, this objective is inherent in the EIR project objectives and the alternatives included in the EIR.
28	24	B. The Draft EIR Fails to Include a Delta Reform Act Focused Alternative The policy of the State of California is set forth in the Sacramento-San Joaquin Delta Reform Act of 2009 (Delta Reform Act), Water Code section 85000 et seq. Pursuant to the Delta Reform Act, the established State policy is "to reduce reliance on the Delta in meeting California's future water supply needs through a statewide strategy of investing in improved water supplies, conservation, and water use efficiency." (Water Code § 85021) (Emphasis added.). Another policy established by the Act is to, "Restore the Delta ecosystem, including its fisheries and wildlife, as the heart of a healthy estuary and wetland ecosystem." (Water Code § 85020(c.)) "'Coequal goals' means the two goals of providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem. The coequal goals shall be achieved in a manner that protects and enhances the unique cultural, recreational,	The EIR has been prepared in accordance with CEQA and adequately examines a reasonable range of alternatives to achieve the project's objectives. Please see Common Response 5, "Delta Reform Act," for a discussion of the Delta Reform Act and the requirements of the Delta Plan. Please also see Section 2.1.1, "Project Objectives," which describe the purpose of the Proposed Project to store, divert, and convey water up to full contract quantities while protecting fish and wildlife based on the best available scientific information. Please see Chapter 11, Section 11.2, "Range of Alternatives Considered," and Common Response 3, "The CEQA Process," for a discussion on the range of alternatives considered and the development of alternatives.

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		natural resource, and agricultural values of the Delta as an evolving place." (Water Code § 85054) (Emphasis added.) The Draft EIR includes no alternative focused on reducing reliance on the Delta. The Draft EIR includes no alternative focused on restoring the Delta ecosystem including its fisheries and wildlife. No alternative is included requiring water conservation, recycling, and greater water use efficiency to reduce the claimed need for exports.	
28	25	C. The Public Trust Was Not Central to the Draft EIR's Consideration of Alternatives The Delta Reform Act mandates, "The longstanding constitutional principle of reasonable use and the public trust doctrine shall be the foundation of state water management policy and are particularly important and applicable to the Delta." (Water Code § 85023) (Emphasis added.) The California Supreme Court made it clear in the Mono Lake case, National Audubon Society v. Superior Court (1983) 33 Cal.3d 419, 446, that "The state has an affirmative duty to take the public trust into account in the planning and allocation of water resources, and to protect public trust uses whenever feasible." (Emphasis added.) Moreover, Once the state has approved an appropriation, the public trust imposes a duty of continuing supervision over the taking and use of the appropriated water. In exercising its sovereign power to allocate water resources in the public interest, the state is not confined by past allocation decisions which may be incorrect in light of current knowledge or inconsistent with current needs. The state accordingly has the power to reconsider allocation decisions even though those decisions were made after due consideration of their effect on the public trust. The case for reconsidering a particular decision, however, is even stronger when that decision failed to weigh and consider public trust uses. (National Audubon, 33 Cal.3d 419, 447) (Emphasis added.) Fish and Game Code § 5937 is also an expression of the public trust doctrine. The statute provides in pertinent part, "The owner of any dam shall allow sufficient water at all times to pass through a fishway, or in the absence of a fishway, allow sufficient water to pass over, around or through the dam, to keep in good condition any fish that may be planted or exist below the dam."	Please refer to Common Response 5, "Delta Reform Act," for more information on the Delta Plan and requirements and Common Response 10, "Public Trust," for more information on the Proposed Project consideration of the Public Trust. Please see Chapter 2, Section 2.1.1, "Project Objectives," for a description of DWR's continuing commitment to operate the State Water Project in compliance with all state and federal water quality and environmental laws. Please see Chapter 11, Section 11.2, "Range of Alternatives Considered," and Common Response 3, "The CEQA Process," for a discussion on the range of alternatives considered and the development of alternatives.

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		The public trust doctrine was not central to the development of the alternatives in the Draft EIR.	
28	26	D. The Principle of Reasonable Use was Ignored in the Development of Alternatives in the Draft EIR The Delta Reform Act mandates, "The longstanding constitutional principle of reasonable use and the public trust doctrine shall be the foundation of state water management policy and are particularly important and applicable to the Delta." (Water Code § 85023) (Emphasis added.) As just one example of applicable State law, Article X of the California Constitution states: It is hereby declared that because of the conditions prevailing in this State the general welfare requires that the water resources of the State be put to beneficial use to the fullest extent of which they are capable, and that the waste or unreasonable use or unreasonable method of use of water be prevented, and that the conservation of such waters is to be exercised with a view to the reasonable and beneficial use thereof in the interest of the people and for the public welfare. The right to water or to the use or flow of water in or from any natural stream or watercourse in this State is and shall be limited to such water as shall be reasonably required for the beneficial use to be served, and such right does not extend to the waste or unreasonable use or unreasonable method of use or unreasonable method of diversion of water… (Cal. Const. art. X, § 2.) DWR has frozen water allocations to the existing contractual allocations for state water contractors. There should have been scrutiny of whether exports can be reduced as certain uses or methods of use have become unreasonable because of current and forecasted shortages of available water caused by climate change on the one hand, and technological improvements and innovations such as conservation, recycling, and drip irrigation on the other hand. The Draft EIR should have, but did not, include an alternative based on reducing exports based on certain uses or methods of use having become unreasonable.	Please see Common Response 3, "The CEQA Process," for a discussion of alternatives and development of alternatives. Please also refer to Chapter 11 of the EIR for alternative analysis and for additional information on alternatives that were considered, more specifically see Section 11.2, "Range of Alternatives Considered." Please refer to Common Response 5, "Delta Reform Act," for more information on the project's alignment with the Delta Reform Act. Please see Common Response 10, "Public Trust," for a discussion of public trust issues. Further, DWR encourages and incentivizes water conservation and improved water management through grant funding and by providing technical assistance. Further, DWR is also involved in several statewide water conservation and water management programs including urban and agricultural water management plans and the water conservation provisions of SBx7-7, additionally DWR is involved with new programs, SB 555 (2015), 2018 water conservation legislation SB 606, AB 1668. DWR supports and encourages water use efficiency by utilizing Demand Management Measures and Integrated Regional Water Management as conservation tools and understands it can provide more flexibility for water users, better management of water resources, and satisfy current and future demand under existing export levels.
28	27	7. DWR's ARTIFICIALLY NARROW PROJECT OBJECTIVES VIOLATE CEQA In North Coast Rivers Alliance v. Kawamura (2015) 243 Cal.App.4th 647, 669, the court held an EIR improperly omitted alternatives by an "artificially narrow" definition of the program objective. The same is true here. DWR stated its "Project Objectives" in one paragraph,	The EIR has been prepared in accordance with CEQA and adequately examines a reasonable range of alternatives to achieve the project's objectives. Please see Chapter 11, Section 11.2, "Range of Alternatives Considered," and Common Response 3, "The CEQA Process," for a discussion on the range of alternatives

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		The underlying purpose of the proposed project is to obtain incidental take authorization from the California Department of Fish and Wildlife (CDFW) pursuant to CESA for five fish species to allow DWR to continue the long-term operation of the SWP consistent with applicable laws, contractual obligations, and agreements. Consistent with this underlying purpose, DWR's project objectives are to store, divert, and convey water in accordance with DWR's existing water rights to deliver water pursuant to water contracts and agreements up to full contract quantities and to optimize water supply and improve operational flexibility while protecting fish and wildlife based on the best available scientific information. (Draft EIR, Ch. 2, Project Description, 2.1.1, p. 2-1.) No objective is stated to avoid jeopardizing the continued existence of any endangered or threatened fish species as required by the California Endangered Species Acts and CEQA. No objective is stated to reduce reliance on the Delta as required by the Delta Reform Act. No objective is stated to protect the public trust. No objective is stated to eliminate unreasonable use or methods of use of water to reduce diversions for export. Pursuant to CESA, the Delta Reform Act, the California Constitution and other related regulatory regimes, project objectives needed to include not jeopardizing endangered and threatened fish species, reducing reliance on the Delta and restoring the Delta ecosystem, and eliminating unreasonable uses or methods of use to reduce the claim need to export the quantities of water currently being exported. DWR used its artificially narrow project objectives in an attempt to unlawfully evade CEQA's requirement to produce a range of reasonable alternatives for decision-maker and public consideration. DWR foreclosed alternatives required by CEQA, CESA, the Delta Reform Act, and other related regulatory regimes. The court explained in Golden Door Properties, LLC v. County of San Diego (2020) 50 Cal.App.5th 467, 546, "Examining alternatives begins with project objectives because it is these objectives that a proposed alternative must be designed to meet." In this case alternatives already foreclosed were required by CESA and the Delta Reform Act. In the Golden Door Properties case there were objectives to reduce vehicle miles traveled, "VMT," to meet goals lowering greenhouse gas, "GHG," emissions. The court held,	considered and the development of alternatives. See Common Response 4, "CEQA and CESA Legal Standards." As the comment states, the underlying purpose of the Proposed Project is to obtain an Incidental Take Permit from CDFW, and CDFW may not issue the incidental take permit without considering whether "issuance of the permit would jeopardize the continued existence of the species." Therefore, this objective is inherent in the EIR project objectives. Please see Chapter 2, Section 2.1.1, "Project Objectives," for a description of DWR's continuing commitment to operate the State Water Project in compliance with all applicable laws, contractual obligations, and agreements. Refer to Common Response 5, "Delta Reform Act," for information on DWR's compliance with the Delta Reform Act policy goal of "reduced reliance" and Common Response 10, "Public Trust," for information on the Proposed Project Consideration of Public Trust. As noted in the comment, Chapter 2, Section 2.1.1, "Project Objectives," states the objectives of the Proposed Project which include delivering water pursuant to water contracts and agreements up to full contract quantities and optimizing water supply and improving operational flexibility while protecting fish and wildlife based on the best available scientific information. The commentor is correct in that export reductions are not a part of the Proposed Project, though the Project Description does include actions to reduce exports to decrease entrainment of listed species. For more information on when DWR is proposing to reduce exports see Sections 2.3.3, "Old and Middle River Flow Management," and 2.3.5, "Spring Delta Outflow," of Chapter 2, "Project Description."

