

MIMI DUZENSKI  
Clerk of the Board

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October 27, 2015

By email to: [BDCPComments@icfi.com](mailto:BDCPComments@icfi.com)

BDCP/WaterFix Comments,  
P.O. Box 1919  
Sacramento, CA 95812

**San Joaquin County's Comments on  
the BDCP/WaterFix Partially Revised Draft Environmental Impact Report  
and Draft Environmental Impact Statement**

Dear Ms. Enos:

The San Joaquin County Board of Supervisors hereby submits the County's comments on the BDCP/WaterFix Partially Revised Draft Environmental Impact Report and Draft Environmental Impact Statement. These comments are also submitted as joint comments with the Central Delta Water Agency and South Delta Water Agency. Additionally, San Joaquin County joins in any comments which may be submitted independently by the Central Delta Water Agency and the South Delta Water Agency. Additionally, San Joaquin County incorporates by reference its previously submitted comments of July 25, 2014.

With nearly two-thirds of the Delta located in San Joaquin County, we are deeply concerned about the protection of water quantity and quality available within the Delta. We are equally concerned with the negative effects the BDCP/WaterFix will have on the County's communities, land use, infrastructure, agriculture and economy. Further, the elimination of any role for local oversight of the operation of WaterFix is wholly unacceptable.

San Joaquin County strongly urges that the State fully consider the County's comments and fully address the concerns and issues outlined in the following pages.

Sincerely,

A handwritten signature in dark ink, appearing to read "Katherine M. Miller", is written over a large, stylized circular flourish.

Katherine M. Miller, Chair  
San Joaquin County Board of Supervisors

Attachment

c: San Joaquin County's State and Federal Delegation  
San Joaquin County Board of Supervisors  
Monica Nino, County Administrator, San Joaquin County  
J. Mark Myles, County Counsel, San Joaquin County  
Kris Balaji, Director, Public Works, San Joaquin County  
Kerry Sullivan, Director, Community Development, San Joaquin County  
Timothy Pelican, Agricultural Commissioner, San Joaquin County

BEFORE THE BOARD OF SUPERVISORS OF THE COUNTY OF SAN JOAQUIN  
STATE OF CALIFORNIA

RESOLUTION

R-15-162

**Resolution Affirming San Joaquin County's Opposition to the BDCP/WaterFix,  
Approving the County's Comments to the Revised Draft EIR and Revised  
Supplemental EIS, Authorizing the Submission of those Comments to the  
Appropriate State and Federal Agencies and Reaffirming San Joaquin County's  
Support for the Delta Counties Coalition Principles**

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WHEREAS, the Sacramento - San Joaquin Delta (hereinafter Delta) is a unique natural and geographic feature of the State of California, and is the largest estuary on the Pacific Coast of the United States encompassing an area of over 730,000 acres with islands and tracts of rich fertile soil surrounded by miles of sloughs and winding channels protected by levees; and

WHEREAS, the Delta is one of the most productive agricultural regions in the United States, with approximately 80% of the Delta classified as Prime Farmland, as contrasted with 20% for all of California, and Delta agriculture has an economic impact of roughly 9,700 jobs and \$1.4 billion in economic output in the five Delta counties, but when value-added manufacturing such as wineries, canneries and dairies are included, has a total Statewide economic impact of approximately 25,000 jobs and \$5.372 billion in economic output; and

WHEREAS, the islands and waterways of the Delta provide habitat for many species of plants and animals, including several listed as either threatened or endangered under State and Federal endangered species laws; and

WHEREAS, recreation in the Delta generates roughly 12 million visitor days of use and approximately \$250 million in visitor spending each year, with Delta recreation and tourism supporting over 3,000 jobs in the five Delta counties; and

WHEREAS, the Delta is a critical infrastructure and transportation hub for the regional and State economy, with important east-west highway and rail facilities, major electrical transmission lines connecting California to the Pacific Northwest, and gasoline and aviation fuel pipelines crossing the Delta supplying large portions of Northern California and Nevada; and

WHEREAS, two-thirds of the legal Delta is located within San Joaquin County and the Delta comprises one-third of this County's total area, meaning that the health and vitality of the Delta is critically important to the economic health, culture and social fabric of San Joaquin County and its citizens; and

WHEREAS, the Delta is also the key conveyance point for California's two largest water projects, the Central Valley Project (CVP) and the State Water Project (SWP) with massive pumps in the Southern Delta near Tracy, California which transport water from the Delta primarily to farms in Central California and municipalities in Southern California; and

WHEREAS, because of the failure to complete the ultimate build-out of water supplies for the CVP and SWP, leaving the system approximately 5 million acre-feet short of water per year, coupled with oversubscription by the water contractors and the water system's State and Federal operators of the water that is available, this has resulted in degradation of both the quality and quantity of water in the Delta and harm to the ecology and economy of the Delta, and

WHEREAS, the water contractors and the State and Federal operators of the CVP and SWP have over the years sought to find ways to transport water directly from the Sacramento River to the pumps near Tracy in order to obtain a greater quantity and quality of water than they could pump out of the South Delta, which efforts would result in further degradation and destruction of the Delta and economic and social harm to the citizens of San Joaquin County, and

WHEREAS, those water interests proposed a Peripheral Canal which the voters voted down in 1982, but are now promoting a new twin-tunnels project which is capable of diverting huge quantities of fresh water directly from the Sacramento River to the Tracy pumps, but this time the proponents of the twin-tunnels project have attempted to hide their massive and incredibly expensive water project inside a so-called conservation plan known as the Bay Delta Conservation Plan (BDCP); and

WHEREAS, for the reasons set forth in the documents attached hereto and adopted herein as the County's comments to the BDCP/WaterFix Revised Draft Environmental Impact Report (RDEIR) - Supplemental Draft Environmental Impact Statement (SDEIS), the BDCP/WaterFix Draft RDEIR-SDEIS fails to meet the legal requirements for a valid EIR-EIS, and also fails to meet the co-equal goals of water supply reliability for the State and restoration of the health of the Bay-Delta ecosystem as required by the Delta Reform Act of 2009; and

WHEREAS, there are less expensive and more effective ways than the twin tunnels and the BDCP/WaterFix to address the legitimate water needs of the various water interests in the State of California without needlessly sacrificing the Delta and San Joaquin County, or pitting Northern California against Southern California and farmer against farmer;

NOW, THEREFORE, BE IT RESOLVED that this Board of Supervisors:

Does hereby reaffirm its opposition to any isolated water conveyance system in the Delta such as the twin-tunnels project, and further specifically opposes the BDCP; and

Does hereby approve and adopt the documents attached hereto as San Joaquin County's official comments to the BDCP/WaterFix Draft RDEIR and SDEIS; and

Does hereby authorize submission of these adopted comments to the appropriate State and Federal agencies, both as comments from San Joaquin County and as joint comments with the Central Delta Water Agency and the South Delta Water Agency; and

Does hereby join in any comments which will be filed by the Central Delta Water Agency and South Delta Water Agency, and further that County staff is authorized to supplement the County's comments between today and October 30, 2015, to the extent that the comments submitted by others or other information comes to light which in staff's discretion should be included in the County's comments; and

Does reaffirm the County's support for the principles adopted by the Delta Counties Coalition; and

Does hereby direct staff to take all necessary and appropriate actions to carry out the direction and intent of this Resolution.

PASSED AND ADOPTED 10/20/2015, by the following vote of the Board of Supervisors, to wit:

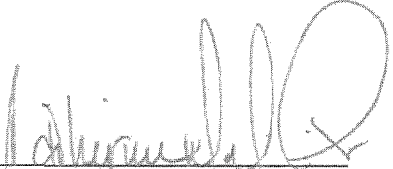
AYES: Winn, Elliott, Villapudua


NOES: None

ABSENT: Miller

ABSTAIN: None

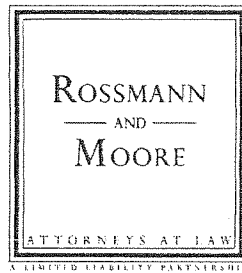
ATTEST: MIMI DUZENSKI  
Clerk of the Board of Supervisors  
Of the County of San Joaquin,  
State of California

  
KATHERINE M. MILLER  
Chair of the Board  
of Supervisors  
State of California

By   
Deputy Clerk



(05/2015)



THE BAY-DELTA CONSERVATION PLAN/  
CALIFORNIA WATER FIX PARTIALLY RECIRCULATED DRAFT EIR/  
SUPPLEMENTAL DRAFT EIS

SUMMARY OF FOUNDATIONAL LEGAL ISSUES

REPORT ON JULY 2015 PUBLIC REVIEW DRAFTS

Roger B. Moore  
Antonio Rossmann  
Rossmann and Moore, LLP  
2014 Shattuck Ave.  
Berkeley, CA 94704

October 15, 2015

**SYNOPSIS: THE RECIRCULATED/SUPPLEMENTAL EIR-EIS  
CONFIRMS THAT THE “CALIFORNIA WATER FIX” WOULD IMPOSE  
UNACCEPTABLE IMPACTS AND FAIL TO ADVANCE THE STATE’S  
FUTURE NEEDS**

1. Rebranding BDCP as the “California Water Fix” fails to fix the central fallacy of the Delta tunnels project: that this massive proposed system, which would greatly reduce the natural flow of water through the Delta, can meet the 2009 Delta Reform Act’s protections, including the “co-equal” goals of protecting, enhancing and restoring the Delta ecosystem and providing reliable water.
2. Despite monumental cost and complexity, the Delta tunnels project creates no new water supply. Even as revised, it compounds reliance on water exports, to the detriment of Delta agriculture, fisheries, and wildlife, as well as communities and water users within and upstream of the Delta. The project would divert resources needed for investments in long-term water reliability, water quality, reuse, storage, drought and flood protection, and ecosystem improvements.
3. The project remains a triumph of project advocacy over sound science. Proposed revisions in the project were made only after the Environmental Protection Agency (EPA), the Delta Independent Science Board (Science Board), and other scientific reviewers undermined the notion that BDCP met the federal and state requirements for a “conservation” plan. EPA indicated that BDCP’s massive conveyance system could negatively impact Delta water quality and may violate the Clean Water Act. The Science Board in 2014 compared the EIR-EIS’s water analysis to “an orchestra playing music without a conductor and with the sheets of music sometimes shuffled.” In its 2015 report on the Partially Recirculated Draft EIR-Supplemental Draft EIS (RDEIR-SDEIS), the Science Board reconfirmed that despite recent reshuffling, the project and its environmental review continue to flout major scientific criticisms.
4. The revised project relies on and compounds a deceptive, incomplete and piecemealed program assessment. It removes conservation measures and drastically reduces habitat restoration and species protection, consigning many major efforts to a vague parallel program, “Eco-Restore,” and to poorly defined “environmental commitments.” Yet the project also inconsistently relies upon many of these future efforts for mitigation of project harm. As revised, the project still lacks crucial details and complete study, which the proponent agencies seek to defer until after the twin tunnels are approved and built.
5. A Legislative Analyst’s Office report underscored BDCP’s fragile economic and fiscal footing, noting the likelihood of significant cost overruns and uncertain continued financial support from water contractors. As revised, the project further complicates BDCP’s shaky economic foundations. It abandons efforts to obtain

long-term regulatory assurances of water deliveries, one of the cornerstones of its earlier economic assessment, and risks major costs being shifted to taxpayers.

6. The project continues to rely on phantom “paper” water, rather than actual supplies for generations to come, ensuring future conflicts over water rights. It 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.

7. The project continues to assign state and federal water contractors an excessive role in plan governance. As revised, it further 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.

8. The RDEIR-SDEIS still 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. It improperly consigns mitigation to vague programmatic analysis, and improperly precludes site-specific assessment of conveyance infrastructure. It fails to fully address a host of new impacts from the revised project, such as large new areas of Reusable Tunnel Material (RTM) that could result in significant truck traffic. Rather than analyzing a reasonable range of project alternatives, the RDEIR-SDEIS focuses on multiple versions of tunnels. As confirmed by the Science Board, this review also fails to fairly test project performance in the context of climate change and other conditions affecting future conditions in the Delta.

9. With the RDEIR-SDEIS’s addition of more than 8,000 new pages to an earlier 40,000 pages of poorly organized supporting documents, the project 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.



# TABLE OF CONTENTS

*page*

I.	REPACKAGING THE BDCP RDEIR/SDEIS AS THE “BDCP/CALIFORNIA WATER FIX” RDEIR/SDEIS CANNOT CURE THE DELTA TUNNELS PROJECT’S VIOLATION OF THE 2009 DELTA REFORM ACT.....	1
A.	The Project RDEIR/SDEIS, By Necessitating Delta Flow Reductions, Defeats the “Co-Equal” Goal of Protecting, Enhancing and Restoring the Delta Ecosystem.....	3
B.	The Project RDEIR/SDEIS, By Reliance on Unsustainable “Paper Water” Deliveries, Fails to Protect the Co-Equal Goal of Improving Reliability.....	5
II.	REPACKAGING BDCP RDEIR/SDEIS AS THE “BDCP/CALIFORNIA WATER FIX” RDEIR/SDEIS CANNOT CURE THE DELTA TUNNELS PROJECT’S SCIENTIFIC AND INSTITUTIONAL DEFICIENCIES.....	7
A.	In Derogation of the Criticisms of Public Agencies and Independent Scientific Reviewers, the Project RDEIR/SDEIS Lacks Support in the Best Available Science.....	7
B.	The Project RDEIR/SDEIS Drastically Reduces its Commitment to Conservation, while Compounding Reliance on Segmented Program Assessment.....	8
C.	The RDEIR/SDEIS and Revised Project Fail to Provide for Responsible Project Governance, Further Marginalizing Delta Counties and Communities and the Public Interest.....	10
D.	The Project RDEIR/SDEIS Promotes a Distorted Version of “Adaptive Management” to Evade Accountability for Major Risks.....	12
E.	The Project RDEIR/SDEIS Cannot Support a Finding that the California Water Fix is Unlikely to Jeopardize Protected Species or Adversely Modify their Critical Habitat.....	13
F.	The Project RDEIR/SDEIS Cannot Support a Finding of Consistency with the Delta Plan, or Requirements for Water Quality Certification or Wetlands Protection.....	14

III.	THE DELTA INDEPENDENT SCIENCE BOARD HAS RECONFIRMED THE LACK OF SCIENTIFIC AND LEGAL FOUNDATION FOR THE RDEIR/SDEIS AND ITS PROJECT.....	15
A.	Overview: Neither the EIR/EIS nor RDEIR/SDEIS Provide Obligatory Scientific Support for the Delta Tunnels Project.....	16
B.	Crucial Details Remain Missing on the Adaptive Management Process, Collaborative Science, Monitoring, and the Resources for These Efforts.....	19
C.	Analysis is Lacking on Landscape-Scale Restoration, Restoration Timing and Funding, and the Strategy of Avoiding Damage to Existing Wetlands.....	20
D.	Analysis is Lacking on How Levee Failures Would Affect Water Operations, and How the Implemented Project Would Affect the Economics of Levee Maintenance.....	20
E.	Deficiencies Remain as to the Treatment of Uncertainties and their Consequences.....	21
F.	Linkages Among Species, Landscapes, and Management Actions are Inadequately Addressed.....	21
G.	The Relationship of Climate Change to Project Operation is Underestimated and Lacks Essential Analysis.....	22
H.	Effects of Changed Water Availability and Its Environmental Consequences are Inadequately Addressed (Including Consequences for the San Joaquin Valley Agriculture).....	23
I.	Assessment of Alternatives Remains Deficient.....	23
J.	Environmental Impacts of the Project Must be Assessed More Completely and Clearly.....	23
IV.	THE RDEIR/SDEIS AND ITS PROJECT RELY ON A SHIFTING, INCONSISTENT AND INACCURATE PROJECT DEFINITION.....	24
A.	Legal Requirements for Environmental Review.....	24
B.	Foundational Project Definition Problems in the RDEIR/SDEIS and its Project.....	24

1.	Misleading and Inconsistent References to "Proposed Action," "Conservation," "Restoration" and "Mitigation."	24
2.	Incomplete and Segmented Project Assessment	26
3.	Unequal Status of Non-Conveyance Project Components	27
4.	Rote Assumption of Regulatory Compliance	28
V.	THE RDEIR/SDEIS AND PROJECT RELY ON A DEFECTIVE ANALYSIS OF THE PROJECT BASELINE	29
A.	Legal Requirements for Environmental Review	29
B.	Baseline Problems in the RDEIR/SDEIS and Project	29
1.	Overview: Failure to Fully Account for Existing Conditions, and Defective Assessment of Future Conditions	29
2.	Reliance Upon Multiple Inconsistent Baselines	30
3.	Reliance On Speculative "No Action" Alternative	32
4.	Inconsistent and Arbitrary Assumptions About Compliance With Laws and Regulations	32
5.	Failure to Analyze Potential Water Rights Conflicts	33
6.	Fundamentally Flawed Cost-Benefit Analysis	33
VI.	THE RDEIR/SDEIS AND PROJECT FAIL TO IDENTIFY AND IMPLEMENT MITIGATION AND ALTERNATIVES	34
A.	Legal Requirements for Environmental Review	34
B.	The RDEIR/SDEIS and Project Improperly Rely on Vague, Unaccountable, and Unlawfully Deferred Mitigation Measures	35
C.	The RDEIR/SDEIS and Project Fail to Identify and Implement a Reasonable Range of Program Alternatives	36

D.	The Project and EIR/EIS Fail to Support Exclusion of Reasonable and Prudent Alternatives.....	37
VII.	THE RDEIR/SDEIS AND THE PROJECT FAIL TO CONSISTENTLY INCORPORATE THE CONSEQUENCES OF DROUGHT, TRANSFERS, GROUNDWATER DEPLETION AND CLIMATE CHANGE.....	38

In June 2014, the San Joaquin County Board of Supervisors' EIR/EIS comments included a *Summary of Foundational Issues*, submitted also on behalf of Central Delta Water Agency and South Delta Water Agency (San Joaquin Agencies' 2014 Summary). This new summary prepared for the San Joaquin Agencies identifies foundational factual and legal issues in the July 2015 Bay Delta Conservation Plan/California Water Fix Partially Recirculated Revised Draft EIR/Supplemental Draft EIS (RDEIR/SDEIS). Unless noted otherwise, comments in the 2014 summary remain relevant to review of the RDEIR/SDEIS.

