SYNOPSIS OF KEY PROBLEMS WITH THE BDCP AND EIR-EIS

1. The BDCP is based upon this misrepresentation: that a massive new twin tunnel system, which would greatly reduce the natural flow of water through the Delta, qualifies as a "conservation" project to restore the Delta ecosystem and protect species already verging on extinction.
2. The BDCP conceals this central fallacy with a deceptive portrayal of the proposed program. It bundles the twin tunnel "conservation" project for immediate approval with 21 other vaguely defined conservation concepts. Many of these 21 measures are already required, or part of earlier-approved projects; others will not be capable of approval for years into the future.
3. The BDCP assumes without justification that benefits of the 21 conservation concepts will outweigh the destructive consequences of the twin-tunnel project. But all these concepts still lack crucial details and complete study, which the BDCP improperly seeks to defer until after the twin tunnels are approved and built.
4. The BDCP relies on phantom "paper" water, rather than actual supplies for generations to come, ensuring future conflicts over water rights. As the twin tunnels deprive the Delta of more water, the BDCP unrealistically assumes that miracles of management and engineering can simultaneously improve Delta water quality, protect endangered species, and avoid major damage to Delta farms and communities.
5. The BDCP's draft Implementing Agreement works primarily as an avoidance agreement. The IA leaves major gaps in accountability for project implementation, mitigation and financing. It assigns state and federal water contractors an excessive role in plan governance, consigns Delta counties to a marginal role, and misuses "adaptive management" as little more than a slogan to evade responsibility for the project's major risks.
6. The BDCP reflects a triumph of project advocacy over sound science. Independent experts, including the State of California's own reviewers in the Delta Science Program, have discredited the scientific credibility of the BDCP, and found it unable to meet federal and state requirements for a "conservation" plan.
7. The State of California's Delta Independent Science Board found that the BDCP's EIR-EIS "falls short" of scientific standards. The Board's report compared the EIR-EIS's water analysis to "an orchestra playing music without a conductor and with the sheets of music sometimes shuffled." Instead of merely headaches, the deficient analysis creates potential risks to public health, the environment and the economy.
8. The BDCP's EIR-EIS fails federal and state requirements for environmental review. It relies on a defective baseline for evaluation, fails to properly study direct and cumulative impacts, and lacks an adequate range of alternatives and meaningful mitigation measures.
9. With more than 40,000 pages of poorly organized supporting documents, the BDCP's EIR-EIS is among the least user-friendly environmental reviews in history. It buries essential information in technical appendices, and fails to fully inform the reader about the project's environmental consequences.

I. THE BDCP'S DRAFT IMPLEMENTING AGREEMENT UNDERSCORES MAJOR DEFICIENCIES IN ACCOUNTABILITY FOR PROJECT IMPLEMENTATION, MITIGATION, AND FINANCING.

A. BDCP Cannot Proceed Without a Lawful Implementing Agreement.

On May 30, 2014, several state and federal agencies involved in developing or reviewing the Bay Delta Conservation Plan (including the Department of Water Resources and federal and state fisheries agencies) finally released a draft Implementing Agreement (IA). A "note to reviewers" in the IA's first paragraph indicates that the "level of agency signatory" for this agreement remains to be determined.

The release of the IA more than five months after the final draft BDCP for a perfunctory two-month comment period does not fulfill the state and federal agencies' prior commitment to allow for public review of the IA concurrently with the BDCP public review draft. In October 2006, the same agencies--along with the California Resources Agency and the United States Bureau of Reclamation, among others--executed the *Planning Agreement Regarding the Bay Delta Conservation Plan* (Planning Agreement, or PA). The signatories retained and amended the agreement in 2009. Section 7.8 of this agreement commits to provide "[a]n Implementing Agreement that includes specific procedures for the implementation, monitoring and funding of the BDCP," and provides that "[a] draft of the IA will be made available *for public review and comment with the final public review draft of the BDCP.*" (PA, 18-19 (emphasis added).)

The IA must provide crucial details about the BDCP and its environmental consequences beyond those covered elsewhere in the public review drafts. The Natural Community Conservation Planning Act (NCCPA) expressly requires an approved plan to "include an implementation agreement" that "contains all" of a lengthy list of requirements. (Fish and Game Code, § 2830(b)(listing the required elements of an Implementation Agreement).) The BDCP's Planning Agreement therefore represented that the IA "will contain provisions for" the following:

- Conditions of species coverage;
- Long-term protection of any habitat resources other measures that provide equivalent conservation;
- Implementation of mitigation and conservation measures;
- Adequate funding to implement the plan;
- Terms for suspension or revocation of the proposed Incidental Take Permit;
- Procedures for amendment of the BDCP, the IA, and take authorizations;
- Implementation of monitoring and adaptive management;
- Oversight of BDCP allocations and funding;
- Periodic reporting.

(PA, pp. 18-19.)

As the Planning Agreement anticipated, the IA must provide essential information illuminating the details of project conditions and the assignment of responsibility for project construction, implementation, adequate funding, mitigation, monitoring, and adaptive management. This information is particularly crucial for a project such as the BDCP, which purports to rely heavily on adaptive management, and leaves 21 of its 22 ostensible "conservation" measures (all except for the proposed construction of a new north Delta twin tunnel system) unanalyzed except, and if at all, at the programmatic level. BDCP's public review draft prospectively relies upon its *future* IA when it generically denies that the project will operate in violation of the law. (See, e.g., BDCP, chapter 6 (Plan Implementation), chapter 7 (Implementation Structure) and chapter 8 (Implementation Costs and Funding Sources).)

In addition to being required for NCCPA compliance, the IA is crucial for compliance with the federal Endangered Species Act (ESA), which requires conservation plans to include steps, and available funding, to "monitor, minimize and mitigate" impacts. (40 C.F.R. § 222.307(b)(5)(iii).) Moreover, the IA's content is also closely related to the environmental review provided in the EIR-EIS. Reliance on a faulty IA would also fatally distort environmental review, because the IA provides an indispensable source of information about the project and its environmental consequences. Under CEQA, reviewing agencies are bound to "scrupulously" enforce CEQA's mandates. (*Vineyard Area Citizens for Responsible Growth v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 435 (quoting *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564).) In CEQA review, "[t]he preparation and circulation of an EIR is more than a set of technical hurdles for agencies and developers to overcome. The EIR's function is to ensure that government officials who decide to build or approve a project do so with a full understanding of the environmental consequences, and equally important, that the public is assured those consequences have been taken into account." (*Id.* at 449-450.)

For the BDCP, the IA is necessary to understand, and establish accountability for, these environmental consequences. Without the IA, the project's review cannot fully achieve CEQA's mandate for public agencies to "mitigate or avoid the significant effects on the environment of projects that it carries out or approves whenever it is feasible to do so." (Pub. Res. Code, § 21002.1.) In light of its major role within BDCP, the IA must necessarily be considered as part of the "whole" of the action as CEQA requires. (14 Cal. Code Regs., § 15368; see section III, *infra.*)

Similarly, under NEPA, excluding full consideration of the IA would unlawfully piecemeal the project's proposed incidental take permit from essential terms of project implementation (40 C.F.R. § 222.307(b)(5)(3)), and would undermine the EIS's ability to fully address the "environmental impacts of the proposed action . .

. ." (42 U.S.C. § 4332(C)(i).) An EIS "shall provide full and fair discussion of significant environmental impacts and shall inform decision-makers and the public of the reasonable alternatives which would avoid or minimize adverse impacts . . . ." (40 C.F.R. § 1502.1.)

Careful consideration of the IA is also crucial in light of the extensive role that the BDCP proposes for federal and state water contractors, from project financing to participation in an "Authorized Entity Group" tasked with extensive powers in the management and implementation of the BDCP. (BDCP, pp. 7-8 to 7-12.) Recent reports suggest that in a May 6, 2014 memorandum to its employees, DWR recognized that a "more detailed financing plan" for the BDCP has yet to be developed. Nonetheless, DWR announced that it is already establishing a separate BDCP Office to coordinate project implementation, and a Delta Conveyance Facility Design and Construction Enterprise (DCE) that will include unspecified local water agencies and private consulting firms as well as DWR. (See http://blogs.esanjoaquin.com/san-joaquin-river-delta/files/2014/05/BDCPJPA.pdf) This puts the cart before the horse.

Rather than proceeding as if BDCP implementation were a foregone conclusion, the reviewing agencies should take the time needed to consider the IA's serious deficiencies and their implications for BDCP and the EIR-EIS. The BDCP is widely recognized as "the most complex HCP/NCCP permit application ever attempted." (See https://watershed.ucdavis.edu/files/biblio/FINAL-BDCP-REVIEW-for-TNC-and-AR-Sept-2013.pdf.) Only through an accurate view of the project may the public and interested parties balance the proposed project's benefits against its environmental cost, consider appropriate mitigation measures, be assured of the feasibility and funding for necessary mitigation measures, and 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, 672 (2007).)

B. The Implementing Agreement Underscores Major Gaps in Accountability for Project Implementation, Mitigation and Financing

Despite its length, the IA does little more than make undocumented assertions of BDCP's compliance with the NCCPA's mandatory requirements for permitting listed in IA section 4.2.1. Rather than realistically addressing the major challenges BDCP implementation faces and clearly assigning responsibility, the current draft IA relies heavily on a morass of elliptical phrases, vague assurances, and deferrals of responsibility to the future decisions and actions of project proponents. Unfortunately, the IA's liberal use of reassuring phrases such as "regulatory assurances" and "adaptive management" cannot paper over BDCP's major problems establishing accountability for project implementation, mitigation and financing. These problems undermine BDCP's compliance with the related legal requirements noted above under the ESA, CEQA and NEPA, as well the IA's ability to live up to

its own asserted purposes. These purposes include the duties to ensure that terms and conditions are "properly implemented," delineate the implementing entities' "responsibilities, financial or otherwise (including the commitment and management of resources" and "set forth the remedies and recourse" should any party to the IA fail to perform its obligations. (IA, section 2.2, at 4.) Without providing any secure foundation for meeting these objectives, the IA appears to place a far higher premium on offering "assurances and protections" to a select group of "authorized" entities compromising BDCP's major proponents. (*Id.*) Indeed, despite previous criticisms of deficiencies in BDCP governance, the IA confirms that a small group of "authorized" entities--including DWR, the Bureau of Reclamation, and unnamed representatives of the State Water Project (SWP) and Central Valley Project (CVP) contractors—are slated to receive sweeping and unprecedented authority to implement (and in some cases to modify) plan requirements. Several of the IA's central defects are highlighted here.

1. Conclusory and Unscientific Findings

The IA relies prospectively on the still-unmade findings of USFWS and NMFS required for ESA compliance (section 4.1) and the still-unmade findings of the Department of Fish and Wildlife (DFW) required for NCCPA compliance (section 4.2). Although the IA correctly notes that these findings are legally required, it contains only bare assertions of compliance, without any analysis that would support findings of compliance. That analysis cannot be complete until these agencies have the full-benefit of public review and comment. The same is the case with respect to section 4.2.2, in which DFW summarily announces without analysis that BDCP and its EIR comply with the Delta Reform Act. (Wat. Code, § 85320, *et seq.*) Although these agencies have not yet even purported to provide the legally required findings, the IA elsewhere misleadingly asserts that the fish and wildlife agencies "*have found that the BDCP fulfills*" the requirements of the ESA and NCCPA for the issuance of take authorizations. (Section 8.0 (emphasis added).)

As explained in the remaining sections of this summary, BDCP and the EIR have not come close to complying with the NCCPA, ESA, CEQA and NEPA. The asserted findings of "compliance" in these placeholder sections of the IA are markedly at odds with the detailed criticisms of leading scientists charged with reviewing BDCP under the Delta Science Program. These criticisms raise fundamental doubts about the advocacy-driven scientific case for BDCP, and confirm that failure to address these deficiencies may well undermine BDCP's ability to meet key requirements of the Delta Reform Act, including the "coequal" goal of the protection, enhancement and restoration of the Delta ecosystem (See section II, *infra.*)

2. Defective Governance and Implementation Structure

The IA underscores major defects in BDCP's implementation structure, confirming and compounding problems evident earlier in Chapter 7 of the plan. For many of the key decisions involved in implementing BDCP (BDCP, Table 7-1), the IA assigns major decision-making responsibilities to the extremely small "authorized entity group" (AEG), consisting of "the Director of DWR, the Regional Director for Reclamation, a representative of the SWP contractors and a representative of the CVP contractors." (IA, Section 15.3.1, at 58; see also section 3.7, at 5 (defining "authorized entity group").) The AEG provides state and federal water contractors with combined representation equivalent to that of the state and federal lead agency, while providing no representation to others, including the Delta's own counties and communities. (*Id.*)

The IA thus assigns an extraordinarily high level of responsibility to a group dominated by project proponents who have incentives to maximize BDCP's commitment to water supply deliveries, and minimize liability for project costs. Under the IA, the AEG "will engage" in decisions on numerous matters relating to administration, oversight, monitoring and funding, but is not even "limited to" those powers. (IA, section 15.3.1, at 58-59.) In addition, the AEG selects BDCP's program manager (section 15.2.4.1, at 56-57). The AEG-appointed program manager will, in turn, select and supervise BDCP's science manager (section 15.2.4.2, at 57).

That same program manager also makes staffing decisions for the Implementation Office, which "shall be responsible for planning, implementation and design" of BDCP's conservation measures (section 15.2.4.3, at 58). The "authorized entities" retain the "ultimate responsibility" for actions undertaken by the Implementation Office. In addition to DWR and some other state entities, state and federal water contractors will staff the implementation office. (*Id.*) In short, the IA undermines genuine responsibility for implementation of BDCP—a task critically in need of scientific candor and public accountability—with repeated reliance on a self-interested entity group that seems structured to minimize obstacles to BDCP's twin tunnel conveyance system. Missing from the IA, as well as the BDCP and the EIR-EIS, is any meaningful recognition of how the BDCP would centralize and transform key aspects of the SWP and CVP in the Implementation Office, with ultimate responsibility retained by the four-member AEG with two water contractor representatives. None of the BDCP documents come to terms with a major proposed revision in the nature of the projects, made without legislative approval, contract amendments, or approval by the California Water Commission.

Further evidence of the water contractor-friendly AEG's excessive authority over BDCP implementation is evident in the IA's provisions addressing the role of the fish and wildlife agencies' Permit Oversight Group (POG), whose representatives are the USFWS director, the NMFS regional administrator, and the DFW director

(section 15.4.1, at 60). Under the IA, key decisions of the POG must be approved *jointly* with the AEG, including those relating to such crucial matters as adaptive management, mitigation monitoring, funding, operations planning, and approval of progress reports (*Id* at 61).

Moreover, even very basic questions about the nature of AEG's decision-making remain unanswered. The IA assumes that the AEG will express a "single position" on matters under its consideration, without explaining how dissent is addressed. (IA, section 15.3.3, at 60.) It opaquely asserts that "the entity(ies)" (*sic.*) with "vested statutory or regulatory authority over the matter" will make the final determination, without explaining to the reader who possesses that authority in specific situations (*Id.*) It never explains how SWP and CVP contractors, groups whose history is replete with major internal disagreements and who have expressed widely differing opinions on BDCP, will manage to appoint a single "representative" apiece to the AEG. (IA, section 15.3.1, at 58.)

Despite a deluge of prior criticism, the IA improperly marginalizes the role of Delta counties and their constituencies, excluding them from any meaningful role in BDCP governance and decision-making even though they will bear the brunt of BDCP's adverse consequences for decades to come. The IA notes that "representatives of the counties of San Joaquin, Sacramento, Solano, Yolo and Contra Costa" will serve—along with dozens others representing NGOs, professional organizations, and other constituencies—on a Stakeholder Council conspicuously lacking in decision-making responsibilities. (IA, section 15.6.2, at 63-64.)

The Stakeholder Council functions simply as an advisory entity, which meets quarterly to exchange information and provide non-binding "input" to the AEG-selected BDCP program manager on the "current significant issues at hand." (IA, section 15.6.3, at 64.) The IA's exclusion of Delta counties from any more substantive role is especially noteworthy in light of their years of efforts to secure a more consequential role. A cryptic "note to reader" in section 7.2.8 of the BDCP asserts that the Resources Agency is "working with" representatives of Delta counties to involve them in plan implementation, and announces an "intention" to later incorporate unspecified revisions addressing their participation in the plan's final iteration (BDCP, at 7-26).

The IA notably does not incorporate the alternative governance proposal advanced by the Delta Counties Coalition. Unlike the IA, that proposal would secure each Delta county a voting role on any decision-making body having oversight, implementation and approval authority over the BDCP's conservation measures. The proposal, unlike the IA, would provide full funding for the counties' participation, recognizing that the counties lack the effective means to otherwise cover their participation costs from customers or ratepayers. Providing for the counties' effective

participation is necessary to ensure consistency with county planning, as well as six regional conservation plans within the BDCP's plan area that the IA notes are "being implemented or are under development." It would also help ensure fairness to those most directly affected by BDCP, and honor the Delta counties' need to protect their residents' health, safety, and welfare.

3. Avoidance of Conservation Measures

Although the IA is labeled an "implementation" agreement, it also provides opportunities for BDCP decision-makers, using unprecedented loopholes, to *avoid* responsibility for implementing its purported conservation measures. Divorcing "adaptive management" from scientific rigor and institutional accountability, the IA reverses the traditional role of such agreements in NCCPA compliance, allowing decision-makers to reduce, expand, delete or relocate the conservation and mitigation measures specified in BDCP and its EIR-EIS. (IA, section 10.3.1, at 29.) Using this method, the IA enables the AEG to secure removal or change of the plan's Conservation Measures 2-22 (those other than the twin tunnel conveyance system itself), whether or not the plan's Adaptive Management Team (AMT) recommends this change. In the IA's euphemistic language, it provides flexibility to allow the "addition to or elimination of" BDCP's conservation measures and biological objectives. (*Id.*) In other provisions of the IA, the AMT receives extensive authority to make changes in BDCP, couched in such terms as performance measures, effectiveness monitoring, and monitoring results. (See IA, section 3.1, at 5.)

BDCP even confers on the AMT the opportunity to decide whether, or if, science review is to be included in these decisions at all. (BDCP, at 7-15.) Likewise, the IA not only allows decision-makers to change conservation measures and biological objectives under the rubric of adaptive management; it authorizes them to do so *without requiring an amendment to BDCP or its regulatory authorizations.* (IA, section 10.3.6, at 36 (emphasis added).) The IA specifies an unusually protracted process for permit revocation, which add additional leeway for permittees to evade conservation requirements.

Another ominous provision buried within the IA's discussion of adaptive management is section 10.3.7.3 ("The Supplemental Adaptive Management Fund"), which in vague language records the parties' anticipation that the referenced funds could be used "to *acquire water to supplement flows....*" (*Id.* at 38.) If "additional outflow" is found to be necessary, "supplemental water *may be acquired from voluntary sellers.*" (*Id.*) The reader is left to speculate when such additional outflow may be necessary, or the conflicts that may arise if voluntary sellers do not materialize, or if the ostensibly voluntary transactions harm other water users. Between the lines, this language may amount to an implicit recognition that the combined provisions of BDCP may well not meet water exporters' expectations for deliveries, and that BDCP funds should be reserved for water purchases that enable additional exports at the

new BDCP intakes. If BDCP ultimately could involve the public in underwriting the costs of transfers that could deplete existing aquifers, that suggestion should be fully analyzed and debated on the merits, not hidden within the implementation provisions of a "conservation" plan.

Taken together, these provisions render the plan itself a moving target, undermining the certainty accountability required for NCCPA compliance. Moreover, because they turn BDCP's ultimate provisions and protections into a cipher that may remain unknown until years after project decisions are made, they also disable the consistent project definition and commitment to effective mitigation required for compliance with CEQA and NEPA.

4. Failure to Ensure Adequate and Reliable Sources of Funding

As the IA concedes, the NCCPA requires a legally adequate conservation plan to ensure "adequate funding to carry out the conservation actions identified in the BDCP." (IA, section 4.2.1, at 12 (discussing Fish & Game Code, § 2820).) Likewise under the ESA, approval of a legally adequate HCP requires identification of sufficient sources of funding, and specification of the sources relied upon to mitigate impacts to covered species. (16 U.S.C. § 1539(a)(2); see also *Southwest Center for Biological Diversity v. Bartel* (S.D. Cal. 2006) 457 F. Supp.2d 1070, 1105.) Failure to include this required analysis and disclosure in an EIR-EIS also fatally compromises its ability to fully inform the reader of the project's environmental consequences, vitiating compliance with NEPA and CEQA. Nonetheless, the IA, like the BCDP itself and its EIR-EIS, thoroughly fails to ensure that the plan is supported by adequate and reliable sources of funding. Section 8.3 of BDCP purports to provide such sources. Moreover, under the IA, only measures other than the twin tunnel conveyance (CM-1) are to be cut back, beginning with terrestrial species. Sacramento County extensively detailed the speculative and unstable nature of BDCP's funding sources in its May 28, 2014 comments. Unfortunately, the IA does not improve on the paucity of reliable funding addressed in those comments.

II. THE DELTA INDEPENDENT SCIENCE BOARD'S REPORT CONFIRMS THE LACK OF SCIENTIFIC AND LEGAL FOUNDATION FOR BDCP AND ITS EIR-EIS.

A. Overview: The EIR-EIS Failed to Use "Good Enough" Science to Meet the Project's Environmental Review Requirements.

On May 15, 2014, the Delta Independent Science Board submitted a detailed report reviewing the BDCP and the EIR-EIS (Science Board Report) to the Delta Stewardship Council (DSC) and California Department of Fish and Wildlife (DFW), as directed under the 2009 Delta Reform Act (Wat. Code, § 85320(c).) This report

follows a similar one prepared by the Delta Science Program's Independent Science Review Panel (Panel), which analyzed the "Effects Analysis" (BDCP, chapter 5) prepared in connection with requirements of endangered species law. (See sections III and V, *infra.*) Both the Science Board and the Panel were sharply critical of the tendency in BDCP and its review documents to tilt the analysis in favor of the proposed project and avoid sound science.

The Science Board examined "the science in the DEIR/DEIS" and the BDCP, focusing on "how well the statements and conclusions are supported by current scientific information; how science is applied to proposed actions; how completely actions and their potential consequences have been assessed; and how science is communicated." (Science Board Report, p. 4.) Examining whether the BDCP's EIR-EIS used the "best available science" in analyzing project alternatives and their effects, the Science Board answered in the negative, concluding that the EIR-EIS failed to use science that was "good enough, and use it well enough" to meet the requirements of project review. (*Id.*, p. 4.) The Science Board summarized its major concerns:

1. Many of the impact assessments hinge on overly optimistic expectations about the feasibility, effectiveness, or timing of the proposed conservation actions, especially habitat restoration.

2. The project is encumbered by uncertainties that are considered inconsistently and incompletely; modeling has not been used effectively to bracket a range of uncertainties or to explore how uncertainties may propagate.

3. The potential effects of climate change and sea-level rise on the implementation and outcomes of BDCP actions are not adequately evaluated.

4. Insufficient attention is given to linkages and interactions among species, landscapes, and the proposed actions themselves.

5. The analyses largely neglect the influences of downstream effects on San Francisco Bay, levee failures, and environmental effects of increased water availability for agriculture and its environmental impacts in the San Joaquin Valley and downstream.

6. Details of how adaptive management will be implemented are left to a future management team without explicit prior consideration of (a) situations where adaptive management may be inappropriate or impossible to use, (b) contingency plans in case things do not work as planned, or (c) specific thresholds for action.

7. Available tools of risk assessment and decision support have not been used to assess the individual and combined risks associated with BDCP actions.

8. The presentation....makes it difficult to compare alternatives and evaluate the critical underlying assumptions.

(Science Board Report, p. 3.)

The Science Board warned that leaving its concerns unaddressed "may undermine the contributions of BDCP to meeting the co-equal goals for the Delta." (Science Board Report cover letter, p. 1; see Wat. Code, §85054 (defining the Delta Reform Act's "coequal goals" as "providing a more reliable water supply for California" and "protecting, restoring, and enhancing the Delta ecosystem").) To comply with the Delta Reform Act enacted in 2009 (Delta Reform Act), 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, § 85054; see also Wat. Code, § 85900, listing other specific goals for the Delta inherent in these goals, including restoration of the Delta ecosystem).)

The BDCP "shall not" be incorporated into the Delta Stewardship Council's Delta Plan, and make its public benefits qualify for state funding, unless the BDCP complies with the NCCPA and CEQA. (Wat. Code, § 85320(b).) In addition to these general requirements, the Legislature has noted that CEQA compliance for the BDCP requires "*comprehensive review and analysis*" of all the following:

(A) A reasonable range of flow criteria, rates of diversion, and other operational criteria required to satisfy the criteria for approval of a natural community conservation plan as provided in subdivision (a) of Section 2820 of the Fish and Game Code, and other operational requirements and flows necessary for recovering the Delta ecosystem and restoring fisheries under a reasonable range of hydrologic conditions, which will identify the remaining water available for export and other beneficial uses.

(B) A reasonable range of Delta conveyance alternatives, including through-Delta, dual conveyance, and isolated conveyance alternatives and including further capacity and design options of a lined canal, an unlined canal, and pipelines.

(C) The potential effects of climate change, possible sea level rise up to 55 inches, and possible changes in total precipitation and runoff patterns on the conveyance alternatives and habitat restoration activities considered in the environmental impact report.

(D) The potential effects on migratory fish and aquatic resources.

(E) The potential effects on Sacramento River and San Joaquin River flood management.

(F) The resilience and recovery of Delta conveyance alternatives in the event of catastrophic loss caused by earthquake or flood or other natural disaster.

(G) The potential effects of each Delta conveyance alternative on Delta water quality.