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		In light of this consistently clear mandate to reduce VMT to help achieve target GHG emission reductions, it is reasonable to expect at least one project alternative in the SEIR to have been focused primarily on significantly reducing VMT. [Citation omitted.] The SEIR's failure to do so is prejudicial because it precludes informed public participation and decisionmaking. (Golden Door Properties, 50 Cal.App. 5th 467, 548.) In Watsonville Pilots Assn. v. City of Watsonville (2010) 183 Cal.App.4th 1059, 1086-1090, the court held a city violated CEQA because the EIR failed to analyze a reduced development alternative. The city had argued that no discussion of an alternative was required if it would not meet a project objective. The court explained, 183 Cal.App.4th at 1087, This premise is mistaken. It is virtually a given that the alternatives to a project will not attain all of the project's objectives. [Citations omitted.] Nevertheless, an EIR is required to consider those alternatives that will 'attain most of the basic objectives' while avoiding or substantially reducing the environmental impacts of the project. (CEQA Guidelines, § 15126.6(a).) DWR's artificially narrow project objectives unlawfully facilitated the Draft EIR's omission of the required range of reasonable alternatives to the Project.	
28	28	8. DWR REJECTED FROM THE BEGINNING REASONABLE ALTERNATIVES PRESENTED TO DWR BY COMMENTS DURING DWR'S SCOPING DWR admits in its Draft EIR, "The following alternatives presented in Table 11-1 were identified in scoping comments or identified by DWR. These alternatives were considered but were not analyzed further in this DEIR because they do not meet the Project objectives or cannot be feasibly implemented by DWR." (Draft EIR, Ch. 11, Alternatives to the Proposed Project, 11/2/1, p. 11-2.) Sierra Club California and the other public interest organizations joining in this Comment Letter presented a detailed alternative, Crafting a Sustainable Water Plan for California to DWR. (Draft EIR, Ch. 11, p. 11-6.) DWR evaded inclusion of the alternative in the Draft EIR by stating it would not meet a Project Objective Component. (Id.) DWR claims, Alternative would not allow DWR to store, divert, and convey water in accordance with DWR's existing water rights to deliver water pursuant to water contracts and agreements up to full contract quantities. (Id.)	Please see Responses to Comments 28-22, 28-23, and 28-24 for discussion of alternatives included in the EIR and the Delta Reform Act.

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		DWR also said as to Feasibility, The feasibility of this alternative is questionable because 3 million acre-feet per year may not be sufficient to meet human health and safety needs during periods of low water availability. (Id.) DWR thus excluded consideration of alternatives that would reduce exports even if reduction is necessary to avoid driving the endangered and listed fish species into extinction and/or to begin reducing reliance on the Delta and restoring the Delta as required by the Delta Reform Act.	
28	29	DWR also in terms of feasibility did not consider reducing exports though not as much as down to 3 million acre-feet per year. The alternative presented to DWR called for consideration of other variants to that quantity. DWR did not consider limiting exports during periods of low water availability to meet human health and safety needs but foregoing wants such as for agriculture. DWR also rejected reasonable alternatives presented to it by the Central Delta Water Agency (CDWA) (Id. pp. 11-3, -4) and by the Natural Resources Defense Council along with other public interest organizations including tribal organizations. (Id. p. 11-5.) DWR even rejected including in the Draft EIR two alternatives proposed by DWR that DWR said would be feasible, but "would not optimize water supply and improve operational flexibility." (Id. p. 11-3.) DWR has failed to proceed in the manner required by CEQA because it did not include in the Draft EIR the required range of reasonable alternatives. In addition, DWR must revise the Draft EIR and recirculate it because "A feasible project alternative or mitigation measure considerably different from others previously analyzed would clearly lessen the significant environmental impacts of the project, but the project's proponents decline to adopt it." (CEQA Guidelines § 15088.5(a)(3.)) The failure to present any true alternatives including ones required by related regulatory regimes also rendered DWR's Draft EIR so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded, requiring revision and recirculation pursuant to CEQA Guidelines § 15088.5(a)(4.)	Please see Response to Comments 28-22 and 28-24 regarding the inclusion of alternatives in the EIR.
28	30	9. DWR HAS UNLAWFULLY SEGMENTED ENVIRONMENTAL ANALYSIS CEQA Guidelines § 15378(a), in relevant part, states: "'Project' means the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable	This EIR evaluates the project as a whole and does not segment or piecemeal its environmental analysis as the comment claims. For a response to comments asserting segmenting or piecemealing please see Common

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		indirect physical change in the environment…" (Emphasis added.) Guideline § 15378(c) adds that "[t]he term 'project' refers to the activity which is being approved and which may be subject to several discretionary approvals by government agencies. The term 'project' does not mean each separate governmental approval." (Emphasis added.) The court in Burbank-Glendale-Pasadena Airport Authority v. Hensler noted CEQA's broad definition of "project" avoids potential piecemealing or segmentation of environmental analysis. "CEQA mandates that environmental considerations do not become submerged by chopping a large project into many little ones, each with a potential impact on the environment, which cumulatively may have disastrous consequences." (233 Cal.App.3d 577, 592 (1991)). A lead agency must not piecemeal the analysis of several smaller projects that are part of a larger project. On December 11, 2018, DWR extended the "term of each of the SWP water contracts to December 31, 2085." On March 27, 2020, DWR certified a Final EIR for long term operations of the State Water Project. DWR closed the public review period on the Draft EIR for that project on January 6, 2020. DWR issued the Notice of Preparation (NOP) for the Delta Conveyance Tunnel Project a mere seven business days later, on January 15, 2020. According to the Draft EIR for the Delta Conveyance Project, "DWR's fundamental purpose in proposing to develop new diversion and conveyance facilities in the Delta is to restore and protect the reliability of SWP water deliveries and, potentially, CVP water deliveries south of the Delta, consistent with the State's Water Resilience Portfolio in a cost-effective manner." (DWR DCP Draft EIR, Ch. 2, Purpose and Project Objectives, p. 2.2.) The EIRs on the SWP contract extensions and SWP long-term operations concealed rather than analyzed the proposed Delta Conveyance Project. In turn, the Draft EIR on the Delta Conveyance Project takes the SWP contracts and SWP long-term operations as givens rather than analyzing their environmental impacts. By conducting separate EIR processes for each of these actions, DWR has unlawfully segmented environmental analysis. DWR must prepare a revised Draft EIR analyzing the whole of the action and recirculate the revised Draft EIR for public review and comment.	Response 6, "Other State Efforts," focusing in on other related efforts and explaining the independent utility of the Proposed Project. Please see Chapter 2, Section 2.1.1, "Project Objectives," for a description of DWR's continuing commitment to operate the State Water Project in compliance with all applicable laws, contractual obligations, and agreements. Please see Chapter 10, "Other CEQA Discussions," for a comprehensive discussion of the cumulative impacts of the Long-Term Operations of the State Water Project.
28	31	10. DWR MUST INTEGRATE THE SWP EIR PROCESS WITH THE OTHER RELATED ENVIRONMENTAL REVIEW PROCESSES	As noted in Response to Comment 28-30, please see Chapter 2, Section 2.1.1, "Project Objectives," for a description of DWR's continuing commitment to operate