# I. REPACKAGING THE BDCP RDEIR/SDEIS AS THE "BDCP/CALIFORNIA WATER FIX" RDEIR/SDEIS CANNOT CURE THE DELTA TUNNELS PROJECT'S VIOLATION OF THE 2009 DELTA REFORM ACT.

The RDEIR/SDEIS tinkers with the mechanics of the proposed twin tunnel conveyance system under the guise of "refinements" to BDCP's Alternative 4 (RDEIR/SDEIS, ES-7). However, the project changes focus more on legal reclassification rather than engineering advancements or environmental protection. Despite being portrayed as a "response" to input from other agencies and members of the public, the new preferred alternative (Alternative 4A, or "project" in these comments) concededly still includes "all of the conveyance components" that principally prompted public and agency objections to BDCP (Alternative 4). (*Id.*)

The main "fix" in the new project effectively removes the "conservation plan" from the Bay Delta Conservation Plan. Alternative 4A abandons any pretense of qualifying as a habitat conservation plan (HCP) or natural community conservation plan (NCCP), or meeting the requirements for such plans under federal and state endangered species laws. (*Id.*, ES-7, 8; cf. Wat. Code, § 85053 (defining "Bay Delta Conservation Plan" or "BDCP" as a "multispecies conservation plan").

Put another way, faced with the historic opportunity to identify a project worthy of designation as a "conservation plan"—one capable of improving rather than worsening conditions for Delta counties and communities—the BDCP agencies have instead devised a project variation chiefly designed to lessen regulatory hurdles preceding approval. However repackaged and reclassified, this attempted "fix" leaves intact the core effort to rationalize an unsustainable, harmful and exceptionally costly conveyance system that would further reduce the natural flow of fresh water through the Sacramento-San Joaquin Delta. As with Alternative 4A, the redefined project's proposed conveyance is incompatible with the structure and specific requirements of the Delta Reform Act of 2009 (Wat. Code, §§ 85000, *et seq.*)

Adopted after years of attempted reforms failed to stop the precipitous decline of pelagic organisms and forestall major risks to communities and farms in

Delta counties, the Delta Reform Act arose out of the Legislature's recognition that "existing Delta policies are not sustainable," and that "[r]esolving the crisis requires fundamental reorganization of the state's management of Delta watershed resources." (Wat. Code, § 85001(a).) The intent to provide a "more reliable water supply for the state" cannot be separated from its context in the Delta Reform Act, in which the Legislature simultaneously sought to "provide for the sustainable management of the Sacramento-San Joaquin Delta ecosystem," to "protect and enhance the quality of water supply from the Delta", and to "establish a governance structure that will direct efforts across state agencies to develop a legally enforceable Delta Plan." (Wat. Code, §85001(c).)

The Legislature's recognition of the need to improve conditions in the Delta and protect its communities and natural resources, rather than cause their further deterioration and decline, is also evident in the Delta Reform Act's language addressing interpretation of its core provision—the "coequal goals" as "providing a more reliable water supply for California" and "protecting, restoring, and enhancing the Delta ecosystem." (Wat. Code, § 85054.) 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." (Wat. Code, § 85054.) Rather than favoring new water conveyance infrastructure over protection, restoration and enhancement of the Delta ecosystem, the Legislature identified in Water Code section 85020 the following objectives "inherent" in the coequal goals for management of the Delta:

- (a) Manage the Delta's water and environmental resources and the water resources of the state over the long term.
- (b) Protect and enhance the unique cultural, recreational, and agricultural values of the California Delta as an evolving place.
- (c) Restore the Delta ecosystem, including its fisheries and wildlife, as the heart of a healthy estuary and wetland ecosystem.
- (d) Promote statewide water conservation, water use efficiency, and sustainable water use.
- (e) Improve water quality to protect human health and the environment consistent with achieving water quality objectives in the Delta.
- (f) Improve the water conveyance system and expand statewide water storage.
- (g) Reduce risks to people, property, and state interests in the Delta by effective emergency preparedness, appropriate land uses, and investments in flood protection.
- (h) Establish a new governance structure with the authority, responsibility, accountability, scientific support, and adequate and secure funding to achieve these objectives.

Similarly, Water Code section 85022(c) provides the following context in delineating consistency of actions with the Delta Plan:

(1) The Delta is a distinct and valuable natural resource of vital and enduring interest to all the people and exists as a delicately balanced estuary and wetland ecosystem of hemispheric importance.

(2) The permanent protection of the Delta's natural and scenic resources is the paramount concern to present and future residents of the state and nation.

(3) To promote the public safety, health, and welfare, and to protect public and private property, wildlife, fisheries, and the natural environment, it is necessary to protect and enhance the ecosystem of the Delta and prevent its further deterioration and destruction.

(4) Existing developed uses, and future developments that are carefully planned and developed consistent with the policies of this division, are essential to the economic and social well-being of the people of this state and especially to persons living and working in the Delta.

Rather than enabling the BDCP agencies to favor new conveyance infrastructure and potential expansion of water exports over long-term protection of the Delta, the Delta Reform Act acknowledges a broader legal context that prevents the agency from reducing its decision to a parochial policy choice. Water Code section 85023 therefore clarifies that “[t]he longstanding constitutional principle of reasonable use and the public trust doctrine shall be the foundation of state water management policy and are particularly important and applicable to the Delta.” (See also *National Audubon Society v. Superior Court* (1983) 33 Cal.3d 419 (public trust doctrine); Cal. Const., art. X, § 2 (reasonable use doctrine); Wat. Code, §§ 12200-12205 (Delta Reform Act of 1959).)

Finally, the Delta Reform Act records the state’s commitment to “*reduce reliance on the Delta in meeting California’s future water supply needs* through investing in a statewide system of improved regional supplies, conservation, and water use efficiency.” (Wat. Code, § 85021 (emphasis added).)

A. The Project RDEIR/SDEIS, By Necessitating Delta Flow Reductions, Defeats the “Co-Equal” Goal of Protecting, Enhancing and Restoring the Delta Ecosystem

Among other subjects, the San Joaquin Agencies’ 2014 Summary pointed out that BDCP’s commitment to conveyance infrastructure expected to *increase* exports out of the Delta beyond already-unsustainable levels cannot possibly qualify as a “conservation measure” in a HCP or NCCP, despite BDCP’s convoluted efforts to designate it as CM-1 (*Id.*, pp.18-20.)

The revised project would dispense with the need for that single legal fiction, but cannot escape overwhelming evidence that implementing the proposed conveyance in either variation would violate the Delta Reform Act’s “coequal”

commitment to protect, enhance and restore the Delta ecosystem, and abrogate its historic commitment to protect and enhance the “unique cultural, recreational, natural resource, and agricultural values of the Delta as an evolving place.” (Wat. Code, § 85054.) The following sources highlight the role and requirements of Delta flow and their crucial relationship to the proposed tunnel system:

- The State Water Resources Control Board has long since established 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. The best available science suggests that “current flows are insufficient to protect public trust resources” served by the Delta, including protected fisheries and their habitats and a host of other beneficial uses. (State Board, *2010 Delta Flow Criteria Report*, pp. 2- 5.)
- 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 (DFW) 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).)
- EPA’s August 26, 2014 letter addressing BDCP and its environmental review (page 2) underscored major environmental risks from BDCP, and emphasized “*the need for water availability and greater freshwater flow through the Delta.*” Similarly, the State Water Resources Control Board’s July 29, 2014 BDCP and EIR/EIS comments



(page 12) noted that the justification for this limited range of Delta outflow scenarios is not clear, given that significant information supports the need for more Delta outflow for the protection of aquatic resources, and the substantial uncertainty that other conservation measures will be effective in reducing the need for Delta outflow. *For this reason a broader range of Delta outflows should be considered for the preferred project.*” Other commenters, last year and in previous reviews, have expressed similar concerns after reviewing relevant scientific research. (See, e.g., United States Army Corps of Engineers, comment letter, July 16, 2014 (impacts to United States waters); Comment letter of Environmental Water Caucus, June 11, 2014 (scientific analysis of BDCP and Delta flow issues); National Marine Fisheries Service, *Progress Assessment and Remaining Issues Regarding the Administrative Draft BDCP Document*, April 4, 2013)(BDCP impacts on Delta flows).

- The RDEIR/SDEIS indicates that the revised project, like BDCP earlier, would fail to improve Delta flows, increase average exports, and risk further deterioration of flows, making them worse during critical time periods. (See, e.g., RDEIR/ SDEIS, 2015, section 4.3.1, Figures 4.3.1-15, -16, -18, -19, -20, and -21; Figures 4.3.2-7 and 4.3.2-8; Appendix B, tables B7-28 to B7-34; pp. B-357 to B-370.)

Concerns remain, detailed in specific comments, about whether the RDEIR/SDEIS has fully accounted for the project’s adverse impacts on flows through the Delta. Even without that more refined analysis, however, impacts acknowledged in the RDEIR/SDEIS still show that that the proposed project, which would worsen rather than improve flows through the Delta, remains on a collision course with Delta Reform Act’s “coequal” provisions designed to protect the Delta.

Reviewed in context, the revised project would turn BDCP, in both the “Bay-Delta” and “conservation plan” aspects, into a complete oxymoron, incapable of either protecting the Bay-Delta or legally qualifying as a “conservation plan.” The RDEIR/SDEIS reclassifies BDCP’s non-conveyance conservation measures, either as segmented components of Eco-Restore or as similarly vague “environmental commitments.” However, none of these elliptical “commitments” change the twin tunnel project’s central and continuing reality: building new infrastructure risking further reductions of flows through the Delta is fundamentally inconsistent with both the well-documented needs of the Delta ecosystem and fulfillment of the State’s commitment to ensure its protection, restoration and enhancement.

#### B. The Project RDEIR/SDEIS, By Reliance on Unsustainable “Paper Water” Deliveries, Fails to Protect the Co-Equal Goal of Improving Reliability.

Having undermined one of the two “coequal goals” in its disregard of its Delta protection requirements, the revised project also lacks credibility in advancing

the second goal of “a more reliable water supply for California.” (Wat. Code, §85054.) Commenting on the EIR/EIS, San Joaquin County and its water agencies took issue with BDCP’s reliance on “paper water” assumptions in its delineation of project objectives. (*Op. cit.* at pp. 19-20.) The RDEIR/SDEIS fails to address this flaw. The revised draft confirms the BDCP agencies’ refusal to conduct further modeling testing the reality of its water supply assumptions identified below. This refusal is particularly remarkable, considering the draft’s heavy reliance on now-outmoded operational assumptions and the proliferation of recent research on drought and climate’s consequences for water supply, and the implications of new legal mandates not yet existing at the time of the previous draft—notably, enactment in 2014 of the transformative Sustainable Groundwater Management Act (SB 1168, ch. 346; AB 1739, ch. 347; SB 1319, ch. 348), with major supply consequences for the Delta region.

Ignoring the need for a disciplined account of the project’s water supply consequences, the RDEIR/SDEIS reflects the BDCP agencies’ unjustified confidence in the project’s contribution to reliable deliveries. (See, e.g., section 4.3 and Appendix 5A.) The Water Fix statement of project objectives and project continues to rely upon a fictitious and unattainable ambition to “restore and protect” the SWP and CVP’s nonexistent ability to deliver “up to full contract amounts....” (RDEIR/SDEIS, p. 1-8.) The revised/supplemental draft actually exposes the fallacy of this vaunted rationale, by reducing it to impotency with “sweet nothing” qualifiers: (1) “when hydrologic conditions result in the availability of sufficient water”; and (2) “consistent with the requirements of state and federal law and the terms and conditions of water delivery contracts and other existing applicable agreements.” (*Id.*)

In contrast to the unqualified statement linking the project to delivery of “full contract” amounts, these tautological qualifiers lack in critical details. First, they fail to disclose that the SWP and CVP cannot capably or consistently deliver these contractual amounts, even under relatively favorable hydrologic conditions. Second, they fail to mention or meaningfully address problems of oversubscription and potentially conflicting claims on supply affecting the state and the Delta region in particular. (See, e.g., T. Grantham and J. Viers, *100 years of California’s water rights system: patterns, trends and uncertainty*, 9 ENVIRON. RES. LETT. 084012 (2014); available at [https://watershed.ucdavis.edu/files/biblio/WaterRights\\_UCDavis\\_study.pdf](https://watershed.ucdavis.edu/files/biblio/WaterRights_UCDavis_study.pdf).) Lastly, the RDEIR/SDEIS, like its predecessor, lacks substantive analysis of potential conflicts between downstream users seeking deliveries of “full” contract amounts and allocations to instream uses and senior water rights holders.

The project cannot credibly base its water supply contributions on “paper water” contract amounts exceeding reliable deliveries. (See, e.g., *Planning and Conservation League v. Department of Water Resources* (2000) 83 Cal.App.4th 892, 912 (criticizing the resulting “aura of unreality”); *Vineyard Area Citizens for Responsible Growth v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 432 (“speculative sources and

unrealistic allocations are insufficient bases for decision-making under CEQA”).) Thus, neither the project’s underlying plan nor the EIR/EIS analyze the expectations stemming from overreliance on water contract amounts (either permanent or “interruptible” allocations), or the environmental consequences of furthering that expectation. Overreaching assumptions from Central Valley Project contracts were recently rejected in *San Luis & Delta-Mendota Water Authority v. Jewell*, (9th Cir. 2014) 747 F.3d 581, cert. denied (2015) 135 S. Ct. 948, 950 (*San Luis v. Jewell*); this ruling vindicated the reliance of the U.S. Fish and Wildlife Service (USFWS) and Bureau of Reclamation (BOR) on the 2008 biological opinion (2008 BiOp) to which the Central Valley Project contracts must conform. (*Id.* at 640, fn. 45.)

## II. REPACKAGING BDCP RDEIR/SDEIS AS THE “BDCP/CALIFORNIA WATER FIX” RDEIR/SDEIS CANNOT CURE THE DELTA TUNNELS PROJECT’S SCIENTIFIC AND INSTITUTIONAL DEFICIENCIES.

### A. In Derogation of the Criticisms of Public Agencies and Independent Scientific Reviewers, the Project RDEIR/SDEIS Lacks Support in the Best Available Science.

Anchoring the project in the “best available science” remains essential to ensure the project’s adherence to multiple legal requirements, including laws protecting listed species and water quality. (See, e.g., H. Doremus, *The Purposes, Effects and Future of the Endangered Species Act’s Best Available Science Mandate* (2004) 34 ENVTL. LAW 397; J.B. Ruhl, *Ecosystem Services and the Clean Water Act: Strategies for Fitting New Science into Old Law* (2010) 40 ENVTL. LAW 1481.)

In the RDEIR/SDEIS, the BDCP agencies applaud themselves for consistently adhering to the “best available science.” (Appendix G, p. G-4.) Elevating this promotional statement to surreal extremes, the revised draft claims the BDCP agencies have developed the project on this basis “since 2006” and have undertaken “an unprecedented commitment to public access and government transparency.” (*Id.*)

In at least four respects, the project and its review plainly fail to honor the BDCP agencies’ self-professed regard for the best available science. First, the RDEIR/SDEIS is conspicuously lacking in scientific analysis supporting its “best available science” claims. Appendix G mistakenly focuses on the high number of documents and meetings, while failing to reference and confront the torrents of critical scientific reviews of the project and its BDCP variations between 2006 and the present.

Second, scientific criticisms since 2006 belie the RDEIR/SDEIS’s benign claims. Evidence of the Delta tunnels project’s disconnect with scientific reality in addressing flows through the Delta and other key environmental issues have come

from numerous commenters, and reports of National Research Council, the EPA, NMFS, USFWS, and the State Board, among others. Last year, EPA indicated that BDCP's massive proposed conveyance system could negatively impact Delta water quality and may violate the Clean Water Act. In 2014 and 2015 reports respectively addressing the EIR/EIS and RDEIR/SDEIS, addressed more thoroughly in section III, *infra*, the Science Board identified many scientific deficiencies in the project review. The 2015 report, which finds the deficiencies severe enough to undercut the review's usefulness for decision-making, confirms that the current project and its environmental review continue to flout major scientific criticisms.

Third, the project review fails to match the RDEIR/SDEIS's hyperbolic claim of unprecedented public access and transparency. While providing extensive access to agency and consultant-prepared documents, the BDCP agencies excluded critical public comments during key periods of review. During the comment period on the BDCP EIR/EIS last year, the BDCP website's "correspondence" section denied that access, offering the dubious premise that allowing it would not "maintain the integrity" of the public review period. The RDEIR/SDEIS, which acknowledges changing the project in response to "numerous comments" on the EIR/EIS (ES-2), fails to make these comments available or provide even draft responses.

