

# CALIFORNIA WATERFIX

## *CEQA Findings of Fact and Statement of Overriding Considerations*

### INTRODUCTION

Under the California Environmental Quality Act (CEQA), a state or local public agency decisionmaker, before approving a project for which an environmental impact report (EIR) was prepared, must make certain findings with respect to each significant impact identified in the EIR. (See California Public Resources Code, § 21081, subd. (a); see also Cal. Code Regs., tit. 14, div. 6, ch. 3 (“CEQA Guidelines”), § 15091, subd. (a).) Such findings are one of the primary means by which California public agencies satisfy what the California Supreme Court has called the “substantive mandate” of CEQA, by which such agencies must substantially lessen or avoid the occurrence of significant environmental impacts to the extent feasible. (See *Mountain Lion Foundation v. Fish & Game Com.* (1997) 16 Cal.4th 105, 134; California Public Resources Code, § 21002.)

In adopting such required findings, the agency decisionmaker must reach, with regard to each significant impact, one of three conclusions, or a combination of them. These potential conclusions are that:

- (1) Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the final EIR;
- (2) Such changes or alterations are within the responsibility and jurisdiction of another public agency and not the agency making the finding. Such changes have been adopted by such other agency or can and should be adopted by such other agency; and/or
- (3) Specific economic, legal, social, technological, or other considerations, including provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or project alternatives identified in the final EIR.

(See CEQA Guidelines, § 15091, subd. (a).)

Additionally, the findings required under CEQA must be supported by substantial evidence. (See CEQA Guidelines, § 15091, subd. (b).)

A typical set of CEQA findings identifies all adopted or rejected mitigation measures for the various significant environmental impacts of a proposed project. The findings then go on to explain why various project alternatives identified in EIRs are either infeasible or unnecessary to meet the substantive mandate of CEQA.

result in the placement of large, multi-story industrial concrete and steel structures, pumping plants, fencing, and other similar anthropogenic features where none presently exist (See Final EIR/EIS, Chapter 17, p. 17-62 [discussion for Alternative 1A]). Because the Project includes only three intakes, as opposed to five, the visual and aesthetic impacts would be less under the Project compared to the five-intake alternatives because its physical presence in the Delta community would be smaller.

Agricultural impacts would also be greater under the five-intake alternatives compared to the Project. The Delta heavily relies on agriculture as one of its main industries to provide income and jobs for the community. All of the project alternatives would have some effect on agriculture within the alignments of physical facilities, but, as demonstrated above, alternatives with five intakes would have a greater level of impact compared to the Project. Specifically, conversion of Important Farmland and land subject to Williamson Act contracts or in Farmland Security Zones to other uses would generally be greater under the five-intake alternatives. (Final EIR/EIS, Chapter 14, Figure 14-0 [Comparison of Impacts on Agricultural Resources]; Chapter 16, Socioeconomics, p. 16-1]). Lost agricultural land translates into a loss in jobs in that industry, and therefore, the five-intake alternatives would generally result in greater impacts to the agricultural economy compared to the Project. (Final EIR/EIS, Chapter 16, p. 16-1.)

The five-intake alternatives would also have greater water quality impacts compared to the Project. During construction, the intensity of construction activity along with the fate and transport characteristics of the chemicals used, would largely determine the magnitude, duration, and frequency of construction-related discharges and resulting concentrations and degradation associated with the specific constituents of concern. (Final EIR/EIS, Chapter 8, p. 8-343.) As described in Final EIR/EIS, Chapter 8, Water Quality, the potential water quality concerns associated with the major categories of contaminants that might be discharged as a result of construction activity include suspended sediment, organic matter, nutrients, petroleum hydrocarbons, trace constituents (metals, pesticides, synthetic organic compounds), pathogens, and other inorganic compounds. (Final EIR/EIS, Chapter 8, pp. 8-343-344.) Because the Project includes only three intakes, the water quality impacts associated with the construction of the intake facilities would generally be lower under the Project compared to the five-intake alternatives.

Finally, on balance, DWR finds that the Project will better achieve the State's coequal goals of providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem, compared to the five-intake alternatives. (California Public Resources Code, § 29702, subd. (a); California Water Code, § 85054.)

#### 5. Alternatives with Fewer than Three Intakes (Alternatives 3, 5, and 5A)

Through its Acting Director, DWR finds Alternative 3, with only two north Delta intakes, and Alternatives 5 and 5A, with one north Delta intake, to be *infeasible* based on all of the reasons discussed below.

Compared to the Project, Alternatives 3, 5, and 5A would provide fewer benefits for fish species in the Delta and would not be capable of meeting key project goals and objectives.