(*Id.*)

The EIR-EIS makes perfunctory claims in an appendix to have covered these BDCP-related environmental review issues (EIR-EIS, Table 3I-1.) However, as detailed further, the Science Board Report demolishes the scientific basis for that analysis and undermines the current BDCP and EIR-EIS's ability to meet the environmental review requirements of CEQA and the Delta Reform Act. Unless these errors are corrected before the Final EIR-EIS, the review's major "mass of flaws" will fatally undermine the EIR-EIS's ability to inform decision-making as CEQA requires, and require recirculation after the major shortcomings of the EIR-EIS are corrected. (*San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 741-742.) If left uncorrected, these errors would preclude informed decision-making and informed public participation, thereby thwarting the statutory goals of the EIR-EIS process. (*Berkeley Keep Jets Over the Bay Com. v. Board of Port Cmrs.* (2001) 91 Cal.App.4th 1344, 1355.)

B. Expectations for the Effectiveness of BDCP's Conservation Actions are Too Optimistic.

The Science Board found that "the DEIR/DEIS, the BDCP actions, as supplemented by Avoidance and Minimization Measures and Mitigation Measures, are assumed to produce the anticipated benefits when they are needed to offset any impacts of BDCP actions. In essence, it is often argued that Conservation Measures (CM) 2–22 will have sufficient positive benefits for covered species to counterbalance any negative impacts of water diversions and changes in flow caused by proposed alternatives (CM1). This is an implausible standard of perfection for such a complex problem and plan, as noted in our reviews of Chapters 11 and 12 (Appendix B). It would be better to begin with more realistic expectations that include contingency or back-up plans." (Science Board Report, at 5.)

C. Uncertainties are Inconsistently and Incompletely Addressed.

The Science Board found that the Draft EIR-EIS's (DEIR/DEIS's)

conclusions or comparisons among alternatives or the impacts of the Conservation Measures were often "encumbered by unaddressed uncertainties. Uncertainties accompany every action and consequence discussed in the DEIR/DEIS, ranging from the designations of habitats for individual species, to projections of entrainment, to modeling results used in the analyses. When combined, these uncertainties will be compounded and propagate. Although the Draft BDCP discusses some of these uncertainties, they are treated inconsistently in the DEIR/DEIS and are largely ignored in the Executive Summary." (Science Board Report, p. 5.)

Notably, the Science Board sharply criticized the tendency in the EIR-EIS to overuse the mantle of avoiding "speculation" to avoid addressing key uncertainties relating to the success of BDCP's proposed conservation measures. Criticizing the misunderstandings stemming from this tendency, the Science Board noted that "avoiding clear articulation of uncertainties is not the same as avoiding speculation. By inadequately addressing uncertainties, the documents may fail to prepare those charged with implementing the Plan to deal with surprises. Unaddressed, uncertainties can pose major and significant risks to the project as a whole and lead to false expectations from managers and stakeholders." (Science Board Report, p.6.) By contrast, if uncertainties are acknowledged, "expectations of the outcomes and benefits of BDCP actions will be more realistic, enabling a more reasoned assessment of how the actions align with NEPA and CEQA standards." (*Id.*)

Criticizing the frequent assumption in the EIR-EIS that the uncertain benefits Conservation Measures 2-22 will somehow counterbalance the "more certain impacts" of the proposed conveyance (Conservation Measure 1), the Science Board found it "important to recognize that Conservation Measures 2-22 are likely to have values in their own rights and are worth implementing regardless of which alternative (if any) is eventually selected." (Science Board Report, p.6.) However, the adequacy of CM 2-22 "to offset the negative impacts of Conservation Measure 1, as assumed in the DEIR/DEIS, is uncertain, in part because they are given only program rather than project-level analysis....*these measures are hypotheses to be tested, or perhaps broadly defined adaptive-management experiments. They need to be treated as such.*" (*Id.* (emphasis added); see also pp. B-37-45 (applying problem to analysis of fish and aquatic resources).)

D. The Potential Effects of Climate Change and Sea-Level Rise are Underestimated.

The Science Board described future climate change and sea-level rise as "perhaps the greatest sources of uncertainty affecting BDCP." (Science Board Report, p. 6.) The Science Board criticized the EIR-EIS's failure to account for how "the speed, magnitude, and intermittent nature of these changes may alter the

outcomes of BDCP actions from what is planned. The potential direct effects of climate change and sea-level rise on the effectiveness of actions, including operations involving new water conveyance facilities, are not adequately considered." (Science Board Report, p.6; see also pp. B-52-54, B-82-88 (addressing EIR-EIS chapters 12 and 29.) Moreover, the Science Board found that similar exclusion of analysis also casts doubt upon conclusions drawn elsewhere in the EIR about "other disrupting factors, such as floods, levee failures, earthquakes, or invasive species, *any of which could profoundly alter the desired outcomes of BDCP actions.*" (Science Board Report, p.6 (emphasis added).)

In light of this defective analysis, the Science Board singled out for criticism an evasive response of DWR to the panel's earlier criticism of the EIR-EIS's inconsistent and incomplete climate change analysis, which avoided analysis based on the inapposite premise that "the scope of an EIR/EIS is to consider the effects of the project on the environment, and not the environment on the project." (Science Board Report, p.6.) Describing DWR's response as "*dangerously unrealistic*," the Science Board observed that CEQA requires impacts to be assessed "in order to provide decision makers enough information to make a reasoned choice about the project and its alternatives. *Surely this choice should also include consideration of factors that may substantially alter the outcomes of the project.*" (*Id.* (emphasis added); see also pp. B-82 ("because of the changing conditions, the Draft BDCP actions may not develop as anticipated. Uncertainties in the effectiveness of conservation measures due to the effects of climate change and sea-level rise must be given greater consideration), B-86-88 (criticizing the EIR-EIS's avoidance of analysis based upon a false dichotomy between climate change and the project).)

E. Interactions Among Species, Landscapes, and the Proposed Actions are Insufficiently Considered.

The Science Board noted that because the Delta is a "complex, interacting system," failure to meet the expectations for BDCP actions "will have cascading effects. If the competitive or predatory effects of one species on another or the effects of habitat restoration in one place on upstream or downstream restoration projects are not fully considered, the effectiveness of actions may be compromised." (Science Board Report, p. 7.) By contrast, the EIR-EIS often focuses on individual species, particular places, or specific actions that are "considered in isolation from other species, places, or actions. In particular, potential predator-prey interactions and competition between covered and non-covered fish species are not fully recognized." (*Id.*) The EIR-EIS's failure to "treat the Delta as a fully functioning and integrated ecosystem" resulted in its overlooking "interactions that may enhance or undermine the effectiveness" of BDCP actions. (*Id.*)

F. Important Effects of BDCP are Ignored.

The Science Board's report provided several examples in which the EIR-EIS deficiently analyzes BDCP's impacts, which resulted in some crucial exclusions from the scope of project review. (Science Board Report, Appendix A (listing examples).) For instance:

- The EIR-EIS defined the project's geographic scope "to exclude San Pablo Bay and San Francisco Bay. The consequences of BDCP actions undertaken within the Plan Area, however, will extend downstream to affect these bays. Changes in sedimentation in the Delta associated with BDCP actions, for example, will not be confined to the Delta. Likewise, changes within the bays (e.g., tidal wetland restorations) will affect tidal fluxes and salinity intrusion into the Delta. Many fish species also migrate into or through these areas." (Science Board Report, p. 7.)
- The discussion of levees in BDCP and the EIR-EIS, while extensive, is "disconnected and incomplete. In particular, neither the consequences of levee failures on the effectiveness of BDCP actions nor the financial implications of demands for levee maintenance receives adequate attention. The assumption that most levee breaches will be repaired seems unrealistic." (*Id.*)
- The EIR-EIS lacks analysis of the environmental consequences of water reliability produced by BDCP (if successful). While the document mentions economic benefits, "there is no parallel discussion of possible environmental impacts that might arise as increased reliability affects which crops are planted, how fertilizers and pesticides are used, or how these changes might affect agricultural runoff and water quality." This all relates to the "whole" of the action. (*Id.*)
- The Science Board criticized the incorrect assumption of "speculation" used to exclude analysis of environmental impacts from the EIR-EIS and to limit the boundaries used for EIR study. The Science Board concluded: "We do not believe that the processes used to determine these boundaries have been made explicit, nor are the boundaries scientifically justified. We know that there is a high likelihood of future levee breaches and that farmers will adjust their crops and management in response to changing water availability. Although we may not be able to anticipate these changes in detail, to ignore them is to pretend that they won't happen. Sufficient information exists to construct and evaluate future scenarios. These potential effects merit more careful consideration." (*Id.*, p. 8.)
- The Science Board found major deficiencies in the EIR-EIS's assessment of water quality. The report decried the "general lack of knowledge" displayed in the analysis of water quality constituents, particularly in the analysis of dioxins and contaminants of emerging concern (CECs). (*Id.*, pp. B-22-23.) Among other criticisms, the authors criticized the EIR-EIS's overreliance on model outputs and "cavalier" treatment of detection limits for analytes. (*Id.*, p. B-24.)
- The Science Board also criticized serious deficiencies in the EIR-EIS's analysis of BDCP's public health consequences. (Science Board Report, p. B-73-77.) The analysis evaded potentially serious problems with mosquito abatement, mercury accumulation, bioaccumulation of toxic compounds, and fish contamination. (*Id.*)

G. The Adaptive Management Process is Not Fully Developed.

The Science Board provided a detailed and devastating critique of the misuse of adaptive management in BDCP and the EIR-EIS (Appendix A). Although the Science Board described adaptive management as "*the* key to the success of the BDCP project over its 50-year duration" (Science Board Report, B-55 (emphasis in original)), the report identified major problems with its use within BDCP and the EIR-EIS:

- "[A]lthough adaptive management is mentioned frequently in the DEIR/DEIS, details about how it will be designed and done are left to a future Adaptive Management Team. As a result, it is unclear how adaptive management will be integrated into the implementation of BDCP, whether the scientific skills needed to plan and oversee adaptive management will exist in the Implementation Office and on the Adaptive Management Team, and whether the capacity to conduct the monitoring and analysis needed for adaptive management will be available." (Science Board Report, p. 8.)
- "Because conditions in the Delta and responses to BDCP actions may change quickly, the adaptive-management process must be nimble and flexible, yet the organizational structure may delay rather than expedite needed adjustments. Although the Draft BDCP has an extensive listing of performance measures linked to its Biological Goals and Objectives, the measures needed to evaluate actions and make adjustments are not addressed substantively in the DEIR/DEIS. Neither are there any indications of the criteria that might be used to establish "trigger points" at which adaptive management procedures would be initiated. This becomes particularly problematic if certain species are benefitting from actions and others are doing worse." (*Id.*)
- "Because BDCP actions will not likely play out as planned, it may be useful to view them as planned experiments or hypotheses to be tested. Consequently, it would be prudent to have contingency plans generally outlined *before* discovering that actions are not working as expected. Yet contingency plans are rarely mentioned in the documents we reviewed. We are not yet convinced that the process of actually doing adaptive management (rather than creating an organizational infrastructure for it) has received the thoughtful development it requires, given its central role in implementing BDCP and ensuring that impacts and benefits balance. Consequently, we have substantial misgivings about how well the proposed adaptive management process, as proposed, will actually function as a key component of BDCP." (*Id.*)
- The BDCP's decision-making structure—including the delegation of extensive authority to the "Authorized Entity Group" drawn from DWR, the Bureau of Reclamation and water contractors—"does not seem to bring enough authority and resources for adaptive management to be implemented in a decisive and timely way." (*Id.*, p. A-19.)
- The BDCP lacks funding specifically earmarked for adaptive management, and the total budget for monitoring and research is "small" relative to BDCP's total cost.

(*Id.*, p. A-21.)

H. Risks are Not Modeled or Fully Evaluated.

The Science Board suggested that available risk-management tools could assist in fully evaluating BDCP's vulnerability to "high-consequence risks," and aid in preparing contingency plans. However, the Science Board found "no indications that the available scientific approaches to risk assessment were used to any great extent in the development of BDCP. Given the concerns over uncertainty and the proposed adaptive-management plan, it would be worthwhile to consider incorporating structured decision-making into the process." (Science Board Report, p. 9; see also Appendix A (listing proposed tools to assist in decision-making).)

I. Descriptions of the Alternative Conveyance Structures, Operations, and Environmental Impacts Do Not Facilitate Informative Comparisons.

The Science Board pointed out that "a central purpose of an EIR/EIS is to clearly describe the alternative options—in this case, water-conveyance operations—and their relative impacts." (Science Board Report, p. 9.) In the BDCP's EIR-EIS, "because no overall framework is provided to draw together the specifics of the alternatives in a clear way, it is difficult to compare alternatives. Consequently, it is challenging to develop a rigorous assessment of the relative strengths and weaknesses of the alternatives...." (*Id.*; see also Appendix A (discussing "clarity").) Treating all alternatives in exactly the same way "ignores the reality that these factors affect the alternatives and conclusions about their impacts in different ways, further confounding comparisons." (Science Board Report, p. 9.)

III. The BDCP AND THE EIR-EIS RELY ON A SHIFTING, INCONSISTENT AND INACCURATE PROJECT DEFINITION.

A. Legal Requirements for Environmental Review

Under CEQA, the project must include "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..." (14 Cal. Code Regs., § 15368; see also *Nelson v. County of Kern* (2010) 190 Cal.App.4th 252, 271.) The project description must address "not only the immediate environmental consequences of going forward with the project, but also all 'reasonably foreseeable consequence[s] of the initial project'." (*Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70, 82.)

CEQA cases have long established 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* (*Inyo III*) (1977) 71 Cal.App.3d 185, 199.) Reliance on a "curtailed, enigmatic or unstable definition of the project" stands as the paradigm of legal error under CEQA, because it "draws a red herring across the path of public input." (*Id.* at 199.)

NEPA requires federal agencies to articulate the "purpose and need" for a proposed action for which environmental review is required. (40 C.F.R. §1502.13.) That articulation is crucial for the "heart" of NEPA, the alternatives analysis, which enables the EIS to provide "a clear basis for choice among options by the decision-maker and the public." (40 C.F.R. §1502.14.) NEPA prohibits the use of a truncated "purpose and need" statement, in which the articulation of objectives is defined in a manner that curtails full assessment of the project and alternatives. (*City of Carmel-by-the-Sea v. United States Department of Transportation* (9th Cir. 1997) 123 F.3d 1147, 1155; *Friends of Southeast's Future v. Morrison* (9th Cir. 1998) 153 F.3d 1059, 1066.)

B. Foundational Project Definition Problems in BDCP and EIR-EIS

1. Faulty Definition of CM-1 as a "Conservation" Measure

The EIR-EIS is fundamentally misleading in portraying the BDCP as a "comprehensive conservation strategy for the Sacramento-San Joaquin Delta (Delta) to advance the planning goal" of "restoring" the Delta's ecological functions. (EIR-EIS, ES-1.). Conservation measure CM-1 (Table ES-3) provides "for the construction and operation of a new north Delta water conveyance facility to bring water from the Sacramento River in the north Delta to the existing water export pumping plants in the south Delta, as well as for the operation of existing south Delta export facilities." This "conservation" measure serves as a euphemism for the twin tunnel system, whose specific physical facilities are buried in the descriptions.

The EIR-EIS offers no credible analysis of why CM-1 qualifies as a conservation measure addressing ESA and NCCPA compliance. Far from contributing to the protection or restoration of ecosystem health in the Delta, this measure would take large quantities of additional water out of the Delta and compound ecological risks. Indeed, facilitating additional exports can in no sense be considered a conservation strategy. Overwhelming critiques vitiate the notion that CM-1 is a conservation measure, and point to the failure to meaningfully analyze BDCP's speculation that the remaining measures can overcome the damage from implementation of CM-1. For example:

- In March 2014, the Independent Scientific Review Panel studied the Effects Analysis (EA) in the BDCP (Chapter 5). The Panel's report (ISRP-3) identified four broad themes emerging from its review. First, the panel found the EA

riddled with fragmented analysis and inconsistencies that made it "difficult to review and comprehend." Second, the Panel identified an "apparent disconnect" between the treatment of uncertainty in BDCP Chapter 5 and in the EA's technical appendices. Third, the Panel noted the continued absence of an integrated or quantitative assessment of net effects. Finally, the Panel concluded that the EA underplayed major uncertainties in the achievement of beneficial effects attributed to the BDCP's conservation measures, slanting the "net effects" analysis in the BDCP's favor. (ISRP-3, pp.1-2.)

- In March 2014, the Pacific Fishery Management Council submitted comments concluding that the BDCP will "negatively impact essential fish habitat" for Council-managed species, including all varieties of Chinook salmon, and noted it is "highly concerned" that the project's water withdrawals will unreasonably constrain the flow of fresh water through the Delta.

- In February 2014, the California Advisory Committee on Salmon and Steelhead Trout (Advisory Committee) submitted its required recommendations to the Department of Fish and Wildlife regarding the BDCP under Fish and Game Code section 6920. Concluding that the BDCP "promotes the unproven scientific hypothesis that habitat restoration can substitute for flow," the Advisory Committee recommended that DFW deny an incidental take permit (ITP) for the BDCP project (Alternative 4) as a Natural Communities Conservation Plan (NCCP). The Advisory Committee also concluded that the BDCP "does not meet the requirements of Fish and Game Code section 2820 for an NCCP and cannot legally be approved because it will contribute to the further decline of Sacramento River Winter Run and Spring Run Chinook Salmon." (*Id.*, p. 1.).

- As the Advisory Committee pointed out, the effects analysis in BDCP Chapter 5 concedes that project operation using CM-1's proposed conveyance will *reduce* winter run and spring Chinook salmon smolt survival. (*Id.*) Under these circumstances, the BDCP is incapable of meeting key requirements of the NCCP Act or CESA. (*Id.*, p. 4; see, e.g., Fish & Game Code, §§ 2081(c)(lack of contribution to recovery, continued jeopardy), 2081(b)(2)(c); 220(e).)

- These comments follow still-unheeded concerns of the State Water Resources Control Board that Delta outflows and inflows are already insufficient to help listed species recover, even without the huge quantities of additional water the project would take out of the Delta. They also follow still-unheeded "red flag" comments of the federal fisheries agencies (NMFS and USFWS), as well as major concerns of EPA and the Bureau of Reclamation about the project's unmitigated environmental consequences.

In short, the integration of CM-1 with the other measures depends upon the strained and discredited premise that aggressive re-engineering of the Delta can

somehow outweigh the extensively documented importance of flow to species already nearing extinction. That sleight of hand distorts the project's potential impacts on existing and senior water users, and species (including humans) depending on flows through the Delta. It also sidesteps the protection of areas of origin rights and beneficial uses in the Delta region.

2. Unequal Status of Non-Conveyance Project Components

The EIR-EIS's division of project and program components creates a major obstacle to ensuring timely consideration of the "whole" of the project in accordance with CEQA and NEPA. Only the non-conserving "conservation" measure CM-1 is slated for project-level analysis, while the remaining measures (CM 2-22) are consigned to program-level review, with the caveat that further environmental review may be needed prior to implementation. This creates an untenable imbalance in which approval of the conveyance based on project-specific review may well go forward while essential details of the remaining conservation measures, as well as their funding and implementation status, remain unstudied and unknown. Under these circumstances, it is clear that conservation is far from "coequal" with conveyance. The project-specific review of conveyance and highly opaque program review of conservation also amount to unlawful segmentation and piecemealing, undermining the ability of the EIR-EIS to serve as decision-making documents under CEQA and NEPA.

3. "Paper Water" Assumption in Project Objectives

The BDCP provides the basis for regulatory compliance with the ESA and the NCCPA for a range of activities related to the operation of the SWP and CVP, including the diversion and export of water from the Delta and its tributaries. (BDCP, p. 1-6.) But BDCP's statement of project objectives and project purpose rely upon the legally erroneous direction to "restore and protect" the SWP and CVP's nonexistent ability to deliver "up to full contract amounts." The BDCP cannot credibly base a conservation plan on institutionalizing the same "aura of unreality" on contract deliveries evaluated and discredited in *PCL v. DWR.* (*Planning and Conservation League v. Department of Water Resources* (2000) 83 Cal.App.4th 892, 915.) Moreover, neither the BDCP nor the EIR-EIS seriously address expectations stemming from overreliance on "interruptible" sources of water referenced in the project contracts.

In *San Luis & Delta-Mendota Water Authority v. Jewell,* (2014) 747 F.3d 581, 44 ELR 20056 (9th Cir. 2014) (*San Luis v. Jewell*) a Ninth Circuit majority held that the U.S. Fish and Wildlife Service (USFWS) and Bureau of Reclamation (BOR) acted within their discretion in approving a 2008 biological opinion (2008 BiOp), and that nothing in the CVP contracts or other federal law creates an "inconsistency" with

ESA compliance. (*Id.* at fn. 45.) *Jewell* serves as an important reminder that expectations of deliveries in project contracts cannot be counted on to justify an end-run around ESA requirements. Respondents' recent decision to seek rehearing of the Ninth Circuit's decision will not change the need, under state and federal law, to avoid facilitating reliance on paper water sources. But it hardly inspires confidence that those responsible for implementing BDCP can be counted on to pursue ecosystem restoration in the Delta with the same zeal applied to "restoring and protecting" delivery of the amounts referenced in water supply contracts.

4. Rote Assumption of Regulatory Compliance

The description of project operation improperly assumes the protection of beneficial uses and meeting of other regulatory requirements, without consistently analyzing hydrologic constraints over the project term. (See, e.g., ES-7.) The project assessment improperly seeks to insulate permit holders from further responsibility to meet federal and state environmental laws, as well as other legal standards and permit requirements. (See Chapter 6.4.2 and following).

That disconnect is also evident in the EIR-EIS's statements suggesting the need to "strike a reasonable balance" addressing both water supply and endangered species objectives. (EIR-EIS, p. 2-1.) Although the discussion is vague, it appears to contemplate precisely the sort of balancing rejected by Congress in the ESA. (See *Tennessee Valley Authority v. Hill* (1978) 437 U.S. 153, 174.) Moreover, even if Congress had permitted the general approach to balancing described in the BDCP, it would fail in light of the overwhelming scientific evidence that the twin tunnel-driven project will not meaningfully protect endangered and threatened species, and will likely harm them instead.

IV. BDCP AND THE EIR-EIS RELY UPON A DEFECTIVE ANALYSIS OF THE PROJECT BASELINE.

A. Legal Requirements for Environmental Review

Baseline selection is a foundational requirement under CEQA serving the EIR's "fundamental goal" to "inform decision makers and the public of any significant adverse effects a project is likely to have on the physical environment." (*Neighbors for Smart Rail v. Exposition Metro Line Const. Authority* (2013) 57 Cal.4th 439, 505 (citing *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 428).) Reliance on a faulty baseline distorts an agency's ability to assess project impacts and benefits, and provide effective mitigation. (See *Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1217.) CEQA analysis must employ a realistic baseline that will give the public and

decision makers the most accurate picture practically possible of the project's likely impacts." (*Neighbors for Smart Rail*, 57 Cal.4th at 507; see also *Communities for a Better Environment v. South Coast Air Quality Management District* (2010) 48 Cal.4th 310, 322, 325, 328.)

NEPA regulations require an EIS to describe the "affected environment" of a proposed action and alternatives, placing a premium on brevity and clarity. The EIS "shall succinctly describe the environment of the area(s) to be affected or created by the alternatives under consideration." (40 C.F.R. §1502.15.) NEPA also incorporates baseline review by requiring analysis of "the alternative of no action." (40 C.F.R. §1502.14(d).) The no-action analysis "provides a benchmark, enabling decision-makers to compare the magnitude of environmental effects of the action alternatives." (CEQ, *Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations*, 46 Fed. Reg. 18026 (March 23, 1981).)

B. Baseline Problems in The BDCP and The EIR-EIS

1. Failure to Fully Account for Existing Conditions

The EIR-EIS discusses *Neighbors for Smart Rail*, noting its holding that "any sole reliance on a future baseline is only permissible where a CEQA lead agency can show, based upon substantial evidence, that an existing conditions analysis would be 'misleading without informational value'." (BDCP EIR-EIS, 3D-2 (quoting *Neighbors*, 57 Cal..4th at 457).) But none of the baselines either fully accounts for existing conditions or meets the Supreme Court's standards for refusing to analyze existing conditions.

2. Reliance Upon Multiple Inconsistent Baselines

- The ***existing conditions baseline*** "has been developed to assess the significance of impacts of the BDCP alternatives in relation to existing conditions at the time of the most recent NOP and notice of intent to prepare an EIS (NOI) (February 13, 2009) "that could affect or be affected by" implementation of the BDCP and alternatives. (BDCP EIR-EIS, 3D-2.) Yet in "some instances", the EIR-EIS concedes, "certain assumptions were updated", including some (but not all) of the standards noted in NMFS's June 2009 biological opinion for salmonids (notably, it did not include the "Fall X2" salinity standard challenged in water users' litigation). Many of the most important details are buried in an appendix disclosing assumptions for State Water Project and Central Valley Project. (See BDCP EIR-EIS, Table 3D-1 and Appendix 5A.) Other still-pending events or judicially challenged events -- for example, renewal of the FERC license for the Oroville project, or operation of the SWP under the Monterey Amendments -- are simply assumed as

part of existing conditions. (See, e.g., BDCP EIR-EIS, 3D-6 and Appendix 5.A, B-68, B-138.)

- *The* ***no-action baseline*** includes the existing conditions baseline's programs, actions and policies, including many of the same assumptions relating to continued operation of the SWP and CVP. Unlike the existing conditions baseline, the no-action baseline does include implementation of the Fall X2 salinity standard in the 2008 USFWS Biological Opinion, "as well as changes due to climate change that would occur with or without the proposed action or alternative." (BDCP EIR-EIS, 4-5.) It also includes facilities under construction at the time of the NOP/NOI, and programs, projects and policies with "clearly defined management and/or operational plans" deemed *likely to occur by 2060.* (BDCP EIR-EIS 4-6.) Although the no-action baseline was developed for NEPA purposes, the EIR-EIS concedes that it is also used to explain many of the CEQA conclusions. (*Id.*)

- The ***existing biological condition baseline*** used for the BDCP's effects analysis reflects the environmental conditions of the Study Area at the time of BDCP approval (BDCP, chapter 2) as well as the anticipated ecological effects of implementing most (but not all) of the actions in the BiOps developed by USFWS for delta smelt (2008) and NMFS (2009) for salmonids and green sturgeon for the long-term operations of the SWP/CVP facilities. (BDCP, Table 5.2-2.) These actions were added to the regional water operations objectives (i.e., rules) previously required under D-1641 provisions of the State Water Resources Control Board (1999), including the Vernalis Adaptive Management Program. This baseline does not include future effects that may result from climate change, or the effects of water operation agreements that are currently being negotiated. Nor does it explain why it does not reference numerous other obligations outside of D-1641.