Finally, the RDEIR/SDEIS fails to apply the detailed regulatory standards for adherence to the "best available science" in the context of BDCP review. In either the Alternative 4 or Alternative 4A variations, the project constitutes a "covered action" under Water Code 85057.5 for purposes of determining consistency with Delta Plan, whose prerequisites include use of a "best of available science" standard. (Wat. Code, § 85302(g).) The Delta Stewardship Council has adopted a definition and guidelines to clarify the steps needed to adhere to this standard and the relevant criteria, including relevance, inclusiveness, objectivity, transparency, timeliness, and peer review. (23 Cal. Code Regs., § 5001(f), appx. 1A.) Instead of applying these regulatory standards, the RDEIR/SDEIS uses "best available science" as if it were a marketing term, rationalizing a review that has often lacked transparency and has thus far failed to adhere to the best available science.

B. The Project RDEIR/SDEIS Drastically Reduces its Commitment to Conservation, while Compounding Reliance on Segmented Program Assessment.

In the RDEIR-SDEIS's descriptions of the BDCP agencies' new "preferred" project (Alternative 4A), the project's first and foremost objective is to construct and operate a new conveyance system for the "movement of water" to exporters south of the Delta. (See, e.g., ES-6, 1-7.) The new "preferred" alternative (4A) drastically reduces the project's conservation commitments and is short on content that would even minimally preserve, much less enhance or restore, the Delta ecosystem. As just one illustration, moving to Alternative 4A shrinks the project's commitment to "tidal

wetlands restoration would shrink from 65,000 acres (Alternative 4) to “up to 59” acres (ES-17; 4.1-15 (i.e., up to 59, not 59,000).) Even without considering the mitigation and financing problems addressed in specific comments below, the new project would, by the RDEIR-DEIS’s concession, produce more than fifty unmitigated significant environmental impacts, most of whose impacts would be heavily concentrated within Delta counties. (ES 40, Table ES-9.)

Adherence to laws protecting species and communities, and environmental review requirements under NEPA and CEQA, first requires complete and accurate disclosure of the entire project under review, and avoidance of segmented analysis. (See, e.g., *Great Basin Mine Watch v. Hankins* (9th Cir. 2006) 456 F.3d 955, 969; 40 C.F.R. 1508.25 (NEPA); *San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645, 654; CEQA Guidelines, § 15124.) Had the BDCP agencies sought to candidly pursue priority for additional exports over the Delta ecosystem and its farms and communities, they might at minimum have acknowledged this would require legal changes and sought legislative and voter approval. The RDEIR/SDEIS follows a more convoluted path, adding new layers of unlawful segmentation and inconsistent description to an already disjointed project assessment. For example:

- The RDEIR/SDEIS indicates that Alternative 4A transforms some of BDCP’s remaining conservation provisions—CM 3, 4, 6-12, 15, 16—from “conservation measures” (a term that retains legal accountability under HCP and NCCP laws) to “environmental commitments,” a more ambiguous term lacking commensurate accountability.
- The RDEIR/SDEIS refuses to analyze these “environmental commitments” with anything more than an opaque program overview, and concedes that “[s]pecific locations for implementing many of the activities associated with these commitments have not been identified at this time.” (RDEIR/SDEIS, 4.1-15.) Whether and how these measures would be implemented and paid for, and whether some may produce conflicts or adverse results in Delta counties, remains unknown.
- The RDEIR/SDEIS adds further confusion to the project’s murky relationship to conservation. It concedes, although vaguely, that Alternative 4A consigns much of what had been project conservation measures to EcoRestore and other “separate projects and programs,” including pending activities lacking project-level accountability that are associated with 2008 and 2009 biological opinions and the California Water Action Plan. (RDEIR/SDEIS, 4.1-15.) However, it inconsistently describes these measures, insisting both that they are “separate from, and independent of the project,” yet also part of a broader “BDCP conservation strategy” that will continue to be pursued. (*Id.*)
- The RDEIR/SDEIS fails to disclose the extent of Eco-Restore commitments that are already slated for implementation. As confirmed in a July 2015 meeting at

Metropolitan Water District, only a small portion of EcoRestore whose funding remains uncertain extends beyond existing obligations.

- The RDEIR/SDEIS fails to disclose the extent of the project's interrelationship with other actions, including review of coordinated operation of the state and federal water projects, and the State Board's pending review of Delta water quality requirements.

C. The RDEIR/SDEIS and Revised Project Fail to Provide for Responsible Project Governance, Further Marginalizing Delta Counties and Communities and the Public Interest.

The San Joaquin Agencies' 2014 Summary (pages 2-9) identified major defects in the governance and implementation structure then proposed for BDCP/Alternative 4, focusing on relevant portions of the 2013 Public Review Draft BDCP (particularly chapters 6-8) and the draft Implementing Agreement released in May 2014. These defects included the following with respect to analysis of Alternative 4:

- BDCP and the Implementing Agreement generally created major gaps in accountability for project implementation, mitigation and financing.
- BDCP's governance structure would marginalize Delta counties and stakeholders, limiting them to service along with many others on an advisory Stakeholder Council, even as unnamed water contractor representatives were assigned decision-making authority as part of an "authorized entity group" (AEG).
- BDCP's approach to governance and implementation would weaken accountability over the state and federal water projects, hampering sound governance without even securing legislative approval, contract amendments, or approval by the California Water Commission.
- BDCP agencies failed to adopt the alternative governance proposal of the Delta Counties Coalition, which would have secured a voice for each Delta county on decision-making bodies with project-related oversight, implementation and approval authority.

In the RDEIR/SDEIS, the BDCP agencies have continued to ignore the Delta Counties' Coalition's recommendations, and all the deficiencies specified above remain relevant at least for Alternative 4. Daunting as these governance problems are, however, the revised project (Alternative 4A) creates an even more unsatisfactory and unaccountable condition. Incredibly, the RDEIR/SDEIS fails to establish that *any* specific governance provisions protecting Delta counties and stakeholders that apply to the revised project (Alternative 4A). Appendix D of the RDEIR/SDEIS, which

ostensibly provides all “substantive BDCP” revisions, sidesteps specific discussion of Delta county protections, and only cryptically suggests that “*most* of the revisions presented below would also be applicable” to Alternatives 4A, 2D and 5A. (Appendix D, 1-1.)

Revisions in BDCP chapters on governance and implementation fail to delineate, what if any, provisions listed apply to Alternative 4A, as do the RDEIR/SDEIS’s descriptions of that alternative. (See, e.g., RDEIR/SDEIS Appendix D, at pp. 235-260; sections 2 (EIR/EIS revisions), 3 (conveyance facility modifications), and 4 (new alternatives).) Especially after years of critical commentary on plan governance issues, leaving such crucial needs unresolved undermines the RDEIR/SDEIS’s ability to assure decision-makers and the public that impacts in the Delta will be addressed, avoided, and mitigated if the project was constructed and eventually operated.

As noted in the San Joaquin Agencies’ 2014 Summary (page 2), the May 2014 draft IA lacked crucial details bearing directly upon BDCP’s environmental consequences. Remarkably, however, the new RDEIR/SDEIS expressly declines to include new analysis of the draft Implementing Agreement as it pertains to Alternative 4. Instead, the RDEIR/SDEIS argues that it and other unspecified administrative agreements need not even be “referenced” within the environmental review because they “*would not change the impact analysis.*” (RDEIR/SDEIS, 3-1 (emphasis added).)

The RDEIR/SDEIS’s suggestion that provisions related to governance and implementation are environmentally irrelevant fails on multiple levels. First, Delta counties and stakeholders, who will principally bear the project’s adverse consequences, cannot view the absence of clear and effective governance so indifferently. Leaving this circumstance unresolved would compound the risk that those affected might be forced to look to other costly, timely and uncertain approaches to address project harm, such as litigation under the Tort Claims Act. (Gov. Code, §§ 815, *et seq.*)

Second, the argument is inconsistent within the RDEIR/SDEIS, which selectively relies on and even expands the disproportionate role of contractor representatives in another of BDCP’s proposed governance institutions, the AEG. (See, e.g., RDEIR/SDEIS, Appendix D, 253-254.)

Lastly, this argument fails to heed the Science Board’s warning in its 2015 review that the “exuberant display of optimism” in the current draft may have damaging environmental consequences, in part because crucial details remain lacking on such subjects as implementing and financing. (2015 Science Board Review, pp. 9-15.)

Due to this evasive discussion, the RDEIR/SDEIS appears to set forth one earlier version of the project (Alternative 4) with thoroughly inadequate governance provisions, and a current project (Alternative 4A), which is likely to be much worse because there are no governance provisions at all. This deficient governance cannot be cured by the RDEIR/SDEIS's mild assurance that "[a]n environmental permitting coordinator" will supposedly enforce the "environmental commitments" listed in Appendix 3B. (Appendix 3C, p. 3B-3.) Such vague statement about already-vague commitments cannot substitute for a well-planned system for addressing the project's major impacts on the local environment and communities, which may otherwise escape accountability. (See, e.g., Gov. Code, § 53091(e)(limiting role of zoning for certain projects).) Such impacts include: interruption and degradation of drinking and irrigation water supplies, interruption of access to farms and homes, damages to homes and other structures from subsidence induced by dewatering, and structural or other damages from excessive construction noises and vibrations, just to name a few.

The complete absence of any cohesive plan to address these localized impacts indicates not only a complete disregard for the burdens the project would put on local communities, but also is an abrogation of CEQA and NEPA's most basic mitigation requirements.

D. The Project RDEIR/SDEIS Promotes a Distorted Version of "Adaptive Management" to Evade Accountability for Major Risks.

Perhaps even more than its predecessor, the RDEIR/SDEIS attempts to finesse numerous instances of deferred analysis or deficient mitigation by asserting a commitment to a "robust program" of collaborative science, monitoring, or adaptive management. As detailed below in more specific comments, the Science Board has discredited in detail this stylized effort to use "adaptive management" as little more than an agency excuse to avoid timely and responsible assessment of impacts, alternatives, mitigation, governance and financing before commitment to the project becomes a *fait accompli*.

Having failed to make such a clearly defined adaptive management program an "integral" part of the project, the BDCP agencies also cannot qualify the project for consistency with the Delta Plan, since the Delta Reform Act expressly requires such an integration. The RDEIR/SDEIS's rhetorical use of "adaptive management," chiefly as an excuse for delaying and avoiding difficult long-term problems, is a poignant example of misuse of the term as identified both legal commentators and scientists. (See, e.g., E. Biber, *Adaptive Management and the Future of Environmental Law* (2013) 46 AKRON L.R. 933; J. Lund, et al., *Adaptive management means never having to say you're sorry*, available at <http://californiawaterblog.com/2011/07/21/adaptive-management-means-never-having-to-say-you%E2%80%99re-sorry/>.)

Indispensable elements of genuine "adaptive management" missing from the



project and review include reliable funding and monitoring, independence of data review from institutional tilting, and effective off-ramps. Nor can the BDCP agencies claim surprise about adaptive management's potential misuse in the Delta tunnels project. In 2011, the National Research Council reviewed the then-draft BDCP's use of science and adaptive management. (National Research Council, *A Review of the Use of Science and Adaptive Management in California's Draft Bay Delta Conservation Plan* (National Academy of Sciences, 2011), available at [http://www.waterboards.ca.gov/waterrights/water\\_issues/programs/bay\\_delta/docs/cmnt081712/dfg/cdfgnationalresearchcouncil2011.pdf](http://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/docs/cmnt081712/dfg/cdfgnationalresearchcouncil2011.pdf).)

The Council sharply criticized the draft. Among the problems noted:

- The draft failed to provide a quantitative assessment of “specific hydrological and biological consequences,” including consequent changes in “tributary watersheds, aquifers, demands, risks of levee failure, and ecology of the BDCP plan area.” (NRC *Review*, at p. 27.)
- The draft did not clearly analyze the feasibility of meeting the Bay-Delta's future demands, or the tradeoffs between the plan's co-equal goals (i.e., Delta ecosystem restoration, and a more reliable water supply for California). (*Id.*, p. 28.)
- The draft expressed concern that built-in requirements would compromise a key condition of adaptive management: that “opportunities for adjustments” remain available. (*Id.*, p. 34.)

The council also pointed to research showing that more than a hundred adaptive management efforts have failed due to institutional problems ranging from lack of funding to lack of leadership in implementation. It noted that the aims of adaptive management often conflict with “institutional and political preferences,” such as the preference for known and certain outcomes. (*Id.* at p. , 4.)

- E. The Project RDEIR/SDEIS Cannot Support a Finding that the California Water Fix is Unlikely to Jeopardize Protected Species or Adversely Modify their Critical Habitat.

The BDCP agencies have abandoned efforts to pursue approval of the project as a “conservation plan” due to inability, confirmed by public agency reviewers last year, to meet the demanding legal requirements for approval of an HCP or NCCP. However, the RDEIR/SDEIS fails to make clear that the project, even as revised, will be equally unable to secure an incidental take permit under section 7 of the Endangered Species Act, which prohibits federal agency actions that are likely to jeopardize the continued existence of any endangered species or that “result in the destruction or adverse modification of [critical] habitat of [listed] species” (16 U.S.C.

§ 1536 (a)(2)), or under the California Endangered Species Act (Fish & Game Code, § 2081(b).) Nor would the project comply with Water Code section 85021, which calls for exporters to reduce reliance on the Delta for water supply.

Commentators on BDCP, including EPA and other public agencies drawing on extensive scientific analysis, identified major problems with modification of critical habitat of multiple endangered or listed species. Although the RDEIR/SDEIS has other deficiencies noted below that likely result in understatement of the project's species impacts, even the impacts acknowledged there would be sufficient to reject permitting of the project. (See, e.g., RDEIR/SDEIS, ES-48 (significant impacts of water operations on rearing habitat for covered fish species, and significant and unavoidable impacts on spawning and egg incubation habitat for winter run Chinook salmon and green sturgeon).)

Proceeding with the project based on presumed compliance with federal and state laws protecting species would be unlawful in light of devastating science-based criticisms from EPA and other agencies. As with the deficiencies under the Delta Reform Act addressed above, the critical problems stem from the project's adverse effects on flows through the Delta. Even though public comment on the RDEIR/SDEIS is coming to a close, the Bureau of Reclamation has still provided no Biological Assessment to the U.S. Fish and Wildlife Service (USFWS) or the National Marine Fisheries Service (NMFS). ESA Section 7 consultations have not occurred, and these federal agencies have prepared no biological opinion with respect to the project's effects on listed fish or their designated critical habitats. Moreover, the agencies have yet to analyze or suggest "reasonable and prudent alternatives" (RPAs) to avoid species jeopardy or adverse modification of designated critical habitat. In the absence of a rigorous analysis of such alternatives, which remains lacking, the project cannot be approved in accordance with section 7 of the ESA.

F. The Project RDEIR/SDEIS Cannot Support a Finding of Consistency with the Delta Plan, or Requirements for Water Quality Certification or Wetlands Protection.

The RDEIR/SDEIS's Appendix G strains to postulate that the revised project, which abandons the pretense of a lawful "conservation plan," can nonetheless potentially meet a determination of consistency with the Delta Plan. However, 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).) Moreover, the project's adverse consequences for Delta flow, discussed above, are also likely to undermine the basis for the State Board's water quality certification under section 401 of the Clean Water Act, and the Army Corps' section 404 permitting relating to wetlands.

III. THE DELTA INDEPENDENT SCIENCE BOARD HAS RECONFIRMED THE LACK OF SCIENTIFIC AND LEGAL FOUNDATION FOR THE RDEIR/SDEIS AND ITS PROJECT.

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.

(Wat. Code, § 85320(b)(emphasis added)).

The RDEIR/SDEIS 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 2014 and 2015 Delta Independent Science Board reports demolish the scientific basis for that conclusion and undermine the ability of the RDEIR/SDEIS and its underlying project to meet the environmental review requirements of CEQA and the Delta Reform Act. Unless these errors are corrected before issuance of a Final EIR/EIS, the review’s major “mass of flaws” will require

additional 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.)

A. Overview: Neither the EIR/EIS nor RDEIR/SDEIS Provide Obligatory Scientific Support for the Delta Tunnels Project.

On September 30, 2015, the Delta Independent Science Board released its final report entitled *Review by the Delta Independent Science Board of the Bay Delta Conservation Plan/California Water Fix Partially Recirculated Draft Environmental Impact Report/Supplemental Draft Environmental Impact Statement* (2015 Science Board report). The 2015 report, like its predecessors addressing earlier drafts, was submitted 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).)

Noting the profound statewide importance of the project's environmental review, the Science Board found that "reasonable expectations" for completeness and clarity remained "largely unmet." (2015 Science Board report, p. 1.) The Science Board found the current draft "sufficiently incomplete and opaque to deter its evaluation and use by decision-makers, resource managers, scientists, and the broader public." (*Id.*) Despite identifying a short list of items deemed improvements over the preceding draft (*id.*, pp. 3-4), the Science Board found the RDEIR/SDEIS's strengths "outweighed by several overarching weaknesses: overall incompleteness through deferral of content to the Final EIR/EIS; specific incompleteness in treatment of adaptive management, habitat restoration, levees, and long-term effects; and inadequacies in presentation." (*Id.*, p. 4.)

The Science Board's 2015 review eviscerates any casual inference that minor adjustments can "fix" major and continuing deficiencies. The Science Board sharply criticized repeated deferral of content until the final report following the close of public review, including such crucial matters as the modeling of levee failures, analysis of climate change and water supply scenarios, and informative comparisons of alternatives. Moreover, the Science Board rejected the draft's uncertainty-based rationalizations for failure to analyze, finding that "[i]gnorance to this degree does not apply" to subjects such as the project's impacts on levee maintenance and San Joaquin agriculture. (*Id.* at 5.) Finally, the 2015 Science Board report found the current draft lacking in "key information, analyses, summaries, and comparisons. The missing content is needed for evaluation of the science that underpins the proposed project. *Accordingly, the Current Draft fails to adequately inform weighty decisions about public policy.*" (2015 Science Board report, p. 4 (emphasis added).)