Because of their reduced north Delta diversion capacity compared with the Project (Alternative 4A), which has three north Delta intakes, reverse flows in the south Delta would persist under Alternatives 3, 5, and 5A, and fish losses in the south Delta would continue, though to a lesser degree than at present. Among other problems, the greater reverse flows and continuing fish losses would not improve conditions for delta smelt as much as the Project, which could lead to additional restrictions on exports, which is inconsistent with the project goals and objectives. Additionally, the operational scenario under Alternative 3 (Operational Scenario A) does not include Fall X2 objectives or the San Joaquin River inflow/export ratio (Final EIR/EIS Chapter 3, p. 3-41). By maintaining X2's position within Suisun Bay and the western Delta, the Project may create better conditions for the delta smelt life cycle. Because Alternative 3 does not include Fall X2 objectives in the operational criteria, it would diminish the ability to implement actions to reduce the potential to result in take of species that are listed under ESA and CESA, which is one of the main objectives of the project (as discussed above in Part 1B). More specifically, because they include fewer intakes, Alternatives 3, 5, and 5A would not meet the project objective of "develop[ing] projects that restore and protect water supply and ecosystem health and reduce other stressors on the ecological functions of the Delta in a manner that creates a stable regulatory framework under the ESA and either the CESA or NCCPA."

Existing problems for fish species, including reverse flows in the south Delta, would persist to a greater extent under Alternatives 3, 5, and 5A, compared to the Project. Alternatives 3, 5, and 5A, with their reduced diversion capacity in the north Delta, would result in more negative reverse flows in Old and Middle Rivers, compared to the Project, during critical periods where species such as salmonids and delta smelt are present in the south Delta (for more information see Final EIR/EIS, Chapter 11). Alternative 3 and 5, for example, would result in an increase in reverse flows in April-May, and Alternative 3 would also increase reverse flows in October compared to Existing Conditions (Final EIR/EIS Chapter 6, p. 6-99 and p. 6-117). Alternative 4A, on the other hand, would provide positive changes related to reducing reverse flows in Old and Middle Rivers in all months except April, compared to Existing Conditions. The reverse flow conditions in April are expected to remain similar, as the increase (more negative) in reverse flow conditions in April is less than 1 percent as compared to Existing Conditions (Final EIR/EIS, Chapter 6, p. 6-176).

Because reverse flow conditions would be lower under the Project, compared to Alternatives 3, 5, and 5A, the Project is expected to result in improved conditions for delta smelt, which also lowers the risk of more stringent regulations reducing water supplies in the long run. Although delta smelt are generally not present in the south Delta where the state and federal pumping facilities are located (Final EIR/EIS, Appendix 11A, p. 11A-1), several of the life stages of that species are affected by negative reverse flows, resulting in entrainment at the State Water Project pumps in the south Delta. As discussed above, due to their limited diversion capacities in the northern facilities, and therefore their heavier

reliance on current water facilities in the south Delta, Alternatives 3, 5, and 5A, while improving on existing conditions, would entail a greater degree of entrainment of larval/juvenile delta smelt compared to the Project (Final EIR/EIS, Chapter 11, p. 11-1198, 11-1859, 11-3877). Operational criteria also play a role in determining the timing and severity of negative reverse flows. Differing from Alternatives 5 and 5A, Alternative 3 would not include inflow/export ratio criteria for the San Joaquin River in April and May; as such, reverse flows would be less positive at those times. As noted above, because its operational criteria do not include Fall X2, Alternative 3 would create conditions where reverse flows would be less positive in October. Although Alternatives 3, 5, and 5A would result in a reduction of overall entrainment of juvenile winter-run Chinook salmon relative to the Existing Conditions baseline (Final EIR/EIS, Chapter 11, p. 11-1213, p. 11-1873, and p. 11-3888), the Project (Alternative 4A) shows a greater reduction across all water years (Final EIR/EIS, Chapter 11, p. 11-3218). Although some entrainment would occur under the Project, the Project's ability to draw water from three intakes rather than the one or two intakes under Alternatives 3, 5, and 5A, combined with its operational criteria, will better meet the project objective of restoring ecosystem health and reducing stressors on the ecological functions of the Delta.

Alternatives 3, 5, and 5A would also provide less operational flexibility compared to the Project. For instance, because the Project includes three intakes, it will still be able to function even if one or two of the intakes is unable to operate. On the other hand, because they have fewer intakes, Alternatives 3, 5, and 5A would have lower capacity than three-intake dual-conveyance alternatives like the Project, and would be more susceptible to system failure, which would translate into greater reliance on the existing south Delta facilities than the Project would afford, which would in turn result in a greater persistence in the ecological problems current experienced with the current system.

Finally, on balance, DWR finds that the Project will better achieve the State's coequal goals of providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem, compared to Alternatives 3, 5, and 5A. (California Public Resources Code, § 29702, subd. (a); California Water Code, § 85054.)

## 6. Alternatives 7 and 8

Through its Acting Director, DWR finds Alternatives 7 and 8 to be *infeasible* based on all of the reasons discussed below.

Like the Project (Alternative 4A), Alternatives 7 and 8 include dual tunnels and three intakes, and therefore, impacts related to the construction of the water conveyance facilities would generally be similar to those of the Project under each of these alternatives, despite the differences in the location of the intakes. The main difference between the Project and the conveyance component of Alternatives 7 and 8 is the operational criteria for the water conveyance facilities. Specifically, compared to the Project, the operational