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		CEQA requires that the EIR project description include "A list of related environmental review and consultation requirements required by federal, state, or local laws, regulations, or policies." (Guidelines § 15124(d)(1)(C)). The second sentence in that subsection goes on to require, "To the fullest extent possible, the lead agency should integrate CEQA review with these related environmental review and consultation requirements." (Emphasis added.) CEQA's policy is to conduct integrated review. (Banning Ranch Conservancy, 2 Cal.5th 918, 939, 942.) Moreover, "Lead agencies in particular must take a comprehensive view in an EIR." (Banning Ranch Conservancy, 2 Cal.5th 918, 939, citing Public Resources Code § 21002.1(d).) Instead of integrated CEQA review, DWR's key environmental review processes have gone ahead separately, each in its silo. With one hand, DWR prepared a Draft EIR on the Tunnel Project. With another hand, DWR prepared an EIR for Long-Term Operation of the SWP. With yet another hand, DWR prepared an EIR for extension of the SWP contracts. To proceed in the manner required by CEQA, DWR must prepare a revised Draft EIR on SWP long term operations and the Delta Conveyance Project. Integrated review is required of these actions that are inextricably related and intertwined.	the State Water Project in compliance with all applicable laws, contractual obligations, and agreements.
28	32	11. DWR HAS LIMITED THE DRAFT EIR TO COVER A PERIOD OF 10 YEARS TO FACILITATE ITS UNLAWFUL SEGMENTATION OF, AND FAILURE TO INTEGRATE, ENVIRONMENTAL REVIEW AND ANALYSIS, AND FAILURE TO ADDRESS CUMULATIVE ENVIRONMENTAL IMPACTS DWR's Draft EIR states, "The expected duration of the Proposed Project is 10 years. After 10 years, the California Department of Water Resources (DWR) will seek further California Endangered Species Act (CESA) compliance for continued long-term operations of the SWP. Therefore, temporal scope of the cumulative analysis also is 10 years." (Draft EIR, Ch. 10, Other CEQA Discussions, 10.1.3, Scope of Cumulative Analysis, p. 10-3.) DWR then used that limitation to exclude assessing the cumulative impacts of the massive proposed Delta Conveyance Project as not being present or ongoing because it is not expected to be constructed to begin to divert massive quantities of freshwater from proposed new diversions from the Sacramento River upstream from the Delta within 10 years. (Id. p. 10-4.) DWR uses the same trick to exclude cumulative analysis of other proposed future projects, the Shasta Dam raise, and the Sites Reservoir Project. (Id. p. 10-7.)	Please see Common Response 6, "Other State Efforts," regarding the Proposed Project's relationship to new facilities and other projects, including the inclusion of the Delta Conveyance Project in the cumulative analyses. As described in Section 10.1.3 of the DEIR: "Additionally, the temporal context of each project shown in Table 10 1 was evaluated relative to the temporal context of the Proposed Project. The expected duration of the Proposed Project is 10 years. After 10 years, the California Department of Water Resources (DWR) will seek further California Endangered Species Act (CESA) compliance for continued long-term operations of the SWP. Therefore, the temporal scope of the cumulative analysis also is 10 years." The Proposed Project analyzes operations under a requested ITP that would be in place for ten years, whereas construction of the Delta Conveyance Project is anticipated to be complete in 2040. Sites Reservoir Project operations were considered in the evaluation of cumulative impacts

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		The EIR only considers the Delta operation of the SWP and does not consider reservoir operation (Oroville) as part of the analysis. Excessive drawdown of Oroville to meet the project purpose of water supply causes impacts to listed species both in the Feather River and Sacramento River, and in the Delta. The history of temporary urgency change petition (TUCPS) in 2014, 2015, 2021, and 2022 (designed to "conserve storage" in Oroville and in CVP reservoirs, shows that deliveries in Dry years (2013, 2020) to north of Delta contractors, including Feather River Settlement Contractors, in combination with deliveries to export contractors, has had terrible effects on listed species, including Delta smelt, longfin smelt, and Feather River spring-run Chinook. These effects include temperature impacts in the rivers and inability to meet D-1641 water quality requirement in the subsequent Critically Dry years. The relicensing of the Oroville Project did not consider storage in Oroville. It only considered day-to-day operation of the facilities, especially power generation. So there is no take coverage in the Oroville BiOp for storage operations at Oroville. DWR has failed to proceed in the manner required by CEQA because it has excluded consideration of cumulative adverse environmental impacts including those to be caused by the proposed Delta Conveyance, Shasta Dam raise, and Sites Reservoir Project.	related to Water Supply, Water Management, and Water Quality Projects and Actions in Section 10.1.6.1 of the DEIR. Regarding the Shasta Lake Water Resources Investigation project, Table 10-1 describes the extent of the project that is reasonably foreseeable for the purposes of the cumulative impacts analysis in the EIR. Please see Common Response 1, "Scope of Analysis," regarding the geographic scope of the analysis and the relationship of the Proposed Project to the Oroville Facilities. Regarding the portion of the comment describing the effects of Temporary Urgency Change Petitions. This is not a comment on the environmental effects of the Proposed Project or the analyses included in the EIR. Therefore, no further response is provided.
28	33	12. DWR's DRAFT EIR FAILS TO DISCLOSE THE DEFECTS IN ITS CLIMATE CHANGE ANALYSES FOUND BY THE STATE AUDITOR On May 25, 2023, the California State Auditor issued its audit, Department of Water Resources Its Forecasts Do Not Adequately Account for Climate Change and Its Reasons for Reservoir Releases Are Unclear. (Auditor Report.) A copy of the Auditor Report is provided to DWR with this letter as Exhibit 5 [Attachment 5]. Of course, the State Auditor provided its audit to DWR back in May 2023. Despite that, the existence of the Auditor Report is not disclosed by DWR to public reviewers in Draft EIR Chapter 9 on Climate Change Resiliency and Adaptation. Nor is the Auditor Report included in the Draft EIR's References for Chapter 9. DWR released its Draft EIR when it was continuing "to rely heavily on the historical climate data when developing its forecasts, despite its own acknowledgment more than a decade ago that its forecasting methods needed to better account for the effects of climate change." (Auditor	DWR's analysis of the Proposed Project is based on a 100-year period of record of input hydrology to the CalSim 3 model, which includes several severe and multi-year drought periods. Chapter 4, "Surface Water Hydrology," Chapter 5, "Surface Water Quality," and Chapter 6, "Aquatic Biological Resources," evaluate operations-related effects and concluded no impacts or less than significant impacts on hydrology, water quality, and special status and commercially or recreationally important fish species. The analyses provided in Chapter 9, "Climate Change Adaptation and Resiliency," used a synthetic hydrology that was based on historical observed hydrology with associated changes in runoff and sea level rise, which were selected based on the best available climate change representations. Appendix 4D Part 1, "Climate Change Projections Development," discusses the assumptions and rationale for selection of

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		Report p. 1.) DWR had not, and still has not, "developed a long-term plan for the State Water Project [SWP] that aligns with best practices for proactively mitigating or responding to drought." (Id. p. 2.) Moreover, "Such a plan could, for example, take into account the project's ability to meet water quality and flow standards for the protection of wildlife in the face of more extreme conditions." (Id.) As the Auditor Report says, In addition, important requirements related to water quality and flow in the Delta also affect DWR's operation of the State Water Project. The Legislature has declared that the Delta is a critically important natural resource for the State and the nation, noting that it serves as both the hub of the California water system and the most valuable estuary and wetland ecosystem on the west coast of North and South America. Moreover, the Delta provides habitat to threatened and endangered species, such as the Delta smelt and the Chinook salmon. Given the Delta's importance, the State Water Project is subject to a number of requirements to ensure proper flow and water quality in the Delta, such as ensuring that the concentration of salt (salinity) remains below thresholds established to protect agriculture and wildlife. (Auditor Report p. 9.) So, DWR has failed to provide for public review and decision-maker information realistic analysis in its Draft EIR of how bad diversions for the SWP coupled with climate change caused worsening droughts, reduced streamflows and increased sea level rise will be for the Delta environment including endangered and threatened fish species. DWR was consistent in its preparation of the Draft EIR. DWR consistently failed to provide the full environmental disclosure required by CEQA.	those assumptions used in the CalSim 3 Climate Sensitivity modeling. It is also important to note that this EIR analyzes the effects of SWP operations over the anticipated duration of the Incidental Take permit DWR is seeking from CDFW, which is anticipated to be 10 years. Based on the duration of the project, as well as DWR's historical policy of not evaluating the largest or smallest extreme SLR scenarios, the selected SLR scenario is not unreasonable, especially considering the divergence in climate model scenarios occurs more rapidly after 2050. For more information, please refer to Common Response 8, "Climate Change."
28	34	13. THE CONCLUSIONS IN THE DRAFT EIR ARE NOT SUPPORTED BY SUBSTANTIAL EVIDENCE CEQA Guidelines § 15384(b) defines "substantial evidence" as including "facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts." "Argument, speculation, unsubstantiated opinion or narrative, evidence which is clearly erroneous or inaccurate, . . . does not constitute substantial evidence." (§ 15384(a.)) The conclusions in the Draft EIR are not supported by substantial evidence. They are simply based on speculation and argument. Compliance with the out of date D-1641 does not mean the project will	The EIR has been prepared in accordance with CEQA and adequately discloses the scope, severity, and magnitude of potential impacts for the environmental resources analyzed in this EIR. The effects analyses performed in Chapters 4-9 in the EIR were done comprehensively using the best available science. Please refer to the modeling appendices associated with Chapters 4-6 to view the modeling lines of evidence. Please see Chapter 2, Section 2.1.1, "Project Objectives," for a description of DWR's continuing commitment to

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		not have significant adverse environmental impacts. Instead of providing the required full environmental disclosure, DWR's Draft EIR fails to even disclose to public reviewers the information in the Water Board Staff Report/SED issued back in September 2023. It would be one thing to provide the required full environmental disclosure while attempting to provide substantial evidence to support a claim the Water Board is wrong and DWR is correct in its claims there would either be no impacts or less than significant impacts on the resource topics addressed by DWR's Draft EIR. Instead, DWR simply hid what the Water Board and EPA had to say about the impacts of diversions for water exports on endangered and listed fish species as well as on water quality.	operate the State Water Project in compliance with all state and federal water quality and environmental laws. Please see Common Response 7, "Relationship to Healthy Rivers and Landscapes Program," for more information on the Proposed Project's relationship with the Water Quality Control Plan Update.
28	35	CONCLUSION DWR has failed to proceed in the manner required by CEQA. DWR's Draft EIR is legally insufficient and fails to provide the CEQA-required full environmental disclosure. Before proceeding to issue and certify a Final EIR, DWR must first prepare a revised Draft EIR and recirculate it for public review and comment.	This comment summarizes the commenter's concerns. Specific responses to the specific comments on the DEIR are provided herein. No additional response is required. DWR has reviewed all comments and will consider all comments in its decision-making process.
28	36	The contact for this supplemental comment letter is [redacted], Counsel, Sierra Club California [contact info redacted]. We will do our best to answer any questions you may have.	This comment provides contact information for the commenter. No response is required.
28	38	[Attachment 1: January 19, 2024, U.S. EPA Comment Letter on Water Board 9/28/23 Staff Report/SED.]	The commenter provided this attachment for reference purposes in support of their comments. Those comments are addressed in these responses to the commenter's letter.
28	39	[Attachment 2: published in the Federal Register at 87 Fed.Reg. 60957-60975, by the U.S. Fish and Wildlife Service on October 7, 2022.]	The commenter provided this attachment for reference purposes in support of their comments. Those comments are addressed in these responses to the commenter's letter.
28	40	[Attachment 3: California Department of Fish and Wildlife Memorandum of January 25, 2024, reporting the 2023 Fall Midwater Trawl annual fish abundance and distribution summary.]	The commenter provided this attachment for reference purposes in support of their comments. Those comments are addressed in these responses to the commenter's letter.
28	41	[Attachment 4: SWRCB Harmful Algal Bloom "Danger" Advisory, July 9, 2024.]	The commenter provided this attachment for reference purposes in support of their comments. Those comments are addressed in these responses to the commenter's letter.