As elaborated further below, the 2015 Science Board report identified numerous specific areas of missing content needed to properly inform decision-makers and the public, including these:

- Details on adaptive management and collaborative science. (2015 Science Board report, p. 5.)
- Modeling how levee failures would affect operation of dual-conveyance systems. (*Id.*, p. 7.)
- Analysis of whether operation of the proposed conveyance would alter the economics of levee maintenance. (*Id.*, p. 7.)
- Analyses of the effects of climate change on expected water exports from the Delta. (*Id.*, p. 35.)
- Potential impacts of climate change on system operations, even during the shortened time period emphasized in the Current Draft. (*Id.*, pp. 8 and 11).
- Potential effects of changes in operations of the State Water Project (SWP) and Central Valley Project (CVP), or other changes in water availability, on agricultural practices in the San Joaquin Valley. (*Id.* p. 12.)
- Concise summaries integrated with informative graphics. (*Id.*, , pp. 9, 13.)

These essential missing items underscore the need for an environmental review that is “more complete, comprehensive and comprehensible” than the current draft. (2015 Science Report (introductory letter).) Moreover, as the Science Board has clarified the reviewing agencies must also still address continuing problems detailed in its May 15, 2014 report on BDCP and the EIR/EIS (2014 Science Board Report). The 2014 Science Board report followed a similarly critical review 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. The 2014 reports of 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 San Joaquin Agencies’ 2014 Summary (pages 9-21) identified key environmental review issues illuminated in the 2014 Science Board report. The problems identified in the 2014 report remain highly relevant to the current project review and must still be addressed, both to fully address Alternative 4 (BDCP) and to address deficiencies in the EIR/EIS that remain uncorrected in the RDEIR/SDEIS. As the Science Board confirmed in its 2015 report (page 9): “Our persistent concerns

include the treatment of uncertainty, the implementation of adaptive management, and the use of risk analysis. These topics receive little or no further attention in the Current Draft. We also found few revisions in response to points we raised previously about linkages among species, ecosystem components, or landscapes; the potential effects of climate change and sea-level rise; and the potential effects of changes in water availability on agricultural practices and the consequent effects on the Delta.”

The 2014 Science Board report 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.” (2014 Science Board Report, p. 4.) The Science Board in 2014 provided the still-unheeded advice that leaving its concerns unaddressed “may undermine the contributions of BDCP to meeting the co-equal goals for the Delta.” (2014 Science Board Report cover letter, p. 1.)

The 2014 Science Board report 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.

(2014 Science Board report, p. 3; see also 2015 Science Board report, pp. 10-13 (highlighting continuing relevance).)

B. Crucial Details Remain Missing on the Adaptive Management Process, Collaborative Science, Monitoring, and the Resources for These Efforts.

As noted in the 2015 Science Board report, the RDEIR/SDEIS places heavy reliance on “adaptive management” to address uncertainties and finesse crucial missing details relating to project impacts and mitigation. (2015 Science Board report, pp. 5-6). However, despite “ample time” since release of the Draft EIR/EIS, the current draft “does little more than promise that collaborations will occur and that adaptive management will be implemented. This level of assurance contrasts with the central role of adaptive management in the Delta Plan and with the need to manage adaptively as climate continues to change and new contingencies arise.” (*Id.*, p. 6.)

Despite the “very general and brief” reference to adaptive management in section 4 of the RDEIR/SDEIS (pp. 4.1-6 to 4.1-7), the Science Board determined that the analysis in the current draft lacks “serious consideration” of the barriers that have impeded implementation of adaptive management in the Delta and elsewhere, as detailed in the Delta Plan, or of “lessons learned” on how these problems can be overcome. (2015 Science Board report, p. 5). To be effective, adaptive management needs to be “integral with planned actions and management—the Plan A rather than a Plan B to be added later if conditions warrant.” By contrast, the draft fails to provide a “substantive” analysis of adaptive management for the Delta tunnels project. (*Id.*)

The Science Board expressly rejected the revised draft’s deferral of critical details about how adaptive management will be made to work, countering the RDEIR-SDEIS’s assertion that “an adaptive management and monitoring program will be implemented to develop additional scientific information during the course of project operations and construction to inform and improve conveyance facility operational limits and criteria.” (2015 Science Board report, p. 5 (quoting RDEIR/SDEIS, ES-17).) Concluding that this was “too late,” the Science Board indicated that the details and resources for adaptive management were needed now, including such items as (1) “species-specific thresholds and timelines for action”; (2) “specific scenarios with target thresholds, decision points, and alternatives”; (3) “commitments and funding needed for science-based adaptive management and

restoration to be developed and, more importantly, to be effective.” (2015 Science Board report, p. 8.) Among other crucial details missing, the Science Board noted that “[a]dequate funding to support monitoring, collaborative science, and adaptive management is a chronic problem.” (2015 Science Board report, p. 15.) The draft often relies on opaque constructs, rather than concrete details on accountability, implementation and financing. Using the example of mitigation for terrestrial resources, the Science Board noted that mitigation should compensate for the project’s “habitat losses and disturbance effects,” and the test for implementation will be “whether the measures will be undertaken as planned, be as effective as hoped, and continue long enough to fully mitigate effects.” (2015 Science Board report, p. 13.)

C. Analysis is Lacking on Landscape-Scale Restoration, Restoration Timing and Funding, and the Strategy of Avoiding Damage to Existing Wetlands.

The 2015 Science Board report found that the current draft still lacks the “landscape-scale” review it previously requested, noting that this remains relevant for projects envisioned as mitigation in the current draft, as well as for the conservation measures now consigned the ostensibly separate EcoRestore program. (2015 Science Board report, p. 6.)

Although the RDEIR/SDEIS presents wetlands restoration as a key element of mitigation of significant impacts (see, e.g., Chapter 12), the Science Board “noticed little attention to the sequence required for assessing potential impacts to wetlands: first, avoid wetland loss; second, if wetland loss cannot be avoided, minimize losses; and third, if avoidance or minimization of wetland loss is not feasible, compensate. Much of the emphasis in the Current Draft is on the third element.” (2015 Science Board report, p. 6; see p. 18.) The Science Board recommended a mitigation ratio exceeding 1:1 for enhancement of existing wetlands in lights of problems and delays associated with restoration, and utilization of “science-based” approaches to aid decision-making at watershed scales. (*Id.*, p. 7.)

D. Analysis is Lacking on How Levee Failures Would Affect Water Operations, and How the Implemented Project Would Affect the Economics of Levee Maintenance.

The 2015 Science Board report criticized the RDEIR/SDEISs failure to “consider how levee failures would affect the short-term and long-term water operations spelled out in Table 4.1-2,” or even to reference existing rough estimates relating to this consideration. (2015 Science Report, p. 7.) Addressing the revised draft’s failure to meaningfully address the relationship between levees and water conveyance, Science Board observed that the draft also “fails to consider” how project implementation would affect the basis for setting statewide priorities for



Delta levee maintenance. The Science Board pointed to a recent scoring system for levee project proposals that awarded points for expected benefits to “export water supply reliability.” (*Id.*) Criticizing the current draft’s selective reference to levee fragility “mainly as a reason to build isolated conveyance for Sacramento River water” (e.g., pp. 1-1, 1-7, 1-9), the Science Board called for further analysis that would “examine interacting impacts of conveyance and levees.” (2015 Science Board report, p. 8.)

E. Deficiencies Remain as to the Treatment of Uncertainties and their Consequences.

Finding that “uncertainties and their consequences remain inadequately addressed” in the current draft, the 2015 Science Board report criticized the current draft’s misguided attempts to finesse uncertainties by referring to a “robust program” of collaborative science, monitoring and adaptive management. (ES 4.2.) Far from providing such a program, the analysis is so lacking in critical details that “there is no way to assess how (or whether) uncertainties will be dealt with effectively.” (2015 Science Board report, p. 11.) Despite “sensitivity modeling” used in the current draft to address the latest changes to the proposed project, the reviewing agencies have failed to provide “full model runs” as to these changes, or to correct other deficiencies in project modeling and presentation of data from modeling outputs. (*Id.*)

Among other issues, these problems raise particular concerns for the analysis of fisheries impacts, which also suffers from other major deficiencies (*Id.*; cf. RDEIR/SDEIS Ch. 11.) For example, the analysis of water temperature in Chapter 11 (Fish and Aquatic Resources) lacks a credible assessment of extreme highs and lows, and relies on comparisons that use “current baseline conditions” and “did not consider climate change effects on temperatures.” (2015 Science Board report, p. 17.) Likewise, the draft relies upon fish screens to express exaggerated confidence in the absence of significant impact (e.g., Ch. 11, 1-100) even though the draft lacks specific data on “how well screens function” and it is “unclear how (and how well) fish screens would work.” (2015 Science Board report, p. 15.)

F. Linkages Among Species, Landscapes, and Management Actions are Inadequately Addressed.

Addressing previous criticisms relating to linkages among species, landscapes, and management actions, the current draft acknowledges that impacts for one species or community type may negatively affect other species or communities. However, the 2015 Science Board report concludes that “the trade-offs do not seem to be analyzed or synthesized,” and that a broader landscape or ecosystem approach is needed “that comprehensively integrates these conflicting effects.” (2015 Science Board report, p. 12.)

G. The Relationship of Climate Change to Project Operation is Underestimated and Lacks Essential Analysis.

The 2015 Science Board report noted that crucial climate-related issues are of great concern in the current review, and remain highly relevant to the project's long-term operation notwithstanding revisions in the latest version of the project. First, despite extensive earlier criticism, the RDEIR/SDEIS "generally neglects recent literature, suggesting a loose interpretation of the 'best available science.'" ((2015 Science Board report, p. 11.) The draft "does not demonstrate consideration of recently available climate science, and it defers to the Final Report analysis of future system operations under potential climate and sea-level conditions." (*Id.*) As Appendix A of the current draft confirms, no changes were made to the climate change chapter (chapter 29) in the Draft EIR/EIS. No attempts were made to address the most recently-available scientific information, including recent analyses addressing climate extremes, computer simulations of ecological futures, and "unprecedented" drought risk. (*Id.*, p. 11.)

Second, the 2015 Science Board report criticized the partial and inconsistent manner in which the current draft attempts to incorporate climate change and sea-level rise in the no-action alternative. (See, e.g., RDEIR/SDEIS, § 4.3.1 (considering changes in outflow from the Delta due to seasonal effects of climate change and the need to meet fall X2 requirements).) Instead of new and rigorous analysis, the draft relies upon loose "sensitivity" analysis that makes the outcome depend heavily on operational assumptions. The RDEIR/SDEIS reports that "Delta exports would either remain similar or increase in wetter years and remain similar or decrease in drier years under Alternative 4A as compared to the conditions without the project." (RDEIR/SDEIS, 4.3.1-4.) According to the Science Board, "[s]uch an inconclusive conclusion reinforces the need to be able to adapt to different outcomes. Simply because the Alternatives are expected to relate similarly to a No Action Alternative that includes climate change does not mean that the Alternatives will be unaffected by climate change." (2015 Science Board report, p. 12.)

Finally, the 2015 Science Board report noted how the RDEIR/SDEIS uses overly general references to "resiliency" and "adaptability" to avoid more rigorous analysis of climate change and sea level rise (cf. section 4.2.25.) The "failure to consider how climate change and sea-level rise could affect the outcomes of the proposed project is a concern that carries over from our 2014 review and is accentuated by the current drought." (2015 Science Board report, p. 8.)

H. Effects of Changed Water Availability and Its Environmental Consequences are Inadequately Addressed (Including Consequences for the San Joaquin Valley Agriculture)

As highlighted in the 2015 Science Board report, the RDEIR/SDEIS continues to fail to account for the potential effects of changes in operation of the state and federal projects, or other changes in water availability, on agricultural practices in the San Joaquin Valley ((2015 Science Board report, pp. 4, 12.) For example, “although the current draft considers how the project might affect groundwater levels south of the Delta (7.14 to 7.18), it continues to neglect the environmental effects of water use south of (or within) the Delta.” (*Id.*, p. 12.) The revised draft cavalierly dismisses the need for additional analysis of agricultural consequences, particularly in the San Joaquin Valley—even though sufficient information is available to conduct further review bearing directly on the “feasibility and effectiveness” of the project. (*Id.*, p. 13.) Moreover, the environmental analysis improperly fails to consider and analyze project operation taking into account the water supply consequences of implementing the Sustainable Groundwater Management Act of 2014 (SGMA)(*Id.*)

I. Assessment of Alternatives Remains Deficient.

In its 2015 report, the Science Board revisited and reconfirmed criticisms of the deficient assessment of alternatives, addressed in more detail in its 2014 report. Noting a “fundamental inadequacy” the current draft shares with earlier versions, the Science Board confirmed that “[r]udimentary comparisons of alternatives” remain “almost entirely absent” in the draft environmental review. (2015 Science Board report, p. 13.) The draft still contains “few examples” of concise text and graphics that compare alternatives and “evaluate critical underlying assumptions.” (*Id.*)

J. Environmental Impacts of the Project Must be Assessed More Completely and Clearly.

The 2015 Science Board report noted the current draft’s continuing failure, despite three years of its requests, to consistently provide “cogent summaries, clear comparisons, or informative graphics” in the report. (2015 Science Board report, p. 9, citing 40 CFR 1502 (calling for plain language and appropriate graphics “so that decision-makers and the public can readily understand them”).) The report noted that “[f]or policy deliberations, the presentation of alternatives should include explicit comparisons of water supply deliveries and reliabilities as well as economic performance. For decision-makers, scientists, and the public, summaries of impacts should state underlying assumptions clearly and highlight major uncertainties. The Current Draft is inadequate in these regards.” (*Id.*, p. 9.)

#### IV. THE RDEIR/SDEIS AND ITS PROJECT 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 p. 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 the RDEIR/SDEIS and its Project.

###### 1. Misleading and Inconsistent References to “Proposed Action,” “Conservation,” “Restoration” and “Mitigation.”

The San Joaquin Agencies’ 2014 Summary (pages 17-25) provided an extensive analysis of project definition problems that remain relevant to the revised draft The RDEIR/SDEIS fails to correct the project definition errors noted earlier, and in some respects makes them worse. Notably, although the BDCP agencies’ preferred project (Alternative 4A) no longer even includes an attempt to qualify a “conservation plan” as a HCP or NCCP, the BDCP agencies have not bothered to circulate a complete revised plan incorporating that key shift in the project’s legal

foundation. Likewise, the bland and cluttered title of the new environmental review document (*Partially Recirculated Draft Environmental Impact Report/Supplemental Draft Environmental Impact Statement*) fails to convey the significance of the proposed project shift.

Instead, a complex and confusing list of “substantive” BDCP revisions is improperly buried in Appendix D to the RDEIR/SDEIS rather than clearly delineated in the text. Text revisions to the EIR/EIS are relegated to another appendix (Appendix A) that omits other unrevised sections. Contrary to the central task of CEQA and NEPA to clearly inform the reader of the project and its environmental consequences, the RDEIR/SDEIS places an unreasonable and unattainable burden on the reader to synthesize an incomprehensible hodgepodge of original and “partially” recirculated documents.

This convoluted analysis is not simply user-unfriendly, but highly prejudicial. The revised document fails to illuminate crucial ambiguities and inconsistencies in the use of key terms—notably “conservation,” “restoration,” and “mitigation” -- needed to understand how dozens of impacts associated with the Delta tunnels project are analyzed and proposed for correction. For example, the RDEIR/SDEIS fails to analyze and disclose the legal implications of removing all its “conservation measures” from accountability under HCP and NCCP requirements. The RDEIR/SDEIS retains many of these former “conservation measures” under the legally murky term “environmental commitments.” (See, e.g., Appendix 3B). It expressly relies upon many of these “commitments” to mitigate environmental impacts of the project, and in particular, the proposed conveyance system (*Id.*; see also Appendix D, D.1-1.) The RDEIR/SDEIS also fails to illuminate the specific role of “restoration” under project operation.

Despite the crucial role assigned to “environmental commitments,” the RDEIR/SDEIS leaves the reader baffled to decipher the legal basis for these commitments, their precise relationship to the project, or how to ensure accountability for their implementation and funding. The lists of operative commitments appear to be internally inconsistent (Compare, e.g., RDEIR/SDEIS, ch. 4.1,-15 (listing “environmental commitments under Alternative 4A” derived from conservation measures); Appendix 3B, Table 3B-1 (listing separate set of tasks as “environmental commitments” under multiple alternatives, from “geotechnical studies” to “selenium management”).) The RDEIR/SDEIS inconsistently references “environmental commitments” as part of the project, part of the mitigation for project impacts, or some legally indefinite territory in between (*Id.*) Appendix 3B also includes an even more elliptical laundry list of 31 other abstract concepts, designated as “avoidance and mitigation measures,” without identifying their legal foundation or the basis for ensuring their accountability. As the Court of Appeal stated in the fifth of the *Inyo* series of cases, “An EIR may not define a purpose for a project and then remove from consideration those matters necessary to the assessment whether the

purpose can be achieved." (*County of Inyo v City of Los Angeles (V)* 124 Cal.App.3d 1, 9.)