- The ***existing conveyance scenario*** is part of the BDCP's August 2013 statewide economic report. It was introduced to bolster the purported economic analysis claiming significant benefits to BDCP (BDCP, chapter 9). This baseline assumes that water deliveries from the Delta will be dramatically lower without the BDCP, far lower (by approximately 1 million acre-feet) than assumed in the EIR-EIS. Although this scenario would appear to reduce environmental damage of north Delta intakes while placing environmentally beneficial restrictions on south Delta plumbing, neither the BDCP nor the EIR-EIS provide environmental analysis for this scenario. Notably, when an MWD director asked David Sunding, the BDCP economic report's author, whether the project would be cost-effective using the baseline in the EIR-EIS, his answer was an unequivocal "no". http://mavensnotebook.com/2013/07/29/dr-sunding-makes-his-case-for-the-bdcp-to-metropolitans-special-committee-on-the-bay-delta/

Overall, these internally inconsistent and confusing scenarios reinforce a continuing concern that, as the National Research Council concluded of an earlier

iteration, "much of the BDCP appears to be a post-hoc rationalization of the water supply elements of the BDCP." (2011 report, p. 13.) They underscore the need for a genuine existing conditions analysis to supplement the efforts to project future conditions. As the Bay Institute aptly noted in a February 29, 2012 briefing paper that remains unheeded, "[c]omparing the BDCP to recent actual conditions (conditions that are already driving the collapse of the Delta ecosystem) would reveal that the BDCP would substantially increase water exported from the Delta while severely degrading environmental conditions." That genuine comparison has still not been made in the BDCP and its EIR-EIS.

3. Reliance Upon Speculative "No Action" Alternative

The no-action alternative strays well beyond the boundaries of reasonably foreseeable future conditions appropriate for inclusion in NEPA's "no action" alternative or CEQA's "no project" alternative. The EIR-EIS purports to make "informed" judgments about future conditions consistent with existing planning that are half a century away. (See BDCP EIR-EIS, 3D-3, 4.; ES-25.) However, the EIR-EIS provides no foundation for the predicted judgments. A similar problem affects the cumulative impacts analysis. Moreover, the EIR-EIS errs in projecting operation under "dead pool" conditions in around 10 percent of water years, without considering foreseeable efforts of water managers to take steps attempting to avoid levels of depletion approaching a dead pool.

4. Inconsistent and Arbitrary Assumptions About Compliance With Laws and Regulations

The baseline scenarios make inconsistent and arbitrary assumptions about which existing laws and regulatory requirements will be met in the absence of the project. Cherry-picking these in advance, without analyzing the physical conditions relating to compliance, is a particularly glaring error in light of critiques from the State Board, Science Board, and federal agencies expressing concern that compliance is already heavily challenged without the additional pumping anticipated by "conservation" measure CM-1.

This manipulation and inconsistency underscore the legal inadequacies of the BDCP as a conservation plan. Under the ESA, "[a]n agency may not take action that will tip a species from a state of precarious survival to a state of likely extinction. Likewise, even where baseline conditions already jeopardize a species, an agency may not take action that deepens the jeopardy by causing additional harm." (*National Wildlife Federation v. National Marine Fisheries Service* (9th Cir. 2007) 524 F. 3d 917, 930.)

The EIR-EIS has failed so far to establish the foundation for compliance with requirements of the Delta Reform Act that are mandatory for BDCP to proceed and receive state funding. (See, e.g., Wat. Code, § 85320 (including NCCPA compliance,

reasonable range of flow criteria, reasonable range of Delta conveyance alternatives, and potential effects of climate change and effects on migratory fish and aquatic resources).)

5. Failure to Analyze Potential Water Rights Conflicts

Although the BDCP and the EIR-EIS simply assume that the project will be benign for holders of water rights, the State Board's comments on the administrative draft EIR-EIS reveal a problem persisting in the latest draft: "implementation of the BDCP project will require changes to water rights and water right requirements. Further, the proposed project may affect other legal users of water through changes in salinity and flows."

Moreover, the EIR-EIS fails to illuminate major potential conflicts with water rights users that may well arise if "no surprises" benefits become available to permittees in return for the BDCP's highly uncertain and tenuous "conservation" benefits. (See BDCP, p. 6-29 (discussing the "no surprises" rule).) Assurances to permittees must be proportional to the certainty that the BDCP's conservation measures will succeed (See Fish & Game Code, §2820(f)(1).) Here, the independent scientific critique of BDCP casts major doubt on the BDCP's ability to live up to the conservation benefits attributed to the EIR-EIS. Unfortunately, the existing analysis fails to illuminate the likely "Plan B" if these benefits fail to materialize, who may lose water, money, or both, and the resulting ecological and economic consequences. The BDCP and its EIR-EIS conceal the risk of major conflicts with existing holders of water rights, existing water users, and areas of origin protected under California law.

6. Fundamentally Flawed Cost-Benefit Analysis

The BDCP bases purported project benefits on a fundamentally flawed cost-benefit analysis that distorts the project baseline and undermines the integrity of the environmental review. Ignoring a deluge of earlier criticism, the analysis retains errors that repeatedly result in exaggeration of the BDCP's benefits and understatement of the BDCP's costs. Without these distortions, the BDCP's costs are highly likely to outweigh benefits. Dr. Jeffrey Michael's detailed assessments of BDCP's costs and benefits (including the socioeconomic analysis appended to as Exhibit I to Sacramento County's comments) identify severe errors, as did the Legislative Analyst in an earlier review.

Baseline errors cast major doubt upon the required assessment of mitigation and project alternatives, and leave accountability for major costs and risks mired in doubt. Fatal errors in the cost-benefit analysis also undermine the BDCP's ability to comply with the required assessment of the project and alternatives to "take" under

the ESA. The full measure of BDCP's costs remains unknown and potentially severe, while all its proposed funding sources remain speculative and uncertain.

V. BDCP AND THE EIR-EIS DEFICIENTLY ADDRESS PROJECT ALTERNATIVES AND MITIGATION.

A. Legal Requirements for Environmental Review

To comply with CEQA, an EIR must examine a range of reasonable alternatives that would feasibly obtain most of the project objectives, but avoid or substantially lessen any significant adverse effects of the project. (14 Cal. Code Regs. §15126.6.) In its screening and review of alternatives, the EIR must provide more than "cursory" analysis. (*PCL v. DWR*, 83 Cal. App. 4th at 919.) It should not construe project objectives so tautologically that only the proposed project could conceivably be capable of achieving them.

The NEPA process is intended to help public officials make decisions that are based on an informed understanding of environmental consequences (40 CFR §1500.1(c)). This requires a clear comparison of the impacts of the project alternatives.

CEQA Guideline section 15126.4(a) requires lead agencies to consider feasible mitigation measures to avoid or substantially reduce a project's significant environmental impacts. As illustrated in a recent appellate ruling, general statements about the adequacy of mitigation incorporated into a project cannot substitute for rigorous project-specific analysis. (*Lotus v Department of Transportation* (2014) 233 Cal.App.4th 645.)

B. BDCP Problems With Assessment of Alternatives and Mitigation

The EIR-EIS does not come close to providing a legally adequate assessment of mitigation or alternatives. It erroneously assumes that amendment or revision of project contracts are beyond the authority of DWR and the federal lead agencies, even though project contracts are presently being renegotiated. As just one illustration, the BDCP fails to consider the effects of reasonable modification of or repeal of the Monterey Amendments.

ESA requires a review of "alternative courses of action," which is defined to mean all alternatives and is not limited to the original project objectives and Agency jurisdiction. The BDCP fails to review the full range of alternatives for survival and recovery of affected species. Remarkably, despite years of scientific evidence documenting the importance of water flow through the Delta to species recovery, the BDCP's EIR-EIS fail to explore alternative approaches that would not rely on the ability to increase Delta exports. As proposed, the BDCP's extraordinarily narrow,

conveyance-dependent approach to water supply reliability is fundamentally at odds with the broader outlook that California has taken in other settings, including the recent California Water Action Plan and its evolving attempts to harmonize water policy with climate change adaptation.

The EIR-EIS renders complete analysis of alternatives and mitigation impossible by confining project-specific assessment to the conveyance portion of the project (CM-1), while providing only nebulous "programmatic" review of all the remaining conservation measures (CM 2-22.) All of the alternatives screening described in Section 3.2.1 focused entirely on water conveyance alternatives (CM-1). Further, the "Proposed Project" described in Section 3.2.3 only addresses water conveyance. As stated on p. 3-21 of the EIR-EIS, "A total of 65,000 acres of tidal habitat would be restored under all action alternatives except Alternative 5 (25,000 acres). There is no indication that any of the alternatives were designed to reduce impacts of the project associated with CMs 2-22.

Even if it could be shown that CMs 2-22 adequately reduce impacts, as required by CEQA, their implementation is fundamentally uncertain, because their funding source would be separate from that of CM-1 (conveyance). CMs 2-22 would be funded by the State, with some federal contributions. The State would need to pass a bond measure to provide funding for CMs 2-22, which is far from assured.

As detailed in section I, *infra*, the BDCP implementation structure described in Chapter 7 reveals numerous deficiencies in governance that make the effectiveness of mitigation measures even more uncertain and remote, empowering water contractors to exercise numerous opportunities to thwart the Delta protection component of the coequal goals. The BDCP's governance structure slights the essential role of San Joaquin and other Delta counties, while involving a large and vaguely-defined council of stakeholders. Moreover, both BDCP and the EIR-EIS fail to effectively analyze the role of the Bureau of Reclamation. Mitigation is also thwarted by the BDCP's heavy reliance upon the assumed future actions of third parties rather than the project's permittees, and improper deferral of mitigation to future decision-making.

Finally, the EIR-EIS fails to sharply distinguish between alternatives and evaluate their comparative merits, as required under 40 CFR 1502.14(b). A central deficiency in the alternatives analysis is that BDCP and the EIR-EIS rely upon a narrow and outmoded conception of water supply reliability, which presumes in favor of using water exports to meet the contract amounts referenced in the SWP and CVP contracts. Indeed, the alternatives heavily focus on meeting this narrow conception of reliability, while avoiding the other 21 of 22 conservation measures. However, a far wider range of options can be utilized to meet supply needs in the future, including water conservation, reoperation, water markets, alternative conveyance, wastewater reuse, water storage, desalination, and efforts toward achieving regional self-sufficiency. Reports of the National Research Council, the Delta Plan (2013), and the

California Water Action Plan (2013), among others, discuss a far broader range of available options.

C. Independent Science Review Confirms Foundational Errors in the "Effects Analysis" Discrediting the Assessment of Alternatives and Mitigation.

The March 2014 report of the Independent Science Review Panel (ISRP-3) identifies major deficiencies in the "effects analysis" required for ESA compliance. Problems identified there also thoroughly undermine the basis for the EIR-EIS's conclusions about alternatives and mitigation. In essence, the BDCP leaves so much undefined and unanalyzed about conservation measures that its implementation hinges centrally on adaptive management. But what the BDCP and the EIR-EIS label "adaptive management" fails to meet scientific standards, and largely serves as a euphemism for unlawfully deferred mitigation.

The EA's analysis of the project's effects must provide "the best scientific assessment of the likely effects of the BDCP actions on the species of concern and ecological processes of the Bay-Delta system." (ISRP-3, p. 11.) The EA therefore serves as a as a "critical component" of the BDCP. (*Id.*) The Delta Reform Act requires science-based adaptive management for all of the Delta's ecosystem and water management programs. (Wat. Code, §85308(f).) Under other requirements as well, adaptive management efforts must incorporate sound science and institutional accountability, rather than opaque commitment. (See, e.g., USFWS/ NMFS five-point policy on adaptive management, 65 Fed. Reg. 35241-35257; NCCPA requirements for monitoring and adaptive management programs (Fish & Game Code, §2820(a)(7).)

Noting that "the foundation of the BDCP is weak in many respects," the Panel's Phase Three review observed that "default burden" to ensure that covered species benefit, if not recover, "depends on adaptive management." (ISRP-3, p. 6.) However, instead of rigorously applying adaptive management, the BDCP uses it "as a silver bullet but without clear articulation about how key assumptions will be vetted or uncertainties resolved to the point that the BDCP goals and objectives are more assured." (*Id.*, p. 9.) Because of the "extensive uncertainties" surrounding the BDCP's assumptions and predictions, the Panel "strongly emphasizes institutionalizing an exceedingly rigorous adaptive management process. This is critical in order to avoid the high risk associated with ecological surprises that will be difficult or impossible to reverse once they have occurred. BDCP must make a commitment to the fundamental process, and specifically the required monitoring and independent science review, not just the concept of adaptive management." (ISRP-3, p. 9.)

The Panel's new assessment of the BDCP's approach to adaptive management

suggests that criticisms of the BDCP offered several years ago by the NAS's National Research Council (NAS-NRC) still have not been heeded. For example:

- "If there is one area of general scientific consensus among the Panel about the implementation of the Bay Delta Conservation Plan is that its outcomes remain highly uncertain. As such, one would expect that the Effects Analysis would reflect this general conclusion by stressing a high level of uncertainty around all of its conclusions. There is also general consensus among stakeholders that the high level of uncertainty should not be an impediment to any action in the restoration of the Bay Delta ecosystem. The only way to address the highly uncertain outcomes of BDCP implementation is through rigorous monitoring and adaptive management." (ISRP-3, pp. 18-19.)

- "Approximately 72% of the objectives for covered fish could not be fully evaluated at this time due to insufficient information. The overall net effects conclusion for each species seemed to be based on the judgment of the authors, rather than a systematic ranking of attribute importance, change in response to the BDCP, and uncertainty in the rankings." (ISRP-3, p. 21.)

VI. The BDCP FAILS TO ADDRESS OTHER SIGNIFICANT PROBLEMS WITH THE REVIEW AND USES OF THE EIR-EIS.

The latest iteration of the BDCP fails to heed overwhelming scientific and agency criticism that followed prior iterations. Although superficially addressing climate change in a discrete chapter, the EIR-EIS also fails to account for cumulative impacts compounded by climate change. The BDCP's ability to live up to its conservation promises is greatly compromised by its failure to ensure the preparation of biological assessments and opinions before framing a draft plan highly focused upon the proposed conveyance. (See, e.g., *Western Watersheds Project v. Kraayenbrink* (9th Cir. 2010) 620 F.3d 1187, 1210 ("any possible effect" triggers consultation requirement).) Under the ESA, regulations require that "Each Federal agency shall review its actions at the earliest possible time to determine whether any action may affect listed species or critical habitat. If such a determination is made, formal consultation is required. . . ." (50 C.F.R. § 402.14(a).) As explained by EPA in its recent letter to the SWRCB, "The State Board. . . has recognized that increasing freshwater flows is essential for protecting resident and migratory fish populations." (EPA letter to SWRCB re: EPA's comments on the Bay-Delta Water Quality Control Plan; Phase 1; SED, pp. 1-2, March 28, 2013.)

The environmental review of the BDCP is also compromised by the assumption that project alternatives must increase flow out of the Delta, without requiring consideration of the State Board's flow analysis. The Delta Reform Act

requires that "[f]or the purpose of informing planning decisions for the Delta Plan and the Bay Delta Conservation Plan, the board shall, pursuant to its public trust obligations, develop flow criteria for the Delta ecosystem necessary to protect public trust resources. In carrying out this section, the board shall review existing water quality objectives and use the best available scientific information. The flow criteria for the Delta ecosystem shall include the volume, quality, and timing of water necessary for the Delta ecosystem under different conditions." (Water Code § 85086 (c)(1).)

The State Board's flow analysis is related to water quality standards, which EPA reviews for Clean Water Act compliance. The BDCP would pre-commit to develop major new conveyance infrastructure without first considering, in light of the State Board's flow analysis, whether the additional pumping it contemplates would be consistent with regulatory requirements. In doing so, it undermined the EIR-EIS's ability to meaningfully consider the projects consequences for water supply and water quality. (See, e.g., *Vineyard Area Citizens*, 40 Cal.4th at 430-441.)

Numerous other problems also severely compromise the EIR-EIS:

- The BDCP prioritizes and elevates the goal of water reliability over the co-equal goal of protection and enhancement of the Delta and related Delta activities in violation of the requirements of the Delta Reform Act.
- The BDCP inconsistently and evasively applies hydrologic projections, failing to consistently incorporate the consequences of foreseeable climate change. The EIR-EIS fails to take into account and analyze the effects of the California Water Action Plan.
- The BDCP fails to incorporate the requirements of law preventing Delta diversion unless adequate supplies are first provided for in-Delta use. The BDCP and the EIR-EIS fail to analyze the effects of incorporating these legal requirements into the plan.
- The BDCP fails to analyze the effects of water transfers and diversions on groundwater basins within the area of impact of the BDCP.
- The BDCP's modeling is poorly explained, and assumes levels of water exports that are both historically unjustified and unsustainable.
- The BDCP, with its complex morass of over 40,000 pages of supporting documents and inadequate summaries, thus far fundamentally fails the duty of environmental review to meaningfully inform the reader of the project's environmental consequences.

EXHIBIT A

AMY SKEWES-COX
ENVIRONMENTAL PLANNING

June 22, 2014

TO: Tom Gau, Brandon Nakagawa, BDCP Working Group

The attached comments focus on land use, agriculture, recreation, transportation, hazards, services, growth inducement and socio-economics.

While comments do not always reference the County directly, they all affect the County's interests.

We stand ready to elaborate on key points as requested to do so, based upon your advice and that of the Working Group.

While many detailed comments address the same issue, they cumulatively point to critical failures to meet CEQA/NEPA requirements, and also give specific examples of major problem areas.

Sincerely,

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COMMENTS on the BDCP EIR/EIS PREPARED BY AMY SKEWES-COX AND ROBERT TWISS

Prepared for San Joaquin County Department of Public Works

June 22, 2014

These comments focus upon the degree to which EIR/EIS adequately addresses impacts of critical interest to San Joaquin County. Below, we make specific line-by-line references to errors, failures, misleading statements, and omissions which cause the document to fall short of NEPA and CEQA requirements. Prior to the detailed comments, we note the following six basic issues which undermine the document's adequacy:

1. A full and fair assessment of impacts is impossible given the EIR/EIS's treatment of water delivery at the project-specific level and the environmental mitigation measures at the vague, programmatic level.
2. Proposed mitigation measures are projects in and of themselves which would have enormous impacts on the land use and economy of the County; but the extent, magnitude, location, and implications of these actions (described only at the programmatic level) can only be speculative.
3. What little can be gleaned from the EIR/EIS in the way of solid information still cannot be taken as given. Both the BDCP Plan and EIR/EIS reference and rely upon the just-released Draft Implementing Agreement (IA) for specification of funding, responsibility, and accountability for the project and the integrity of promised mitigation measures. Neither the Plan, the EIR/EIS, nor the IA can be taken as a stand-along document; each must be considered in concert to comprehend the likelihood and magnitude of environmental impacts and the likelihood that they will in fact be mitigated. The Draft IA clearly undermines the viability of the EIR/EIS as an operative response to NEPA/CEQA requirements.
4. The IA, which should specify how mitigation measures are to be assured, sets forth responsibilities and voting/decision structures which remove assurances altogether. It would permit mitigation measures to be reduced, expanded, relocated, or deleted at will. (BDCP Draft IA052814, pg. 29)
5. Under the rubric of adaptive management, water managers who hold a voting majority in all sub-entities may alter any promised mitigation measures. Conservation Measures 2-22 can be dropped or changed by the BDCP Authorized Entity Group (AEG) as recommended (or not) by the Adaptive Management Team (AMT). "The adaptive management program will afford the flexibility to allow for changes to be made to Conservation Measures and biological objectives, including the addition to or elimination of such measures or objectives, to improve the effectiveness of the Plan over time. (BDCP Draft IA052814, pg. 29). The IA authorizes the AMT to: create performance measures (BDCP 7.1.6, pg. 7-15 line 36), perform effectiveness monitoring (BDCP 7.1.6, pg. 7-15 line 36), and perform analysis, synthesis, and communication of monitoring results" (BDCP 7.1.6, pg. 7-15 line 37); (BDCP Draft IA052814, pg. 5). The AMT is given the power to decide if and when and under what terms to involve science review (BDCP 7-15, line 33). All of this means that environmental mitigation can be directed by agency expediency; not science.
6. No plan amendments would be required. The EIR/EIS is ephemeral and transitory in that mitigation measures can be changed or deleted without a plan amendment or further environmental disclosure and review. "Changes to a Conservation Measure or Biological Objective shall not require an amendment to the BDCP." (BDCP Draft IA052814, pg. 36).

The table below cites specific problems with the EIR/EIS and notes how that problem is an example of a broader issue.

COMMENTS	TOPIC
General Comments	
1. **Project Level vs. Program Level:** The project is basically piecemealed because the actual impacts/precise impacts of CM 2-22 are not addressed at a project level of analysis and thus one cannot determine the true cumulative impacts of the water conveyance facilities. The impacts of the mitigation measures are basically not addressed, because much of CM2-22 refers to basic mitigation measures of the water conveyance facilities (CM1). Specific locations of CM2-2 are not clarified (as stated on page 14-26, Line 5); thus, the full project is not truly defined. Because CM2-22 are used as mitigation to offset many of the impacts of CM1, the EIR throughout uses program-level mitigation measures to reduce project-level impacts of CM-1 to less than significant levels. In order to assure mitigation, the document must specifically show how the program mitigation reduces the project impacts to a less-than-significant level, bridging the analytical gap from program to project level with clear, specific measures. Further, impacts of each of the mitigation measures for CM-1 must be clearly and precisely identified. It fails to do that. Re-write the EIR to include either detailed explanations showing how the programmatic mitigation measures reduce impact significance to less-than-significant levels, and/or provide project-level mitigation measures that are enforceable and clearly monitorable, and reduce impacts to the extent feasible. Numerous examples of this problem are presented in the Recreation and other comments below.	Incorrect use of Program and Project EIRs Piecemealing Inadequate project-level mitigation measures Programmatic mitigation measures used when project-level required
2. **Project Components:** In addition to the tunnels, the water conveyance facilities include a variety of ancillary elements such as transmission lines, reusable tunnel material, borrow/spoils areas, concrete batch plants, siphons, new fire stations, dredging areas, barge unloading facilities and other elements. The impact analysis needs to address each of these components at a project and site-specific level and this has not been done.	Incomplete impact analysis Incomplete project information and mapping
3. **General:** The overall title of the EIR/EIS is very misleading. To call this project a "Bay Delta Conservation Plan" is misleading to the reader who needs to know that this project is actually primarily the proposed construction of major water conveyance structures, which will largely be undertaken within the boundaries of San Joaquin County. It would be much clearer if the entire project had been entitled "Peripheral Canal Revised with Conservation Components" or "Peripheral Canal II and BDCP" or "Water Conveyance Facility with Ecological Enhancement Program." The entire populace of the State is being misled by spin throughout the document and in the "word framing" that has been so consistently used to bury and obfuscate the true project. Why is CM-1 referred to as a conservation measure? Its' main purpose is water supply/conveyance with some but not all alternatives having benefits for fish; but it is not primarily a conservation project. This nomenclature misleads the public and decision makers. The EIR-S must replace the nomenclature for "CM-1".	Misleading title Inappropriately defined project Use of "wordframing" to misconstrue project as a "mitigation project"; obfuscation of main project which is permission for the water conveyance facility
4. **Unreadable Document.** At more than 30,000 pages, this entire EIR/S is totally unreadable, and especially for the lay person who has not had extensive experience with CEQA/NEPA. The Table of Contents alone is 235	Unreadable document Not a user friendly document

	COMMENTS	TOPIC
	pages long! That alone should be enough proof that this is not "user friendly" or even "User Accessible." The other elements that make it unreadable are: 1) the number of alternatives and the "sub-alternatives" within each alternative (none of which are specifically aimed at meeting CEQA's requirements that alternatives mitigate project impacts) 2) the lack of a concrete set of project objectives which would help to define the need for the project or the "Environmentally Superior" Alternative; 3) the lack of graphics that add to the text in a location that is useable (e.g. one has to go to one of multiple appendices to find applicable graphics and to search endlessly for base information that is not located correctly; 4) the lack of a clear project description for the "Preferred Alternative" that is supposedly evaluated at a project level (instead, one has to search through Appendix 3C to learn of all the components that are part of the Preferred Alternative. Any document that is 30,000 plus pages long is not user friendly. This is almost twice the length of the Keystone Pipeline EIS and the project is far smaller in geographic extent than the Keystone Pipeline.	
5.	The EIR-S applies general "Environmental Commitments" (ECs) and CMs 2-22 to reduce the impacts of CM-1 to a less than significant level. However, it fails to show how those program-level ECs and CMs reduce the impacts to less than significant. Equally significant, the assumption of ECs and CMs as mitigation eliminates the rigorous review of impacts and mitigation possibilities required under the recent (January 20, 2014) Trisha Lee Lotus v. Department of Transportation appellate court decision, which expressly prohibits the approach used in this document. This is especially egregious in this case because the project-level impacts of up to 65,000 acres of new wetland construction, which is claimed as mitigation for many of the project impacts, are not analyzed. This document must be re-written to clearly identify the impacts, evaluate a range of mitigation measures, and select the most effective feasible measures. Numerous examples of this problem are presented in the Recreation comments below.	Inadequate impact analysis Applicable to recent "Lotus v. Caltrans" case Inadequate mitigation measures
6.	**No Action Alternative and Cumulative Analysis:** The EIR/S is flawed in assuming that the cumulative analysis considers the project alternatives as compared to the No Action Alternative in 2060. First of all, the time horizon is so far into the future that any impact analysis is rendered meaningless. While the ITP may extend to 2060, there is no reason that the CEQA/NEPA analysis cannot have a "mid-point" year of 2030 or 2035. CEQA is very clear on how cumulative analyses should be done and this can be by either using a General Plan or other planning document, or using a list of identified proposed, approved or pending projects. This EIR/S has done neither. Instead, the No Action Alternative conditions for 2060 are "predicted" without any justification as to how such future conditions were determined. How the Year 2060 was chosen has not been explained. The EIR/S needs to explain how only 2060 was chosen as the "future baseline" year; why was no intervening year selected in addition to 2060? How can effectiveness of mitigation measures be evaluated when such a future baseline is being used. 2060 as a future baseline is meaningless and highly speculative. This is 46	Inappropriate use of "future baseline" year of 2060 Inappropriate methodology for cumulative analysis; not meeting CEQA requirements Lack of foreseeable future per CEQA requirements Lack of reasonable time horizon