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28	42	[Attachment 5: California State Auditor audit, Department of Water Resources Its Forecasts Do Not Adequately Account for Climate Change and Its Reasons for Reservoir Releases Are Unclear (May 25, 2023)]	The commenter provided this attachment for reference purposes in support of their comments. Those comments are addressed in these responses to the commenter's letter.
29	1	Please find attached the August 2, 2024, additional written comments of our 8 public interest organizations including Sierra Club California on DWR's Draft EIR that was issued on May 19, 2024, for long-term operation of the State Water Project. These comments are in addition to those our organizations submitted on July 15, 2024. The four new Exhibits, 6-9, are also attached to this email. We request someone at DWR to reply confirming receipt of our additional comment letter. I would do my best to answer any questions you may have.	This information describes the structure or organization of the comment letter, the background of the organization or individual commenter, clarification on the submittal of the comment letter, or general introductory text. It is not a comment on the contents of the DEIR. DWR has reviewed all comments and will consider all comments in its decision-making process.
29	2	By this letter, our public interest organizations submit additional comments in this letter, pursuant to the California Environmental Quality Act (CEQA), on the Department of Water Resources (DWR) 2024 Draft Environmental Impact Report (Draft EIR) for Long-Term Operation of the State Water Project (SWP) in the Sacramento-San Joaquin Delta, Suisun Marsh and Suisun Bay. Our public interest organizations: Sierra Club California, AquAlliance, California Water Impact Network, California Sportfishing Protection Alliance, Center for Biological Diversity, Environmental Water Caucus, Friends of the River, and Planning and Conservation League object to approval of the project and object to preparation and certification of a Final EIR for the project. This additional comment letter follows our organizations' July 15, 2024, comment letter.	See Response 25-2. This comment does not raise an environmental issue relating to the proposed project or address the adequacy, accuracy, or completeness of the DEIR. DWR has reviewed all comments and will consider all comments in its decision-making process.
29	3	Because the purpose of the proposed project is to obtain authorization from the California Department of Fish and Wildlife (CDFW) pursuant to CESA (the California Endangered Species Act) for five fish species, these additional comments focus on the Draft EIR's deficiencies with respect to the subject endangered and threatened fish species. DWR's Draft EIR makes the preposterous claims that diversions of freshwater flows for SWP exports have "Less-Than-Significant Impact" on Delta Smelt, Longfin Smelt, Winter-run Chinook Salmon, Spring-run Chinook Salmon, Central Valley Steelhead, and White Sturgeon. (Draft EIR, pp. ES-10, 6-88, -107, -163, -175, -202, -212.) Our July 15, 2024, comment letter did not include the July 30, 2024, listing of Bay-Delta longfin smelt by the U.S. Fish and Wildlife Service as	The conclusions of less than significant impacts for aquatic biological resources, including listed fish species, are supported by the quantitative and qualitative analysis of the Proposed Project's actions including diversions of flows, among others, presented in Chapter 6, "Aquatic Biological Resources." The status of Longfin Smelt as federally proposed to be listed as endangered was noted in Table 6-1 in Chapter 6 of the DEIR and has subsequently been updated in the FEIR given that listing occurred in June 2024; information in Appendix 6A, Section 6A.1.2.1, "Legal Status," has also been updated accordingly.

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		an endangered species under the federal Endangered Species Act, as the listing did not yet exist. The citation for the new listing is, Endangered and Threatened Wildlife and Plants; Endangered Species Status for the San Francisco Bay-Delta Distinct Population Segment of the Longfin Smelt, 89 Fed. Reg. 61209 (July 30, 2024.) This rule will be effective August 29, 2024. Bay-Delta longfin smelt are added to the list of endangered and threatened wildlife at 50 CFR 17.11(h.) A copy of the Federal Register pages is attached as Exhibit 6 [See ATT 1]. Exhibits 1- 5 were attached to our July 15, 2024, comment letter.	
29	4	Our July 15, 2024, comment letter [on the DWR LTO DEIR] also did not include the January 19, 2024, comment letter of the National Marine Fisheries Service on the State Water Resources Control Board (Water Board) September 28, 2023, Draft, Staff Report/Substitute Environmental Document in Support of Potential Updates to the Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary for the Sacramento River and its Tributaries, Delta Eastside Tributaries, and Delta. ("Staff Report/SED.") The January 19, 2024, National Marine Fisheries Service (NMFS) comment letter is attached as Exhibit 7 [See ATT 2].	This information describes the structure or organization of the comment letter, the background of the organization or individual commenter, clarification on the submittal of the comment letter, or general introductory text. It is not a comment on the contents of the DEIR. DWR has reviewed all comments and will consider all comments in its decision-making process.
29	5	SUMMARY First, increased freshwater flows are necessary to save the endangered and threatened fish species. Second, the voluntary agreements will not protect the endangered and threatened fish species. Third, DWR's inadequate climate change analysis further endangers the endangered and threatened fish species.	This comment summarizes the commenter's concerns. Please see responses to the detailed comments provided on these summary topics.
29	6	Fourth, a revised Draft EIR must be recirculated for public review and comment.	This comment summarizes the commenter's concerns. Please see responses to the detailed comments provided on these summary topics. The minor modifications included in the Project's FEIR do not change conclusions or impact determinations identified in the analysis and recirculation is not required.
29	7	Fifth, DWR did not use its best efforts to find out and disclose all that it reasonably can about the impacts of diversions of freshwater for SWP operations on endangered and threatened fish species.	This comment summarizes the commenter's concerns. Please see responses to the detailed comments provided on these summary topics.
29	8	1. INCREASED FLOWS ARE NECESSARY TO SAVE THE ENDANGERED AND THREATENED FISH SPECIES	The EIR fully analyzes the impact of the Proposed Project on aquatic biological resources, including

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		DWR's Draft EIR claims habitat restoration projects would "enhance food protection and rearing habitat for Delta Smelt and Longfin Smelt." (Draft EIR, Ch. 2, p. 2-36, 37.) The Draft [E]IR also claims those habitat projects would provide "benefits to winter-run and spring-run Chinook Salmon." (Draft EIR, Ch. 2, pp. 2-36, 37; Ch.9, p. 9- 21.) Our July 15, 2024, comment letter pointed out "that increased flows are what is necessary to save the endangered and threatened fish species." (Sierra Club California et al. comment letter p. 19.) Our July 15, 2024, comment letter cited the Water Board's Staff Report/SED and the EPA's January 19, 2024, comment letter extensively to support the conclusion that increased flows are necessary.	endangered and threatened fish species. Please see Chapter 6, "Aquatic Biological Resources," for detail. To the extent this comment references the Water Board's Water Quality Control Plan update, please note that the Proposed Project is independent from the WQCP update, which is subject to a separate environmental review process by the State Water Resources Control Board. Please see Common Response 7, "Relationship to Healthy River and Landscapes Program," for further information about the separate processes.
29	9	A. The U.S. Fish and Wildlife New Listing of Bay-Delta Longfin Smelt as an Endangered Species Because of Reduced Freshwater Flows Now, the U.S. Fish and Wildlife Service (Service) has listed the Bay-Delta longfin smelt as an "endangered" species. (89 Fed. Reg. at 61030, 61046.) The Service explained under the heading "Threats Influencing the Bay-Delta Longfin Smelt," We consider reduced and altered freshwater flows resulting from human activities and impacts associated with current climate change conditions (increased magnitude and duration of drought and associated increased temperatures) as the main threat facing the Bay-Delta longfin smelt due to the importance of freshwater flows to maintaining the life-history functions and species needs of the DPS [distinct population segment]. However, because the Bay-Delta longfin smelt is an aquatic species and the needs of the species are closely tied to freshwater input into the estuary, the impact of many of the other threats identified above are influenced by the amount of freshwater inflow into the system (i.e., reduced freshwater inflows reduce food availability, increase water temperatures, and increase entrainment potential). (89 Fed.Reg. at 61039) (Emphasis added.)	The status of Longfin Smelt as federally proposed to be listed as endangered was noted in Table 6-1 in Chapter 6 of the DEIR and has subsequently been updated in the FEIR given that listing occurred in June 2024; information in Appendix 6A, Section 6A.1.2.1, "Legal Status," has also been updated accordingly. The EIR includes quantitative assessment of the potential effects of the Proposed Project on Longfin Smelt as a result of changes in Delta outflow (see Chapter 6, Section 6.4.2.1, subsection on "Delta Outflow-Abundance Analysis") and concluded the impact would be less than significant.
29	10	Under the heading "Reduced and Altered Freshwater Flows," the [US Fish and Wildlife] Service explained, The development of dams and water delivery infrastructure built throughout the Sacramento and San Joaquin River basins for flood protection and water supply for agriculture and human consumption has greatly impacted freshwater flows into the San Francisco Bay estuary (Service 2024, section 3.1.1). The creation of this water storage and delivery system, where water is stored resulted in one of the largest	Please see Response to Comment 29-9.