Appendix D illustrates the depth of the RDEIR/SDEIS's morass over environmental "commitments." It relies on former conservation measures CM3-CM11 to "offset effects associated with" the proposed conveyance (CM1), but characterizes them as "*de facto* CEQA and NEPA mitigation measures with respect to those effects." (RDEIR/SDEIS, Appendix D, D.1-1.) It mentions another list of activities claimed to have undergone separate "independent" environmental review, yet also claims them as "meaningful examples of the activities that would be credited towards implementation" of these very same environmental commitments. (*Id.*) If NEPA and CEQA review are to retain any genuine value for decision-makers and the public, they cannot leave basic elements of the project and proposed mitigation so inscrutable that they would confound even an ace detective.

## 2. Incomplete and Segmented Project Assessment.

Rarely has a revised project review so cavalierly announced its intention to rework the project definition simply to avoid a major area of public controversy, rather than focusing on the underlying environmental concerns that sparked this controversy.

The RDEIR/SDEIS concedes that the "ecological health of the Delta continues to be at risk," and acknowledges the growing tension between Delta water exports and species protection. (1-7.) It also recognizes that "systemic change" is necessary because the present design and operation of the "overall system" is no longer environmentally sustainable. (ES-5.) Faced with these systemic problems, agency reviewers examining BDCP and its EIR/EIS last year issued blistering science-based critiques, raising major concerns affecting the project's ability to comply with numerous legal requirements, including federal and state laws protecting species, water quality, and wetlands. These agency reviewers, building on concerns expressed earlier by the NAS and the Science Board, underscored the need to better address the project's consequences for Delta flows and the need for better analysis of mitigation and alternatives. (See, e.g., EPA review (August 26, 2014); State Board review (July 29, 2014); United States Army Corps of Engineers review (July 16, 2014).) Unfortunately, the RDEIR/SDEIS fails to provide or even fairly summarize these agency critiques, as well as similar concerns expressed by the Science Board, the county and other commenters.

From these major critiques, one might have expected any revisions in the project and its review to focus on finding ways to *improve* rather than impair flows of water through the Delta, and to more effectively protect, enhance and restore the Delta ecosystem and its communities. Instead, the RDEIR/SDEIS establishes that the new project *reduces or removes* project-related conservation measures, and modifies

the project objectives to *eliminate* the need for permitting of a “conservation plan” lawfully qualifying as a HCP or NCCP. (See, e.g., RDEIR/SDEIS, 1-1 to 1-12.) To rationalize this attempt to weaken project-related Delta protections even further, the RDEIR/SDEIS seeks to segment review of the conveyance-dominated revised project from other, vaguely defined conservation efforts—even as the agencies continue to rely on these efforts—principally the Eco-Restore program—as part of a “BDCP conservation strategy.” (*Id.*, 4.1-15.) This poorly defined “strategy” is paradoxically used to put a conservation-conscious face on the project even as it is claimed to be separate from and not subject to the project. (*Id.*; see also ES-8, 9.)

Segmentation and simultaneous reliance on EcoRestore in the project review obscures the varied nature of its project list, which includes many already-existing projects and others that may well never go forward. It also obscures that plainer fact that none of the EcoRestore projects, or the broader extra-project conservation strategies,” is subject to any accountability within this project review. Moreover, since the location and specific features of numerous “commitments” remain unknown and unstudied (4.1-15), they may well either never go forward or have adverse and still-unstudied impacts on the Delta ecosystem or its counties and communities. The RDEIR/SDEIS’s efforts to segment project-related conveyance and conservation greatly complicates review of a project that also fails to analyze the consequences of other parallel actions acknowledged to profoundly affect the future sustainability of the Delta ecosystem, such as the framing of Delta water quality requirements and the coordinated operation of state and federal water projects.

### 3. Unequal Status of Non-Conveyance Project Components.

Although the BDCP agencies’ preferred action no longer defines the conveyance itself as a “conservation measure,” it retains that approach for analytic purposes in Alternative 4 and disingenuously refuses even to concede the infeasibility of this approach, notwithstanding the lack of any remaining foundation for it following EPA’s review and other scientific critiques. (Cf. RDEIR, 1-5.)

The RDEIR/SDEIS concedes that the BDCP agencies’ review cannot lawfully pre-commit to agency approval of the proposed conveyance. (See 1-7 (quoting *Save Tara v. City of West Hollywood* (2008) 45 Cal.4th 116, 136-137).) However, the RDEIR/SDEIS continues to skew project review in favor of conveyance by failing to correct the key project-related error the San Joaquin agencies identified in comments last year (page 20): singling out the conveyance for project-specific review while consigning conservation and mitigation components to far more vague programmatic assessment.

The RDEIR/SDEIS’s division of project and program components, as with the EIR/EIS last year, creates a major obstacle to ensuring timely consideration of the “whole” of the project in accordance with CEQA and NEPA. Ignoring the

county's criticisms, the review provides project-level analysis of the conveyance, while offering far vaguer program-level analysis for conservation and other measures portrayed as addressing adverse consequences. 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. Further skewing the project analysis, as discussed in section II.B above, is the RDEIR/SDEIS's reliance upon expectations of "paper water" deliveries.

#### 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., RDEIR/SDEIS 16-19.) The project assessment therefore improperly continues to seek insulation of permit holders from further responsibility to meet federal and state environmental laws, as well as other legal standards and permit requirements. This prejudicial assumption runs counter to the RDEIR/SDEIS's recognition that the "system" as presently operated does not sustainably protect the Delta. (ES, 1-5). In addition to skewing the present project review in favor of conveyance, the EIR/EIS's misguided analysis of existing regulatory standards should not be used in other settings to prejudice other efforts to improve conditions for the Delta ecosystem and protect the health and well-being of communities in Delta counties.

The same disjointed approach to regulatory compliance is also evident in the RDEIR/SDEIS's statements referring to the balance of water supply and endangered species objectives. (See, e.g., ES-18, 19.) 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.



## V. THE RDEIR/SDEIS AND PROJECT RELY ON 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*, 40 Cal.4th at 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; see also BDCP 2013 EIR/EIS, 3D-2 (recognizing that under *Neighbors*, "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'").)

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 RDEIR/SDEIS and Project.

#### 1. Overview: Failure to Fully Account for Existing Conditions, and Defective Assessment of Future Conditions

The San Joaquin Agencies' 2014 Summary extensively chronicled baseline errors prejudicing the project and "no action" assessments (pages 25-30), which in turn prejudiced the EIR/EIS's ability to fairly evaluate project alternatives and mitigation. As detailed in those comments, while the use of multiple baselines in an EIR or EIS is not automatically unlawful, the specific baselines uses in the EIR/EIS

were fundamentally inconsistent, failing to either fully account for existing conditions or meet the Supreme Court's standards for refusing to analyze existing conditions. Moreover, selective and unrealistic assessment of future conditions in the EIR/EIS's baseline review also prejudiced the remaining analysis.

Baseline errors and related modeling problems also receive detailed analysis in the 2014 and 2015 Science Board reviews, and in extensive public comments on the EIR/EIS, which the RDEIR/SDEIS has neither included nor addressed in analysis. (See, e.g., MBK Engineers Report; EIR-EIS and RDEIR-SDEIS comments of Center on Urban Environmental Law, Contra Costa Water District, Sacramento County, and the Environmental Water Caucus.) As detailed further below, these comments remain of continuing relevance. The RDEIR/SDEIS has failed to correct the key baseline errors in the preceding draft, and to coherently address existing and future conditions. In some respects it has made the deficient assessment even worse.

## 2. Reliance Upon Multiple Inconsistent Baselines.

Despite these powerful criticisms, the RDEIR/SDEIS confirms the absence of major changes to the baseline analysis criticized earlier and summarized below. (See RDEIR/SDEIS, appendix A, sub-appendix 3D (identifying all interlineated changes to EIR/EIS appendix 3D, which set forth the review's approach to existing conditions, the "no project" and "no action" alternatives, and cumulative impact conditions).) Although it attempts to provide updates to related ongoing programs, the RDEIR/SDEIS assumes "continued implementation of operations, maintenance, enforcement, and protection programs by federal, state, and local agencies and non-profit groups that affect or could be affected by the Proposed Project and alternatives, as summarized in Table 3D-10-2." (RDEIR/SDEIS 3D-1; see also attachment 3D-A.)

- The *existing conditions baseline* assess the significance of impacts of the BDCP alternatives in relation to existing conditions. "Existing" conditions in this baseline review generally include "facilities and existing conditions" that existed on February 13, 2009 (the time of the most recent Notice of Preparation/Notice of Intent), and "that could affect or be affected by" implementation of the BDCP and alternatives. (BDCP EIR/EIS, 3D-2.) Yet in "some instances", the RDEIR/SDEIS 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 project's August 2013 statewide economic report. It was introduced to bolster the purported economic analysis claiming significant benefits (2013 BDCP, chapter 9). This baseline assumes that water deliveries from the Delta will be dramatically lower without the project, far lower (by approximately 1 million acre-feet) than assumed in the EIR/EIS. 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 (emphasis added); cf. RDEIR/SDEIS, 1-7 (noting unlawfulness of post-hoc rationalizations).) These rationalizations 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 revised project and the RDEIR/SDEIS.

### 3. Reliance On 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 RDEIR/SDEIS continues to make “informed” judgments about future conditions consistent with existing planning that are far into the future, despite the RDEIR/SDEIS’s recognition that the “system” under present conditions is unsustainable for the Delta. However, the RDEIR/SDEIS provides no foundation for the predicted judgments. A similar problem affects the cumulative impacts analysis. Moreover, the review continues to err in overstating projected operation under “dead pool” conditions, without considering foreseeable efforts of water managers to take steps attempting to avoid levels of depletion approaching a dead pool.

In some respects, the RDEIR/SDEIS’s misuse of the “no action” and baseline assessment may be even worse than its predecessor. First, the RDEIR/SDEIS uses flatly inconsistent baselines for comparison to evaluate the impacts of the new preferred alternative (4A) and other project alternatives. Second, as the Science Board highlighted and as discussed above, the RDEIR/SDEIS’s scenarios and modeling lack even elementary updates on drought and climate. The RDEIR/SDEIS recognizes that “when compared to the CEQA baseline, [the Water Tunnels], including climate change, would substantially reduce the quantity and quality of spawning and egg incubation habitat for winter-run Chinook salmon relative to existing conditions.” (RDEIR/SDEIS 4.3.7-58.) Yet the revised review improperly treats climate change only as an *excuse* to avoid more nuanced assessment of the project and alternatives under a reasonable range of future hydrologic conditions. (See, e.g., *id.*, 4.3, 4-67.)

### 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 project's anticipated additional extraction.

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. The Science Board's 2015 review underscores the vague, incomplete and unproven nature of purported conservation and environmental benefits: what if these benefits fail to materialize, who may lose water, money, or both, and the resulting ecological and economic consequences. The project and environmental review continue to 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 RDEIR/SDEIS bases the revised project's 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 as Exhibit I to Sacramento County's comments) identify severe errors, as did the

Legislative Analyst in an earlier review. (See Sacramento County's 2014 EIR/EIS comments, exh. I; Legislative Analyst's Office, *Financing the Bay Delta Conservation Plan*, February 12, 2014.) As Dr. Michael pointed out in recent analysis, "the plan's already flimsy economic rationale evaporated" with the latest changes, notably the abandonment of fifty-year regulatory assurance and separation of environmental restoration. (J. Michael, *Cost of Delta tunnels doesn't add up*, Sacramento Bee, July 25, 2015; <http://www.sacbee.com/opinion/the-conversation/article28509157.html>; <http://valleyecon.blogspot.com/search/label/delta%20tunnels> (neither water supply nor seismic safety survives cost-benefit analysis as a rationale for the revised plan).)

Baseline errors in the RDEIR/SDEIS's 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.

## VI. THE RDEIR/SDEIS AND PROJECT FAIL TO IDENTIFY AND IMPLEMENT MITIGATION AND ALTERNATIVES.

### A. Legal Requirements for Environmental Review.

CEQA includes the "fundamental statutory directive that '[e]ach public agency shall mitigate or avoid the significant effects on the environment of projects that it carries out or approves whenever it is feasible to do so.'" (*City of San Diego v. Board of Trustees* (2015) 61 Cal.4th 945, 962-963 (quoting Pub. Res. Code, § 21002.1, subd. (b).) This obligation extends to both onsite and offsite impacts, and does not allow the absence of legislative appropriation to support a finding of "infeasibility" (*Id.* at p. 962 (concluding that such a rule would improperly impose a "financial burden on local and regional agencies" to cover the costs of a project's "contribution to cumulative impacts on local infrastructure").)

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. 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.) In *Lotus*, the duty to mitigate extended to the "area which will be affected by proposed project," including offsite areas.

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 p. 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, as well as assessment of a reasonable range of alternatives.

B. The RDEIR/SDEIS and Project Improperly Rely on Vague, Unaccountable, and Unlawfully Deferred Mitigation Measures.

The San Joaquin Agencies’ 2014 Summary identified deficiencies in the EIR/EIS’s assessment of mitigation and alternatives (pages 26-29), which have not been overcome in the revised draft and remain relevant.

Review of the RDEIR/SDEIS confirms that, far from correcting the previously identified errors, the BDCP agencies have compounded these deficiencies in critical respects. The RDEIR/SDEIS, despite its lengthy conceptual descriptions of conservation concepts (see, e.g., appendix 3B), fails the BDCP agencies’ obligation to identify mitigation measures that are reasonable, feasible, and enforceable before committing to final action on the project. In particular:

- The RDEIR/SDEIS relies heavily on listed “environmental commitments” even though their legal standing, and basis for implementation, enforcement and funding, still remain hopelessly ambiguous. On one hand, the RDEIR/SDEIS states that these “commitments” are part of the project and should *not* be construed as mitigation measures. (Appendix 3B-2.) On the other, the RDEIR relies on the same commitments as “*de facto* mitigation measures” and portrays them as “feasible means to reduce the severity of environmental effects.” (*Id.* (emphasis added).) The RDEIR/SDEIS also recognizes that the “project proponents” intend to rely on them to “avoid or minimize potential adverse effects (a NEPA term) and potential significant impacts (a CEQA term).”
- The RDEIR/SDEIS strains to find a way around the legal requirements for mitigation measures identified in *Lotus v Department of Transportation* (Appendix 3B-2.) Despite these efforts at avoidance, the RDEIR still retains the key mitigation defect identified in *Lotus*, because its dependence on *de facto* “mitigation” from a project feature muddles the crucial CEQA distinction between the project and mitigation, improperly compressing these distinct legal concepts into a single concept lacking the specificity and accountability required under CEQA. (Appendix 3B-3.)

- The RDEIR/SDEIS's other attempt to overcome *Lotus* — an inscrutable new “summary of environmental commitments” (Table 3B-1) — simply makes matters worse. Far from overcoming the improper conflating of project and mitigation, it includes a citation dump lacking explanation or context, and an invitation for the reader to piece together the information by undertaking a scavenger hunt through numerous sections of the EIR/EIS. This lack of accountability is especially critical in light of the central imbalance in the project review noted above: a project-specific assessment of the proposed conveyance, and a vague program-level review of virtually everything else.

- As discussed in greater detail in the separate specific comments on the RDEIR/SDEIS, and in the Science Board's review of missing details discussed above, many of the project's “conservation measures” and other provisions intended to mitigate the project's adverse impacts are unacceptably and unaccountably vague. The “commitments” identified in Appendix 3B include numerous items that lack any clear standards and amount to no more than still-conceptual plans, ineffectively addressing such subjects as stewardship of agricultural lands, transportation demand management, erosion and sediment control, fish rescue and salvage, barge operation, construction equipment exhaust, noise reduction, hazardous materials, spill prevention, and mosquito management.

- Additional “avoidance and mitigation measures,” like many of the conservation measures noted above, are similarly opaque and lacking in commitment to clear standards and enforceable steps. (See Appendix 3B (listing AMMs).) All these measures fail to make a present commitment to understandable and enforceable standards, and effectively defer any formulation of genuine and accountable standards to implementation stages following project approval. Reliance on them would violate CEQA's rule against deferred mitigation. (See, e.g., *Madera Oversight Coalition v. County of Madera* (2011) 199 Cal.App.4th 48.)

- A major and recurrent error undermining accountability for mitigation in the RDEIR/SDEIS -- discussed in the Science Board's 2015 review, in section II.D and III.B above, and in a separate attachment — is its heavy reliance on a distorted version of “adaptive management” to evade accountability for major risks.

In short, the EIR/EIS does not come close to providing a legally adequate assessment of mitigation or alternatives.

#### C. The RDEIR/SDEIS and Project Fail to Identify and Implement a Reasonable Range of Program Alternatives.

Despite the contrary requests of the San Joaquin Agencies in their 2014 summary and those of numerous other commenters, the RDEIR/SDEIS, like the previous draft, fails to identify and analyze a reasonable range of alternatives. As



confirmed in the RDEIR/SDEIS's assessment of alternatives (section 4 and Appendices A, F and G), all of the proposed new alternatives (alternatives 4A, 2D and 5), like the other project alternatives discussed, would fail to heed science-based recommendations to increase flows through the delta—instead, they would reduce these flows, undertaking upstream diversion of large quantities of water for the proposed Water Tunnels.

Remarkably, despite years of scientific evidence referenced above documenting the importance of water flow through the Delta to species recovery and to support other crucial beneficial uses for Delta farms and communities, the RDEIR/SDEIS fail to explore alternative approaches that would not rely on the ability to increase Delta exports. As proposed, the project'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 California Water Action Plan and its efforts to harmonize water policy with climate change adaptation. The review continues to erroneously assume 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, and even though pending contract discussions continue to explore the role of this project.