COMMENTS	TOPIC
years from today! In perspective, if one goes back 46 years....this is what you'd find. It was 1968. In 1968, there was no NEPA, no CEQA, no discussion of sea level rise, no discussion of toxics in the environment, no knowledge of what climate change would do to the environment. How can we possible predict what conditions will be in 2060? The California Dept. of Finance does not project population for that year? Why would the EIR/S assume to predict environmental conditions in that year?	
7. **Inadequate Funding for Project Level Mitigation Measures:** Even if it could be shown that CMs 2-22 adequately reduce impacts, as required by CEQA, there is no certainty that they would actually be implemented because their funding source would be separate from that of CM-1. CM-1 would be funded by the state and federal water contractors, while CMs 2-22 would be funded by the State, with some federal contributions. The State would need to pass a bond measure to provide funding for CMs 2-22, which is far from assured. Absent this funding, the mitigation effects of CM2-22 cannot be assumed for CM-1. See: http://blog.aklandlaw.com/2006/05/articles/ceqa/impact-fee-programs-as-effective-tools-for-ceqa-mitigation-an-update/	Inadequate funding of mitigation measures Lack of assurance of mitigation for project level impacts
8. **Whole of action not considered.** CEQA defines a project as "the whole of an action..." For CM-1, a major part of the construction action is storage/disposal/reuse of the spoils from 70+ total miles of approximately 42-foot tunnel bores, yet the impacts of transporting, storing, and disposal disposing of upwards of 25 million cubic yards of tunnel and other construction spoils are not adequately analyzed at a project level. The EIR cites the volume of spoils to be generated – but then provides open-ended flexibility alter the amount and timing stating merely: *"In the course of constructing project features, substantial quantities of material may be removed from their existing locations based on their properties or the need for excavation of particular features. These materials will require handling, storage, and disposal, as well as chemical characterization, prior to any reuse. It is anticipated that one or more of the disposal and reuse methods could be implemented on any individual spoil, reusable tunnel material (RTM), or dredged material site. Depending on which combination of these approaches is selected, implementation of material reuse plans could create environmental impacts related to ground disturbance, noise, release of hazardous materials, traffic, air quality, water quality, and Important Farmland or farmland with habitat value for covered species." (DEIS/EIR p. 31-20)* Apparently, some or all of this earth is intended for use in implementing wetlands restoration under CMs 2-22, however, as there is no project-level analysis of impacts of these CMs, and no specific permanent locations identified for the "reusable materials"., The EIR fails to assess the project-level impacts of this essential component of CM-1 (CM-1 cannot be constructed without storage/disposal/reuse of the tunnel spoils). Section 31.5.1.4 provides general EC's that are entirely unenforceable and whose effectiveness cannot be determined due to the lack of specifics. Mitigation measures are equally vague and deferring of any actual analysis. For	Inadequate project description Piecemealing Lack of analysis for whole of the project

COMMENTS	TOPIC
example, in Section 31.5.2.1, the portion of the MM Soils 2b discussion regarding air quality for handling and storing the massive spoils quantities states: *Air Quality* *Increased GHGs and criteria pollutant emissions would result from the operation of excavation equipment, both at the excavation site and the application site, and haul trucks. These effects are expected to be further evaluated and identified in subsequent project-level environmental analysis. Mitigation Measure AQ-2 through AQ-4, AQ-15 and AQ-18, as well as related AMMs and environmental commitments, as described in Section 31.5.1.2, would be available to address criteria pollutant and GHG emissions.*	
9. The "Project" and the associated range of alternatives do not meet CEQA's requirement that the alternatives be designed to reduce or eliminate one or more project impacts. In fact, many have greater impacts on a wide range of resources than the "preferred project", Alternative 4. Alternatives seem to have been selected based on engineering possibilities, resulting in the EIR's function being relegated to that of a constraints analysis of a group of options rather than the requisite investigation into feasible alternatives that would reduce project impacts while still achieving most of the project objectives.	Inadequate Alternatives analysis Alternatives do not reduce impacts of preferred project
10. The alternatives are further deficient because they address only EC-1, and not ECs 2-22. In fact, all of the alternatives screening described in Section 3.2.1 focused entirely on water conveyance alternatives (CM-1). Further, the "Proposed Project" described in Section 3.2.3 only addresses water conveyance. As stated on p. 3-21 of the DEIS/EIR, "A total of 65,000 acres of tidal habitat would be restored under all action alternatives except Alternative 5 (25,000 acres). There is no indication that any of the alternatives were designed to reduce impacts of the project associated with CMs 2-22, despite CEQA's requirement that alternatives be designed to reduce project impacts. It is imperative to revise the project alternatives to reduce impacts associated with implementation of CMs 2-22, including, but not limited to, reducing the loss of agricultural lands, reducing construction-related impacts of the wetland restoration projects, and reducing loss of upland foraging habitat. Further, the EIR/S should be revised to include and assess two sets of alternatives, one set for the program (CMs 1-22) and the other a project-specific set for the conveyance facility (CM-1). A project-specific EIR/S that does not include project-specific alternatives is inadequate, and the same is true for a program EIR. The current hybrid approach is doubly inadequate.	No alternatives for CM2-22 Inadequate Alternatives analysis Inappropriate use of project and program analysis in one document
11. Under the description of alternatives, the diversions are always characterized in terms of maximum cubic feet per second (cfs). That description would only be important if the project were premised on maximum diversion. Otherwise, acre-foot diversions/month plus cfs limits are a more important metric from which to determine impacts. In fact, many of the impacts of the project are far more dependent on low flow commitments than high-flow diversions. The document must revise the alternatives to clearly describe a range of water management options that would reduce impacts of the proposed project in addition to maximum diversion capacities.	Inadequate alternatives description Inappropriate characterization of alternatives' components
Executive Summary	

COMMENTS	TOPIC
12. **Page ES-1**, Line 23.: The Executive Summary states "The BDCP is a comprehensive conservation strategy for the Sacramento-San Joaquin Delta (Delta) to advance the planning goal of restoring ecological functions of the Delta and improving water supply reliability in the state of California." Instead of immediately following this statement with a statement that the project also includes the development of major water conveyance facilities, the paragraph continues to focus on the "conservation strategy" component of the project. It is not until line 33 on this page that we even see mention of "water conveyance facilities" and even then, there is no description of what this means, no description of tunnels, intake structures and other water conveyance elements. Where is the first mention and full description of the water conveyance facilities, including clear mapping of such facilities?	Mischaracterization of project Lack of adequate project description in Executive Summary
13. **Page ES-3, Line 35**: There is a statement that the goal of the EIR/EIS is to provide sufficient evaluation of alternatives so that project-level assessment of the potential effects of selected modified and/or new conveyance facilities is possible. Then, Line 37 mentions that for BDCP Conservation Measures (CM) 2-22, the EIR/EIS intends to present a program level analysis, and that further environmental review may be needed prior to implementing conservation measures. Thus, it appears that the EIR/EIS is both a project level and program level EIR/EIS as partly defined in CEQA Sections 15161 and 15168. It appears that the EIR/EIS might be specific about the conveyance facilities and then not specific about the conservation measures. This raises an immediate concern that if the conservation measures (which are assumed to help mitigate some of the impacts of the project) are addressed at a programmatic level, how can there be certain assurances of their implementation? And it raises the additional concern that if water conveyance facilities are addressed at a project level, no opportunities for future CEQA review may occur as related to those components of the project that may have the greatest impact. See Comment 1 above.	Misuse of program-level analysis Confusion of mitigation measures with program-level project Inadequate evaluation of mitigation measures Lack of assurance that CM2-22 can be approved in future
14. **On page 3.-24** (Line 15), the EIR/EIS states that the water conveyance facility components are analyzed at a project level in the EIR/EIS. It would seem that the EIR/EIS should clearly list which components are addressed at a project level and which are addressed at a programmatic level, and this should occur very early in the Executive Summary as the reader has no idea what components are to be covered in the overall document.	Lack of adequate project description
15. **Page ES-4**, Line 36: Mention is made of how the EIR/EIS is intended to provide sufficient detail to allow USFWS and NMFS to make an informed decision on action of considering issuance of an Incidental Take Permit (ITP) under Section 10 of the Endangered Species Act. And the second main project component is identified as the Natural Community Conservation Plan (NCCP). Finally, Line 40 of this same page mentions the intent of the EIR/EIS to provide project-level assessment of the potential effects of modified and/or new water conveyance facilities, water supply contract amendments and/or funding agreements. And CM 1 is also intended to be addressed at a project level. Nowhere is there mention of which agency will take responsibility for permitting the water conveyance facilities, whether they be new and/or modified. However, the title of this section is "Intended Uses of the BDCP EIR/EIS and Agency Roles and Responsibilities". The document must clarify any agency associated with	No clarification on permitting agencies

COMMENTS	TOPIC
permitting the project elements that are addressed at a project level.	
16. **Page ES-6, Line 1** shows the responsible and lead agencies for both CEQA and NEPA. However, the main project is defined as the ITP and the NCCP. If the NCCP is a main component requiring the action of the California Dept. of Fish and Wildlife, (CDFW), why is CDFW not the lead agency? As stated in Section 15051 (b) of the CEQA Guidelines, "the Lead Agency shall be the public agency with the greatest responsibility for supervising or approving the project as a whole." If DWR is shown as the lead agency, the EIR/EIS has been very unclear up to this point of the document why DWR has the greatest responsibility. DWR has no responsibility over the NCCP, which is the EIR's stated State "Project". One could infer by the fact that DWR is the lead agency that the water conveyance facilities are truly the most significant element of the proposed project. This fact contradicts all the statements on page ES-1 emphasizing that the major components of the project include the ITP and NCCP. The EIR/EIS needs to clarify why DWR is identified as the lead agency. From Section 15051(c) of the CEQA Guidelines, it would appear that DWR was selected because it was going to act first on the project (vs. CDFW), and that the water conveyance facilities approval will be the first approvals far before the ITP and NCCP. Again, there is obfuscation of the true project and the true order of priorities.	Inappropriate lead agency
17. **Page ES-6**, Line 8 states that CDFW is "considering whether to approve the BDCP as an NCCP...." What does this mean by the use of the word "considering"? Is an NCCP to be adopted or is the NCCP itself only being considered? Also, Section ES1.1.1.1 mentions DWR responsibilities but never mentions DWR responsibilities as to water conveyance facilities. It is not clear whether DWR has any discretionary approvals related to water conveyance, and there is no explanatory text as there is for Reclamation per text on page ES-7, Line 8-13.	Inadequate description of agency responsibilities
18. **Page ES-7**, Lines 8-13 finally explain the conveyance facilities in very shaded terminology using the words "*provide for diversion, storage, and conveyance of CVP water consistent with applicable law and contractual obligations.*" It is as if there were no choice but to allow for the massive new conveyance facilities (which still have not been explained in the document to this point) because it's merely compliance with legal obligations.	Inadequate project description
19. **Page ES-10,** Lines 17-22 includes the text "*It is not intended to imply that increased quantities of water will be delivered under the BDCP. As indicated by the "up to full contract amounts" phrase, alternatives need not be capable of delivering full contract amounts on average in order to meet the project purposes. Alternatives that depict design capacities or operational parameters that would result in deliveries of less than full contract amounts are consistent with this purpose.*" This text fails to explain that the EIR/EIS must look at the "full project" and if the water conveyance facilities are designed/planned for conveying up to a certain amount of water, that full conveyance must be addressed. For an analogy, an environmental document on a new college facility must address full occupancy based on the capacity of the school; a water treatment facility must be addressed based on the full capacity of the system. Our future comments will address whether this has been done appropriately for the BDCP. Explain where in the EIR/EIS the full capacity of the water conveyance system has been adequately addressed.	Inadequate analysis of full capacity of water conveyance facilities

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20. **Page ES-13**, Lines 16-24: In two summary paragraphs, the BDCP is defined. First, the text says the "*BDCP is a joint HCP/NCCP*" and then later, the text states that the "*BDCP is also proposed to provide for the conservation and management of covered species....through a conservation strategy that includes....conservation measures, including the construction and operation of new Delta water conveyance facilities...*". What are the conservation measures contained in construction and operation of water conveyance facilities?	Inadequate project description
21. **Page ES-19 Table ES-3**: What a twist in terminology to refer to the water conveyance facility as a "conservation measure". The document must explain why this term would apply to this element of the project.	Deceptive terminology defining the project
22. **Page ES-19: Lines 3-6**: It would seem from this section that it's assumed that the water conveyance facilities would be constructed over a 10-year period. From Years 11 to 15, the "early long-term" implementation measures would be undertaken and from Years 16 through 50, the "late long-term" implementation measures would undertaken. The document must clarify that this is correct in terms of phasing as this issue may arise later in the EIR/EIS. (Note: In the analyses that follow, by topic, these 3 phases are not always addressed separately. The construction [10-year] phase is addressed and then the operation phase is addressed).	Lack of clarity on phasing of project
23. **Page ES-25, Lines 16-35: Issue of No Action Alternative and Environmentally Superior Alternative and Baseline**. The issue of "No Project" is not correctly explained. The statement that "Under CEQA, the No Project Alternative is not the baseline for assessing the significance of impacts of the Proposed Project." Is taken out of context and not fully correct. Section 15126.6 (e)(1) of the CEQA Guidelines state that "The no project alternative analysis is not the baseline for determining whether the proposed project's environmental impacts may be significant, unless it is identical to the existing environmental setting analysis which does establish that baseline (see Section 15125)." (Emphasis added) While it is true, as stated, that the "No Project conditions may include some reasonably foreseeable changes in Existing Conditions and changes that would be reasonably expected to occur in the foreseeable future if the project were not approved", the EIR/S fails to mention that Section 15126.6 (e)(2) that this "future scenario" must be discussed in addition to existing conditions at the time of the notice of preparation. It is critical to note that the words "foreseeable future" and "reasonably expected" to occur are used in the CEQA Guidelines. Using 2060 as the year of assessing the No Project Alternative would not be considered the "foreseeable future" or a time in which anyone could determine what would be "reasonably expected". For example, the Agricultural section addresses in Section 14.3.3.1 the Cumulative Effects of the No Action Alternative, and in this section states that projects assumed to be constructed by 2060 are included in the analysis. The use of 2060 as a "future baseline" seems to fly in the face of the recent CEQA lawsuits that have clearly stated that present (time of NOP) conditions	Incorrect use of "No Project" Alternative Inappropriate baseline Confusion of "cumulative" with future baseline Inappropriate use of 2060 as future baseline year

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must also be addressed if a future baseline is to be considered. And how can anyone know 2060 conditions? That is 46 years from now. That would not be defined as the "foreseeable future" as we know the term. Just as an example, no one was discussing sea level rise and climate change 46 years ago (Year 1968). And in 1968, all the Best Management Practices to prevent soil erosion and sedimentation weren't known. These are just a couple of examples to point out the 2060 is not the foreseeable future. A Merriam Webster definition of "foreseeable" is "lying within the range for which forecasts are possible". Forecasts have to be made based on current knowledge, current technologies, and known elements. Forecasts are not just conjecture. Section 3D.2.3 of the EIR/S states that the future No Project condition is allowed by NEPA; however, CEQA requires, as stated in 3D.2.3, that if a future baseline is assessed, then the "existing conditions" baseline must also be assessed. The EIR/S appears to consistently violate this by addressing Cumulative conditions as the "No Project 2060" condition, and foregoing a comparison of the project to cumulative conditions that are present day. By doing this, the project's impacts can be woefully understated. See Discussion under "Appendix 3D" elsewhere in these comments.	
24. **Pages ES-27 through 31**: Project components are diverse and require being addressed throughout the EIR/EIR. From the brief project description, it appears that the following elements could have associated environmental impacts: ▪ Intakes ▪ Pumping plants (which include sedimentation basins, substations, access roads) ▪ Pipelines ▪ Tunnels ▪ Canals (unlined or lined with concrete which means transport of concrete needs to be addressed) ▪ Forebays: possible expansion of Clifton Court Forebay and division of this forebay ▪ Fixed and operable barriers ▪ New levees or levee modifications (these alone have issues related to import of soil materials, etc. ▪ Culvert siphons ▪ Gates or similar structures ▪ Concrete batch plants (requires source of clean water; location not shown; acreage not shown) ▪ Temporary barge unloading facilities ▪ Other facilities: Bridges, road, utilities, local drainage systems Locations and acreage of each of the above components need to be identified and mapped.	**Lack of adequate project description** **Lack of impact analysis for all project components being addressed at project level of detail (vs. program)**
25. **Page ES-34**: There are 16 alternatives evaluated in the EIR/EIS and then this page addressed 15 operational scenarios. 16x15 results in 240 variations that one has to track. The "project" becomes convoluted to the point of indecipherable as the multiple variations are explained. There is no way that	**Unclear and onerous project description**

COMMENTS	TOPIC
a reader can make sense and track all the components of this many variations on a project. And this doesn't even account for the variations in Conservation Components addressed on page ES-37!	
26. **Page ES-40, Section ES.6.2.4**: This addresses environmental justice; however, nowhere is there an explanation of how the entire BDCP EIR/EIS has been made "workable" for minority populations. For example, has there been a translation into Spanish? Almost 40% of the population of San Joaquin County alone is Hispanic.	Issue of translation into Spanish given demographic makeup of counties impacted
27. **Page ES-41: Lines 1-11**: The text does not clarify that the Notice of Determination (NOD) is filed AFTER approval of the project. DWR must certify the EIR portion as meeting the requirements of CEQA. This can happen completely separately from the filing of the NOD. The NOD just sets the time period during which a challenge can be made. The text needs to clarify this.	Lack of clarification on NOD
28. **Page ES-48, Section ES.8.3.2, Lines 29-38:** Mitigation measure responsibilities are addressed and it is clarified that a number of parties will be responsible for ensuring implementation of mitigation measures. Nowhere is it clarified who will have overall responsibility. For example, if DWR is relying on CDFW to implement a measure, who will have the power to ensure that happens? These agencies operate quite independently and the Mitigation Monitoring and Reporting Program (not included to our knowledge in the EIR/EIS and required prior to approval of project) should identify how the ultimate decisions about effective mitigation will be made. The document must clarify who the entity will be to ensure effective mitigation measures.	Inadequate clarification on agency overseeing implementation of mitigation measures Lack of Mitigation Monitoring and Reporting Program
29. **Table ES-11**: This table has a variety of alternatives that do not match those shown on page ES-24. The document must explain this.	Inconsistent listing of alternatives
30. **Table ES-9:** This table summarizes impacts and mitigation measures. However, it comes AFTER Table ES-11 on page ES-61 of the EIR/EIS. None of the topics are identified and there is no legend to explain the topic. For example, the rows should be labeled as to whether the topic is Agriculture; Hydrology; Geology; etc. The legend does not explain what SW, WS, or other initials stand for. The table shows a total of 628 impacts. Of these, 6 are related to Land Use and 4 are related to Agriculture, while 217 are related to aquatic species. This alone exemplifies how the EIR/S is unbalanced in its evaluation of the true impacts associated with the water conveyance facilities which are the ONLY element addressed at a project level. It appears that there are at least 89 significant unavoidable (SU) impacts as identified for CEQA. It is very unclear how there can be significant impacts after mitigation. If this is the case, the impact is normally significant and unavoidable. This matter must be fully explained and justified. Of the 89 SU impacts, many of these are related to the CM1 element which is the water conveyance facilities, either as related to construction or operation. The water conveyance facilities are evaluated at a project level, and not a programmatic level. Therefore, it is imperative that mitigation measures be clear and concise and that they not be deferred to a future time or a future discretionary approval time. Simply making the impacts SU because the	Inadequate Summary Unbalanced evaluation of topics Inadequate mitigation measures, even for those impacts determined to be significant and unavoidable

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mitigation measure cannot be guaranteed or is outside the control of the lead agency does not mean that the analysis is adequate.	
Chapter 2, Description of Alternatives	
31. **Page 2-3** of the EIR/EIS lists the objectives for the project. The elements of the physical developments associated with the project (e.g., the Tunnels) are not even mentioned until the end of the list of objectives as highlighted below. All the emphasis from the very beginning of the EIR/EIS is upon use of the words "improve", "conservation", "recovery of the species", "protecting", "enhancing certain aquatic, riparian and associated terrestrial natural communities and ecosystems". As stated in **Section 15124 of the CEQA Guidelines**, "The statement of objectives should include the underlying purpose of the project." It is very clear that the "underlying purpose" of the project is to construct water conveyance structures to move water from northern California to southern California. The protection of species and restoration of habitat is not the underlying purpose; rather, these are the associated actions to be taken to mitigate/offset the impacts of the underlying water conveyance structures. At a minimum, the list of objectives should be reordered to highlight the conveyance facilities as the main objectives, followed by the restoration activities. Even when physical development is listed, it's referred to as "physical improvements" as highlighted below. The actual main component of the proposed tunnels (and the word "tunnels" isn't even used) occurs as the very last objective as "*To identify new operations and a new configuration for conveyance of water entering the Delta from the Sacramento River watershed to the existing SWP and CVP pumping plants in the southern Delta.....*" Use of obfuscating language such a "new configuration for conveyance of water" entirely misleads the public who are reviewing the EIR. What is the true project? And what is the underlying purpose of the project as required by Section 15124 of the CEQA Guidelines? List of objectives as per page 2-3 of the EIR/EIS (underlining added to emphasize physical changes)..... • *Respond to the applications for incidental take permits[2] for the covered species that authorize take related to:* 1. *The operation of existing SWP Delta facilities and construction and operation of facilities for the movement of water entering the Delta from the Sacramento Valley watershed to the existing State Water Project (SWP) and Central Valley Project (CVP) pumping plants located in the southern Delta;* 2. *The implementation of any conservation actions that have the potential to result in take of species that are or may become listed under the ESA, pursuant to the ESA at §10(a)(1)(B) and its implementing regulations and policies;* 3. *The diversion and discharge of water by Mirant LLC for power generation in the Western Delta[3]*	Inadequate objectives Inadequate definition of purpose of project

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• *To improve the ecosystem of the Delta by:* 1. *Providing for the conservation and management of covered species through actions within the BDCP Planning Area that will contribute to the recovery of the species; and* 2. *Protecting, restoring, and enhancing certain aquatic, riparian, and associated terrestrial natural communities and ecosystems.* 3. *Reducing the adverse effects to certain listed species of diverting water by relocating the intakes of the SWP and CVP;*[4] • *Restore and protect the ability of the SWP and CVP to deliver up to full contract amounts, when hydrologic conditions result in the availability of sufficient water, consistent with the requirements of State and federal law and the terms and conditions of water delivery contracts and other existing applicable agreements.* • *To ensure that the BDCP meets the standards for an NCCP by, among other things, protecting, restoring, and enhancing aquatic and terrestrial natural communities and ecosystems that support covered species within the Plan Area.* • *To make physical improvements to the conveyance system in anticipation of rising sea levels and other reasonably foreseeable consequences of climate change.* • *To make physical improvements to the conveyance system that will minimize the potential for public health and safety impacts resulting from a major earthquake that causes breaching of Delta levees and the inundation of brackish water into the areas in which the SWP and CVP pumping plants operate in the southern Delta.* • *To develop 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 NCCPA.* 1. *To identify new operations and a new configuration for conveyance of water entering the Delta from the Sacramento River watershed to the existing SWP and CVP pumping plants in the southern Delta by considering conveyance options in the north Delta that can reliably deliver water at costs that are not so high as to preclude, and in amounts that are sufficient to support, the financing of the investments necessary to fund construction and operation of facilities and/or improvements.*	
32. The Purpose Statement found in **Section 2.4 on page 2-4** is slightly better in that "construction and operation of facilities…for the movement of water" is mentioned as number 1b. However, again, there is no description of the type of facility being discussed.	Lack of adequate project description
33. **Section 2.5, Project Need:** Again, the actual underlying project is hidden behind the" habitat protection veil". The section states, "There is an urgent	Lack of adequate project description

COMMENTS	TOPIC
need to improve the conditions for threatened and endangered fish species within the Delta. Improvements to the conveyance system are needed to respond to increased demands upon and risks to water supply reliability, water quality and the aquatic ecosystem."	
Chapter 3, Description of Alternatives	
34. **Page 3-2, Lines 1-5:** This chapter describes the Alternatives to the Project. However, CEQA (**Section 15126.6**) is very clear that an EIR shall describe a "range of reasonable alternatives to the project, or to the location of the project, which would feasibly attain most of the project objectives of the project but would avoid or substantially lessen any of the significant effects of the project". It is not until the 3rd page of Chapter 3 that one finds the Preferred Alternative (which for the purposes of CEQA would be the "proposed project") and then it is difficult to see how the 15 alternatives would be considered a "range of reasonable" alternatives, and how the alternatives would compare to the Preferred Alternative. While NEPA does not necessarily require alternatives to offer some environmental benefit (as stated on page 3-5, line 33), it is very clear that CEQA does require this. At a minimum, the EIR/EIS needs to state which alternatives to Alternative 4 would offer environmental benefits, or reduced impacts.	Alternatives fail to reduce project impacts Failure to identify how alternatives relate to "Preferred Project"
35. **Page 3-3, Section 3.1.1** clearly states that the Preferred Alternative is Alternative 4 as defined in the BDCP. However, nowhere is that Alternative described or mapped for the reader in this section of Chapter 3. One long paragraph is provided for Section 3.1.1, totally not meeting the requirements of the CEQA Guidelines, **Section 15124**, which describe the Project Description requirements. The following elements are not included in Section 3.1.1: ▪ Location and boundaries of the project; ▪ Description of project's technical, economic and environmental characteristics; ▪ Statement of the intended uses of the EIR; ▪ List of permits/approvals required; ▪ All the future decisions subject to CEQA such as state, regional, or local permits. CEQA does not have a concept or term of a "Preferred Alternative". That is NEPA parlance and concept. CEQA requires that an EIR evaluate the impacts of a "Proposed Project" and alternatives to that project that would reduce one or more impacts while achieving most of the project's goals. This section instead states that Alternative 4 is a tentative Preferred Project. What does this mean in a CEQA context? This does not provide the reader with essential CEQA information. The document must revise this discussion to; 1) identify the proposed project, and 2) identify the environmentally superior alternative, as mandated by CEQA. **Section 31-3 on the Environmentally Superior Alternative.** This section fails to identify an environmentally superior alternative. This is because the alternatives were not designed to mitigate impacts, as required by CEQA. The document must develop a true environmentally superior alternative that reduces impacts compared to Alternative 4, which appears to be the	Failure to meet CEQA requirements as related to Project Description and Alternatives "Environmentally Superior" Alternative required by CEQA has not been identified