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		human-altered water systems in the world (Nichols et al. 1986, p. 569). Operation of this system has resulted in a broader, flatter hydrograph with less seasonal variability, thus changing the timing, magnitude, and duration of freshwater flows into the San Francisco Bay-Delta (Kimmerer 2004, p. 15; Andrews et al. 2017, p. 72; Gross et al. 2018, p. 8). It is estimated that the Federal and State water projects annually reduce an average of about 5 million acre-feet (MAF) of freshwater into the San Francisco Bay Delta, while other municipal or private reservoirs or diverters annually divert an additional 8 MAF of potential freshwater into the San Francisco Bay Delta (Hutton et al. 2017b, fig. 4, p. 2523). The cumulative effect of this annual average of about 13 MAF of freshwater supplies has resulted in a long-term decline in freshwater inflow into the estuary during the period of February through June relative to estimates of what flows would have been available absent water development (Gross et al. 2018, fig. 6, p. 12; Reis et al. 2019, fig. 3, p. 12). This situation has further increased the frequency of very low outflow years that, prior to water comment letter development, would have been very rare and associated only with extreme drought (Reis et al. 2019, fig. 3, p. 12).	
29	11	From 1956 to the 1990s, water exports (water removed from the San Francisco Bay Delta as a result of State (State Water Project) and Federal (CVP) water projects) increased, rising from approximately 5 percent of the Delta freshwater inflow to approximately 30 percent of the Delta inflow (Cloern and Jassby 2012, p. 7). By 2012, an estimated 39 percent of the estuary's unimpaired freshwater flow in total was either consumed upstream or diverted from the estuary (Cloern and Jassby 2012, p. 8). Water exports continue to the present day and are expected to continue in the future. A reduction in freshwater flows into the estuary influences and impacts the location and function of the low-salinity zone (spawning and rearing habitat for longfin smelt). Freshwater inflow into the estuary and other co-linear indicators of wet versus dry conditions during the winter and spring have been statistically associated with recruitment of larvae to the juvenile life stage of Bay Delta longfin smelt (Service 2024, section 3.1.1). Prior to large-scale water exports and reduced freshwater flows, the location of the low-salinity zone (as represented by the 2 percent bottom salinity position, known as X2) reached the ≤55-km (≤34-mi) point in the estuary (monthly averages from February through May) and about half of all years. More recently the position of X2 reaching at least	Please see Response to Comment 29-9.

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		the 55-km (34-mi) point occurred only very rarely as a result of wet year conditions (Gross et al. 2018, fig. 6, p. 12 and fig. 7, p. 13) (Service 2024, section 3.1.1). In the case of Bay-Delta longfin smelt, optimal growth and rearing conditions (food and water conditions (salinity, turbidity, circulation patterns)), especially for early life stage fish, is directly linked to freshwater inflow to the estuary. (89 Fed.Reg. at 61039- 61040) (Emphasis added.)	
29	12	As to current efforts to save the longfin smelt, delta smelt, and several salmonid species, the Service concluded, "However, despite efforts such as those identified above, the current condition of the estuary and continued threats facing the estuary and Bay- Delta longfin smelt, such as reduced freshwater inflow, severe declines in population size, and disruptions to the DPS's food resources, have not been ameliorated." (89 Fed.Reg. at 61046) (Emphasis added.) The Service concluded as to the threats starting with reduced freshwater flows, "These threats have put the Bay-Delta longfin smelt largely into a state of chronic population decline due to habitat loss (reduction in freshwater flows into the estuary), which is exacerbated by limited food resources and the impacts associated with climate change, thereby limiting its resiliency and ability to withstand catastrophic events (reduced redundancy). This decline in numbers of the Bay-Delta longfin smelt is also a reflection of the DPS's ability to adapt to the ecosystem changes. (89 Fed.Reg. at 61046) (Emphasis added.)	The comment summarizes information related to Longfin Smelt from USFWS that is consistent with information presented in the DEIR, which cited threats noted in the proposed listing rule; this has been updated in the FEIR to cite the finalized rule.
29	13	B. The National Marine Fisheries Service Explanation of the Needs of Salmon for Increased Freshwater Flows The NMFS [National Marine Fisheries Service] explained in its January 19, 2024, comment letter on the Water Board's Staff Report/SED, Recent publications, most notably work conducted by the SWFSC [NMFS Southwest Fisheries Science Center] (Michel 2018, Notch et al. 2020, Michel et al. 2021), outline the important relationship between flow and the survival of juvenile Chinook salmon during their outmigration through the Sacramento River and Delta. (Exhibit 7, p. 2.) [See ATT 2] In supporting recommendations for year-round inflow requirements based on hydrology, the NMFS said, Specifically, we suggest consideration of instream flows that embrace the unimpaired hydrologic flow regime to support all anadromous salmonid and sturgeon life history stages and the ecological function of critical and essential fish habitat. Instream flows should support	Please see Common Response 7, "Relationship to Healthy Rivers and Landscapes Program."

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		upstream and downstream migration and rearing needs, including successful, unimpeded passage over critical riffles and other impediments. Flow regimes should also support effective inundation of important rearing habitats such as riparian zones, floodplains and side channels. Adoption of unimpaired flow is a useful approach to achieve a more natural flow pattern in the Sacramento River and Delta as it captures both within-year and between-year changes in hydrology. (Exhibit 7, pp. 3-4.)	
29	14	So, habitat restoration is not sufficient. Freshwater flows must be increased to prevent the extinction of endangered and threatened fish species. That is said by the expert agencies including the Water Board, EPA, U.S. Fish and Wildlife Service, and National Marine Fisheries Service. This is an environmental emergency. As the expert California Department of Fish and Wildlife (CDFW) said in its January 19, 2024, comments on the Water Board's Staff Report/SED, CDFW supports the findings in the draft Staff Report and associated documents regarding the ecological status of the San Francisco Bay-Delta and its tributaries with many native fish species populations at historic low abundances and still declining. In recent years, the poor water quality conditions in the Sacramento River watershed and Bay-Delta, exacerbated by drought, have brought fish species listed under the protection of state and federal Endangered Species Acts to levels near extinction or extirpation. Given the impaired condition of the ecosystem, CDFW supports the State Water Board in its update of the Bay-Delta Plan and encourages the State Water Board to move forward expeditiously. (CDFW comment letter at pp. 2-3)(Emphasis added.)(A copy of the CDFW comment letter is attached as Exhibit 8.) [See ATT 3]	The Proposed Project includes flow-related actions such as described in Chapter 2, Sections 2.3.5, "Spring Delta Outflow," and 2.3.6, "Delta Smelt Summer-Fall Habitat." Cumulative effects illustrate additional flow-related action potential effects for the combination of the Proposed Project plus Central Valley Project (see Chapter 10, Section 10.1.6.1, "Water Supply, Water Management, and Water Quality Projects and Actions.") The Proposed Project includes various actions to limit the potential effects of south Delta exports (see Chapter 2, Section 2.3.3, "Old and Middle River Flow Management.") The Proposed Project also includes actions to address species status such as Delta Smelt supplementation (see Chapter 2, Section 2.3.9, "Delta Smelt Supplementation"). Please also see Common Response 7, "Relationship to Healthy Rivers and Landscapes Program."
29	15	The way to increase flows is to reduce diversions of water for SWP exports. DWR's Draft EIR, however, hides instead of discloses the critical truth that the endangered and threatened fish species are headed toward extinction if action is not taken to increase freshwater flows which is their critical habitat.	Please see Response to Comment 29-14. Please also see Common Response 7, "Relationship to Healthy Rivers and Landscapes Program."
29	16	2. THE VOLUNTARY AGREEMENTS WILL NOT PROTECT THE ENDANGERED AND THREATENED FISH SPECIES DWR's Draft EIR states the project will provide Delta outflow "per terms of the Voluntary Agreements." (Draft EIR, Ch. 2, 2.3.5.1, p. 2-31; Ch. 9, 9.4.4, p. 9-30.) Our organizations July 15, 2024, comment letter showed	Please see Common Response 7, "Relationship to Healthy Rivers and Landscapes Program."