Finally, the RDEIR/SDEIS fails to sharply distinguish between alternatives and evaluate their comparative merits, as required under 40 CFR 1502.14(b). The alternatives analysis continues to 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. 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.

D. The Project and EIR/EIS Fail to Support Exclusion of Reasonable and Prudent Alternatives.

As discussed in section II.F above, a crucial deficiency in the RDEIR/SDEIS is that it fails to establish the absence of a “reasonable and prudent alternative” to avoid species jeopardy or adverse modification of critical habitat, and consequently cannot qualify for an incidental take permit under section 7 of the federal Endangered Species Act and section 2081(b) of the California Endangered Species Act. Having repeatedly sidestepped key scientific criticisms discussed above, the review does not come close to adequate study of the range of alternatives for survival and recovery of affected species.

## VII. THE RDEIR/SDEIS AND THE PROJECT FAIL TO CONSISTENTLY INCORPORATE THE CONSEQUENCES OF DROUGHT, TRANSFERS, GROUNDWATER DEPLETION AND CLIMATE CHANGE.

As discussed above in section III.G, the Science Board sharply criticized the RDEIR/SDEIS for its incomplete and inconsistent treatment of climate change, and its refusal to make meaningful updates to its water and climate analysis despite years of drought and additional study since the dated analysis relied upon in the EIR/EIS. Moreover, the new review, like its predecessors, fails to analyze the effects of water transfers and diversions on groundwater basins within the areas of project impact.

With respect to climate, this indifference cannot be reconciled with DWR's own science-based climate guidance in other settings, and more than a decade of scientific research already compiled by DWR.

As DWR summarizes that research:

- “Climate change is having a profound impact on California water resources, as evidenced by changes in snowpack, sea level, and river flows . These changes are expected to continue in the future and more of our precipitation will likely fall as rain instead of snow. This potential change in weather patterns will exacerbate flood risks and add additional challenges for water supply reliability.”
- “The mountain snowpack provides as much as a third of California's water supply by accumulating snow during our wet winters and releasing it slowly when we need it during our dry springs and summers. Warmer temperatures will cause what snow we do get to melt faster and earlier, making it more difficult to store and use. By 2050, scientists project a loss of at least 25 percent of the Sierra snowpack. This loss of snowpack means less water will be available for Californians to use.”
- Climate change is also expected to result in more variable weather patterns throughout California. More variability can lead to longer and more severe droughts. In addition, the sea level will continue to rise threatening the sustainability of the Sacramento-San Joaquin Delta, the heart of the California water supply system and the source of water for 25 million Californians and millions of acres of prime farmland.

(<http://www.water.ca.gov/climatechange/>.)

That same consensus of scholarship also undermines the notion that the range of past hydrologic conditions can adequately account for the foreseeable range of conditions in which the project must operate. In several cases, federal and state

courts have cautioned against attempts to use past hydrology to avoid climate-resilient analysis. (See *NRDC v. Kempthorne* (E.D. Cal. 2007) 506 F.Supp.2d 322, 336, 337, 369; *PCFFA v. Gutierrez* (E.D. Cal. 2008) 606 F.Supp.2d 1122, 1184; *Pacific Coast Federation of Fishermen's Ass'n v. Gutierrez* (E.D. Cal. 2008) 606 F.Supp.2d 1122, 1184.) *Voices for Rural Living v. El Dorado Irrigation District* (2012) 209 Cal.App.4th 1096

The following sources, available and hyperlinked on DWR's website, should be reviewed and included in the record for this project.

The descriptions below of climate change reports and studies are those provided by DWR [http://www.water.ca.gov/climatechange/pub\\_video.cfm](http://www.water.ca.gov/climatechange/pub_video.cfm).

- ☐ [California Climate Science and Data for Water Resources Management](#) (2015)
- ☐ [DWR Climate Change Achievements](#) (2014)
- ☐ [DWR Climate Change Annual Report 2013](#) (2014)
- ☐ ["Estimating Historical California Precipitation Phase Trends Using Gridded Precipitation, Precipitation Phase, and Elevation Data", DWR Memorandum Report](#) (July, 2014)

This exploratory study develops and describes a methodology that uses readily available research data sets to produce gridded estimates of historical rainfall as a fraction of total precipitation for areas comprising the major water-supply watersheds of California. Written by Aaron Cuthbertson (DWR), Elissa Lynn (DWR), Mike Anderson (DWR, California State Climatologist) and Kelly Redmond (Western Regional Climate Center).

- ☐ ["Preparing for Change, 'N' Magazine", by Elissa Lynn, DWR](#) (July, 2014)
- ☐ ["Regional Governance of Flood Management in the Central Valley: An analysis of the Integrated Regional Water Management and Regional Flood Management Planning processes "](#) (May, 2014)

This study analyzes the origins and functioning of the Integrated Regional Water Management and Regional Flood Management Planning processes, and the degree of coordination between them to address flood risks in the Central Valley. It examines how these two processes are working to generate multi-benefit strategies and account for climate change, and discusses opportunities for future coordination. This report was written by Esther Conrad, PhD candidate in Environmental Science, Policy and Management at the University of California at Berkeley.

- ☐ [Paleoclimate \(Tree-Ring\) Study](#) (February, 2014)

New Hydroclimate Reconstructions have been released, using updated tree-ring chronologies for these California river basins; Klamath, San Joaquin and Sacramento. The report, prepared by the University of Arizona, allows assessment of hydrologic variability over centuries to millennia, gives historic context for assessing recent droughts, and can be used in climate change research.

- ☐ ["Cry Me a Reservoir: Water Management and Climate Change Adaptation "](#), [Environmental Law News](#) (Summer, 2013)

This paper presents four commentaries on water management and adaptation to climate change by four practitioners who work on these issues, including DWR's Katherine Spanos.

□ DWR Climate Change Annual Report 2012 (2013)

□ Preparing for New Risks: Addressing Climate Change in California's Urban Water Management Plans (June 2013)

Urban Water Management Plans (UWMPs) are an important element of California's efforts to assure reliable water supplies. This study assesses how water suppliers have considered the impacts of climate change and greenhouse gas emissions in their 2010 plans, and provides recommendations for how DWR could improve its climate change guidance for 2015 UWMPs. This report was written by Esther Conrad, PhD candidate in the Department of Environmental Science, Policy and Management at University of California Berkeley.

□ DWR Climate Change Annual Report 2011 (2012)

□ Analysis of the Department of Water Resources volunteer Climate Cooperator Network (December, 2012)

Discusses the current state of DWR's Volunteer Climate Cooperator Network, and makes suggestions for the future of the program.

□ Sea-Level Rise for the Coasts of California, Oregon, and Washington: Past, Present, and Future Prepublication (June, 2012)

Committee on Sea Level Rise in California, Oregon, and Washington Board on Earth Sciences and Resources and Ocean Studies Board (Division on Earth and Life Studies, The National Academies Press, Washington, D.C., [www.nap.edu](http://www.nap.edu))

□ "Climate Change and Integrated Regional Water Management in California: A Preliminary Assessment of Regional Approaches." (June, 2012)

Written by Esther Conrad, Dept. of Environmental Science, Policy and Management, University of California, this report examines the initial steps that IRWM (Integrated Regional Water Management) regions are taking in response to new requirements to address climate change vulnerabilities and consider greenhouse gas emissions in IRWM plans in California. Specifically, this report seeks to assess the manner and degree to which the climate change requirements in the 2010 IRWM Guidelines are met in Round1 Proposition 84 Planning and Implementation grant proposals, and in recently approved IRWM plans, assess current IRWM regional approaches to analyzing and adapting climate change risks in light of the overall goal to promote an adaptive management approach, and provide recommendations on key steps for DWR IRWM regions to support the development of informative climate change analyses and mechanisms for adaptive management at regional and state levels.

□ California Department of Water Resources Draft Climate Action Plan Phase I: Greenhouse Gas Emissions Reduction Plan (2012)

DWR in an effort to reduce its impact on the environment and lead by example, is developing a Department-wide Climate Action Plan. The first phase of this Climate Action Plan is a Greenhouse Gas Emissions Reduction Plan, which will guide project development and decision making with respect to energy use and GHG emissions.

- ["Hydrological Response to climate warming: the Upper Feather River Watershed"](#). Huang, G., Kadir, T., Chung, F. Journal of Hydrology (2012)

The hydrological response and sensitivity to climate warming of the Upper Feather River Basin, a snow-dominated watershed in Northern California, were evaluated and quantified using observed changes, detrending, and specified temperature-based sensitivity simulations.

- ["The Climate has Changed: Now what? Integrated Regional Water Management and Climate Change Planning a Coincidental or Inevitable Union?"](#). Katherine Spanos. 30th Annual Water Law Conference American Bar Association Section of Environment, Energy, and Resources. San Diego, California (February 22-24th, 2012)

- [Climate Change Handbook for Regional Water Planning](#) (2011)

- ["Isolated and integrated effects of sea level rise, seasonal runoff shifts, and annual runoff volume on California's largest water supply."](#) Jianzhong Wang, Hongbing Yin, Francis Chung. Journal of Hydrology. (May, 2011)

A detailed analysis of climate change impacts on seasonal pattern shift of inflow to reservoirs, annual inflow volume change, and sea level rise on water supply in the Central Valley of California.

- [DWR Climate Change Program Annual Report 2010](#) (2011)

- ["Climate Change Characterization and Analysis in California Water Resources Planning Studies"](#). California Department of Water Resources (December, 2010)

A comprehensive and comparative look at planning studies conducted by DWR and its partner agencies that have addressed climate change. Thirteen planning studies completed since 2006 or in the process of being completed are reviewed and summarized.

- [Coastal and Oceans Climate Action Team Sea Level Rise Task Force Final Interim Sea Level Rise Guidance Document](#) (October, 2010)

- [DWR Climate Change Achievements Brochure](#) (2010)

- [DWR Climate Change Program Annual Report 2009](#) (2010)

- California Water Plan Update 2009: Volume 1 Strategic Plan, [Chapter 5 Managing for an Uncertain Future](#)

- [2009 California Climate Adaptation Strategy](#). California Natural Resources Agency (December, 2009)

A first-of-its-kind multi-sector strategy to help guide California's efforts in adapting to climate change impacts. The 2009 California Climate Adaptation Strategy summarizes the best known science on climate change impacts in seven specific sectors and provides recommendations on how to manage against those threats.

- ["Using Future Climate Projections to Support Water Resources Decision Making in California."](#) California Climate Change Center (May, 2009)

The report evaluates how climate change could affect the reliability of California's water supply. [Click Here](#) to view a Summary Factsheet. For further information, please contact Francis Chung ([chung@water.ca.gov](mailto:chung@water.ca.gov)) or Jamie Anderson ([jamica@water.ca.gov](mailto:jamica@water.ca.gov))

- [DWR Climate Change Program Annual Report 2008](#) (2009)

- "Managing an Uncertain Future: Climate Change Adaptation Strategies for California's Water" California Department of Water Resources (October, 2008)

Focuses discussion on the need for California's water managers to adapt to impacts of climate change, some of which are already affecting our water supplies. The report proposes 10 adaptation strategies in four categories.

- DWR News/People (Fall, 2008)

DWR's quarterly magazine highlighting the people and projects of DWR

- "Progress on Incorporating Climate Change into Management of California's Water Resources" Climatic Change (March, 2008)

Published in the March 2008 special issue of *Climatic Change -California at a Crossroads: Climate Change Science Informing Policy*. This is an 18 page condensed version of the original 350 page 2006 report of the same name. Coauthored by DWR staff.

- Proceedings of the Western Governors' Association/Western States Water Council/California Department of Water Resources Climate Change Research Needs Workshop. (May, 2007)

A summary of information presented at the conference and of water management-related climate information and policy needs. Recommendations are also presented for development of relationships with the federal climate science agencies and with academia.

- "Progress on Incorporating Climate Change into Management of California's Water Resources" California Department of Water Resources (July, 2006)

In response to Executive Order S-3-05 from Governor Arnold Schwarzenegger, this report documents the Department's progress toward incorporating multiple climate change scenarios into the management of California's water resources.

- California Water Plan Update 2005:

- From Volume 1 Strategic Plan, Chapter 4 Preparing for an Uncertain Future
- From Volume 1 Strategic Plan, Chapter 5 Implementation Plan, policy recommendation concerning climate change
- From Volume 4 Reference Guide, Climate Change and California Water Resources: A Survey and Summary of the Literature (by Michael Kiparsky and Peter H. Gleick, Pacific Institute for Studies in Development, Environment, and Security)
- From Volume 4 Reference Guide, Accounting For Climate Change (by Maurice Roos, DWR)

Other reports not included in this list also merit review and inclusion in the record: Public Policy Institute of California, *Climate Change and Water* (April 2015); P. Kibel, *Sea Level Rise, Saltwater Intrusion and Endangered Fisheries—Shifting Baselines for the Bay-Delta Conservation Plan*, (Enviroins, July 2015); and T. Zuckerman, *A Water Plan for the 21st Century: Regional Self-Sufficiency Scenario* (July 2007).

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

**Prepared for San Joaquin County Department of Public Works**

**October 4, 2015**

DWR has issued a Partially Recirculated EIR/Supplemental EIS on what is now referred to as "Bay Delta Conservation Plan/California Water Fix." In these comments, we refer to the document as the "RDEIR/SDEIS." These comments focus upon the degree to which RDEIR/SDEIS 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. Many of these issues are common to the original EIR/EIS on which we commented in 2014. However, the focus of this review will be only on the RDEIR/SDEIS. Prior to the detailed comments, we note the following basic issues which undermine the document's adequacy:

1. A full and fair assessment of impacts is impossible given the RDEIR/SDEIS's treatment of water delivery at the project-specific level and the environmental mitigation measures at the vague, programmatic level. For example, we are still left with no information on the location of the so-called "Environmental Commitments" (hereinafter referred to as ECs) which in spite of reduced eco-restoration could take up significant acreage of agricultural land in San Joaquin County. This land is critical for the economy and livelihood of the County and impacts need to be adequately addressed as part of the REIR/S. If the ECs are to be part of the project, and not simply mitigation measures, their nature and locations need to be specified and clarified.
2. Proposed mitigation measures are projects in and of themselves which would have serious 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. As with the original EIR/EIS, this document is not "user friendly" and seems designed to thwart review. As someone with over 35 years of CEQA experience, I found it tragic that a typical citizen in San Joaquin County could not possibly navigate this document, or determine whether their farmland might be impacted. This could be called an "IKEA Environmental Document"....once you get in the door; you can never find your way out. And by the time you do, you're left without what you were looking for, and with things you don't need.

In this RDEIR/SDEIS, one searches for relevant text with all the cross references, only to lose track of where one originally was reading, ending up in a "mental knot" with conclusions that are unfounded, vague generalizations, and lacking in standard analyses methodologies.

4. The lack of balance in the analysis of the new Alternative 4A was blatantly obvious. Of the 1,088 pages in Chapter 4 addressing Alternative 4A, there is only the briefest discussion (5 pages) devoted to the topic of Land Use, and similarly only brief discussion (8 pages) devoted to Agricultural Resources. Instead, the largest effort was put into the topics of Aquatic Resources (441 pages), Water Quality (70 pages), and other topics. Requests for more clarification on land use and agricultural resources impacts (per comments on original EIR/S) were not even touched upon.
5. The analysis in Chapter 4 includes broad generalizations, making statements for example that since impacts would be dispersed and because impacts would be limited compared to other BDCP alternatives, the impacts would be less than significant. First of all, the RDEIR/SDEIS is not meant to address impacts of Alternative 4A as

related to other alternatives. Impacts have to be compared to baseline conditions (but were not). And the fact that impacts are dispersed does not make them any less significant. For the landowner affected by those impacts, or the biological species impacted, dispersion is completely irrelevant.

6. There are significant and unavoidable impacts that are listed; however, the reader is not clearly shown that in the analysis in Chapter 4 when impacts and mitigation measures are addressed.
7. For a "Project EIR," this RDEIR/SDEIS refers to an incredible number of "plans" for mitigation. No clarity is provided in terms of standards. Thus, these plans would constitute deferral of mitigation. Without the standards in the plans themselves, and without seeing copies of these plans, the reviewer has absolutely no clue as to whether they would serve to mitigate potential impacts. They are just words. Some examples of all the recommended plans to serve as mitigation are the following (including Environmental Commitments):
  - Agricultural Lands Stewardship Plan
  - Transportation Demand Management Plan
  - Erosion and Sediment Control Plans
  - Fish Rescue and Salvage Plans
  - Barge Operations Plan
  - Construction Equipment Exhaust Reduction Plan
  - Noise Reduction Plan
  - Hazardous Materials Management Plan
  - Spill Prevent Plans
  - Mosquito Management Plans

And these are only some of the 21 so called "Environmental Commitments" listed in Appendix 3B. That same appendix identifies an additional 31 "Avoidance and Minimization Measures" (AMMs). It's as if someone sat down to think about every possible mitigation measure that might apply to the project and then simply listed these separately. They are not clearly discussed or shown in the impact discussion or the text on mitigation measures. Again, the reader has to go on "the Ikea hunt" for information. This type of approach seems exactly what was challenged in the Lotus v. Caltrans case recently. Please clarify how these "mitigation measures" have been adequately assessed. Revised Chapter 31 on page 31-9 through 31-15 addresses "Mitigation Measures with the Potential for Environmental Effects under CEQA and NEPA"; however, it appears that only five mitigation measures are addressed. Even then, the impact discussion remains vague. In discussion of Mitigation Measure BIO-176 (hard to believe there are this many mitigation measures related to biology!), the issue of conversion of agricultural lands is given a cursory review with statement that further evaluation would be needed when specific locations of lands to be converted are known. No information is provided on acreage of ag lands removed, the County where this would occur, or the type of ag soils to be impacted. Such an impact discussion renders the analysis worthless.