COMMENTS	TOPIC
Proposed Project for CEQA review.	
36. **Page 3-6 to 3-8**: The reader is referred at the top of the page to three appendices that describe how alternatives were selected. The appendices are cumbersome and should only be used to supplement the main document. Again, the readability of the document is compromised. Section 3.2.1.3 describes how 15 conveyance alternatives were narrowed down to seven. The EIR/EIS does not refer to any specific maps that would define the location of the alternatives; nor are the conveyance alternative described in detail. Instead, each conveyance alternative is described with one or two sentences.	Cumbersome reading Lack of clear project description Information hidden in appendices that should be in main text
37. **Pages 3-8-3-10, Section 3.1.2.4.** The operation alternatives are not described in terms comprehensible to the layperson in this EIR, but rather are characterized as different locations of the mysterious X2, and the cryptic 2008 BiOps. This does not serve to inform the public. The document must provide a simple description of the actual operations alternatives.	Inadequate description of alternatives Incomprehensible to lay reader
38. Finally, on page 3-12, we are told more specifically what the project is! And then, it is not until page 3-27 that we get any idea of what the proposed tunnels would look like. Finally, we understand that the preferred alternative in 2012 was framed to include water intake facilities with a total capacity of 9,000 cubic feet per second (cfs), phased operations, and gravity flow conveyance system. However, again, we are left without any clear maps to show where these might occur and the ancillary facilities that would go along with the conveyance facilities. And just when we get our arms around the preferred project, Table 3-1 comes along to show a complex web of 15 variations on the theme, again with no accompanying maps. No description is provided about the length of the tunnels or pipelines, what is meant by "intakes", etc. It is not until page 3-24 that the reader is then referred to Section 3.6.1 where the project is expected to be described in more detail.	Unclear project description
39. **Page 3-12, Section 3.2.3**. This section discusses development of DWR's "Proposed Project", and implies that the CEQA Project is, in fact, Alternative 4A. It states, "The proposed project, as embodied in the draft BDCP document published together with the EIR/EIS, will form a major portion of the HCP and NCCP...." This is puzzling because the HCP/NCCP is the stated subject of the EIR/EIS. Therefore, the entire HCP/NCCP should be the subject of the EIR, not just "a major portion of it". The document must revise this discussion to tell the reader which parts of the HCP/NCCP are addressed in this EIR/EIS and which are not.	Inadequate project description
40. **Page 3.-24 (Line 15)**, the EIR/EIS states that the water conveyance facility components are analyzed at a project level in the EIR/EIS. Does this include the proposed forebays, or only the canals and/or tunnels? Does this include the proposed concrete batch plants, which could range in size from 2 acres to 40 acres (page 3-29, line 38). CEQA Guidelines, Section 15161 clearly defines a Project EIR to be one that examines all phases of the project, including planning, construction and operation. This is very different from a Program EIR (Section 15168) that address a series of actions early in the process so that an agency can get an overview of cumulative impacts associated with a series of action. Given the very obvious lack of detailed information on the water conveyance systems, and the fact that the EIR/EIS in Chapter 3 clearly states that Alternative 4 may be revised, it is very unclear	Misconstrued project level definition Program level vs. project level Inadequate project definition

COMMENTS	TOPIC
why this EIR/EIS is addressing the water conveyance systems at a project, vs. programmatic level. The document must define why the entire EIR/EIS is not a Program EIR. **Pages 3-24 through 3-37.** The entire description of the water conveyance alternatives is at a program level, and not a project level. You must revise to include specific designs for each of the project facilities including, but not limited to, pumping plants, diversion facilities, wharfs, forebays, barriers, roads (temporary and permanent), temporary spoils storage areas, permanent spoils disposal areas, concrete plants, bridges, laydown areas, etc. The document must also describe all construction activities including months and hours of construction operations for each type of construction activity, number of construction workers for each site and activity, construction haul routes for each phase/type/location of activity, number of trucks associated with each phase/location/type of activity, number of barges associated with various construction activities, throughput and other operational considerations for each batch plant and spoils storage facility, locations and volumes of borrow areas, etc. Absent this information, it is impossible to either conduct the impact assessment at a project level or evaluate the adequacy of that assessment.	
41. **Page 3-40 Lines 15-41, Section 3.5.** The document should include in its description of action alternatives their relative capacity to be accomplished using adaptive management and the best available science. The EIR/S' consideration of adaptive management as applying solely to conservation measures is not sufficient.	Failure to disclose each Action Alternative's potential for Adaptive Management
42. **Page 3-40, Section 3.5** should provide or point to a comparison of all Action Alternatives' effects. The EIR/S contends that environmental effects can be found under each factor heading (e.g.: agriculture, water quality) but those chapters do not uniformly permit comparison across all alternatives. For example, they may compare one alternative to existing conditions or to no-project, but not to all other alternatives. Chapter 31 provides a brief discussion of each alternative's pros and cons but the EIR/S does not give a succinct comparison.	Failure to compare environmental effects of the Action Alternatives
43. **Page 3-40, Section 3.5** the EIR/S should give a good-faith summary of how the 15 action alternatives compare against important CEQA and NEPA criteria. Chapter 31 tries to explain why no environmentally superior alternative has been identified; but this does not relieve the lead agency of the responsibility to do so.	Failure to determine and disclose the environmentally superior alternative
44. **Page 3-40, Section 3.5** should but does not disclose the relative capacity of each action alternative to be accomplished in phases, so as to permit reasonable and scientifically defensible projections and assurances. Phasing is an essential component of adaptive management and science-based management under high uncertainty.	Phasing of action alternatives: Phasing vs. all-or-nothing
45. **Page 3-40, Section 3.5** should disclose and compare the time required to: 1) begin to see effects of the action alternatives, and 2) to reach completion. For example, no results of Alternative 4 would be realized for a decade or more, while Alternative 9 could result in improvements starting immediately with incremental improvements over the short, middle, and long run. The EIR/S comments only on the Conservation Measures, but not on the action	Failure to disclose the time required to gain results.

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alternatives.	
46. **Page 3-14, Table 3-1** is in error in its implication that Alt. 9 per se would require a 50-year Incidental Take Permit (ITP). In fact, unlike the other 14 action alternatives, Alternative 9 could be phased and monitored, and the ITP given in more predictable and scientifically defensible shorter, say 10- or 15-year increments. The EIR/S should explain that Alternative 9 could be phased, and the action alternative itself (not just the conservation measures) subject to adaptive management.	Failure to disclose that a 50 yr. ITP may not be required for one of the alternatives
47. **Page 3-79, Line 10, Section 3.5.16.** The EIR/S should explain that Alternative 9 is the only conveyance alternative that taken as a complete system can be done using Adaptive Management (AM) and the application of best available science. All other alternatives require "Yes/No" full-scale implementation, with adaptive management and best science applied only to small portions of the system's operations, or applied only to the mitigation measures and stressor reductions. Unlike the other all-or-nothing action alternatives, Alternative 9 can be phased, tested, altered, refined, and perfected as management experiments yield answers, science progresses, and the extraordinarily high level of uncertainties surrounding management actions and environmental responses can be reduced. Failure to so comment gives a false picture of the advantages of Alternative 9.	Failure to treat the action alternatives even-handedly
48. **Page 3-80, Lines 1-31** should disclose that the 13 separate parts of the Alternative 9 system that can be operated flexibly in response to the system's environmental and water-conveyance performance, and altered as monitoring shows the degree to which promises and modeled targets are actually being achieved.	Failure to explain the inflexibility of all alternatives except Alt. 9
49. **Page 3-80, Lines 2-4** [as a component of Alternative 9]. "Operable barriers on the Mokelumne River..... to provide a path for fish migration ..." The key word here is "operable" which provides for changing the extent and timing of interruption of flows, and the option of simply leaving the barrier open if it does not perform as planned. The EIR/S should disclose the importance of this aspect in meeting BDCP's responsibility to use adaptive management and the best available science.	Failure to develop and propose action alternatives that can utilize adaptive management and best science
50. **Page 3-80, Lines 9-11** [as a component of Alternative 9]. "An operable barrier at Three Mile Slough to reduce salinity in the San Joaquin River during low delta outflow .... and reduce fish movement into the San Joaquin River...." The EIR/S should disclose the importance of this aspect in meeting BDCP's responsibility to use adaptive management and the best available science. It should note this as an advantage to Alternative 9 and a serious disadvantage to the preferred and other alternatives.	Failure to treat inflexibility as an environmental impact in comparing alternatives(no-adaptive = non science-based)
51. **Section 3.5.16** the EIR/S should declare Alternative 9 as the "environmentally superior" alternative; given that it is the only Action Alternative that can be implemented and managed so as to utilize Adaptive Management and the best available science; and to respond positively to the admonitions of independent science reviews.	Alt. 9 is the environmentally superior alternative
52. **Chapter 3 General Comment.** The EIR/S has missing parts. It fails to adequately analyze and disclose the impacts of Conservation Measures 2 through 21.	Project vs. Program
53. **Chapter 3 General Comment.** The EIR/S lists and describes CMs 2-21, and	Project vs. Program

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lists magnitudes and general locations. But given that these measures create substantial impacts, they deserve adequate analysis. These comments serve as place holders for now.	
54. **Chapter 3 General Comment.** CMs 2-21 should be presented individually or as alternative packages and analyzed for cost/effectiveness as per comments from independent science boards (including that of the Delta Stewardship Council Independent Science Board "Review of the Draft BDCP EIR/EIS and Draft BDCP", May 15, 2014).	The effectiveness of conservation measures is un-supported by science
55. **Chapter 3 General Comment.** CMs 2-21 individually or as packages should be developed so as to evaluate and minimize their impacts on affected parties, such as the individual local governments including San Joaquin County.	Negative effects of conservation Measures should be analyzed, reported, and minimized (not just listed)
56. **Chapter 3 General Comment.** The magnitude of CM 3, 4, 5, & 10's land alterations purported to be required should be justified by adequate models and science-based documentation.	Lack of science support for conclusions
57. **Chapter 3 General Comment.** CM 3, 4, 5, & 10 should be evaluated at the same level of detail as CM-1.	Project vs. Program
58. **Chapter 3 General Comment.** It is stated that CM 3, 4, 5, & 10 will be sized differently for different alternatives. The EIR/S should compute and disclose the minimum needed for each action alternative; so as to minimize the impacts on affected sectors such as the agricultural economy of San Joaquin County.	Conservation measure's impacts should be the minimum necessary
59. **Chapter 3 and EIR/S as a whole.** The document fails to explain why CM-1's sub-parts are treated as Action Alternatives and sub-parts of CM-2-21 are simply listed as components. If BDCP is really intended to be an ITP/NCCP/HCP, all components should be treated equally.	Project vs. Program
60. It appears that with Alternative 4, a 40-acre concrete batch plant would be constructed (along with a 2-acre fuel station) near Twin Cities Road and Interstate 5 and this same location would be used to store reusable tunnel material, which is a by-product of tunnel excavation. Another 40-acre concrete batch plant would be located between Byron Highway and Italian Slough for Alternative 4. Have traffic impacts of using Byron Highway, which flows right through the middle of the Mountain House Community, been evaluated in the EIR/EIS? Have impacts (noise, traffic, air quality, etc.) upon the Consumnes River Preserve, located just south of Twin Cities Road and I-5 been addressed? If so, The document must clarify where in the EIR/S.	Unclear impact analysis for all relevant project components
Chapter 13: Land Use	
61. These comments are directed at Alts. 1B, 2B, & 6B. All of the three East Side alternatives have the same implications for San Joaquin County. Issues are treated most fully under Alt. 1B; but some are embedded under 6B. Alt. 4 has much less of a direct impact on land use designations and uses, but the comments on the East Side alternatives apply to Alt. 4 as well but to a lesser degree. The EIR/S gives separate treatment to: 1) incompatibilities with County designations and policies, and 2) impacts on current land uses. The EIR/S admits that the water conveyance facilities will cause numerous incompatibilities with County policies and designations, and impacts on	Lack of adequate mitigation measures Deferral of mitigation measures Lack of project-specific impact analysis for all project components, especially for San Joaquin County

COMMENTS	TOPIC
existing land uses. BDCP's proposed water conveyance facilities will receive no further environmental review because they would be covered at the Project Level in this EIR/S. However, critical measures that would avoid or mitigate these impacts and incompatibilities are not disclosed because they are covered only at the Programmatic Level. They are deferred, and will not be disclosed until possible environmental review at some time after BDCP approval. Page 13-71, Lines 18-21 admits to an array of incompatibilities. "Table 13-6 displays the temporary and permanent structures associated with the water conveyance facility, the local land designations on which they would occur, and the number of acres that would be affected. Mapbook Figure M 13-2 displays relevant generalized land use designations where they could overlap with proposed water conveyance structures and temporary work areas. Note that not all of these structures would be built under any individual alternative. For further description of the locations of various structures, refer to Chapter 3, *Description of Alternatives*." Specifically relating to incompatibility with County designations and policies, the EIR/S admits to an array of serous impacts to San Joaquin County, but does so only at very gross scale. Serious impacts would arise from projects, each of which taken alone would normally be subject to a full environmental review: Page 13-72 Table 13-6 (abbreviated here)	Inadequate land use impact analysis

Permanent Feature	Agriculture / General: Acres	Open Space / Conservation: Acres
Bridge	136	
Canal	4,892	73
Borrow & Spoil areas	7,400	55
Spoil disposal areas	131	2
Pumping plant (intermediate)	68	
Siphon	131	
Transmission line	13	
Tunnel material	437	11
Total (includes omitted minor permanent features and "temporary" features)	14,340	505

In the text of Ch. 13, the majority of impacts referenced above are treated only by mention and listing of the impact. However, the accompanying maps shown in Mapbook M13 are highly specific. Fuel stations, pumping plants, concrete batch plants, bridges, siphons, and disposal areas, all of which are direct impacts of the East Alignment are clearly sited in specific locations.

COMMENTS	TOPIC
The underlying and adjacent land uses are or can be identified, if not by simple reference to public maps and GoogleEarth ®, then by more rigorous analysis if needed to provide basic information to the public and land owners who should not have to conduct such research. For example: Figure M13-2: Sheet 3 0f 7 clearly shows that the footprint of the canal and a bridge will completely replace and cover the intersection of Walnut Grove Rd. / Blossom Rd. and adjoining land uses. Reference to GoogleEarth® shows that direct impacts will fall on farm structures that are clearly in use, several new and substantial single-family residences, a thriving vineyard and other features that will be obliterated. It should also be noted that the Summary Table, Table ES-9, only identifies 6 land use impacts. And of those, it is shown that there are no land use conflicts with existing land uses (page ES-110). This points to a woefully inadequate land use impact analysis.	
62. **Page 13-72.** The EIR/S fails to analyze and disclose the impacts associated with sub-components of the project (bridges, batch plants, fuel stations, borrow pits etc.) that would normally be required to obtain NEPA or CEQA compliance. This needs to be done not by brief mention or gross acreages, but by substantive discussion with reference to the specific locations and effects of disturbance. THIS IS A PROJECT-LEVEL EIR FOR THESE COMPONENTS. Means for avoiding, reducing, minimizing or mitigating these impacts should be provided. References to other Chapters in the EIR/S are not sufficient unless those cited discussions include analysis of specific sub-projects and components at known locations (which is not the case). Specifically, **Page 13-75, Lines 1-6** admit: *"San Joaquin County* The footprint of water conveyance facilities constructed under Alternative 1B would be incompatible with land designated as Agriculture/General, Residential/Very Low Density, Elementary School, and Open Space/Resource Conservation in San Joaquin County primarily due to borrow and/or spoil areas, canal segments, RTM areas, bridges, siphons, transmission lines, and an intermediate pumping plant." The EIR/S should explain how these incompatibilities with land use designations and policies are to be avoided, minimized, or mitigated. Explain actual actions to be taken, not future studies. **Page 13-75, Lines 11-18** admit: "Conversion of agricultural lands would be incompatible with general plan policies, including Agricultural Land Policy 5, which reserves agricultural areas principally for crop production, ranching and grazing. Conversion of agricultural lands and project conflicts with the Agriculture	**Inadequate land use analysis** **Failure to address specific project components, by location** **Lack of detail in impact analysis and lack of substantial evidence** **Inadequate mitigation measures**

COMMENTS	TOPIC
land use are described in Chapter, *Agricultural Resources.* The placement of canals, where constructed over or adjacent to lands designated under the San Joaquin County General Plan as Open Space/Resource Conservation, would be incompatible with this land use designation and related Open Space Policies 3 and 4 because they would diminish the amount of land dedicated to open space and conservation of natural habitat and resources." 63. Page 13-75. The EIR/S should enumerate and account for these losses and deduct them from the acreage claimed to be created by BDCP's conservation measures. The document should explain where and to what extent lost lands can be replaced, and whether like-for-like replacement can be possible. If the San Joaquin County tax base would be affected by transfer to uses shifted to other jurisdictions, this should be disclosed, and mitigation measures ensured. Page 13-75, Lines 21-32 admit: "Temporary project features in San Joaquin County associated with the construction of water conveyance facilities would include a barge unloading facility, three concrete batch plants, three fuel stations, transmission lines, and various work areas for other water conveyance features. These features would occupy lands designated as Agriculture/General, Residential/Very Low Density, and Open Space/Resource Conservation, as shown in Table 13-6. Many of these temporary features would likely be in place for nine or more years of project implementation (i.e., during the near-term implementation or the nine-year project construction period). During that period, lands designated under agricultural zones would be temporarily converted to non-agricultural use, as described in Chapter 14, *Agricultural Resources.* Construction during this period would be incompatible with Agricultural Lands Policy 5, which reserves agricultural areas principally for crop production, ranching and grazing, and with Open Space Policies 3 and 4, which restrict development in open space resource areas". Their definition of "temporary" fails to disclose the true meaning of the term. First, nine or more years' loss of use can destroy or damage the economic viability of a parcel of land; whether in residential, commercial, or agricultural use. Further the EIR/S' mention of "nine or more" implies that impacts could extend for an undisclosed additional period of time. Further, the nine or more years "clock" would not start until construction were to be commenced. Given BDCP's complexity, enormity, permit requirements, and potential legal and legislative hurdles, construction would not likely start for some years. In the meantime, private lands subject to potential impact would be under a cloud of uncertainty, making land sales, investment, securing of loans, and crop-planting decisions, all virtually impossible. Further still, since the lands potentially subject to expropriation or impact are mapped with such a broad brush, vast acreages that may never be needed will nonetheless be under this cloud. Indeed, the mere threat of BDCP being implemented may well have begun to cloud the economy and future of Delta lands in San Joaquin	Inadequate impact analysis Inadequate mitigation measures Conflicts with adopted policies and no mitigation measures proposed Inappropriate definition of "temporary" Timeframe of construction too vague Indirect impacts of "clouding" use of lands due to "unknowns" not addressed, especially related to economic and agricultural losses for San Joaquin County

COMMENTS	TOPIC
County and the other Delta jurisdictions. The acreages given in Table 13-6 and elsewhere reference a huge impact upon thousands of acres of land which by themselves deserve proper treatment in the EIR/S; but the EIR/S fails to consider or disclose the impacts on parcels adjoining or nearby that will exposed to lack of access, noise, and visual disturbance. Thus, even the large acreage disclosed fails to compute and disclose the true extent of impacts.	
64. **Page 13-75, Lines 21-32.** The EIR/S should address the impact of disruption caused by the placement of a cloud of uncertainty over more than hundreds of parcels of private land subject to impacts of the project or conservation measures. Lands that lie under alternatives that may not be selected may nonetheless be under this cloud for a period of years. The document must compute and report the magnitude of these impacts and explain how these impacts are to be minimized, avoided, or mitigated.	Lack of adequate impact analysis Issue of lands being under a "cloud of unknowns"
65. **Page 13-75, Lines 21-32** The document should replace the term "temporary" with one which more fairly and accurately describes a period of roughly 9-15 years; for example: "impermanent", which compares to the use of "permanent" for other features. **Page 13-133, Lines 5-14** Admit: *NEPA Effects:* Effects related to incompatibility with applicable land use designations, goals, and policies resulting from implementation of BDCP Conservation Measures 2–21 would be the same under Alternative 6B as those described under Alternative 1B. **Because the locations for the implementation of these conservation measures are unknown at this time, a conclusion about the compatibility of this alternative with local land use regulations cannot be made. These issues would be addressed in detail in site-specific environmental documents for restoration proposals. However, implementation of this alternative may result in substantial incompatibilities with local land use regulations due to the amount of land area targeted for restoration actions.** (Bolding added).	Incorrect definition of "temporary" Deferral of both impact analysis and development of mitigation measures due to lack of specificity regarding areas of known land use changes
66. **Page 13-133, Lines 5-14**. Explain how the actions that cause impacts can be covered at the Project Level and permitted without further review, yet the means for avoiding, minimizing or mitigating these admitted impacts can be prospective, located in only vague terms, and studied and funded only after the impact-producing actions are permitted? How does the approach used in this EIR/S differ from the following scenario? *Developer asks for a permit to build a hotel on the California Coast and admits that it would block public access, cause traffic problems and noise, conflict with zoning and adopted plans and policies, interfere with the public's use of the public beach, but nonetheless should be approved under CEQA without having to disclose the location of the project.* Explain how this EIR/S is any different from the above case.	Lack of project-specific impact analysis for component that is specifically being addressed at project level Inadequate evaluation of land use impacts Summary table (ES-9) does not agree with main EIR/S text

COMMENTS	TOPIC
The EIR/S admits to conflicts with existing land uses as shown below. However, the Summary Table (ES-9) shows "No Impact" related to conflicts with existing land uses. The document must clarify why this has happened. The following text is from the EIR/S: **Page 13-133, Lines 27-43, and Page 13-134, Lines 1-6.** Impact LU-5: Conflicts with Existing Land Uses as a Result of Implementing the Proposed Conservation Measures 2-21 *NEPA Effects:* Effects related to conflicts with existing land uses under Alternative 6B would be the same as those described for Alternative 1B because the proposed CM2–CM21 would be the same under both alternatives. As with Alternative 1B, implementation of CM2–CM21 could create **temporary or permanent conflicts with existing land uses where they would require the removal of structures or sever critical access routes**. When required, the BDCP proponents would provide compensation to property owners for losses due to implementation of the alternative, which would reduce the severity of economic effects related to this physical impact, but **would not reduce the severity of the physical impact** itself. Implementation of this alternative would be anticipated to result in **substantial conflicts with current land uses** due to the amount of land area targeted for restoration actions. (Bolding added) *CEQA Conclusion*: **Because the locations and types of restoration to be implemented are unknown at this point, no definitive conclusion can be made about the potential for restoration actions to result in the permanent conversion of land uses** (including displacement of existing structures and residences) due to the construction of permanent features of the facility. **Nor can a conclusion be made with regard to the degree of indirect impacts**, which could occur primarily as a result of **incompatibility with adjacent land uses or the loss or increased difficultly of access to parcels**. However, implementation of this alternative would be anticipated to result in substantial conflicts with current land uses due to the amount of land area targeted for restoration actions. Where applicable, the BDCP proponents will provide compensation to property owners for losses due to implementation of the alternative. This would reduce the severity of economic effects related to this physical impact, but would not reduce the severity of the physical impact itself. (Bolding added)	
67. **Page 13-133, Lines 27-43, and Page 13-134, Lines 1-6.** The document must disclose and explain the impacts of interrupting access on the County's agricultural road network essential to viable agricultural use. The EIR/S admits that farm access has not been fully accounted for; so this shortcoming should be corrected.	Inadequate impact analysis
68. Disclose and explain the impacts of fragmenting lands available for agricultural use.	Inadequate impact analysis
69. Disclose and explain the impacts of reduction of parcel sizes and splitting of	Inadequate impact analysis

<table>
<tr><th>COMMENTS</th><th>TOPIC</th></tr>
<tr><td>related uses of essential viable farming by breaking contiguous operations into smaller, separated parcels.</td><td></td></tr>
<tr><td>70. Explain how the actions that are admitted to cause direct and indirect impacts to existing uses can be covered at the Project Level and permitted without further review, yet the means for avoiding, minimizing or mitigating these admitted impacts can be prospective, located in only vague terms, and studied and funded only after the impact-producing actions are permitted? Explain how this can be justified under CEQA.</td><td>Misuse of project-level and program-level analyses</td></tr>
<tr><td colspan="2">Chapter 14. Agricultural Resources</td></tr>
<tr><td>71. Page 14-7, Table 14. 2 is misleading in that the totals by County and by crop type are not shown. If San Joaquin County alone were shown with totals it would appear as follows:

Table 1
Crop Acreages for San Joaquin County as Compared to Total Crop Acreages in Plan Area (in acres)