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		that "DWR's Draft EIR fails to disclose to the public the EPA's information that the Voluntary Agreements are insufficient to protect the endangered and listed fish species." (Sierra Club California et al. comment letter p. 19.)	
29	17	The NMFS January 19, 2024, comment letter on the Water Board's Staff Report/SED establishes the inadequacies of the Voluntary Agreements. (Exhibit 7 pp. 4- 6.) The NMFS pointed out that only a small percentage of the required funding for "currently-identified habitat restoration projects" would be provided by the VA parties. Substantial funding—$740 million hoped to be provided by state and federal agencies— "has not been secured." (Exhibit 7 p. 4.) [see ATT 2] The NMFS also explained, The Vas [voluntary agreements] propose that, in the eighth year of implementation, the Board would consider the reports, analyses, information, and data from the VA Science Program, as well as recommendations from the VA Governance Committee and the Delta Independent Science Board, to decide the future of the VA Program. This proposed timeframe for assessing the effectiveness of the Vas is concerning, given the dire status of native fish species within the Sacramento River Basin and Delta and the urgency in improving conditions for these species to prevent further declines. (Exhibit 7 p. 4.)	This comment is related to the State Water Resources Control Board's water quality control planning process. It is not a comment on the environmental effects of the proposed project or the contents of the DEIR. No response is required. DWR has reviewed all comments and will consider all comments in its decision-making process.
29	18	The NMFS [National Marine Fisheries Service] pointed out that the Voluntary Agreements flow assets would not be deployed during the years when ESA-listed species are at highest risk of extinction-- critical water years. (Id.) Also, "In addition, the potential benefits of the proposed VA flow assets are further reduced in some watersheds by limiting the frequency of deployment. For example, the description of the American River states, "These flows would be deployed in three out of eight years of the VA in the above year types." (Exhibit 7 pp. 4-5.) [See ATT 2] This is not sufficient to provide necessary protections to ESA-listed species. The NMFS said, "Based on the information in the Staff Report, we are highly uncertain that the VAs as currently proposed will provide for the reasonable protection of fish and wildlife beneficial uses through restoration of the Delta ecosystem over time." (Exhibit 7 p. 5.)	Please see Common Response 7, "Relationship to Healthy Rivers and Landscapes Program."
29	19	The NMFS pointed out that the Water Board's Staff Report/SED modeling showed that the flow commitments in the VA Term Sheet are nonbinding and "would not provide a significant difference in average	Please see Common Response 7, "Relationship to Healthy Rivers and Landscapes Program."

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		flow relative to the baseline (Alt1)." (Exhibit 7 p. 5.) [see ATT 2] Also, habitat restoration actions required in any event "should not be considered voluntary or new contributions to ecosystem lift." (Id.) Finally, While not directly compared within the Staff Report, assessment of the total flows that would be expected under the proposed VAs is much less (range of 1-43 percent, depending on location/source and water year type) than what would occur under the Proposed Plan Amendments alternative. (Exhibit 7 p. 5.)	
29	20	The voluntary agreements would not protect the endangered and threatened fish species.	Please see Common Response 7, "Relationship to Healthy Rivers and Landscapes Program."
29	21	3. DWR's INADEQUATE CLIMATE CHANGE ANALYSIS FURTHER ENDANGERS THE ENDANGERED AND THREATENED FISH SPECIES Our organizations July 15, 2024, comment letter showed how DWR's Draft EIR failed to disclose the defects in its climate change analyses found by the State Auditor. (Sierra Club California et al. comment letter pp. 38-39.)	The EIR evaluates effects to hydrology in Chapter 4, effects to fish and aquatic resources in Chapter 6, and impacts of climate change in Chapter 9. Please refer to Common Response 8, "Climate Change," for additional information.
29	22	Again, the U.S. Fish and Wildlife Service explained on July 30, 2024, We consider reduced and altered freshwater flows resulting from human activities and impacts associated with current climate change conditions (increased magnitude and duration of drought and associated increased temperatures) as the main threat facing the Bay-Delta longfin smelt due to the importance of freshwater flows to maintaining the life-history functions and species needs of the DPS [distinct population segment]. (89 Fed.Reg. at 61039, Exhibit 6.) [See ATT 1] The NMFS [National Marine Fisheries Service] explained in its January 19, 2024, comment letter on the Water Board's Staff Report/SED, A changing climate complicates the conservation of protected resources, due in large part to the uncertainty of the rate and magnitude of climate-related changes and the response of various organisms to those changes. Chinook salmon in California's Central Valley are at the southern limit of their range and are currently restricted to low elevations as a result of impassable rim dams. Climate change is expected to further limit the suitability of available habitat by shortening the period in which the low elevation habitats used by naturally-producing Chinook salmon are thermally suitable. These impacts are of particular concern to the listed runs of Chinook salmon in the Central Valley which have a longer freshwater residency, and therefore require suitable water temperatures	With respect to Longfin Smelt, please see Response to Comment 29-9. With respect to salmon and water temperature, as described in Section 6.1.4.2, "Habitat Conditions and Environmental Stressors in Delta and Suisun Bay/Marsh," reservoir releases have limited influence on water temperature by the time the water reaches the Delta. Please also see Common Response 1, "Scope of Analysis."

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		over a longer duration, than non-listed Chinook salmon runs. (Exhibit 7 p. 3.) [See ATT 2]	
29	23	Given the projected effects of climate change on the amount and timing of freshwater runoff and the increase in water temperatures, the conclusions of DWR's Draft EIR that the impacts of diversions for SWP operations are less than significant (Draft EIR, Executive Summary, p. ES-10) are preposterous. DWR's conclusions are not supported by substantial evidence.	Please see EIR Chapters 4-9 for comprehensive effects analyses of impacts from the Proposed Project. Appendices 4D and 4E analyze the operations sensitivity to climate change. The project team has developed model simulations to support analysis of the State Water Project (SWP) long-term operations (LTO) as part of reviewing proposed operations. These two appendices describe the overall analytical framework and key analytical tools and approaches used for application of climate change onto the modeling. They also describe the results of climate sensitivity modeling. Overall, the relative incremental changes due to the Proposed Project as compared to the Baseline Conditions under 2022 climate and sea level rise conditions, TUCPs, and no IOP are similar to that described under the adjusted historical hydrologic conditions in the EIR. While future climate and sea level rise will alter some of the magnitude of flows, the relative incremental changes due to Proposed Project are similar when compared to the Baseline Conditions.
29	24	4. A REVISED DRAFT EIR MUST BE RECIRCULATED FOR PUBLIC REVIEW AND COMMENT Our organizations established in our July 15, 2024, comment letter that the deficiencies in the Draft EIR require revision and recirculation of a revised Draft EIR for public review and comment. (Sierra Club California et al. comment letter pp. 20-21.)	This comment references Comment 28-17. Please see the response to that comment for a response. Please see Chapter 2, Section 2.1.1, "Project Objectives," for a description of DWR's continuing commitment to operate the State Water Project in compliance with all applicable laws, contractual obligations, and agreements.
29	25	DWR's Draft EIR does not mention the NMFS [National Marine Fisheries Service] January 19, 2024, comment letter on the Water Board's Staff Report/SED in Chapter 6 on "Aquatic Biological Resources." DWR's Draft EIR does not include the NMFS letter in its References for Chapter 6. DWR's Draft EIR likewise does not mention the CDFW [California Department of Fish and Wildlife] January 19, 2024, comment letter on the Water Board's Staff Report/SED in Chapter 6 on "Aquatic Biological Resources." DWR's Draft EIR does not include the CDFW letter in its References for Chapter 6.	The EIR focuses on published studies and reports, including the Staff Report/Substitute Environmental Document cited in the comment. It would be expected that the State Water Resources Control Board would provide responses to the NMFS and CDFW letters, which the commenter would be able to read. Please also see Response to Comment 28-8 and Common Response 7, "Relationship to Healthy Rivers and Landscapes Program."

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29	26	The July 30, 2024, listing of Bay-Delta longfin smelt as an endangered species by the expert U.S. Fish and Wildlife Service and supporting information published by the Service in the Federal Register, 89 Fed.Reg. 61029, adds to the evidence that the impacts of diversions of freshwater flows for the SWP would in fact be significant. The information provided by the expert National Marine Fisheries Service and California Department of Fish and Wildlife likewise adds to the evidence that the impacts of diversions of freshwater flows for the SWP would in fact be significant. That means that recirculation is required pursuant to CEQA Guideline section 15088.5(a)(1.) ("A new significant environmental impact would result from the project or from a new mitigation measure proposed to be implemented.") The information also adds to the evidence that the Draft EIR was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded. That means that recirculation is also required pursuant to CEQA Guideline section 15088.5(a)(4.)	The conclusions of less than significant impacts for aquatic biological resources, including Longfin Smelt, are supported by the quantitative and qualitative analysis of the Proposed Project's actions including diversions of flows, among others, presented in Chapter 6, "Aquatic Biological Resources." Please see Chapter 2, Section 2.1.1, "Project Objectives," for a description of DWR's continuing commitment to operate the State Water Project in compliance with all state and federal water quality and environmental laws. Regarding the preclusion of meaningful public review, CEQA provides that the public review period for a DEIR shall not be less than 30 days nor should it be longer than 60 days except under unusual circumstances (CEQA Guidelines § 15105(a)). Therefore, the DEIR was initially made available on May 29, 2024, for a 47-day public review period, ending July 15, 2024. In response to commenter requests, DWR extended the public review period by 21 days. On July 12, 2024 DWR announced the public review period would be extended by 21 days, ending August 5, 2024. As a result, the total public review period duration was 68 days. The total public review period duration exceeded the CEQA requirement and allowed sufficient time for reviewers to submit meaningful comments on the DEIR.
29	27	5. DWR FAILED TO PROCEED IN THE MANNER REQUIRED BY CEQA BECAUSE IT DID NOT USE ITS BEST EFFORTS TO FIND OUT AND DISCLOSE ALL THAT IT REASONABLY CAN ABOUT THE IMPACTS OF DIVERSIONS FOR SWP OPERATIONS ON ENDANGERED AND THREATENED FISH SPECIES Our organizations established in our July 15, 2024, comment letter that DWR failed to make the required full environmental disclosure in its Draft EIR. (Sierra Club California et al. comment letter pp. 21-22.) "While foreseeing the unforeseeable is not possible, an agency must use its best efforts to find out and disclose all that it reasonably can.' (Guidelines, § 15144.)" (Banning Ranch Conservancy v. City of Newport Beach (2017) 2 Cal. 5th 918, 938) (Emphasis added.)	Please see Common Response 4, "CEQA and CESA Legal Standards."