8. Revised Chapter 31 in Appendix A of the RDEIR/SDEIS shows **FIFTY (50)** remaining **significant and unavoidable impacts** from this project. And those impacts are not just localized to a small area; these are spread over the entire area of the tunnels' route as well as additional acreage for Clifton Court Forebay expansion, areas for reusable tunnel material (RTM) and pumping plants. These impacts could occur over 4,000 acres shared by multiple counties (not accounting for acreage of habitat restoration) if data on pages 3-20 to 3-21 of the revised Chapter 3 in Appendix A are correct. Now that many of the original "restoration" activities have been delayed (or eliminated), additional acreage could be impacted by this element of the project since the earlier focus on conservation has been dropped. The following is a summarized list of the impacts that are NOT



able to be fully mitigated and that would impact many residents, businesses, and visitors of San Joaquin County as well as impact the overall environment that is so important to making San Joaquin County what it is:

- Groundwater depletion
- Interference with agricultural drainage
- Interference with groundwater recharge
- Degradation of groundwater quality (NM)<sup>1</sup>
- Reduced water quality related to mercury, etc.
- Loss of topsoil
- Creation of physical structures through existing communities
- Conversion of Important Farmland
- Long-term reduction in recreational opportunities
- Substantial alteration in existing visual quality
- Permanent effects on scenic vistas
- Damage to scenic resources from conveyance facilities
- New light and glare
- Effects on archaeological, paleontological, and historic resources
- Effects on buried human remains during construction
- Construction vehicle trips causing unacceptable LOS conditions
- Construction vehicle trips worsening pavement conditions
- Interference with emergency routes
- Disruption to transit service
- Effects on local and regional utilities
- Cumulative greenhouse gas (GHG) emissions due to pumping
- Generation of regional criteria pollutants
- Significant noise and vibration impacts
- Public health impacts related to water quality
- Loss of important natural gas wells

Given the recent San Diego State University CEQA case, it appears that DWR has not done enough to identify mitigation measures that are reasonable, feasible, and enforceable. There is no reason that all of the above significant, unavoidable impacts have to result from the project. And it is hard to imagine how Findings will be able to be made given over 50 significant and unavoidable impacts. The following are measures that have not even been mentioned in the mitigation discussion:

- Reducing the scale of the project.
- Committing DWR to specific assurances such as means for payment and authority for completion of mitigation measures (e.g., purchase of agricultural easements, repaving of roads needed for construction, identifying non-auto/truck construction vehicles for moving equipment, identifying and committing to developing of habitat restoration in specific locations, protecting groundwater by specific measures).
- Implementing measures that are vaguely referred to in the myriad of 'plans' that are shown as mitigation but that are only vague assurances of implementation.

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<sup>1</sup> NM: No mitigation even provided for this impact.

## 9. Overall Comments on Transportation Analysis

**Methodology** -The methodology used to forecast future volumes, and future volumes with project has been reviewed. The report states that the future volumes in San Joaquin County were developed based on the SJCOG Travel Demand Model. The methodology seems sound, with one exception. The metric used is hours of congestion per day. The time period analyzed is from 6AM to 7PM. In many cases, both the future with and without project scenario show the maximum of 13 hours. In these cases, it is impossible to determine the impacts of the project. Roadway segments that are already at congested level during the entire period are inherently the most critical roadway segments.

Using total hours of delay would be a more useful metric and consistent with common practice. This metric would be especially useful in cases where the impacts of the project cannot be determined from the current analysis.

**Consistency with Local Plans and Programs**-The analysis does not cite the San Joaquin Council of Governments Regional Transportation Plan, or the SJCOG Congestion Management Program. The methodology section states that the SJCOG Travel Demand Model was used in the analysis, but does not specify which version of the model was used. We cannot determine if it was consistent with the adopted Regional Transportation Plan at the time of the NOP or release of the DEIR/DEIS, or RDEIR/SDEIS. This limits our ability to determine if the document properly assesses the impacts to the County's roadways over the 20 year construction period of the plan.

Impacts to the SJCOG CMP roadway network have not been analyzed or mitigated consistent with the most recent SJCOG Congestion Management Plan (CMP).

### **Traffic Impacts**

**SR4** - The most severe impacts directly attributable to the proposed project are on SR4 from the San Joaquin County Line to I-5. The three segments analyzed experience only one hour of congestion in the base, and only three hours in the future without the project. With the proposed project, the three segments would experience 39 hours of congestion.

**SR12** - It is not possible to determine the proposed project's impact on SR12. The base line indicates 12 hours of congestion. The future shows 13 hours of congestion for both the with and without project scenarios. Since the analysis only covers a 13 hour period from 6AM to 7PM, this is the maximum number of hours. Additional 24-hour analysis will likely also identify additional impacts requiring mitigation to the County transportation network.

**I-5** – This is a critical Interstate link for the entire West Coast. It is a major goods movement corridor for the entire West Coast. Two segments that are projected to be deficient are impacted by the project. According to Caltrans data, traffic volumes on these two segments range from 130,000 per day to 149,000 per day.

**From the CrossTown Freeway to Dr. Martin Luther King Blvd in the Southbound direction:** This analysis shows that this segment currently operates at an acceptable level of service. The future projections without the project are 2 hours per day. The proposed project would increase congestion to 3 hours a day. Even an increase of 1 hour per day on this segment will impact thousands of motorists each day over the next 20 years. A select link analysis of the diversion of traffic should be done on all major roadways to assess the impact to the local circulation system, as well as the appropriate mitigation for such critical impacts.

**From Dr. Martin Luther King Blvd to 11<sup>th</sup> St. in the Northbound Direction:** This analysis shows that this segment currently operates at an acceptable level of service. The future projection without the project is 3 hours of congestion per day. With the project, congestion will increase to 4 hours per day. Even an increase of 1 hour per day on this segment will impact thousands of motorists each day over the next 20 years. A select link analysis of the diversion of traffic should be done on all major roadways to assess the impact to the local circulation system.

**From Dr. Martin Luther King Blvd to 11<sup>th</sup> St. in the Southbound Direction:** This analysis shows that this segment currently experiences 3 hours of congestion per day. The future projections without the project are 13 hours per day. The "with project" scenario also shows 13 hours per day. Since 13 hours is the maximum time period analyzed, it is not possible to determine the project impacts on this very critical interstate segment.

**I-205** is another critical Interstate link that connects the Northern San Joaquin Valley to the San Francisco Bay area. It is also a very high volume route. The entire route from I-5 to I-580 experiences over 100,000 trips per day.

**From I-580 to Mountain House Pkwy in the Eastbound Direction:** This analysis shows that this segment currently experiences 4 hours of congestion per day. The future projection without the project is 5 hours of congestion per day. With the project, congestion will remain at 5 hours per day.

**From I-580 to Mountain House Pkwy in the Eastbound Direction:** This analysis shows that this segment currently experiences 2 hours of congestion per day. The future projection without the project is 3 hours of congestion per day. With the project, congestion will remain at 3 hours per day.

**From Mountain House Pkwy to 11<sup>th</sup> St. in the Eastbound Direction:** This analysis shows that this segment currently experiences 4 hours of congestion per day. The future projection without the project is 5 hours of congestion per day. With the project, congestion will remain at 5 hours per day.

**From Mountain House Pkwy to 11<sup>th</sup> St. in the Westbound Direction:** This analysis shows that this segment currently operates at an acceptable level of service. The future projection without the project is 2 hours of congestion per day. With the project, congestion will increase to 3 hours per day. Even an increase of 1 hour per day on this segment will impact thousands of motorists each day over the next 20 years. A select link analysis of the diversion of traffic should be done on all major roadways to assess the impact to the local circulation system.

**Byron Highway** - This analysis shows that this segment currently operates at an acceptable level of service. The future projections show that without the project, it will continue to operate at an acceptable level of service. Due to a typographical error in the analysis, we cannot determine the hours of congestion with the project.

**Mitigations Measures:** The proposed Mitigations measures are not adequate to mitigate the traffic impacts of the proposed projects

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

COMMENTS	TOPIC
<b>GENERAL COMMENTS</b>	
<p>1. <b>Project Level vs. Program Level:</b> The project is basically piecemealed because the actual impacts/precise impacts of ECs 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 not adequately addressed, because many of the ECs refer to broadly defined mitigation measures of the water conveyance facilities. Specific locations of ECs are not clarified; thus, the full project is not truly defined.</p> <p><u>Because ECs are used as mitigation to offset many of the impacts of the water conveyance facility, the EIR throughout uses program-level mitigation measures to reduce project-level impacts</u> of Alternative 4A 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 must be clearly and precisely identified. The RDEIR/SDEIS fails to do that. Please rewrite 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 able to be monitored, and reduce impacts to the extent feasible. Numerous examples of this problem are presented in the comments below.</p>	<p><b>Incorrect use of Program and Project EIRs</b></p> <p><b>Piecemealing</b></p> <p><b>Inadequate project-level mitigation measures</b></p> <p><b>Programmatic mitigation measures used when project-level required</b></p>
<p>2. <b>Unreadable Document.</b> At more than 2,200 pages alone for Chapter 4 of the RDEIR/SDEIS, this entire EIR/S is essentially unreadable, not only for the lay person but for an expert or elected official who has not had extensive experience with CEQA/NEPA. The Executive Summary alone is 106 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 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 for base information that is not located correctly; 2) 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 the appendix to learn of all the components that are part of the Preferred Alternative</p>	<p><b>Unreadable document</b></p> <p><b>Not a user friendly document</b></p>
<p>3. The definition of ECs is very unclear. Appendix 3B lists 20 measures, almost all of which are plans and programs that are intended to serve as mitigation measures. The REIR/SEIR cites the Lotus case, implying that these measures are effectively part of the project. Then, Chapter 4.1 addresses completely different ECs that are related to biological mitigation measures such as tidal communities' restoration, channel enhancements, vernal pool restorations and fish barriers. Are they both intended to be ECs? Why does Appendix 3B not include the measures shown on page 4.1-15?</p>	<p><b>Inadequate impact analysis</b></p> <p><b>Applicable to recent "Lotus v. Caltrans" case</b></p> <p><b>Inadequate mitigation measures</b></p>
<p>4. The project as proposed is too big for the proponent to develop and manage, let alone provide for meaningful review and comment as required by law. This</p>	<p><b>Project is too big to build with confidence; clearly beyond the</b></p>

COMMENTS	TOPIC
<p>is evidenced by major last-minute changes in alignment of the tunnels, and the eleventh-hour decision to abandon all components of BDCP that would protect the Delta as Place and the broader environment. Related to CEQA/NEPA, this attempt to piggy-back the Water Fix on the BDCP analysis, modeling, assessment and documentation fails to provide an adequate project description and analysis such that it can be reviewed.</p>	<p><b>competence of the proponents.</b></p>
<p>5. The proposed alternative is at full-buildout only, and as such, mitigation and adaptive management can touch only the fringes of impact-causing actions. For comparison, a through-delta conveyance can be done in increments with monitoring, field-testing, and analysis to re-design the project if needed as it progresses. This issue underlies the grave concerns expressed by the DSC Independent Science Board. This characteristic is inherent in such a massive engineering scheme; but as such it requires prior modeling, experimentation, and analysis commensurate with the risks involved. This project, in spite of its massive documentation, has morphed into the area of high uncertainty, and must be seen as "shooting from the hip."</p>	<p><b>Project is "All or nothing," thus impossible to apply adaptive management, modify design and correct mistakes as they are experienced.</b></p>
SPECIFIC COMMENTS	
Executive Summary	
<p>6. Page ES-8, Lines 18-21: There are no assurances that California EcoRestore actions will occur. That is a separate project and this RDEIR/SDEIS should not mislead readers to thinking that future habitat restoration beyond the mitigation measures in this document will occur. The document does not clearly explain which features are required to mitigate the impacts of previous projects, and which are prospective. In either case, Water Fix should not imply that it need not mitigate because the actions of others may (or may not) lessen the impact.</p>	<p><b>Misleading reliance on separate project to mitigate this project.</b></p>
<p>7. Page ES-9, Lines 31-32: Again, EcoRestore is mentioned in terms of reducing impacts. You can't have it both ways. You say impacts related to HCP are reduced due to removal of habitat restoration efforts with this new project; and then on the same page, you say biological impacts are reduced due to existence of EcoRestore. This Executive Summary needs to be revised to truthfully separate EcoRestore as a separate project that should NOT be included in this RDEIR/SDEIS.</p>	<p><b>Misleading reliance on separate project to mitigate this project.</b></p>
<p>8. Page ES-10: Finally, there is an admission that agricultural impacts are still of concern. If this is the case, please explain why there is no clear description of impacts (only 8 pages are devoted to this topic in Chapter 4 of the RDEIR/SDEIS as related to Alternative 4A).</p>	<p><b>Inadequate evaluation of agricultural impacts.</b></p>
<p>9. Page ES-82: Please explain how there can be no impact of construction on existing land uses. For example, the REIR/SEIR states that there are significant, unavoidable roadway interruptions and LOS exceedances during construction. That congestion will both directly and indirectly affect land uses along those roadways for a considerable length of time. Residences could be impacted by significant air emissions if located near those roadways; commercial enterprises could have limited access due to congestion.</p>	<p><b>Insufficient impact analysis False conclusions</b></p>
<p>10. Page ES-82: The mitigation for agricultural land loss is development of an Agricultural Lands Stewardship Plan (ALSP). No standards are set. No funding or authority is assured. This constitutes deferral of mitigation. No</p>	<p><b>Deferral of mitigation Inadequate mitigation</b></p>

COMMENTS	TOPIC
clarification is provided on how much acreage is to be saved.	
11. Page ES-83: Maintaining water supplies where dewatering is required is far from clear. Have groundwater levels been monitored to know how this can possibly happen, and how nearby farmers groundwater levels may be impacted? Please clarify how anyone can maintain water levels when groundwater is being withdrawn. Specify the base condition.	<b>Inadequate mitigation</b>
12. Page ES-94: Mitigation Measure TRANS 1c for Impact 6 states "Make good faith effort to enhance capacity of congested roadway segments." Please clarify how this can possibly be monitored. If this were a mitigation for a builder, people would laugh. Please clarify what constitutes a "good faith effort" and whether one phone call to one agency might qualify.	<b>Inadequate mitigation Unenforceable mitigation</b>
13. Overall comment on Summary Table ES-9: For an RDEIR/SDEIS that has over 8,000 pages of text, the Summary Table takes on even more relevance as compared to a normal RDEIR/SDEIS that is generally less than 400 pages. Five word summaries of mitigation measures are totally inadequate. Many significant impacts show no mitigation measures, though it appears these might have been corrected with the "Errata" sent out over 3 weeks after the review period began (again adding to the cumbersome review process). Many mitigation measures are repeated over and over and over again. If these were meaningful and enforceable, that might be OK. However, they are generalized and deferred, giving the reader and public no assurance of implementation.	<b>Vague and meaningless mitigation measures</b>
<b>Appendix A – Chapter 13 and 14</b>	
14. Page 13-9 appears to show that temporary construction impacts of converting ag lands to non-ag uses would now be 14 years rather than 9. However, in Chapter 3, construction period is shown as 11. Please explain why 5 years have been added to the construction period. Or is it 3 years now added? Lack of consistency in analysis is very confusing. Please explain why 14 years are considered "temporary." Develop new terminology to clarify and admit to the impact implications of time involved. For example, one or two years' disruption could ruin a business, or cause people to move from their home.	<b>Lack of consistency in years of "temporary" construction</b>
15. Page 14-5, Line 15: About 295 more acres of Williamson Act contract lands are shown for temporary removal now; please clarify in which County this occurs.	<b>Lack of clarity on impacts location</b>
16. Page 14-16; Line 6: Good to see that ag lands are now to be acquired within both Sacramento and Stockton metropolitan areas (Impact AG-2); it appears that our earlier comments on this may have been addressed. However, we still question the ability to mitigate for conversion of protected prime Delta farmland outside of the Delta. The best thing would be to avoid the conversion and impacts in the first place.	<b>Changed mitigation</b>
17. Page 14-19, Line 37: It appears that there may be a new impact related to 5 miles of Staten Island agricultural water delivery canals and ditches to be impacted, primarily due to assumed geotechnical investigation areas. The mitigation measure refers to GW-1 which can be found in Appendix A on page 7-5. However, this mitigation measure ONLY refers to impacts to related to groundwater depletion for ag use. It says nothing about water in	<b>Inadequate mitigation</b>