<table>
<tr><th>Type of Crop</th><th>San Joaquin County</th><th>Percent of Total</th><th>Total for Plan Area</th></tr>
<tr><td>Farmland and Row Crop</td><td>85,368</td><td>58.5</td><td>145,888</td></tr>
<tr><td>Field Crops</td><td>133,220</td><td>52.6</td><td>253,202</td></tr>
<tr><td>Orchards</td><td>15, 150</td><td>34.5</td><td>43,942</td></tr>
<tr><td>Mixed Ag</td><td>53,840</td><td>34.5</td><td>156,015</td></tr>
<tr><td>Uncommon Crops</td><td>20,101</td><td>11.5</td><td>174,568</td></tr>
<tr><td>Pasture and Permanent Annual</td><td>5,363</td><td>10.3</td><td>51,872</td></tr>
<tr><td>Total</td><td>313,042</td><td>37.9</td><td>825,487</td></tr>
</table>

By addressing the above percentages, one can see that San Joaquin has a very large share of the acreage in the Plan Area that is farmland and row crops, field crops, orchards and mixed agriculture. Five other counties make up what is not shown for San Joaquin County. Table 14. 2 should be revised to reflect the percentages by County for the various categories of agricultural production. By doing so, the reader would get a clearer picture of how San Joaquin County's agricultural production may be impacted by what is proposed within the Plan Area.</td><td>Inadequate evaluation of agricultural land impacts, especially for San Joaquin County</td></tr>
<tr><td>72. Page 14-10, Section 14.1.1.5 discusses Important Farmland. However, there is no table clarifying acreage of Prime Farmland by County within the overall Plan Area. If 512,000 acres of the total 825,487 acres in agricultural production are considered Prime Farmland, then 62% of the overall agricultural acreage is Prime Farmland. The EIR/S needs to show percentage of Prime Farmland by County in order to more fully assess potential impacts to such Prime Farmland and to identify appropriate mitigation measures for each County. Farmland losses in San Joaquin County should not be mitigated in Sacramento County due to the direct and indirect economic impacts associated with such losses.</td><td>Impacts by County need to be shown to ensure adequate mitigation for farmland loss

Mitigation measures need to be directed to specific counties</td></tr>
<tr><td>73. Page 14-26, Line 14: Text describes that analysis related to groundwater</td><td>Inadequate impact analysis</td></tr>
</table>

COMMENTS	TOPIC
and impacts on agriculture as related to water conveyance facilities is "qualitative in nature". Again, this brings into question, the ability for this EIR/S to be a project-level analysis. The text also states, "location-specific effects cannot be identified."	
74. **Page 14-27, Lines 2-3**: How was it determined that four or fewer years constituted "temporary" construction activities and that between 4 and 10 years constituted "short-term" construction activities? This seems a rather arbitrary and capricious determination of defining construction impacts, and may underestimate the true impacts associated with the project. It would be much clearer if the EIR/S just referred to "construction impacts" vs. "operation impacts". Downplaying impacts because of the timing as "temporary" or "short-term" would not be justified and should be explained. On Page 14-28, Lines 15-17, the text states that "where impacts are temporary or short-term in nature, and the impacted land can be restored to productive agricultural status after the completion of construction, impacts are considered less severe than those that will be permanent in character, and mitigation obligations would be diminished accordingly." The document must explain why this is the case. A farmer cannot necessarily be out of commission for 4-10 years and expect to be financially stable in what the EIR/S defines as "short term". This many years of lost agricultural production could mean financial ruin for some farming establishments.	Inappropriate definition of "short-term" and "temporary" Inadequate evaluation of agricultural impacts and associated economic impacts for counties that rely heavily on agricultural economy
75. **Page 14-28, Lines 25-29**: This entire paragraph would be better placed in the Mitigation Measures section as it refers to BDCP proponents (undefined) working with agencies on "design features" to benefit agricultural and natural resources. Why is this statement located here?	Vague mitigation measures
76. **Page 14-35, Table 14-8**: This table shows that 4,975 acres of important farmland would be permanently lost under Alternative 4, while up to 18,875 acres of such lands could be permanently lost under Alternatives 1B and 6B. Again, the analysis does not break down the impacts by category, which is very important when it comes time to identify mitigation measures. Each county has varying programs for agricultural mitigation and each county may or may not have a land trust who can help to implement and manage agricultural easements.	Inadequate impact analysis tied to ineffective mitigation measures
77. **Page 14-59, Lines 6-10:** For Alternative 1B, the text shows that up to 2,144 acres of Important Farmland could be impacted "temporarily" and the permanent conversion would occur for about **18,875 acres of Important Farmland.** Borrow/spoils areas alone would convert more than 10,500 acres under 1B. However, this acreage does not get shown by County or by specific percentage so that it more closely matches Table 13-6 in the Land Use section. Table 13-6 shows that San Joaquin County alone would have 14,340 acres impacted where the proposed use would be incompatible with the County's designation for this acreage as "Agriculture-General". It's hard to imagine that 4,535 acres (18,875 minus 14,340 acres) are designated for the industrial type uses proposed for the project. The document must explain why a table similar to Table 13-6 could not have been prepared in the Agricultural section of the EIR/S to show specific County impacts (San Joaquin, Sacramento, etc.) and for each project component. The reader has no idea how the acreages were identified in terms of Important Farmland without such a table.	inconsistent information across topics Lack of information on agricultural impacts by specific county No information on how conclusions were reached Reader forced to review multiple, disparate sections of EIR/S to understand how conclusions reached

COMMENTS	TOPIC
78. **Page 14-109, Section 14.3.3.9:** This section is the beginning of the impact analyses for Alternative 4 as related to agricultural impacts. Lines 3-13 summarize the types of facilities associated with the water conveyance facilities. However, no mention is made of new bridges, local drainage systems, fixed/operable barriers, canals, culvert siphons, or temporary barge unloading facilities. While some of these project components may not impact agricultural lands, they need to be mentioned as components of the project to be consistent with the Project Description, especially if water conveyance facilities are to be addressed at a project level. The document must identify all project-related facilities and describe what types of physical impacts such facilities may have in terms of general acreage for each or land-related alterations related to each. This paragraph also has an incomplete sentence on Line 13. To just list the types of facilities is not adequate for a project level analysis. The reader has no idea of the physical ramifications of the facilities. The roadway locations/lengths/widths have not been identified; the transmission corridors and pole locations have not been identified; the acreage of spoils/RTM storage have not been identified, etc. Without this information, the conclusions about agricultural acreage impacts are suspect.	Inadequate impact analysis; no idea of acreage impacts by specific project components
79. **Page 14-109, Line 21**: The construction impacts to agricultural land are identified as "temporary or short-term conversion". The components with such impacts are identified as follows: ▪ Forebays: 860 acres ▪ RTM areas: 3,160 acres ▪ Intake pumping plant sites: 240 acres ▪ Borrow and spoil areas: 200 acres The total mentioned on page 14-109 is 4,975 acres for Alternative 4. However, the total above is 4,460 acres. What constitutes the undefined acreage? And what about acreage of other facilities such as barge unloading, transmission lines, roads, etc. as listed below. A project level EIR must include a clear table identifying ALL elements of the project in the left column and acreages impacted by the project, by County. It appears that the following elements have not been addressed as compared to project elements identified on page 3-64 of the EIR/EIS: ▪ **Intakes:** Page 3-66 says 90 acres each and 3 total which would be 270 acres (not 240 as stated above on page 14-109); however, it should be noted that Table 3C-1 in Appendix 3C says "Intake facilities including pumping plants....average approximately 60 acres per site" except for Alternative 4 which would be 90 acres; thus the acreage in the Alternative 4 analysis is not correct. ▪ Land area excavated (if any surface disturbance) for pipelines from intakes to intake pumping plants; ▪ **Solids handling facilities**; ▪ **Intake pumping plants associated facilities** (access road; electrical substation with transformers; switching equipment and surge towers); ▪ Land area excavated (if applicable) for **discharge pipelines** (water from intake pumping plants to initial tunnels); ▪ **Vent shafts** (page 3-65 is not clear about size and area needed for	Lack of project-specific information that leads to inaccurate impact analysis and underestimating of impacts

COMMENTS	TOPIC
these); Table 3-11 mentions 9 shafts for Tunnel 2 and 4 for Tunnel 1A, and an additional 3 for Tunnel 1B; thus, there are a total of 16 tunnel shafts; page 3C-19 says that each ventilation shaft may have a temporary work area ranging from 10 to 40 acres; ▪ **Valve and flowmeter vaults** (page 3-65 is not clear on size of these); ▪ **Transition structures** (not defined on page 3-65); ▪ **Forebay acreage**: Page 14-109 says 860 acres; Table 3-11 says 245 acres for intermediate forebay and 2,030 acres for dredging are of expanded Clifton Court Forebay;[1] however, page 3c-21 says that surface area of intermediate forebay would be 925 acres; which is true? It appears that the 245 acres applies to Alternative 4. ▪ **Transmission lines**: Table 3-11 identifies the total MW load but does not identify acreage or length associated with new transmission facilities, nor is this explained on page 3-65; ▪ **Intake pumping plants**: Page 14-109 mentions 240 acres for these; Page 3C-7 says 60 acres per intake pumping plant for the modified pipeline/tunnel alignment which applies to Alternative 4; and there are 5 for Alternative 4; that would result in 300 acres (not 240 acres); And then page 3C-10 says that each intake pumping plant would range from 60 acres to 150 acres in terms of general construction area; where is this calculated? ▪ **Clearing and grubbing** is mentioned on page 3C-3 but no acreage is provided; every facility is likely to have an "area of impact" that exceeds the actual footprint of the facility. Page 3-66, Footnote "a" says that acreage estimates refer to permanent surface footprints which may far underestimate the area of impact, and this acreage does NOT account for non-permanent, "temporary" acreage impacts that must be considered in the analysis, especially related to removal of important farmland. ▪ **Tunneling and pipe placement**: Page 3C-6 mentions that open-cut method may be undertaken which would impact agricultural lands to some degree; this has not been addressed. ▪ Page 3C-7 mentions 2,800 cubic yards of **riprap** to be placed around the perimeter of cofferdam/intake foundations; nowhere is the acreage of riprap storage mentioned. ▪ No mention is made of acreage for **sedimentation basins**, which are clearly identified on page 3C-8. The basins alone could be 0.23 acres in size, but this does not include the area of disturbance. ▪ **Solids lagoons**: Page 3C-8 mentions 3 of these at each intake pumping plant, and each would be about 0.32 acres in size, not including the area of disturbance. There should be 9 of these if there are 3 intake pumping plants. That is about 3 acres of impact or more. ▪ **Pumping plant building** would be about 10,200 square feet in size. No mention of this is included in the agricultural land impacts analysis. And there would be pipes outside of the footprint area. ▪ Transition structures would be about 14,700 square feet as mentioned on page 3C-9. Again, no mention of this is made.	

[1] The underlined/bolded text emphasizes critical text that has not been included in the agricultural analysis.

COMMENTS	TOPIC
▪ Page 3C-11 mentions **69 kV substations** with footprints at each intake pumping plant of 22,500 square feet to 122,500 square feet (2.81 acres). And a 69 kV or 230 kV transmission line would be constructed, depending on the alternative. About 500 permanent poles would be constructed for these transmission lines and 509 temporary poles would be constructed. There is no mention of agricultural impacts from this construction. ▪ **Parking areas** have not been mentioned; these would be for temporary construction facilities, temporary staging areas. Clearing and grubbing and surfacing would be done for these; and they may need to be relocated as construction proceeds as stated on page 3C-13. ▪ **Roads:** Nothing is provided in terms of location of roads, widths of roads, or lengths of new roads. As stated on page 3c-58 and 59, both wet weather and dry weather roads are needed. Table 3C-8 in Appendix 3C fails to identify which Alternatives apply to road needs. The only data provided is total acreage of roads, which is meaningless when addressing a project-level EIR that has to be site specific. ▪ **Relocation of Byron Hwy.**: Table 3C-8, page 3C-59 addresses the need to temporarily relocate the Byron Hwy.; no mention of this is made in relation to agricultural land impacts. ▪ **Temporary Barge Unloading Facilities**: Page 3C-60 mentions that anywhere from 30 acres to 180 acres may be needed for such facilities. ▪ **Concrete batch plants**; may vary from 2 acres to 40 acres; up to four could be locate in San Joaquin County. ▪ **Fuel stations**: would be located adjacent to batch plants and may be 2 acres each.	
80. **Page 14-110, Line 21**: An incorrect reference is made to a Table M14-7, which does not describe any of the features as related to important farmland.	Incorrect reference to table
81. **Page 14-110, Line 42:** Again, an incorrect reference is made to Table M14-8 which DOES NOT show any acreage by Alternative related to Williamson Act lands or Farmland Security Zones. And, it does not show project features as the text alludes to. This is Table M14-9. But again, project specific features are not addressed. A list of all the above features (see comment above) should be identified and the acreage for each to determine true impacts to agricultural lands.	Incorrect reference to table
82. **Page 14-111, Line 40**: Nowhere is there a table showing how this acreage was determined. This is needed for ALL facilities associated with Alternative 4.	Inadequate impact analysis
83. **Pages 14-112 to 121:** The mitigation measures for loss of agricultural land are deficient in a number of areas as follows: ▪ Mitigation is deferred to a future date which is not permitted for a project-specific EIR; ▪ No specific standards are identified for the recommended Agricultural Lands Stewardship Plan (ALSP); ▪ The responsibility for preparing and managing ALSPs is not clarified; ▪ Measures to promote agricultural productivity appear aimed at CM2-22; not CM-1, the water conveyance facilities; and because of this, the mitigation is not adequate and especially not adequate for the project level analysis;	Inadequate mitigation measures for loss of agricultural lands "Notification" is not a mitigation measure Vague, unenforceable and unworkable mitigation measures

COMMENTS	TOPIC
▪ All of the bulleted items on page 14-113 should have been done as part of this EIR; for example, there appears to have been no effort to avoid prime agricultural lands and there has been no effort to adequately offset such losses; ▪ Keeping lands in private ownership (see Line 5 on page 14-115) does NOTHING to protect agricultural viability; ▪ Making wetlands "viable living managing wetlands" as stated on page 14-115, Line 21, does NOTHING to offset losses of agricultural lands and there is NO connection between the identified impact and the mitigation measure. ▪ The loss of Important Farmlands and Williamson Act lands is a significant, unavoidable impact and the text should clearly state this. While "SU" is mentioned on page ES-111, there is no mention in the main body of the EIR/S as to why this would remain a significant unavoidable impact. ▪ There is NO mention of purchasing agricultural easements and the indirect impacts of doing this. This needs to be addressed. Case law for CEQA has recently confirmed (*Masonite Corporation v. County of Mendocino (2013)218 Cal. App.4th 230*) that purchase of agricultural easements should be considered as potentially feasible mitigation for loss of agricultural lands. The EIR/S needs to address the feasibility of purchasing easements and where these would be located; then, the EIR/S needs to address the availability within each County where impacts would occur and if easements would be available for "like" lands that are lost (in terms of soils, irrigation, crops able to be grown). Finally, the potential for needed acreage of Ag. Mitigation lands needs to be assessed as related to habitat mitigation lands needed for project, and if there is acreage for both within specific counties. Specifically, impacts in San Joaquin County need to be addressed. ▪ **Nothing** in Mitigation Measure AG-1b would mitigate for the loss of Important Farmland and Williamson Act lands. Every measure uses the word "notify". Notification is not mitigation. ▪ Mitigation Measure AG-1c assumes that setting aside habitat lands for habitat would also mitigate for loss of agricultural lands. This is highly dependent on what types of uses would be allowed on habitat lands. Also, this mitigation measure proposes a lot of communication with multiple entities and references the "Conventional Mitigation Approach" of establishing easements "where necessary and feasible" as stated on line 43 of Page 14-117. This is NOT mitigation. Who determines what is necessary and feasible? ▪ All of the bulleted measures on pages 14-118 and 119 are vague and generalized, using words such as "investigate"," provide technical and financial assistance;" "work with others;" "work with counties." Strategy 11 (not sure where these numbered strategies are from) states, "Provide for Agricultural Conservation Easements". Nowhere does the text explain how, where, and with what specific funding such easements would be created; nor is the acreage of such easements, by County, specified. ▪ Page 14-120: line 13: Only AFTER all other generalized approaches such as consensus for an Operational Agricultural Land Stewardship	

COMMENTS	TOPIC
Approach have failed, does the EIR/S mention "Conventional Mitigation Approach" as if this were stale and irrelevant. This conventional approach would be purchase of agricultural easements, an accepted form of mitigation ever since CEQA/NEPA were adopted. ▪ Page 14-120 mentions the need for purchasing agricultural easements but does not identify the availability of known funding sources for such. Line 44 of this page mentions that easements should not be obtained on lands that may be needed for BDCP conservation strategies/habitat purposes up until the Year 2060! How is anyone to know what lands might be needed 46 years into the future? Again, the mitigation measure is worded in such general ways and with so many limiting conditions to make it basically meaningless.	
84. **Page 14-121, Line 16** mentions that if lands to offset agricultural land lost cannot be found within the county where conversion would occur, that agricultural land conservation can take place in another county. However, the text states that preference would be within the greater Sacramento metropolitan area. Explain why and how this has been determined. Explain why ag land losses in San Joaquin County, which has a huge percentage of its income reliant on agricultural production, should be offset by provision of conservation lands near Sacramento.	Impacts to San Joaquin County suggested to be mitigated in Sacramento metropolitan area
85. **Page 14-122, Lines 1-7 and previous page:** Impacts of excess, elevated levels of groundwater on crops in the vicinity of the enlarged Clifton Court Forebay are not quantified or mapped.	Inadequate impact analysis
86. **Page 14-123, Lines 1-17**: Reference is made to Table 14-6 about crops tolerances of soil and irrigation water salinity. However, Table 14-6 is totally unreadable for the lay person. The measurement used for salinity is not explained. The table mentions dS/m but that abbreviation is not defined. Then, the text on page 14-123 talks about percentage changes in salinity but does not relate to the measurement limits shown in Table 14-6. The EIR/S does not clarify how many acres and what crops, and what locations could be impacted by increased salinity. This results in not allowing any specific mitigation measures that would be applicable.	Unreadable information Inadequate impact analysis and lack of mitigation measures Stating that impact is significant and unavoidable does not mean that no mitigation measures should be suggested
87. **Page 14-125, Lines 1-21:** Conclusions state that impacts would be SIGNIFICANT AND UNAVOIDABLE as associated with water quality, groundwater elevation changes, increased salinity, and disruptions to agricultural drainage facilities. However: ▪ No feasible mitigation measures are identified; ▪ No specific acreage, by County, of affected ag lands is addressed; ▪ No time duration is provided as to how long such impacts could be experienced. It is not adequate to just say the impact is significant and unavoidable without a more precise impact analysis for what is supposed to be a Project level EIR.	
88. **Page 14-126, Lines 12-41**; Again, the EIR is shown as a piecemeal analysis of the project's true impacts. The CM2-22 measures are addressed (or	CM2-22 are part of CM-1 and as such should be evaluated

COMMENTS	TOPIC
portions thereof) as related to farmland impacts. However, these are not just mitigation measures. These are integral to the project and the impact of farmland acreage should be addressed as a WHOLE – the conveyance facilities with the associated habitat restoration. The EIR/S does not identify the full acreage, by location and by County of agricultural land impacts. This lack of information makes any mitigation measures useless. Restoring habitat (83,800 acres) as mentioned on page 14-127, is NOT related to the true impact. Establishing new habitat has its own agricultural land impacts and this to be assessed fully.	for impacts to agricultural lands
Overall Conclusions re: Alternative 4 Agricultural Land Impacts	
89. The overall CEQA/NEPA analysis of agricultural land impacts is insufficient and does not meet CEQA/NEPA requirements for the following reasons: a) All components of CM-1 are not addressed b) Without addressing all components of CM-1, impacts are understated c) Habitat restoration (CM2-22) is an integral element of CM-1 and by addressing these elements separately, the project analysis is piecemealed and the whole of the action is not addressed; both should be addressed at a project level d) Impacts are not adequately assessed: a) areas and footprints are not defined; b) impacts by County are not defined; c) acreages for some project components are evaluated, but not for all components; e) Impacts are generalized which makes mitigation measures inadequate (e.g., impacts from removal of agricultural drainage canals/irrigation systems that could impact large acreages of cropland) f) Mitigation measures are not specific and are deferred. Mitigation measures cannot be deferred for a project level analysis. If they are deferred, specific standards need to be identified. For example, setting up ALSPs is not an adequate mitigation measure as it is not specific; funding is not identified; standards are not identified. g) Conclusions of significant and unavoidable ignore the need for specificity.	Summary of insufficient analysis for agricultural impacts
Chapter 15. Recreation Issues	
90. **Pages 15-20,Table 15-3 (and accompanying text) , page 15-21, Line 20.** Boating and fishing use data are from 1997 and 1997. This 17-18 year old data may be substantially out of date. For a project that could affect the entire Delta and beyond for generations, the EIR must have accurate baseline information. Therefore, the EIR/S authors should have conducted new studies of these recreation activities. The document must be based upon new use studies and be revised to identify baseline conditions.	Outdated information Inappropriate baseline information
91. **Page 15-59.** The document must add discussion of potential impacts to river recreation to the bullet points on p. 15-59, and add discussion of these potential impacts to the impact analyses.	Inadequate impact analysis
92. **Page 15-60, Table 15-12a on p. 15-88 and all associated impact assessments.** The DEIR includes two baselines for recreation – existing conditions and a 2060-without-the-project baseline. Per the Neighbors for Smart Rail v. Exposition Metro Rail Construction Authority (2013) decision, the appropriate baseline for CEQA analyses is existing conditions unless that baseline would be misleading or deprive the reader of important information, in which case dual baselines must be used. The 2060-without the project is	Inappropriate baseline Need full impact for each baseline year assessed No Project Alternative must address existing year baseline

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the CEQA no-project alternative, not the setting. If the EIR uses both baselines, it needs to address impacts under each of the baselines and apply mitigation measures to each situation, as applicable. The document must revise the text accordingly. Further, the analyses also attempt to distinguish which impacts would result from the project and which would result from climate change. These two factors are not separable. For example, the operational criteria for reservoirs and pipelines would be dependent on the climactic and weather conditions, both long-term and in any specific year, but there would just be a single set of these criteria, not separate criteria for climate change and project impacts. In fact, CM1's primary purpose is to provide water supply in response to changing climatic conditions. Therefore, this appears to be a false dichotomy aimed at reducing the appearance of project impacts and reducing the project's mitigation obligations. It is misleading to ascribe certain impacts to changes in climate and others to the project. The EIR, in fact, acknowledges this on p15-66 (among others, i.e. p. 15-87, lines 19-20; p. 15-274, lines 34-37), where it states, *"The CALSIM II modeling results show that, overall, future opportunities for boating-related recreation under the No Action Alternative conditions at these reservoirs would be less than under the Existing Conditions. However, as noted above and discussed in Section 15.3.1, Methods for Analysis, these changes in SWP/CVP reservoir elevations are caused by sea level rise, climate change, and future no action conditions.* ***It is not possible to specifically define the exact extent of the changes due to future no action operations using these model simulation results.*** *" [emphasis added]* You must revise the EIR impact analyses and mitigation measures to address all changes in future conditions with the project.	(or NOP date baseline)
93. **Pages 15-62 and 63 – Significance Criteria.** Certain significance criteria are not sufficiently protective of the environment, counter to the purpose of CEQA. Specifically, the first criterion, which considers only permanent displacement of recreational facilities as significant, should be revised to also include long-term (more than one season) temporary displacement of these facilities, and the analyses revised to address this long-term temporary impact. Similarly, what is the supporting documentation for the 8-year change to reservoir or river flow criteria? This seems arbitrary. Why not use a more conservative 4 or 5 years, which would be more protective of the environment? Also, this entire criteria, and associated impact assessment, focuses on reservoir levels. The document must add river flows and impacts to river recreation to the analyses.	Inadequate significance criteria
94. **Pages 15-64 and 65.** This discussion focuses on impacts of projects other than the proposed project. It is inappropriate in this section, which is supposed to analyze the project impacts. Rather, it is a cumulative impact discussion that should be moved to that section of the EIR. This discussion should be moved.	Inappropriate impact analysis
95. **Page 15-66, Table 15-10a; Page 15-86, Line 32; 15-274, Lines 12-16, and**	Peak recreation use times not

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other similar references in impact analyses. The reservoir recreation analyses are based on late September reservoir levels. However, as acknowledged in the EIR, most reservoir use is in the summer months, from June through August. Therefore, the late September analysis does not appear to be the correct metric for assessment of project impacts to reservoir (and river) recreation. The document must add July and/or August analyses of project impacts to lake (and river) levels so that potential impacts at the time of peak recreational activity can be determined.	evaluated Inadequate impact analysis
96. **Page 15-67, Lines 10-29; page 15-68, Lines 1-2.** Why are Catastrophic Risks described in the impact discussion? This is an existing condition, which should be considered as part of the setting. It should be removed from this section.	Use of existing conditions in impact discussion; not related to project impacts Inadequate impact analysis
97. **Page 15-68, Lines 7-14, Page 15-76, Lines 32-35, and similar analyses throughout the impact section.** The impact assessment relies on the program-level CM's 3 and 11 as mitigation for the project-specific impacts of CM1. As described in my general comments above, these program-level CMs are neither sufficiently described nor is their funding sufficiently assured for them to serve as reliable mitigation measures for the project-level activities. Further, these analyses fail to provide any actual analyses as to how the program CMs will mitigate the project impacts. They are just listed, followed by a conclusion that they will mitigate the impact the impact to a less-than-significant level. The analytical nexus is absent. In addition, this approach fails to comply with the court's direction in the Trisha Lee Lotus v. Department of Transportation decision.	Inadequate mitigation measures Unfounded conclusions that mitigation measures would be adequate without backup data or substantial evidence Lotus v. Caltrans case Lack of analytical nexus
98. **Page 15-77, MM REC-2 (and Rec 2 discussions in other alternatives, i.e., Page 15-255, Lines 37-40; Page 15-263, Lines 20-36).** The mitigation is vague and not at a project level. It states that the project proponents "will enhance nearby formal fishing access sites" and "ensure adequate signage will be placed at informal sites..." but provides no information on which sites will be enhanced or specifics about signs, nor what the enhancements will be. The p. 15-255 discussion relies on programmatic mitigation measures in other resource chapters to mitigate these impacts with no analysis as to what impacts would occur at each site, how those mitigations would be applied to these sites or how effective they would be. Given this absence of information, there is no way to determine what the impacts after mitigation will be. Revise the document to include all of the missing information/analysis listed above.	Inadequate mitigation Program- level mitigation when project-level warranted Missing information
99. **Page 15-79, Lines 31-39, Page 15-80, Lines 27-31, Page 15-83, Lines 20-23, and similar analyses throughout the impact section.** This analysis relies on Mitigation Measure TRANS-1a to reduce impacts to a less than significant level. However, this mitigation measure defers the development of actual mitigations to a future plan. Such deferral may be appropriate for a program-level document, but is inadequate for the project-level evaluation/mitigation for CM1. Identify which specific mitigation actions are proposed for all CM1 impacts.	Inadequate mitigation for project-level analysis Deferral of mitigation
100. **Page 15-80, Lines 7-10.** This discussion relies on Environmental Commitments to reduce project impacts. However, the discussion includes no analyses as to how and to what extend those ECs will actually reduce these impacts. The document must add that discussion and analyses.	Inadequate mitigation and lack of substantial evidence that mitigation would be adequate