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29	28	DWR has not used its best efforts to find out and disclose all that it reasonably can about the impacts of diversions for SWP operations on endangered and threatened fish species. In addition to the omitted information our organizations set forth in our July 15, 2024, comment letter, DWR also omitted the information set forth in the NMFS [National Marine Fisheries Service] January 19, 2024, comment letter on the Water Board's Staff Report/SED. In fact, DWR's conduct amounts to bad faith concealment of evidence establishing that the reduction of freshwater flows for SWP exports does have significant impacts on endangered and threatened fish species. As our organizations pointed out in our July 15, 2024, comment letter, the only "information" supplied by DWR's Draft EIR for the public about the Water Board's Staff Report/SED, was, In September 2023, the State Water Board issued a Staff Report/Substitute Environmental Document in support of the Phase Two updates. The Board anticipates finalizing its Phase Two Staff Report and considering specific Phase Two amendments to the Delta Plan in late 2024. (Draft EIR, Ch. 6, p. 6-35.) DWR, however, submitted a four-page single-spaced comment letter on the Water Board's Staff Report/SED to the Water Board on January 22, 2024. The letter was signed by DWR's Director, Karla A. Nemeth. A copy of the letter is attached as Exhibit 9. [See ATT 4] DWR's Director expressed concern about the Staff Report/SED "proposed inflow and outflow objectives, on the State Water Project (SWP),.." (Exhibit 9, p. 1.) DWR's Director said, The Staff Report raises significant concerns regarding anticipated impacts to SWP agricultural and municipal and industrial (M&I) supplies (e.g., Staff Report, p.A1-289, p.A1-436, p.A1-538), and additional impacts to power generation, agricultural, and M&I supplies could occur depending on the details and mechanisms of POI [Program of implementation] implementation. (Id.)	With respect to the July 15, 2024, comment letter cited in the comment, please see responses to that letter, in particular Responses to Comments 28-7, 28-8, 28-9, and 28-10. Please also see Common Response 7, "Relationship to Healthy Rivers and Landscapes Program."
29	29	So, DWR at the very top level of the Department had "significant concerns" that the Water Board's Staff Report/SED inflow and outflow requirements to protect endangered and threatened fish species could lead to reductions in freshwater diversions for SWP exports. DWR expressed those concerns with one hand to the Water Board on January 22, 2024. DWR hid with the other hand all information in the Water Board's Staff Report/SED from the public about the needs to increase	Please see the Response to Comment 29-28 for a response to this comment.

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		freshwater flows to protect endangered and threatened fish species when DWR issued its Draft EIR four months later for public review on May 29, 2024. Our organizations summarized some of that extensive information in the Staff Report/SED in our July 15, 2024, comment letter at pp. 8-12. DWR must prepare and recirculate for public review a revised Draft EIR based on the agency's best efforts to find out and disclose all that it reasonably can about the adverse impacts of diversions of freshwater flows for SWP operations on endangered and threatened fish species.	
29	30	CONCLUSION DWR has failed to proceed in the manner required by CEQA. DWR's Draft EIR is legally insufficient and fails to provide the CEQA-required full environmental disclosure. Before proceeding to issue and certify a Final EIR, DWR must first prepare a revised Draft EIR and recirculate it for public review and comment.	This comment summarizes the commenter's concerns. Specific responses to the specific comments on the DEIR are provided herein. No additional response is required. DWR has reviewed all comments and will consider all comments in its decision-making process.
29	31	[ATT 1: U.S. Fish and Wildlife Service listing of Bay-Delta Longfin Smelt as an Endangered Species, 89 Fed.Reg. 61029-61049 (July 30, 2024)]	The commenter provided this attachment for reference purposes in support of their comments. Those comments are addressed in these responses to the commenter's letter. DWR has reviewed all comments and will consider all comments in its decision-making process.
29	32	[ATT 2: National Marine Fisheries Service January 19, 2024, comment letter on State Water Resources Control Board September 28, 2023, Staff Report/SED]	The commenter provided this attachment for reference purposes in support of their comments. Those comments are addressed in these responses to the commenter's letter. DWR has reviewed all comments and will consider all comments in its decision-making process.
29	33	[ATT 1: California Department of Fish and Wildlife Service January 19, 2024, comment letter on State Water Resources Control Board September 28, 2023, Staff Report/SED]	The commenter provided this attachment for reference purposes in support of their comments. Those comments are addressed in these responses to the commenter's letter. DWR has reviewed all comments and will consider all comments in its decision-making process.
29	34	[ATT 4: California Department of Water Resources January 22, 2024, comment letter on State Water Resources Control Board September 28, 2023, Staff Report/SED]	The commenter provided this attachment for reference purposes in support of their comments. Those comments are addressed in these responses to the commenter's letter. DWR has reviewed all comments

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			and will consider all comments in its decision-making process.
30	1	Okay, thank you. It shouldn't be more than two or so minutes. Thank you for the opportunity to comment today. My name is [redacted]. I am an 11-year resident of San Francisco and the Policy and Communication Specialist for Save California Salmon, which is a nonprofit dedicated to policy change and community advocacy for Northern California salmon and fish-dependent people. We support the fisheries and water protection work of local communities and advocate for effective policy change for clean water, restored fisheries, and vibrant communities.	This information describes the background of the organization or individual commenter as presented in a public hearing for the DEIR. It is not a comment on the contents of the DEIR. DWR has reviewed all comments and will consider all comments in its decision-making process.
30	2	We understand that the proposed project will create changes and have possible impacts to surface water quality and aquatic biological resources. These impacts also overlap with tribal cultural resource impacts since tribes within the project region rely on fresh flows of water for fish, including salmon, which are going extinct in Northern California rivers. In the draft, EIR-DWR is seeking approval of long-term operations of the SWP facilities to continue to provide water supply for agricultural, municipal, and industrial uses, as well as benefits to the environment, and it should also protect fish. During consultations that have occurred so far, tribes have expressed that salmon, smelt, water flow, and quality of the delta is very important to their culture and livelihood. As such, more consultations still need to occur. It is important to note here that staff should not treat these consultations as boxes that need to be checked, but actually create policies designed to protect these resources and the tribes that depend on them.	This comment is a general summary of the purpose of the Proposed Project and potential resources impacted. Please refer to Chapter 7, "Tribal Cultural Resources," Appendix 7A, "Tribal Consultation and Engagement Log," and Common Response 14, "Tribal Consultation," regarding the Tribal consultation and engagement effort for the Proposed Project. Through consultation with the Tribes information presented in other resource chapters (Surface Water Quality, Surface Water Hydrology, etc.) was summarized and provided to the Tribes for consideration. Upon receiving a summary of the information, Tribes did not identify or express concerns for impacts to culturally important waterways or fish species.
30	3	More specifically, tribes have expressed an interest in the criteria, timing, and volume of water for operations coinciding with tribal ceremonies. These ceremonies may take place during certain fish runs. The tribes would like to be included in the future discussions about the timeframe of operations and flows and to consider tribal ceremonies.	The commenter quotes the EIR, Chapter 7, Section 7.1.1.3, Page 7-7.
30	4	Additionally, when it comes to tribal cultural resources, construction is not the only possible negative impact. The proposed redistribution of water can harm tribal cultural resources by lowering flows for fish, creating harmful algal blooms, and destruction of ecosystems. Again, thank you for the opportunity to comment.	Please refer to Common Response 14, "Tribal Consultation," as well as Chapter 4, "Surface Water Hydrology," Chapter 5, "Surface Water Quality," and Chapter 6, "Aquatic Biological Resources," regarding impacts to flow, harmful algal blooms and fish, respectively. Through consultation with the Tribes information presented in other resource chapters

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			(Surface Water Quality, Surface Water Hydrology, etc.) was summarized and provided to the Tribes for consideration. Upon receiving a summary of the information, Tribes did not identify or express concerns for impacts to culturally important waterways or fish species.
31	1	Well, hi, good afternoon. This is [redacted]. I'm with San Luis and Delta-Mendota Water Authority. I just wanted to thank you all for having this meeting and the information session, we really appreciate the outreach.	This information describes the background of the organization or individual commenter as presented in a public hearing for the DEIR, clarification on the submittal of the comments or a comment letter, or general introductory information. It is not a comment on the contents of the DEIR. DWR has reviewed all comments and will consider all comments in its decision-making process.
31	2	And also, I just wanted to mention that it's good to see that the drought relief team, the dry team, has remained in the considerations for the proposed action. It was very helpful during the last drought period, and I'm glad to see that that is moving forward in this one as well.	This is a concluding comment. Responses to the specific comments on the DEIR are provided herein. No additional response is required.
31	3	And then, the other comments will be provided by letter form and submitted. So thank you so much.	This information describes the background of the organization or individual commenter as presented in a public hearing for the DEIR, clarification on the submittal of the comments or a comment letter, or general introductory information. It is not a comment on the contents of the DEIR. DWR has reviewed all comments and will consider all comments in its decision-making process.
32	1	Yes. Thank you so much. My name is [redacted]. I go by he/they [inaudible 00:25:43] pronouns. I work as the Land and Water Justice Manager for Save California Salmon.	This information describes the background of the organization or individual commenter as presented in a public hearing for the DEIR, clarification on the submittal of the comments or a comment letter, or general introductory information. It is not a comment on the contents of the DEIR. DWR has reviewed all comments and will consider all comments in its decision-making process.
32	2	The long-term operations plan and draft for environmental impact report, along with the proposed voluntary agreements are exclusionary to tribal communities and those most impacted by environmental justice and environmental injustice. The winter, spring, and fall run Chinook	Please refer to Chapter 7, "Tribal Cultural Resources," and Common Response 14, "Tribal Consultation," regarding the consultation process with Tribes and impacts to Tribal cultural resources. Please refer to