COMMENTS	TOPIC
canals and ditches used on Staten Island.	
18. Page 14-20: Unclear why Mitigation Measure AG-1 is shown for Impact AG-2. Then, there's mention of mitigation measures for Alternative 1A but Alternative 4 also has major ag/water infrastructure impacts in terms of pumping 500 gallons per minute (gpm) at construction sites and interrupting miles of ag drainage ditches. Please clarify why there is no mitigation measure for this.	Odd numbering of mitigation Inadequate mitigation
16. In Chapter 14, text seems to be missing from Section 14.3.3.2 to 14.3.3.9. Please clarify if there were changes to that section of the DEIR.	Missing text
<b>Chapter 4 – New Alternatives</b>	
19. <b>Overview:</b> This chapter was extremely difficult to review as there was no clear breakdown by alternatives or topics. There should have been hyperlinks to topics so that the reader did not have to sift through 2,277 pages to find the topic of concern. This was done in Appendix A and could easily have been done for Chapter 4 of the RDEIR/SDEIS. As stated in Section 15140 of the CEQA Guidelines, "EIRs shall be written in plain language and may use appropriate graphics so that decision makers and the public can rapidly understand the documents." Please note the word "rapidly." This document was so cumbersome, as mentioned in our introduction above, that one gets lost trying to find the relevant section dealing with the revised project.	EIR written and presented with no clarity or appropriate hyperlinks, making it quite cumbersome to find relevant sections. Ignores Section 15140 of CEQA Guidelines.
20. <b>Issue of Environmental Commitments:</b> The idea that the project now includes "Environmental Commitments" (EVs) which were originally referred to as "Conservation Measures" (and fewer now apply to revised project) seems to directly apply to the Lotus v. Caltrans case. Please clarify why you assume that these EVs do not have to be adequately evaluated as related to potential specific impacts and why they wouldn't be included in a Mitigation Monitoring and Reporting Program. As stated in the Lotus case, "Caltrans compounds this omission by incorporating the proposed mitigation measures into its description of the project and then concluding that any potential impacts from the project will be less than significant. As the trial court held, the 'avoidance, minimization and/or mitigation measures,' as they are characterized in the EIR, are not 'part of the project.' They are mitigation measures designed to reduce or eliminate the damage to the redwoods anticipated from disturbing the structural root zone of the trees by excavation and placement of impermeable materials over the root zones. By compressing the analysis of impacts and mitigation measures into a single issue, the EIR disregards the requirements of CEQA."	Lack of adequate mitigation Use of Environmental Commitments to ignore need for mitigation  Application to Lotus v. Caltrans CEQA case
<b>Land Use</b>	
21. Page 4.3.9-1: Line 23-24: There is no reference to what mitigation measures apply to identified impact of land use incompatibility. It is amazing in Chapter 4 that there is no description to provide an understanding of what is proposed.	Lack of mitigation measures
22. Page 4.3.9-3, Line 31: While about 68,000 fewer acres would now be impacted due to removal of CMs 2, 5, 13, 14, and 17-21, there would still be about 15, 548 acres of habitat restoration. However, please explain why there is absolutely no clarification of where these acres would be located. How can this RDEIR/SDEIS assess and report the impacts of the Environmental	Lack of adequate impact analysis

COMMENTS	TOPIC
Commitments without knowing and showing the location of habitat restoration and the current land uses it would replace. It is not always true that habitat restoration is compatible with agricultural operations as stated on page 4.3.9-4, Line 21. Please correct this conclusion.	
23. Page 4.3.9-4: Open space and agricultural designations are NOT the same. Also, habitat restoration does not equal an agricultural use. Please correct.	Incorrect land use analysis
24. Page 4.3.9-4, Line 7-8: Comparing this new alternative to other BDCP alternatives is not the appropriate CEQA methodology; the new alternative must be compared to baseline conditions. There is a statement "not anticipated to result in substantial incompatibilities" but without any backup information to justify this conclusion. And the "dispersion" of impacts does not mean reduced impacts, but rather could indicate an increase in effect.	<p>Failure to compare to baseline conditions</p> <p>Lack of information or evidence to support conclusions</p> <p>Minimization of impacts by concluding that dispersed impacts are reduced impacts</p>
<b>Appendix 3B – Environmental Commitments</b>	
25. Page 3B-55, Line 29: States that RTM areas are considered permanent surface impacts for the purpose of the impact analysis. If this is the case, please clarify that the agricultural/land use impacts of using this acreage for RTM have been shown as permanent rather than temporary impacts.	Clarification on short-term vs. long-term impacts
<b>Transportation</b>	
26. Page 4.3.15-1, Line 30: Please clarify how the impacts of Alternative 4A can be the same as Alternative 4 when you have significantly more RTM stored at the Clifton Court Forebay area and other new areas were not assessed in the original DEIR. The mitigation measures for construction impacts remain vague, unclear and deferred. Using words such as "make good faith effort" and "limit construction when feasible" illustrate totally ineffective mitigation measures that cannot be monitored.  Nowhere is there a discussion of 1) reducing the scale of the project to reduce impacts (per recent San Diego State case), 2) suggesting alternative routes, 3) suggesting alternative means of delivering materials such as rail or water or helicopter to eliminate reliance on construction trucks.	<p>Lack of adequate mitigation</p> <p>Relevance to recent San Diego State case</p> <p>Vague and deferred mitigation measures</p>
27. Table 19-25 in Appendix A: This revised table is showing that LOS exceedances could occur for up to <u>13 hours per day</u> on some local roads such as SR 4, SR 12, etc. These are main arteries for San Joaquin County and adjoining counties. And these roads could be impacted for more hours, but the RDEIR/SDEIS analysis only covered 6 AM to 7 PM. And such exceedances could occur over the 14 year construction period.	Lack of full impact analysis and significant very long-term transportation impacts that lack adequate mitigation
28. Page 19-122 in Appendix A: Line 26: Expanding the study area to "capture all potentially affected roadway segments" is NOT a mitigation measure. Please clarify why this suggestion would serve as mitigation.	Lack of adequate mitigation "Study" does not equal mitigation
29. Page 19-123, Lines 1-38: A traffic mitigation plan with the following measures is far from adequate in reducing construction traffic impacts. The following <u>DO NOT</u> constitute traffic mitigation for construction: <ul style="list-style-type: none"> <li>Slowing or rerouting traffic (especially in the Delta, where alternative routes are not available)</li> </ul>	<p>San Diego case</p> <p>Lack of effective mitigation measures</p>



COMMENTS	TOPIC
<ul style="list-style-type: none"> <li>▪ Notices</li> <li>▪ Outreach</li> <li>▪ Procedures for evacuation</li> <li>▪ Describing staging areas</li> <li>▪ Designating areas of nighttime construction</li> <li>▪ Relocating school bus stops</li> <li>▪ Telling haulers to pull over in an emergency</li> <li>▪ Or</li> <li>▪ Adding a TDM program for construction workers (their contribution to overall traffic is likely a fraction of the problem)</li> </ul> <p>In addition, Mitigation Measure TRANS-1b suggests limiting the hours of construction. Please clarify how the impact of this mitigation measure would be in lengthening the construction period. Instead of 14 years, maybe construction would go on for 20 years. Please provide a simple table that recognizes and reports the direct relationship between hours worked and construction time for the entire project. And please clarify that any construction workers would even be able to abide by this. If they cannot work during nighttime hours, this could have important cost implications. In addition, Mitigation Measure AES-4a suggests limiting construction to daylight hours within 0.25 miles of residents. This would significantly restrict where any nighttime construction could occur. It appears that there are conflicts between mitigation measures. Please clarify.</p> <p>The mitigation measure for traffic is woefully inadequate and needs to be re-analyzed and rewritten to include effective and workable measures that can be monitored. Please revise these measures per the San Diego case rather than just concluding that impacts would be significant and unavoidable, and adding "band aid" mitigation measures that are meaningless.</p> <p>Page 19-125 states in Mitigation Measure TRANS-1c to "make good faith efforts to enter into mitigation agreements to enhance capacity of congested roadway segments." This is the antithesis of Governor Brown's goal of reducing greenhouse gas emissions in the State. And if you increase capacity for 14-15 years of construction, you've basically used this project to expand capacity of all affected roadways. Please identify the impact of such capacity increases in terms of land use, GHG, air quality, noise, growth inducement, cumulative impacts and other issues.</p> <p>The REIR does nothing to address creative solutions to reducing overall construction traffic such as delivery by rail, nighttime deliveries, helicopter deliveries and/or barge deliveries. Please address if these are feasible to reduce vehicular traffic congestion.</p>	<p><b>Impacts of mitigation measures not evaluated</b></p> <p><b>Mitigation measures working at cross purposes.</b></p> <p><b>"Good faith effort" does not constitute mitigation.</b></p>
<b>Groundwater – Alternative 4A</b>	
<p>30. Page 4.3.3-1; Lines 26-29: Text mentions "temporary" effects on groundwater levels and associated well yields but provides no clarification of the true level of the impact. If it's true that "sustainable yield of some wells might temporarily be affected by the lower water levels such that they are not able to support existing land uses" as stated in the text, this could be a significant</p>	<p><b>Lack of clarity of impact</b>  <b>Failure to define "temporary"</b></p>

COMMENTS	TOPIC
<p>unavoidable impact and could have far-reaching consequences for farmers affected by such groundwater reductions for an extensive period of time. Elsewhere "temporary" had meant up to 14 years. There has been no discussion of the secondary impacts of this lowered groundwater such as removal of lands from agricultural production, resulting in increased development pressure and the associated impacts of such.</p> <p>The duration of the dewatering activities is not clarified. Please state how many months/years are involved.</p> <p>There is no clarification on the total number of acres impacted which prevents the reader from having a clear idea of the true impact of dewatering activities. Please provide acreage and specific locations.</p>	
<p>31. Mitigation for Impact GW-1: The reviewer must go back to <u>see revisions to Chapter 7 of the original EIR/S</u> to see the recommended mitigation measure for groundwater reductions for Alternative 4A. On page 7-4 of the original EIR/S, one sees that the mitigation measure is extremely vague and not enforceable. If monitoring shows that domestic or agricultural water supplies are reduced due to dewatering, the EIR/S states that BDCP proponents (who is this and who is going to "watchdog" this?) will ensure domestic water supplies provided by wells "are maintained" during construction. This could entail installing sheet piles, deepening wells, or securing potable water from offsite sources. Nowhere is the impact of securing potable water from offsite addressed. Nowhere is one aware of how much water we might be discussing here. For agricultural water losses, the EIR/S states that the mitigation could be compensation to offset crop production losses. Again, the full impact is not addressed. If there are crop losses, please explain what impacts there could be in terms of long-term removal of ag lands from production; what impacts there could be from fallow land without water increasing dust emissions.</p> <p>The new revised Mitigation Measures GW-1 has extensive text added about monitoring, but the mitigation is still not enforceable. New text on line 37 of page 7-5 states "If water level data indicate that dewatering operations are responsible for reductions in well productivity such that water supplies are inadequate to meet existing or planned land use demands, mitigation will be required and implemented." This is not a mitigation measure....this is part of the IMPACT. Clarify who is to determine if dewatering operations are responsible for this impact. Clarify what other reasons there could be for lowered levels such as drought conditions, etc. This is the most <u>circular reasoning</u> that gets nowhere in terms of truly mitigating what could be a very serious impact.</p> <p>No specific standards or triggering points are provided in terms of defining "inadequate water supplies" due to well drawdown. Is that 1% less than prior to construction activities? Is it 15% less? Please clarify how you would define "inadequate" and who makes that determination? There are no established standards identified which results in a type of deferral of the mitigation measure. Please define what baseline would be used and how it would be</p>	<p><b>Inadequate mitigation for groundwater reductions, both domestic and agricultural</b>  <b>Reference to implementation and enforcement by an agency that does not and may not ever exist</b></p>

COMMENTS	TOPIC
<p>established.</p> <p>How can the proponent of the project make the determination when it's not in their best interest to have additional costs such as this? What outside, independent agency such as local County Health Department, or County Public Works staff could oversee this effort (assuming appropriate fees would be paid for their time)? Please clarify.</p>	
<p>32. <b>General Omission:</b> There is no discussion of the Sustainable Groundwater Management Act (SGMA) of 2014 in Chapter 4 of the RDEIR/SDEIR or in Appendix A of the RDEIR/SDEIS, Chapter 7.1. One does not find a single mention of SGMA – one of the most critical pieces of legislation in the State of California in years. The only place SGMA is mentioned is in Chapter 5 dealing with cumulative impacts. But this is not just a “cumulative issue.” The future Groundwater Management Plans to be developed by local governments may have major ramifications on future water use within the State. If significant overdrafting is identified, the result may be severe curtailments on water use, especially for agricultural operations. Consequently, there may be even higher demands for surface water sources. This entire issue has been blatantly omitted from the RDEIR/SDEIR discussion. Please elaborate on this issue and include information relevant to the impact analysis, including the analysis of future water demand projections.</p>	<p><b>Omission of critical SGMA legislation discussion related to future groundwater use</b></p>
<p><b>Water Quality</b></p>	
<p>33. <b>General:</b> A total of 34 impacts related to water quality are addressed in Chapter 4.3.4 of the RDEIR/SDEIS. The impacts address levels of boron, bromide, chloride, dissolved oxygen, electrical conductivity (EC or what should be called “salinity”), mercury, pathogens, pesticides, selenium, nutrients (ammonia, nitrate and phosphorous), trace metals, turbidity, <i>microcystis</i>, and total suspended solids (TSS), and dissolved organic carbon (DOC). Many of the conclusions state that increases in these compounds would not degrade water quality; however, there are no tables showing expected levels as compared to standards or objectives related to these compounds. The reader is left just trusting the conclusion without substantiation. There is mention of “objectives” and “criteria” but no tables showing the impacts related to these.</p>	<p><b>Lack of criteria by which to assess impacts</b></p>
<p>34. Impact WQ-11 re: Electrical Conductivity: Page 4.3.4-23, Lines 25-27 states that “quantitative modeling results presented in this assessment is (sic) not entirely predictive of actual effects under Alternative 4A, and the results should be interpreted with caution.” The text goes on to say that no new modeling was done; instead, a sensitivity analysis was completed. However, this leaves the reader wondering how much one can trust the conclusions.</p>	<p><b>Alt 4A not modeled, results of analysis “used with caution”</b></p> <p><b>Example of DSC ISB concerns</b></p>
<p>35. Throughout, the report uses various bases for comparison (none, other alternatives, BDCP) but at lines 17-31, 4.3.4-67 for example, the project's impacts are deemed minor in comparison to effects of other projects, sea-level rise, and climate change.</p>	<p><b>Shifting baseline to include other project's impacts and effects of sea-level rise</b></p>

## Adaptive Management & Monitoring Comment

Adaptive management and monitoring is essential for a project as complex and far-reaching as Waterfix. In fact, the WaterFix RDEIR/RDEIS acknowledges this and states that there will be “a robust program of collaborative science, monitoring, and adaptive management” (RDEIR Executive Summary, page 37). Yet, while confirming that monitoring and adaptive management is a critical element of the permitting process under CESA and ESA, specific details of such a monitoring and adaptive management plan are missing from the recirculated documents. Little more than lip service is paid to the need for such elements of WaterFix. Waiting until some unspecified future date to develop a reliable and functional monitoring and adaptive management system deprives the public and decision makers of the opportunity to assess and comment upon such a plan.

In fact, the Delta Independent Science Board (DISB), having reviewed WaterFix, emphatically notes that the recirculated environmental documents repeat the inadequacies of the BDCP environmental documents. The DISB states that the deferral of providing details of the adaptive management process, collaborative science, monitoring, and the resources for these efforts is simply too late for WaterFix to be a successful plan. The DISB also notes that, for WaterFix to meet the consistency requirements of the Delta Plan, a clearly defined adaptive management plan must be an integral part of the plan. Details on how adaptive management and monitoring will be done and resourced must be done now, at the outset, so that the public, as well as decision makers can review and analyze the adequacy of WaterFix at the earliest moment, not some time in the distant future.

The DISB is not alone in expressing concerns about plans which contain only vague promises of adaptive management. Knowledgeable and respected legal scholars have heavily criticized so-called adaptive management plans that contain little more than watered down ad hoc contingency planning and crisis management on the fly. They appropriately deem this “a-m lite” (citation for Minnesota LR article). Such “e-m lite”, as with WaterFix, does not live up to either the theoretical promise or the legal demands of substantive and procedural law.

At a minimum, adaptive management must entail the development of a comprehensive conceptual model for evaluating the potential causes of environmental degradation, as noted by the DISB. The WaterFix documents contain little in the way of such modeling.

Moreover, planning and design of an adaptive management program must be developed simultaneously with a plan for monitoring and those plans should be developed before implementation of the project. That is not the case with WaterFix as there is little evidence in the recirculated documents of a specific set of plans for adaptive management and linked monitoring. WaterFix simply provides empty and unclear promises of some plans in the future.

Finally, one of the most critical parts of successful adaptive management and monitoring plans, and perhaps the most important factor influencing a decision to use those plans, is clearly calculated and assured funding before the beginning of any project such as WaterFix. Waterfix provides neither a clearly calculated cost of a successful adaptive management plan and an integrated monitoring program nor any discussion of the assurances of the funding of such costs. Without such delineation of those costs and their assured enforceable funding

from presently identified sources, any purported adaptive management plan and related monitoring plan is simply a sham.

As suggested by the Delta Independent Science Board, assured funding for an adaptive management and monitoring program for DeltaFix should be a budgetary line-item allocation in the range of 10% to 20% of the cost of the WaterFix project. That funding should be treated as a trust fund based on newly dedicated revenues which are not merely transferred from other existing sources. Without such assurances, any WaterFix adaptive management and monitoring program (which presently does not exist within WaterFix) will be a failure.

The public and those decision makers reviewing WaterFix environmental documents absolutely need the details of an adaptive management and monitoring plan, and details of assured finding for such a plan, before this environmental review can be completed so that the true scope and cost of WaterFix is known.

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**From:** Myles, James <jmyles@sjgov.org>  
**Sent:** Friday, October 30, 2015 10:07 AM  
**To:** BDCPcomments  
**Subject:** Revised Comments of San Joaquin County  
**Attachments:** San Joaquin County's Comments on the BDCP WaterFix Partially Revised DEIR and DEIS.pdf

Please find attached the revised comments of San Joaquin County on the BDCP WaterFix. This version replaces the version filed October 29, 2015.

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