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Additionally, per the Trisha Lee Lotus v. Department of Transportation decision, You must evaluate other mitigations as appropriate.	Lotus v. Caltrans case
101. **Page 15-82, Lines 10-24; Page 15-269, Lines 21-23.** This analysis relies on Mitigation Measure TRANS-1a to reduce impacts to a less than significant level. However, as discussed above, this mitigation measure defers the development of actual mitigations to a future plan. It further relies on recommendations in the Delta Plan as mitigation. These recommendations have no force of law and cannot be assumed to be implemented; therefore, they do not assure any mitigation. Similarly, it relies on vague ECs, whose applicability and effectiveness to the identified impacts are not discussed. The document must add an analysis of how these mitigations would be applied to the project impacts and to what degree they would be effective in reducing impacts to a less than significant level.	Deferral of mitigation Lack of substantial evidence that mitigation would be adequate
102. **Page 15-84, Lines 12-15 and 25-40; Page 15-260, Lines 1-11, and similar statements throughout the EIR/EIS.** These impacts discussions state that certain mitigation measures "would be available" (see, for example, line 13). It also relies on some of the programmatic ECs. This is not a commitment to mitigate. You should revise this terminology throughout the EIR to read, "would be implemented". Further this discussion relies on a large number of vague, noncommittal programmatic mitigation measures for visual impacts, noise impacts, and aquatic biology impacts to reduce this impact, but never analyzes the actual effectiveness of these measures at a project level. It just references them and then states, "The effect would not be adverse". (Line 41). This is an inadequate CEQA evaluation. The document must revise to include a detailed evaluation of what the impacts would be, how the measures would reduce impacts, and to what extent.	Inadequate impact analysis Vague mitigation measures Lack of substantial evidence
103. **Page 15-86, Impact REC-5 (and other Impact REC-5 discussions throughout the chapter).** This "analysis" consists of a single sentence under the CEQA conclusion stating, "The potential impact on covered and non-covered sport-fish species...would be considered less than significant because any impacts to fish and, as a result, impacts to recreational fishing, are anticipated to be isolated to certain areas and would not impact the species population of any popular sportfishing species overall." This is a conclusion with no actual impact analysis. The conclusion fails to reference or comport with any of the Recreation section's listed criteria of significance. Further, Chapter 11 focuses on special status fish species and includes mitigation measures to reduce or eliminate non-native predatory fishes, which include several popular species of sport fishes. The document must be revised to include a project-level impact assessment of the impacts of reducing or eliminating certain sport fish populations on popular fishing sites throughout the Delta.	Inadequate impact analysis Unsubstantiated conclusions Lack of project-level analysis
104. **Page 15-253, Line 9.** This line refers to Table 15-15 as providing the reader with a summary of recreation sites that might be affected by Alternative 4; however, the table addresses only construction impacts and not operational impacts. The document must provide a similar table summarizing operation impacts to recreational facilities.	Lack of impact analysis for operational impacts
105. **Page 15-255, Line 6.** This line states that recreational access could occur in the future. Will access be restored or not?	Unsubstantiated conclusions Inadequate impact analysis

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106. **Page 15-255, Lines 16-21.** This discussion is a speculative argument as to why water skiing facilities should not be considered "long term" and therefore the Project's impacts to them aren't significant. The analysis compares the Project impacts to a future baseline where the water skiing no longer exists. Use of this future baseline is impermissible under CEQA. The facilities exist (setting), have existed for a long period of time, and would be affected by the project (impact). Therefore the impact should be considered potentially significant and mitigation should be required. The document must revised as required by CEQA.	Inappropriate use of future baseline Inadequate impact analysis
107. **Page 15-255, Line 24.** The reliance on program ECs as mitigation for CM1 project impacts is impermissible under the Trisha Lee Lotus decision and also fails to explain how the EC's would mitigate the project's specific impacts.	Inappropriate use of program-level mitigation measures for project-level analysis Lotus v. Caltrans case Inadequate mitigation
108. **Page 15-256, Lines 22-30; page 15-258, Lines 3-16 .** Issue with using generic ECs and program-level CM's 3 and 11 to mitigate for project specific impacts. See previous comments on the problems with this approach – it is impossible to see how they would be applied and how well they would work. Revise to explain how these CMs and ECs will be applied to the project, and provide a project-level analysis of the impacts. Add project-level mitigation measures as needed.	Inadequate project-level mitigation measures
109. **Page 15-256, Lines 35-38; page 15-257, Lines 48-53.** These lines provide a general statement that project spoils may be reused, which involves a wide range of uses anywhere in the Delta. Revise to inform the reader how those spoils (which result from the Project-level CM1) are proposed for reuse, and what the impacts of that reuse would be, at a project level.	Inadequate project description Inadequate impact analysis
110. **Page 15-260, Lines 14-19.** The document must assess the impacts of operating the operable barrier to fisheries upstream and downstream of the barrier, not just at the barrier.	Inadequate impact analysis
111. **Page 15-261, Lines 10-46; page 15-262, Lines 1-42.** The references text is a litany of generic mitigation measures, and programmatic ECs and CMs, leading to a conclusion (on p. 15-263). There is no analysis as to how these measures would be applied to project impacts or to what degree they would be effective. In fact, there is no analysis at all. Revise to include the missing analyses and add project-specific mitigation measures as applicable.	No analysis of mitigation measures Lack of project-level mitigation measures
112. **Page 15-266, Lines 29-32.** Relies on generic ECs to mitigate project specific impacts. Needs nexus and actual analysis.	Inadequate impact analysis Lack of project-specific mitigation measures
113. **Page 15-267, Lines 30-43.** This "analysis" fails to identify the number of barges to be used, daily barge activity, routes of barges, size of barges, duration of barging, what will be barged, etc. Absent this information, it is not possible to identify impacts of the barges on recreation (or air quality, noise, water quality, biotic resources, etc.). The document must provide the necessary detail to assess the project-level impacts of CM1 and reevaluate all barge-related impacts.	Inadequate impact analysis
114. **Impact REC-3, General Comment.** Nowhere in this assessment are the	Inadequate recreation-related

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impacts of changes in delta currents, either locally (e.g. associated with intakes or barge terminals) or regionally (e.g. associated with changes in Delta flows, ecological restoration projects that may include levee breeching and/or major changes in tidal prisms) on recreational boating, including marina access, boating safety and overall boating suitability discussed. Impacts of changes in flows and currents on fishing also have not been addressed. The document must add a discussion of all of these issues to this chapter, including impacts to access at all marinas.	impact analysis
115. **Page 15-271, Lines 2-3.** The document must describe fishing impacts from changes in flows, salinity, and other hydrologic and water quality effects associated with the Project (CM1) and Program (CM2-22) activities, in addition to barge facilities.	Inadequate impact analysis
116. **Page 15-271, Lines 12-14.** What's the significance level of this impact?	Lack of definition of level of impact
117. **Page 15-271, Lines 20-22.** Mitigation REC-2 does not address the reduction in fishes, which is the impact stated above. Therefore, this impact is not mitigated. You must revise text accordingly.	Inadequate mitigation measures
118. **Page 15-271, Lines 29-46, continuing on p. 15-272.** This mitigation discussion once again relies on program-level CMs and ECs to mitigate project-level impacts without describing the impact at a project level or the nexus between the impacts and mitigation measures. Revise to fully describe the impacts then specify detailed mitigation measures and residual effects.	Lack of project-level analysis Inadequate mitigation
119. **Page 15-273, Lines 34-35, and 15-274, Lines 1-2.** This impact "analysis" concludes that the project would not result in long-term reductions in fishing opportunities because impacts would be "typically limited to specific rivers and not the population of the species as a whole." First, this conclusion is not consistent with the Recreation section's stated criteria of significance; second, it is unclear why, if an entire river is affected, why fishing impacts would not be significant; third, there's no project-level analysis of the potential impacts on loss of fisheries to the CM1 project. The document must address each of these deficiencies in a revised text.	Inadequate impact analysis Lack of project-specific analysis
120. **Page 15-275, Lines 9-16 and 38-39.** These conclusions rely on a comparison of the Project impacts with a future (2060) baseline. You must add a comparison of the post-project conditions with the existing baseline and identify appropriate mitigation measures for each of these impacts.	Inappropriate use of future baseline
121. **Page 15-275, Line 28.** This impacts discussion states that certain mitigation measures "would be available". It also relies on some of the programmatic ECs. This is not a commitment to mitigate. This terminology must be revised throughout the EIR-S to read, "would be implemented".	Vague mitigation measures
122. **Page 15-276, Lines 5-8.** This mitigation states that DWR and Reclamation "will work with DPR....". Working with agencies does not assure mitigation. The document must be revised to describe what actual mitigation will be conducted and how that would/would not mitigate the project's impacts.	Vague mitigation measures
123. **Pages 15-277-283, Impact REC-9. Long-Term Reduction in Fishing Opportunities as a Result of Implementing Conservation Measures 2–21:** The document must provide a detailed analysis of how specific SAV removal and turbidity increases resulting from the project may affect sport-fishing species. The document must also discuss the changes in flows and salinity with the project (combined CM1-22) in 2060 may affect these species.	Inadequate impact analysis Lack of substantial evidence for conclusions reached

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The conclusion that, "In the long term, the impact on fishing opportunities would be considered beneficial because the 35 conservation measures are intended to enhance aquatic habitat and fish abundance", is not supported by the analysis in Chapter 11, which focuses on special-status species and specifically states that one of the goals of the CMs is to adversely affect many of the non-native, predatory sportfishing species.	
124. **Pages 15-285-289, Impact REC-10.** This section fails to address impacts to boating from changes in currents, tidal prism's and flow patterns resulting from CMs2-22. The document must revise the analysis to address these issues. It must include both Delta and upstream rivers that may have altered flows associated with the CMs.	Inadequate recreation-related impact analysis
125. **Page 15-291, Lines 5-15.** This discussion fails to describe the degree of increase in inundation in the Yolo Bypass compared to existing conditions. It is impossible to assess the severity of the impacts to recreation absent this information. The document must provide this essential information and reassess as necessary.	Inadequate recreation-related impact analysis
126. **Page 15-291, Lines 32-36; page 15-292, Lines 2-3.** This vague discussion states, "Additionally, environmental commitments are available to reduce the effects of inundation on upland recreational opportunities" and "Depending on the acquisition strategy implemented through this measure, recreational access for upland activities could be expanded or diminished". This provides no information as to what the impacts would be or what will be done to mitigate the impacts. The document must be revised to state what assures that monitoring measures will be implemented.	Inadequate mitigation measures Inadequate impact analysis
127. **Page 15-291, Lines 8-24.** There will be a large-scale transition in habitats, which will result in a large-scale transition in species, affecting hunting. This needs to be assessed in detail to determine what recreation opportunities will be lost and/or gained as a result of the project, not just types of effects that may occur. This section must be revised to inform the reader as to the net benefit or loss of each type of recreation activity associated with the conversion of up to 65,000 acres of upland habitat to wetlands and other associated habitats. We suggest separate discussions for each type of recreation use that may be affected, with specific mitigation for impacts to each use. Issues to be addressed should include, but not be limited to: Would access be provided to wetland areas for recreational use? How would the areas be managed? What would be the tradeoffs in terms of recreation uses?	Inadequate recreation impact analysis
128. **Page 15-294, Lines 26-40.** This discussion remarkably concludes that "These impacts [from construction and operation of CMs 2-22] on upland recreation opportunities would be considered less than significant because the BDCP would include environmental commitments that would require the BDCP proponents to consult with CDFW to expand wildlife viewing, angling, and hunting opportunities, as described in Recommendation DP R14 of the Delta Plan." This conclusion is unsupported and possibly in error because: a) DP14 is a recommendation and not a requirement; thus, this mitigation is not assured to occur. b) Consultation with CDFW does not necessarily result in any mitigation; consultation is just talking, not acting. c) The ECs are vague and unenforceable. Further, the EIR provides insufficient information as to how the ECs would be applied to this	Inadequate mitigation measures

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program to assure mitigation. Given the potential for large-scale landscape-level impacts to recreation as a result of the project, this discussion provides no evidence that the impacts would be reduced to a less-than-significant level. The document must revised to describe how the mitigations would be implemented, enforced, and monitored. Identify what proportion of each type of impact is expected to be mitigated by each type of mitigation measure.	
Chapter 16. Socioeconomics	
129. **Page 16-39, Lines 23-25:** The EIR states that the cumulative analysis is based on comparing all the "development" alternatives to the "No Action Alternative" for Year 2060. This is an extremely erroneous way of evaluating cumulative analysis for a variety of reasons. First of all, the cumulative analysis needs to evaluate the geographic area for which the cumulative analysis is done; for each topic that may vary such as airsheds, viewsheds, etc. Then, the cumulative analysis under CEQA requirements requires that cumulative conditions identified by relevant General Plans or other similar plans be considered or a "project list" approach can be done (see Section 15130 of CEQA Guidelines). Section 16.3.3 address the No Action Alternative. Rather than project what conditions are likely to exist in 2060 under that No Action Alternative, the text on page 16-50 refers to the reader back to the Environmental Setting section. This section DOES NOT identify conditions that are likely to exist in 2060. Instead, this section addresses conditions as of the time of writing the EIR/S. The cumulative analysis needs to compare future cumulative conditions to the baseline year. This has not been done and is a major inadequacy of the EIR/S. In addition, how can 2060 economic conditions possibly be determined in this Project Level EIR/S for the conveyance facilities? No General Plan of the affected counties covers this great a time period. For example, the update of the San Joaquin County General Plan is currently underway. This General Plan only goes to the year of 2035. One only has to look at the economic conditions of 2008 -10 that so severely affected the Central Valley economy to know that one could not have predicted that phenomenon. Explain how a meaningful cumulative analysis of socio-economic impacts can be done in this manner and how it meets the requirements of CEQA/NEPA?	Incorrect cumulative analysis Incorrect baseline Misuse of future baseline Future Baseline Year of 2060 highly speculative
130. Nowhere does this section address the significance criteria used to evaluate impacts related to population and housing. A search was done for all of Chapter 16 for the word "criteria" and it was not found. And the same applies to "criterion". Without identified CEQA/NEPA significance criteria, the analysis does not follow the CEQA/NEPA requirements. For example, CEQA very clearly states that displacement of housing must be addressed. Where has this been done specifically for all the components of CM1 as well as CM2-22? An extremely generalized statement is made on **page 16-177, Lines 34-35**, but there is no specificity as to number of households or business, or where these would be located that would be displaced. The EIR/S needs to provide specificity on this impact.	Inadequate identification of significance criteria Inadequate evaluation of impacts related to potential displacement of housing

COMMENTS	TOPIC
131. **Page 16-52, Lines 10-12:** The CEQA Conclusion for the No Action Alternative is that ongoing programs and plans would result in crop acreages and crop values similar to those under Existing Conditions. There is no substantial evidence showing that by 2060, 46 years after 2014, that crop values would be the same as in 2014. If one goes back to evaluate the history of crop values, there have been significant changes over time. For example, orchards and vineyards have replaced row crops as more economic value per acre has been found by these conversions. The document must provide substantial evidence to justify this conclusion.	Lack of substantial evidence
132. **Page 16-163, Line 53:** Nowhere is there a table identifying where (in terms of communities/counties) the 53,000 units of available housing are to accommodate the projected peak of 3,937 workers during the 8-year construction period. And nowhere is there an explanation of how it was determined that only 1,180 workers would require housing within the 5-county region of the BDCP water conveyance facilities. The EIR/S does not identify the likely wages of these workers as related to local housing costs.	Inadequate impact analysis and lack of backup data
133. **Page 16-164, Lines 13-15**: It is explained that a much larger (87%) percentage of agricultural workers are of Hispanic origin, while only 54 percent of construction laborers claim Hispanic origin. The EIR/S does not assess the impact of Hispanic agricultural workers loosing work due to the removal of agricultural lands from production. And because most of these workers are not trained in construction skills, the EIR/S needs to address what happens to these workers who may lose agricultural employment.	Inadequate impact analysis related to job losses
134. **Page 16-166:** The EIR/S on Line 30-31 states "Access would be maintained to all existing recreational facilities, including marinas throughout construction." Why is this not addressed in the Project Description? If the water conveyance facilities are to be evaluated at a project level, this kind of information needs to be clearly spelled out and illustrated in the Project Description.	Inadequate project description
135. **Page 16-168, Table 16-43** is totally unclear. First, it does not define the columns. Does Column 2 refer to acreage lost? The last column shows minus numbers....are these percentages lost from existing acreage? Finally, the information needs to be shown by County. The table is totally meaningless unless one knows where the economic impacts are occurring. Just above the table, text refers to 5,600 acres of irrigated cropland declining. Then, the table immediately below shows 478,100 total acres but no line item shows the 5,600 acres referred to in the text. The table does not clarify which items refer to irrigated crops.	Unreadable tables
136. **Page 16-170, Table 16-44** is very unclear as related to employment impacts. By "Impacts" in the second column, is this referring to jobs lost? Is the "Labor Income" lost and to what counties? The IMPLAN results are extremely generalized and do not assist individual counties in commenting on this EIR/EIS.	Unreadable tables
Chapter 19. Transportation	
137. The transportation analysis identifies the following main roads within the jurisdiction of San Joaquin County or cities within the County: Walnut Grove Road; Peltier Road; Tracy Blvd.; Byron Highway; Mountain House Parkway; Eight Mile Road; and Tracy Blvd. These are all the roads within the study	Missing information

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area that may be impacted by construction traffic over the 9-year construction period. However, Table 19-7 fails to include Byron Highway for San Joaquin County.	
138. **Page 19-171, Table 19-25:** Bryon Hwy. is shown has having significant construction-related transportation impacts for the analysis period of 6 AM to 7 PM. However, the mitigation measures basically state the following: ▪ Implement a site-specific traffic management plan (TMP) ▪ Limit hours or amount of construction activity on congested roadway segments ▪ Make good faith efforts to enter into mitigation agreements to enhance capacity of congested roadway segments These mitigation measures are woefully inadequate. First of all, Mitigation Measure TRANS-1a addresses this impact but goes into details totally unrelated to the impact such as in-water work areas (this impact is related to road vehicles) and notification of boating organizations and marinas; no-wake zone (again the impact is about road vehicles); coordination with rail providers; coordination with transit providers. The impact states "TRANS-1: Increased Construction Vehicle Trips Resulting in Unacceptable LOS Conditions." Why is this TMP mentioning anything related to boating facilities? The mitigation is also woefully inadequate for the following reasons and the following elements of the suggested mitigation measure: - Signage is not mitigation - Barricades are not mitigation - Use of flag people may be somewhat helpful but not much, and detouring traffic just moves the problem elsewhere - Notification is not mitigation, especially for cycling organizations and marinas as this does nothing to mitigate the congestion - Outreach is not mitigation - Alternative access routes just relocate the problem but don't solve it - Describing construction staging areas does nothing to relieve traffic congestion; - Designating areas where nighttime construction will occur does not provide mitigation (the impact is related to 6 AM to 7 PM time period) - Plans to relocate school bus drop-off zones does nothing and this issue wasn't even addressed in the impact discussion - Directing construction vehicle drivers to pull over in the event of an emergency is not a mitigation measure; this is required by law (CA Vehicle Code 21806) and has nothing to do with relieving construction vehicle traffic congestion - Designating offsite vehicle staging does not mitigate congestion - Posting information for emergency contact does not mitigate congestion - Coordinating with rail providers or transit providers does not mitigate congestion - Posting information on 511.org does not mitigate for congestion. The most egregious item in the list is "Other actions to be identified and developed as may be needed by the construction manager/resident engineer	Inadequate and inappropriate mitigation measure Deferred mitigation Vague mitigation

COMMENTS	TOPIC
to ensure that temporary impacts on transportation facilities are minimized." The mitigation measures are deferred, ineffective, and not directed to the identified impact. Revise to include measures that are able to be monitored; identify the responsible parties and the timing; and identify how the measures would relieve the construction vehicle traffic congestion that has been identified as the impact where LOS impacts were significant. Additionally, the other two mitigation measures suggest limiting hours of construction on congested roadway segments. Do you really think this would happen? You have a long route; a truck travels through segments that are fine and ones that have been identified as congested. You can be assured that this will not happen. In addition, TRANS-1b starts out with the words "Where feasible"....this is deal killer from the start. The impact analysis has not even identified when congestion is not acceptable because the entire period of 6 AM to 7 PM was assessed. LOS for peak hours for intersections was not assessed as the EIR/S stated that routes cannot be known at this time. Without such an analysis, this so called "project-specific" mitigation measure is totally unworkable. The third and final mitigation measure for construction vehicle congestion is to "Make Good Faith Efforts to Enter into Mitigation Agreements to Enhance Capacity of Congested Roadway Segments". Making a good faith effort is totally unenforceable. If "capacity enhancements" are ever funded, then the growth inducing impacts of such have to be assessed and this has not been done in the EIR/S. The document must address what types of enhancements may occur, where and when. This is only appropriate for a project-specific EIR/S which this is for CM-1. Stating that any traffic models to be used to determine fair share costs shall be mutually agreed upon by BDCP proponents and the affected agencies creates the risk of never having such modelling done. The agency determining the models shall be the appropriate transportation agency and BDCP should have nothing to say about the models. This mitigation measure must be revised.	
139. **Page 19-173, Line 20-21, at beginning of Mitigation Measure TRANS-1a states:** "...environmental commitments identified in this EIR/EIS. This will include potential expansion of the study area identified in this EIR/EIS to capture all potentially significantly affected roadway segments." This statement implies that the impact analysis has not been complete, and that additional analysis is necessary which is not appropriate for the Project level component of the analysis. Clarify what this sentence means and why study area would need to be expanded.	**Admission that impact analysis is not complete**
140. **Page 19-181, Lines 21-17:** The mitigation measure for impacts to paving conditions of roads used for construction are not adequate. Prohibitions again construction traffic using roadway segments with pavement conditions below thresholds is totally unenforceable. Mitigation Measures TRANS-2a and 2b are not workable; Only TRANS-2c might be workable. But again, as stated in Line 10 on page 19-182, making a "good faith effort" is not an enforceable	**Inadequate and unworkable mitigation measure**

COMMENTS	TOPIC
mitigation measure. San Joaquin County could be saddled with the burden of worsened roads and the cost of repaving roads used for the BDCP project.	
141. **Impact TRANS-3:** Mitigation measure TRANS-1c does not solve the problem of interference with emergency routes during construction. As stated above, "making a good faith effort" for anything is not an enforceable mitigation measure. The document must revise this mitigation measure so that it is enforceable and identify who is to do what and when it's to be done.	Inadequate and unworkable mitigation measure
142. **Impact TRANS-6:** The mitigation measures related to transit interruptions just refer back to Mitigation Measure TRANS-1a, b, and c. As stated above, these are woefully inadequate and unenforceable.	Inadequate and unworkable mitigation measures
143. **Inadequate coverage of CEQA Significance Criteria:** The EIR/S fails to address the following criteria as required by the CEQA Guidelines: ▪ Conflict with applicable plan or policy related to effectiveness of the performance of the circulation system ▪ Conflict with an applicable congestion management program ▪ Increase in hazards due to a design issue ▪ Conflict with adopted plan/policies related to bike use, transit, or pedestrian facilities or decrease the safety of such facilities. This entire section must address the required significance criteria. In addition, it must analyze and disclose increased traffic and congestion on I-5, I-205, I-580, and I-80 that will occur because of admitted heavy construction traffic on Delta highways: SR-12 and SR-4.	Impact analysis fails to address significance criteria as required by CEQA Guidelines
144. **Impact TRANS-8:** The EIR/s fails to provide substantial evidence of why traffic generated during project operations would be less than significant. There is no data on number of workers, number of trips, or times/days of trips. The document must provide this important information.	Inadequate impact analysis; Lack of substantial evidence
145. **Impact TRANS-10:** This impact analysis fails to provide any information related to traffic impacts associated with CM2-22. Doing a qualitative analysis for project elements that are intricately linked with the success of CM1 is another example of piecemealing the project and failing to adequately assess all project impacts. Restoration efforts; creating wetlands; construction worker vehicles, etc. will have large impacts related to construction vehicles hauling dirt and other materials. The EIR/S needs to identify where such trucks may travel and how many may use local roads. The impacts on LOS and pavement conditions need to be addressed. Just concluding that the impact could possibly be significant and unavoidable does not relieve the authors of the responsibility of doing an adequate impact analysis. And again, the reference to Mitigation Measures TRANS-1a, b and c is woefully inadequate. It is as if the authors were trying to create one "catch-all" mitigation measure that could be used for multiple identified impacts rather than gearing the mitigation measures to the specific impact. The result is that the mitigation measures are far too generalized and vague to make them worth anything.	Inadequate impact analysis Piecemealing of project
146. **General:** Has the transportation analysis evaluated the transportation impacts of trucking in the water for the concrete batch plants and operations which are estimated to need approximately 47 million gallons of potable water. Many of the locations are not near a source of potable water.	Incomplete analysis