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		salmon along with field trout, Delta smelt, long fin smelt, green and white fin sturgeon, Pacific and River lamprey, Sacramento hitch and split [inaudible 00:26:18] are all subject to low flows and have special designation as tribal, commercial and in recreational importance to many people. They're also most negatively and disproportionately impacted by low flows, harmful algal blooms and water quality polluted by toxins from big agricultural farming operations. So we ask that the water board reconsider the draft environmental impact report and ensuring that the proper protocol is extended to tribal communities, inter-tribal organizations and indigenous-led organizations, such as Save California Salmon, and commercial and recreational fishing organizations that depend heavily on organizations that depend heavily on the proposals that are put forth by the State Water Board. Thank you very much.	Chapter 8, "Environmental Justice," regarding impacts to disadvantaged communities. Please refer to Chapter 6, "Aquatic Biological Resources," regarding impacts to fish species. Please refer to Chapter 5, "Surface Water Quality," regarding harmful algal blooms and impacts to water quality. Through consultation with the Tribes information presented in other resource chapters (Surface Water Quality, Surface Water Hydrology, etc.) was summarized and provided to the Tribes for consideration. Upon receiving a summary of the information, Tribes did not identify or express concerns for impacts to culturally important waterways or fish species. Comments expressing general opposition to the project are not considered substantive comments raising significant environmental issues and therefore no specific response is provided. DWR has reviewed all general comments in opposition of the project and will consider these comments as part of the decision-making process.
33	1	Yes, thank you. So I put my questions into the chat, but I'll also restate them verbally for everyone's benefit. So DWR [inaudible 00:34:15] an EIR for long-term operations a few years back, and from my review of this EIR, I can't discern what the core differences are for this iteration. It seems to be maybe related to the upcoming listing of the [inaudible 00:34:32] under CISA, and maybe related to the potential voluntary agreements. But if there are other changes that are the reason for the issuance of this EIR, it would be helpful to understand those. So that's the first one.	Please refer to the Executive Summary, section Project Background for information regarding DWR's need to obtain an ITP from CDFW for the long-term operation of the State Water Projec.t Please also refer to Chapter 1, "Introduction," regarding the purpose of the EIR. As described in Chapter 1, the Notice of Preparation was issued in June of 2023 which described the project background, project location, a description of the Proposed Project, and a summary of potential environmental topics to be considered in the DEIR. Please refer to Chapter 2, "Project Description," Section 2.3.5.1, "Voluntary Agreement Implementation."
33	2	And then, the second one is that the voluntary agreements were mentioned as one of the elements that this EIR is addressing, and so my question is, if the voluntary agreements, as a previous commenter noted, which are not approved, would DWR then recirculate this EIR, or start a	Please refer to Common Response 7, "Relationship to Healthy Rivers and Landscapes Program," regarding the Proposed Project's relationship to the Healthy Rivers and Landscapes Program (previously referred to as voluntary agreements) which has not yet been approved

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		new one to reflect the impacts of long-term operations under a separate regular [inaudible 00:35:35]? Thank you.	by the State Water Resources Control Board. Recognizing that the SWRCB has not yet approved HRLP, DWR included an alternate mechanism for Delta Outflow, "Early Voluntary Agreement Implementation," in the Proposed Project described in the EIR (Chapter 2, Section 2.3.5.2). The EIR includes modeling of the Proposed Project with the alternate "Early Voluntary Agreement Implementation" mechanism, and therefore a scenario where the Voluntary Agreements are not yet in place is fully analyzed in the EIR and recirculation would not be required.
34	1	Apologies, this is [redacted] from Save California Salmon, I must be in the organizational account. Yeah, I have a lot of questions, so I will put those in the chat.	This information describes the background of the organization or individual commenter as presented in a public hearing for the DEIR, clarification on the submittal of the comments or a comment letter, or general introductory information. It is not a comment on the contents of the DEIR. DWR has reviewed all comments and will consider all comments in its decision-making process.
34	2	We've been working on the biological assessment for the State and Federal Water Project on the federal level for a very long time, and we have a lot of confusion about the EIR, and how it's looking at cumulative impacts and also the coordinated operations with the federal government, with the Bureau of Reclamation, and we really don't see how there's a finding of no significant impact. It is really well-documented that State Water Project operations have been actively killing endangered salmon and endangered species in the Delta for decades, and there's been some measures taken to deal with... And also creating really terrible water quality within the Delta and San Francisco Bay itself. And I know there's been minor measures taken to deal with some of the water quality and endangered species issues, but we are looking at salmon fishing being shut down for the second year in a row, but also for maybe the fifth year out of the last 10 years. So I don't see how there's even a possibility of there being no significant impact, and I really think that there needs to be a hard look at mitigation measures that can be taken to make sure that we're not only protecting the remaining endangered species, which are less than 90% of historic... Not only historical numbers of endangered species, but really about	The EIR provides an impact analysis of environmental resources raised by the comment. Please refer to Chapter 6, "Aquatic Biological Resources," and Chapter 10, Section 10.1, "Cumulative Impacts," and supporting appendices for these respective chapters, for discussion and analysis of the potentially significant environmental impacts on the environmental resources mentioned in the comment as a result of operation of the Proposed Project. Please see Common Response 1, "Scope of Analysis," regarding coordinated operations with the CVP. See also Common Response 2, "CEQA Environmental Baseline," for information on the project's baseline. As noted in Common Response 2, environmental problems that already exist are part of the baseline conditions, and the EIR analyzes whether changes to those conditions caused by a proposed project are considered significant under CEQA. Please refer to Common Response 14, "Tribal Consultation," regarding impacts to Tribes from the

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		60% to 90% of the numbers just from five years ago, before the last drought. It's really obvious that DWR is not managing for watershed health, for environmental justice communities, or for cultural resources of the tribes within the area.	Proposed Project. Please refer to Common Response 12, "Drought Conditions," regarding the consideration of drought conditions in the hydrologic modeling used in the analysis of potential impacts associated with the proposed project and its alternatives. Please see Chapter 2, Section 2.1.1, "Project Objectives," for a description of DWR's continuing commitment to operate the State Water Project in compliance with all applicable laws, contractual obligations, and agreements, including all CEQA requirements.
34	3	The water quality in the Bay Delta is terrible, and there's no one who would argue that it's not. The harmful algal blooms alone is such a massive issue. And also, it's very hard to understand the impacts of what DWR is proposing when it's not being looked at as a whole. You're just doing an analysis of the Feather River down. Cumulative impacts need to be disclosed, along with mitigation measures. You can't just say, "Oh, we're not having an impact" when it's been well-documented over decades that you're having a very significant, very hard impact.	Please see Common Response 1, "Scope of Analysis," regarding the geographic scope of the project. Please see Common Response 2, "CEQA Environmental Baseline," regarding the structure of the analyses and the comparison of the Proposed Project to the baseline. As noted in Common Response 2, environmental problems that already exist are part of the baseline conditions, and the EIR analyzes whether changes to those conditions caused by a proposed project are considered significant under CEQA. Regarding cumulative impacts, Section 10.1.1, "CEQA Requirements for Cumulative Assessment," describe the approach to the cumulative analyses in the EIR and explains that the analysis presented in the subsequent sections are consistent with statutory and regulatory requirements to assess cumulative impacts. Section 10.1.4, "Surface Water Hydrology," Section 10.1.5, "Surface Water Quality," Section 10.1.6, "Aquatic Biological Resources," Section 10.1.7, "Tribal Cultural Resources," and Section 10.1.8, "Environmental Justice," utilize the approach described in Section 10.1.1 to evaluate the cumulative impacts of the Proposed Project on these resources.
34	4	And with that, I also wanted to say that the reliance on voluntary agreements that actually have not even been finalized or approved just seems crazy and ridiculous, and does not come anywhere near meeting the requirements of CEQA. We actually need a plan to protect and restore the fisheries and water quality within the Delta, and even go as	Please see Chapter 2, Section 2.1.1, "Project Objectives," for a description of DWR's continuing commitment to operate the State Water Project in compliance with all state and federal water quality and environmental laws. Please refer to Common Response 7, "Relationship to

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		far as actually following the laws as far as the doubling standards for salmon and protecting beneficial uses of our waterways. We cannot continue to operate the State Water Project only for people who are diverting water, and also, we cannot continue to operate it under a broken water rights system and not looking at the ecosystem as a whole.	Healthy Rivers and Landscapes Program," for more information about the relationship between the Proposed Project and Voluntary Agreements.
34	5	So I think that DWR needs to do better, and needs to also figure out how to fully disclose the impacts of both the biological opinion on the federal side, but also proposals such as Sites Reservoir and the Delta Tunnel that are happening within the project area, instead of just saying, "No significant impact," not looking at cumulative impacts and not looking towards mitigation measures. It's kind of mind-boggling to even think about how you can even come to a no significant impact determination. So that's my comment, I really hope to see a better document that actually plans to protect all people and water quality and fisheries in the Delta. So thank you for the time to comment, and hopefully I stayed within my time.	This is a concluding comment. Specific responses to the specific comments on the DEIR are provided herein. No additional response is required. DWR has reviewed all comments and will consider all comments in its decision-making process.