COMMENTS	TOPIC
Chapter 20. Public Services and Utilities	
147. **Page 20-35: Lines 31-41:** In terms of the No Action Alternative, the EIR/S states that "*the Lead Agencies have made some informed judgements about what might happen outside the immediate SWP/CVP context during such an extended time period. For example, it is highly improbable that, over the course of nearly five decades, water systems throughout California will not change in numerous relevant ways. Since such changes could affect how the SWP and CVP under the BDCP would operate within a larger water supply framework, the Lead Agencies have attempted to identify the predictable or foreseeable actions of California water suppliers other than DWR and Reclamation under a long-term scenario in which a BDCP is not approved or implemented.* " What defines "informed judgements"? This is about PREDICTIONS, not informed judgements. It is not explained how it is justified to state that under the No Action Alternative, that services and utilities are likely to be maintained at required levels until 2060. The EIR has major flaws related to trying to predict what is likely to occur between now and 2060. That time period is highly unrealistic in terms of meaningful impact analysis. How was this time horizon chosen?	Inappropriate use of predictions rather than reliance on substantial evidence
148. **Page 20-115, Lines 25-38**: Nowhere does the EIR/S address the potential change in emergency response times or the adequacy of response times related to provision of fire/police services. While the project may incorporate safety plans to reduce need for emergency response, there are always unexpected emergencies that can arise during construction. Given the isolated nature of the water conveyance alignment alternatives, and the lack of fire/police stations in the area (as shown in Figures 20-1 and 20-2), the EIR/S has failed to identify the impact s related to emergency response times and the potential for new facilities to serve the project. At a minimum, the EIR/S needs to address the emergency response times to all areas of proposed construction, including concrete batch plants, electrical transmission substations, pipeline routes, and other project elements. At a minimum, the most isolated location of construction should be clearly identified to assess the emergency response time to such a location.	Inadequate impact analysis
149. **Page 20-120: Lines 20-21**: The EIR/S states that new wastewater treatment facilities would not be required. However, this is in direct contradiction to the statement on page 20-119, Line 40, which states that concrete batch plants would have onsite treatment for wastewater. CEQA does not distinguish between a municipal and a private/State treatment facility. The project DOES require wastewater treatment facilities, the construction of which could result in environmental impacts. Because these are integral to the water conveyance facilities, which are addressed at a project level of analysis, these treatment facilities need to be addressed herein, using the identified significance criteria.	Inconsistent data/impact analyses Conflicting statements
Chapter 24. Hazardous Materials	
150. **Page 24-4, Lines 15-18:** The EIR/EIS states, "no comprehensive area-wide soil or sediment sampling program is known to have been conducted to evaluate pesticide residues from agricultural use." Given the large-scale	Missing essential information

COMMENTS	TOPIC
impacts of both the Project (CM1) and Program (CM2-22) in terms of moving (25 million cy) and wetting (up to 65,000 acres) agricultural soils, which could release pesticides to the water column, a sampling program must be conducted. Absent this data, the EIR cannot adequately determine either the context or intensity of impacts, as required under both CEQA and NEPA. The document must rovide the needed data.	
151. **Page 24-4, Lines 29-38:** This section notes that above-ground and underground storage tanks and other potential hazardous materials facilities may exist in the project area. However, no surveys have been done of the conveyance facility alignment for these potential sources of hazardous materials. While deferral of this analysis may be acceptable at a program level, such a survey is required to identify potential impacts for a project-level EIR on the conveyance facilities. The document must provide the needed information to provide an adequate impact analysis.	Deferred analysis and mitigation Inadequate information on existing conditions
152. **Page 24-6, Lines 3-7:** States that abandoned oil and gas well may pose hazards as they may act as conduits for natural gas to the surface. The discussion goes on to state, "the locations of many abandoned or shut-in wells may be unknown due to inadequate or missing data or poor record keeping." A project level EIR for the conveyance facilities must identify these hazards and not defer this work to future study. There would be no more future study under CEQA if this EIR were certified as the project-level assessment for the conveyance facilities.	Deferred analysis and mitigation Admission that impact analysis is not complete
153. **Page 24-7, Lines 12-25:** This discussion acknowledges that information regarding transportation of hazardous materials through the study area was not obtained. At a minimum, this section should address the types of materials that are likely to be transported through the region, and where the transportation routes would be.	Admission that impact analysis is not complete
154. **Pages 24-31:** The EIR acknowledges that the Phase 1 Site Assessment was for a different set of conveyance facility alignments than are considered in this EIR/EIS, but fails to tell the reader what the differences are and how that may affect the applicability of that site assessment to the currently proposed conveyance project. The EIR/EIS then defers preparation of a corrected Phase 1 Assessment until after the conveyance project is approved, stating, "The locations of these three alignments under consideration in 2009 differ somewhat from the four alignments being considered in this impact analysis. As such, once a BDCP conveyance alternative is chosen, a conveyance-alignment-specific (i.e., site-specific) Phase 1 ISA will be performed prior to construction." This deferral is impermissible given 1) the uncertainty as to whether the existing Phase 1 study is applicable to the current proposal, and 2) the potential impacts of the project at this massive scale. The EIR notes that the Phase 1 ESA failed to follow standard practice in that it lacks landowner interviews. The EIR also states, "Further, Although the ISA identified Recognized Environmental Conditions (RECs), the limited scope of this ISA allowed only for recognition of "sites of concern" (SOCs). Many of these SOCs constitute RECs for the study area, while others that might be RECs have insufficient information at this time to make that determination".	Deferred analysis and mitigation Admission that impact analysis is not complete

COMMENTS	TOPIC
This is a fancy way of saying that many potential contaminated sites may have been missed by the ESA prepared for the prior alignments. The analysis needs to be redone for this EIR/EIS.	
155. **Page 24-34, Section 24.3.2, Determination of Effects:** The Determination of Effects discussion is inconsistent with the "Construction Effects" discussion on P. 24-31. The document must clarify which criteria are being used in the impact analysis.	Inadequate impact analysis; Lack of substantial evidence
156. **Page 24-36, Lines 24-45; Page. 24-37, Lines 1-10:** This discussion claims that the project would comply with County plans but fails to provide any documentation of such compliance. It lists mitigation measures but fails to connect mitigation measures to the specific impact or evaluate their effectiveness. The mitigation measures are far too generalized and vague to assure mitigation to a less-than-significant level, and the conclusion of policy compliance is unsupported by fact. In addition, the SWPPP, HMMP, and spoils treatment measures are not specific enough to assure adequate treatment of the 25 million cy of tunnel spoils proposed for reuse or disposal. There is no project-level analysis of this issue, despite it being a critical component of the conveyance facility construction.	Inadequate impact analysis
The following comments are made with reference to Alternative 1A, but are equally applicable to Alternative 4A, because the text in the two sections is nearly identical.	
157. **Page 24-46, Lines 27-45. The discussion of potential soil contamination begins with,** "The lateral and vertical extent of any historical soil-, sediment- or water-based contamination within or near the construction footprint is unknown. Although, where it exists, soil contamination is likely to be highly localized, while groundwater contamination could have migrated substantial distances and therefore be more widespread than soil contamination. Locations of known oil and gas processing facilities (Figure 24-1) are considered a separate category of SOC due to the potential for spills and leaks at these locations. The lateral and vertical extent of any existing contamination that may be present at these sites is unknown. The number of SOCs may change during right-of-way evaluation, land acquisition and preconstruction site-clearance investigations or during construction. Additional SOCs may be identified during these activities, and currently identified SOCs may be determined innocuous after site-specific field investigation and testing." The text goes on to state, "It is likely that contaminated sediments (e.g., persistent pesticide- and mercury-contaminated sediments) would be resuspended during sediment-disturbing activities related to in-river construction activities (e.g., cofferdam construction at intake sites). However, concentrations of potential contaminants in the sediments where in-river construction activities would be taking place are not known; therefore, the associated risk cannot be identified. " **Page. 24-47, Lines 14-41** list programmatic Environmental Commitments but	Inadequate setting and impact discussion Project-level analysis for CM-1 not complete

COMMENTS	TOPIC
provide no analysis as to how they would be applied at a project level, how well they would work to reduce impacts, or even if they would be implemented (for example, line 36 starts, "To the extent feasible, action alternative design would minimize the need to acquire or traverse areas where the presence of hazardous materials is suspected..." Who determines what's feasible and on what basis? If it's not feasible, then what?. This is an inadequate setting and impact discussion upon which to base a project-level impact assessment of the conveyance facilities.	
158. **Page 24-48, Lines 6-41.** This section needs to tell the reader which chemical will be used in drilling, how much of each chemical is likely to be used, and which treatment methods for the tunnel spoils (which appears to be euphemistically referred to as Reusable Tunnel Material, whether or not it is actually found to be reusable) would be applied. What constituents may be in the decant liquid (lines 42-44)? Also, this text refers to a very large storage facility, the impacts of which have not been identified. As discussed in comments above, the EIR estimates that about 25 million cubic yards of material will be stored and treated for reuse. This could result in hundreds of acres of land used for storage and treatment of potentially contaminated drilling spoils. For comparison, the proposed Forward Landfill expansion included about 32 million cy of material on nearly 200 acres, and would have formed hills over 170 feet high. Revise to address in detail the potential impacts associated with spoils storage and reuse areas, at a site-specific level, as required for a project-level assessment. Specifically, the following must be addressed: ▪ More clearly define "Reusable". We presume it is non toxic, but can it be used as agricultural soil (not likely), as levee construction material (not too likely either) or simply for filling in subsided islands, and if so, what land uses could such islands support? ▪ Clarify the location of where spoils disposal will or may be placed if it is in fact "Re-used". ▪ Explain whether the areas shown as cross-hatched tan (RTM) on Fig. M3-4 are permanent features or not. ▪ Clarify and provide evidence that there is barge access for all sites: source, temporary storage, and ultimate placement. If trucks will be needed, where in the EIR-S has this been analyzed and reported in regard to transportation and air quality impacts. ▪ Clarify and provide evidence that the barge traffic for spoils (not equipment, which is covered) has been accounted for in terms of marine traffic and air quality. ▪ There's a very large gap in treatment sites from the Potato Slough site to the Clifton Court Forebay site, with diminishing waterways how will materials be transported to the CC Forebay site? Are barges feasible or would material require trucking? Has this distance of trucking or barging been considered in the aim quality and traffic analyses?? ▪ The Clifton Court Forebay spoils treatment facility at southern end of the conveyance facilities is quite distant from the restoration areas, which	**Inadequate setting and impact discussion** **Deferral of mitigation measures**

COMMENTS	TOPIC
are mostly in the north delta/Cache Slough areas. How will the materials be transported there? ▪ Given that spoils disposal is part of the project-level conveyance facility project, The document must provide an evaluation on a project (site-specific) basis of the treatment facility sites to determine their suitability/sensitivity of potentially affected resources? ▪ What percentage of the materials is likely to be contaminated such that they require off-site hauling and disposal? ▪ The document must evaluate the air pollutant and emissions and traffic effects of double hauling materials from the excavation sites to the treatment facilities and then to either reuse sites or disposal facilities. ▪ The document must evaluate the capacity for any contaminated material at suitable landfills. Finally, this section envisions a possible landfill for contaminated materials, stating, "At a minimum, a final clean soil cover would be placed over the dewatered RTM in order to isolate any contaminates in the RTM and then seeded." Potential impacts of this long-term landfill must be assessed in detail. Instead, the analysis is improperly deferred to a future plan (**see p. 24-49, lines 1-17**). The document must provide a detailed description of these facilities and their potential impacts in this EIR. (This discussion also mentions health risks of diesel emissions, which should be assessed now and not deferred.)	
159. **Page 24-51, Lines 26-45.** This discussion mentions possible risks associated with transportation of spoils and other materials, but does not provide any estimate of the number of trips of trucks, barges, trains, etc. that would be required to transport the 25 million cubic yards of tunnel spoils to treatment/storage sites and then re-transport those materials suitable for reuse to the reuse sites. The document must describe – will there be multiple handling of materials? How and where will these spoils be transported? How much will be transported via which mode? Describe how the vague and non-committal programmatic mitigation measure Trans-1 would be applied to the conveyance project to reduce this impact to less-than-significant level, as repeatedly claimed in this impact discussion.	Inadequate impact discussion
160. **Page 24-52, Lines 6-19.** This section discussed barge hazards but fails to tell the reader how many barge trips may occur, what the risk of spills or collisions is (i.e. per trip or per mile travelled), and what magnitude of impacts may occur in the event of an accident or spill. The document must add a detailed, project-level assessment of all of these issues as required for assessment of the transport of 25 million cy of tunnel spoils.	Inadequate impact discussion
161. **Page 24-53, Lines 21-27, 37-38, 44.** There's no connection between these conclusions and the preceding discussion - just a statement of generic impacts, a statement of generic BMPs, and a conclusion. Provide the analytical nexus from the discussion of impacts through the mitigation measures supporting the conclusion. Revise the conclusion as necessary.	Unsupported impact significance conclusions
162. **Page 24-54.** Mitigation Measure HAZ-1a and HAZ-1b improperly defer impacts analysis to future studies.	Improper deferral of impact assessment and mitigation to future studies
163. **Page 24-64, Lines 37-38, Impact HAZ-6:** Statement that, "Maintenance	Inadequate project description

COMMENTS	TOPIC
requirements for several of the water conveyance facilities features (e.g., tunnels) have not yet been finalized. " indicates that the project description is inadequate to conduct a project-level CEQA and NEPA evaluation. You must add missing information and reassess the impact.	
164. **Page 24-67, Lines 39-43, Page 24-68, Lines 1-45:** CM2 involves tens of thousands of acres of restoration projects with potential to affect gas wells, gas facilities, transport impacts, etc. The "analysis" of the potential impacts of this massive construction is limited to one page of generic statements regarding possible effects, with no assessment of the possible magnitude or intensity of the impacts. Instead, vague mitigation measures are assumed (but not shown) to reduce these impacts to a less than significant level. Provide a detailed discussion of potential impacts for each possible contaminant, considering the overall impact on specific sensitive areas and resources. Note that a simple statement of the type of impact that may occur is not an adequate assessment because CEQA/NEPA require a determination of the context and intensity of impacts, neither of which is provided here.	Inadequate impact discussion. Unsupported impact significance conclusions
165. **Page 24-69, Lines 27-34, Page 24-70, Lines 26-45:** These discussions, referring to potentially contaminated sites and worker exposure, state." However, because locations within the eleven conservation zones (described in Chapter 3, Description of the Alternatives) for implementing most of the conservation measures have not yet been determined, it is not known if the conservation measures would be implemented on or near "Cortese List" sites. Project design would minimize, to the extent feasible, the need to acquire or traverse areas where the presence of hazardous materials is suspected or has been verified. Implementation of conservation measures could also involve dredging Delta waterways and other activities that could disturb contaminated sediments that hold mercury, pesticides, or other constituents," and "The potential exists for CM2–CM11, CM13, CM14, CM16, and CM18 to result in effects related to the release of or exposure to hazardous materials or other hazards. The potential for these kinds of effects is considered adverse because implementation of these conservation measures would involve extensive use of heavy equipment that could unintentionally result in the release of hazardous substances or that could expose construction workers or members of the public to hazards. Construction of restoration projects on or near existing agricultural and industrial land may result in a conflict or exposure to known hazardous materials."	Inadequate impact discussion Unsupported impact significance conclusions
166. **Pages 24-70 top 24-71:** There is no connection between these conclusions and the preceding discussion - just a statement of generic impacts, a statement of generic mitigation measures and BMPs, and a conclusion. The document must provide the analytical nexus from the discussion of impacts through the mitigation measures supporting the conclusion. Revise the conclusion as necessary.	Unsupported impact significance conclusions
Chapter 30. Growth Inducement	
167. **Page 30-74; Line 6:** 60 percent of the increased water would go to the South Coast Region. This is mainly a point of interest given the environmental impacts that would be experienced by San Joaquin County and adjoining	Support for Southern California growth

COMMENTS	TOPIC
counties for the proposed project. The No Action 2060 scenario shows an increase of 2,650,500 people, and Table 30-25 and 30-26 show that the largest percentage of growth due to BDCP would occur in the South Coast Hydrologic Region (of 8 regions addressed in the State).	
168. **Page 30-107 and all of Section 30 on Growth Inducement:** This page of the EIR/S states "The planning horizon for BDCP is 2060. None of the horizon years of the General Plan EIRs reviewed for this analysis extends to 2060." If this is the case, how can this EIR/S justify using the year 2060 for the future baseline analysis? The reason that no General Plans extend to 2060 is that it is totally out of the range of the "foreseeable future". CEQA very clearly uses the term "foreseeable" future; and 46 years into the future is not what one would consider foreseeable. This is "conjecture" more than "foreseeable". If one goes back in time to 1968 to compare what we knew then vs. what is now happening, you would see that at that time, there was no NEPA/CEQA, no Endangered Species Act, no knowledge of toxic waste impacts; no discussion of sea level rise and climate change. How can one presume to really know what conditions will be in 2060? More commonly, General Plans address a 20-year future time horizon, or at most, a 30-year time horizon. Explain how the 2060 year was chosen for future baseline and how it can be justified. This EIR/S took it upon itself to extrapolate population projections using Department of Finance numbers from 2050. Finally, Section 30 of the EIR/S summarizes that many General Plan EIRs show future growth impacts, by topic, as significant and unavoidable. Thus, this EIR/S need to do the same and show growth inducement as significant and unavoidable, requiring that Findings be prepared.	Misuse of future baseline Conjecture by using Year 2060 Growth inducement fails to clarify why growth inducement would be significant and unavoidable
169. **Section 30.3.7; Lines 13-16: Conclusions on Growth Inducement:** It is concluded that construction and operation of BDCP facilities would not have any DIRECT growth inducing impacts. In one sentence, it is concluded that construction would not result in the need for new housing or jobs in the study area. There is no substantial evidence to back up this conclusion, no cross reference to the socio-economics section of the EIR/S identifying the expected number of employees, the availability of local housing during the 10+ years of construction. The document should expand on this conclusion and justify why it was determined that no direct growth inducing impacts would result.	Lack of substantial evidence Inadequate analysis of direct growth inducing impacts
170. **Section 30.3.7; Lines 17 to 41 and Page 30.3.7, Lines 1 to 19:** This section points out that indirect growth inducing impacts would occur as associated with lifting a constraint to growth by the provision of reliable water supplies. Yes! And then, the text goes on to correctly state that "DWR and Reclamation lack the authority to approve or deny development projects or to impose mitigation to address significant environmental impacts associated with development projects; that authority resides with local cities and counties." What the EIR/S fails to say right after this is "Because the development of mitigation measures is outside of the control of the lead	Growth inducement fails to clarify why growth inducement would be significant and unavoidable

COMMENTS	TOPIC
agency, growth inducing impacts would be significant and unavoidable and findings would need to be made." Change the text accordingly to clearly identify this as a significant unavoidable impact and make sure that this is shown in the Summary table and in the required CEQA Findings section showing this as a significant, unavoidable impact. Currently, the text does not clarify that the reason for this being significant and unavoidable is that it's outside the control of the lead agency.	
Chapter 31. Other CEQA/NEPA Required Sections	
171. Growth inducement is not shown as a significant unavoidable impact. This impact must be added.	Growth inducement fails to clarify why growth inducement would be significant and unavoidable
172. **Pages 31-4 to 31-8 Section 31.3 CEQA Environmentally Superior Alternative.** Explaining that it is just too complex is not sufficient rationale. Discussing the pros and cons of each alternative does not relieve the lead agency from responsibility.	Failure to identify the Environmentally Superior Alternative.
173. **Pages 31-4 to 31-8 Section 31.3** The discussion of the pros and cons of each alternative fails to note that for all but Alternative 9, the action alternatives are all-or-nothing, full build-out-or-nothing which eliminates the opportunity for use of adaptive management and best science to guide the action alternative's development under uncertain conditions.	Failure to treat inflexibility as an impact; in that it precludes best science/adaptive management
Appendices: Appendix 3D	
174. **Section 3D.2.4:** Cumulative Impact Analysis conditions are assessed. However, nowhere in this section of Appendix 3D does the text address why the cumulative analysis under many topics addresses Year 2060. This section does not address the methodology for identifying other projects; this section does not address how cumulative impacts may have different geographic areas used to determine cumulative impacts. For example, hydrology may assess watershed; air quality may assess projects within airsheds. However, where in the EIR is a list of "cumulative projects" identified that is the basis for all the topics (land use, agriculture, traffic, etc.)? Did the EIR/S rely on adopted General Plans of relevant counties? Did it rely on a list of identified pending/approved projects? This is completely unclear and needs to be explained. It also appears that the EIR/S confuses the No Project Alternative with the Cumulative analysis . These are two distinct items. The No Project/No Action conditions should be evaluating conditions as of the time of the EIR/S. The Cumulative conditions should be addressing potential future projects.	Inadequate cumulative analysis
175. **Attachment 3D-A (Page 3D-26),** a list of projects related to three scenarios (Existing Conditions, No Project, Cumulative) are identified. However, this is why the EIR/S is so confusing. These are different issues of CEQA and should not be merged. The High Speed Rail project is mentioned; and then the table shows that this project is not considered in ANY of the three scenarios. Why is that the case? This is a project under construction and that would be for sure operating by 2060. Why was it eliminated from cumulative? The LURMP of the Delta Protection Commission (page 3D-68) is shown as NOT part of Existing Conditions but part of No Action and part of Cumulative. This is an existing document! Explain why this was not part of the Existing	Inadequate cumulative analysis Lack of data on critical land use documents

COMMENTS	TOPIC
Conditions but that biological opinions that were adopted after the NOP are included in Existing Conditions. The same applies to the Delta Plan of the Delta Stewardship Council. These are critical documents affecting land uses in the Delta. The No Project Conditions, at a minimum, should be updated to address these two critical land use documents.	
176. **Page 3D-73,** the Canada-Northwest California Transmission Project is shown as not considered in the Existing Conditions, No Action/No Project, or Cumulative Conditions. This is a clear example of they these three issues should not be discussed together. This transmission project is a perfect example of a project under consideration that could have large ramifications for the BDCP project area and that SHOULD be considered in the Cumulative analysis.	Inadequate cumulative analysis
177. **Page 3D-82, San Joaquin County General Plan,** shows that the San Joaquin County General Plan Update is not being considered for the Existing Conditions, No Project/No Action Conditions, or Cumulative Conditions. This is exactly what SHOULD be considered in the cumulative analysis. While the 2035 General Plan has not been adopted, the County has the 2010 General Plan which WAS adopted in 1992. This plan and identified land use changes should certainly be considered in the Cumulative Analysis of the EIR/S. The adopted General Plan for San Joaquin is not even mentioned in this table.	Missing information on adopted San Joaquin County General Plan Inadequate cumulative analysis
Appendices: Appendix 19	
178. This appendix provides the backup construction study provided by Fehr & Peers. In the first paragraph of the Introduction (Lines 5-10), the statement is made: "Identifying all the construction related activity for the BDCP with a high degree of certainty is challenging at this stage of project development for such a large and complex project." The text then goes on to say that the impact analysis is a "reasonable 'worst-case-scenario' of construction traffic" and that mitigation measures are "sufficiently broad to provide the BDCP proponents flexibility in the types of strategies that can be implemented to address construction traffic impacts...." This introductory wording does not give the reader confidence that the analysis is at all accurate or that the mitigation measures are geared towards likely impacts. If the entire EIR/S were at a programmatic level, this might be fine. But it's not. CM-1 has specific construction-traffic impacts and specific mitigation measures need to specifically address these. CEQA does not have Guidelines that suggest the need for "flexibility" on a broad scale. The comments below will address specific issues.	Lack of specificity Lack of detail for impact analysis Inadequate analysis for project
179. **Table 1 of Appendix 19:** CT-53 through CT-65 are all roadways within San Joaquin County. In addition, San Joaquin County has segments identified as SJ03 through SJ07, STK 01, and TRA 01. There are multiple roads within San Joaquin County that could be impacted. And many of these roads now operate at LOS C or worse during peak hours. The last two roads are already operating at LOS E as shown in Table 4 of Appendix 19. Tables of Appendix 19 says "Administrative Draft Report, Sept. 2013". Has this been updated and why was final report not included as Appendix 19?	Need final report
180. **Page 37 of Appendix 19, Lines 4-22:** This analysis says that "To reflect the change in traffic patterns between baseline conditions and the peak	Inappropriate baseline analysis

COMMENTS	TOPIC
construction period, background traffic volumes were developed by factoring up the baseline volumes based on traffic growth rates obtained from the following regional travel demand models...." Per the Neighbors for Smart Rail case, a "future baseline" is only appropriate to use if an analysis of existing conditions would detract from an EIR's effectiveness as an informational document, "either because an analysis based on existing conditions would be uninformative or because it would be misleading to decision makers and the public." Explain why an "existing baseline" condition was not assessed in this EIR/S or why it would be misleading to the decision makers. While it is understood that a "future baseline" would also be appropriate to assess, given the long construction period projected for the BDCP, this does not excuse the EIR authors from addressing the existing baseline. The authors used the term "Baseline Plus Background Growth"; however, doing this can easily result in underestimating impacts from the proposed project, not only for transportation impacts, but also for related air/noise impacts.	
181. **Page 37, Appendix 19:** The text states that "specific project trip routing is unknown at this time". If that is the case, how can a construction traffic impact analysis be adequate? The text states that the analysis assumes use of routes to provide the quickest and most direct access to surrounding major regional highways. However, in the example of spoils disposal, the construction vehicles may not even be accessing regional highways and they may need to rely on a variety of local roadways. This has not been factored into the analysis and needs to be explained.	Assumptions on trip distribution Lack of analysis on local roads Inadequate data to allow adequate analysis
182. **Section 2: Analysis Approach:** This section fails to identify how construction vehicle trips were calculated. There is no table showing number of trips associated with project components such as: spoils disposal; hauling of concrete from the batch plants to the site of the tunnels; construction vehicle workers; forebay construction/expansion; levee modification construction; barge unloading facilities. And these are only related to CM 1. What about trips associated with CM2-22. The EIR/S needs to include a clear identification of all trips generated by the project, both for construction and for operation and the reader needs to be informed of all assumptions related to trip generation.	Inadequate information on methodology and how construction trips were determined