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BDCP/CA WaterFix Comments
P.O. Box 1919
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RE: Solano County Comments on the Draft Bay Delta Conservation Plan (BDCP) / California WaterFix (CA WaterFix) Partially Recirculated Draft Environmental Impact Report and Supplemental Draft Environmental Impact Statement (RDEIR/SDEIS)

Dear BDCP/CA WaterFix:

Thank you for the opportunity to comment on the draft Bay Delta Conservation Plan/California Water Fix Recirculated Draft Environmental Impact Report and Supplemental Draft Environmental Impact Statement (RDEIR/SDEIS). Our comments on the new project are included here as Attachment 1. Solano County provided comments on the prior iteration of the project, the Bay Delta Conservation Plan (BDCP) on July 28, 2014. We note that our prior comments and concerns were not addressed in this new draft but assume they will be considered in the Final RDEIR/SDEIS applicable to both the original alternatives and the new alternatives associated with the CA WaterFix.

Solano County continues to have significant concerns about the BDCP and the new Water Fix Project. As a County with a very large agricultural base that is expected to take on a significant degree of habitat restoration entailing the conversion of agricultural land, we are particularly concerned about the lack of information available about the impacts to our region. The divestment of the Habitat Conservation Plan/Natural Communities Conservation Plan components, which identified some 153,000 acres of habitat restoration and protected lands, is now absent, replaced by a series of unformed or non-public plans and programs, and EcoRestore, which purports to restore/protect some 30,000 acres, most of which are required by existing Biological Opinions and for which very little information is available. We understand that this ecosystem restoration will occur, but there is no indication that a public process will be required or initiated for implementation of these projects that will impact us so greatly. In addition, the siting and development of habitat will have great impacts to the sustainability of remaining agricultural areas, also not discussed in the documents.

The sheer volume of the combined documents and the difficulty in reviewing a significantly changed project which uses parts of the original project as a base continues to be problematic to agencies and the public in enabling meaningful understanding, review or comment, and is particularly troubling in a project of this size. This is further exacerbated by the narrow focus of the project on isolated conveyance and the speed at which the project is moving as well as the lack of scientific and technical underpinning for a project of this complexity. Among other problems, the lack of scientific and technical basis precludes meaningful identification of impacts and their level of significance, mitigation and subsequent analysis of cumulative impacts. In many areas of the documents, analysis and decisions are delayed to an undetermined point in the future by an unidentified entity.

For example, water quality is critical to our agriculture, and even small changes in salinity have huge impacts to farmers, determining what crops can be planted at what time and even whether planting can occur in a given year. Yet the water quality modeling in the document is far too broad, quite outdated, and among many other problems, does not recognize that small changes in salinity can have significant impacts.

Despite the excessively large and ponderous nature of the environmental document, it is amazingly lacking in critical analysis on significant impacts to the Delta region. This of particular concern to Solano County where we believe agriculture and the local economy it serves will be seriously impacted by the "Wate Fix" and "EcoRestore" projects over the years they are implemented and beyond. By segregating the two projects in terms of environmental and economic impacts the documents prepared have effectively downplayed the true and cumulative impacts of the projects being proposed.

Thank you for the opportunity to comment. Solano County looks forward to working with you as this process continues to evolve.

Sincerely,



Bill Emlen, Director

Enclosure

CC: Solano County Board of Supervisors
Rep. Mike Thomson
Rep. John Garamendi
Senator Dianne Feinstein
Senator Barbara Boxer
Senator Lois Wolk
Assemblymember Susan Bonilla
Assemblymember Jim Frazier
Assemblymember Bill Dodd

Solano County Comments on the WaterFix RDEIR/SDEIS

Solano County's interest in submitting these comments is two-fold: First, the County seeks to ensure that the entire EIR/EIS document prepared by the state and federal lead agencies for their proposed project – particularly the WaterFix RDEIR/SDEIS document released for public review and comment in July 2015 – fully discusses how the proposed project could impact the people and environment of Solano County, including the quantity and quality of water available from the Delta for beneficial use within Solano County; second, the County seeks to ensure that the EIR/EIS document identifies feasible mitigation measures and a reasonable range of project alternative that will effectively mitigate or avoid any significant impacts of the proposed project.

General Comments regarding Structure of the RDEIR/SDEIS

An accurate, stable, and finite project description is the *sine qua non* of a legally-adequate EIR, because without such a project description, it is impossible for an EIR to provide an adequate discussion of project impacts, potential mitigation measures, or feasible project alternative. The Draft EIR/EIS for the proposed project, now consisting of both the original BDCP DEIR/DEIS released for public review in December 2013 and the WaterFix RDEIR/SDEIS released for public review in July 2015, is fundamentally and fatally flawed due to the unstable and open-ended project description provided in that document. This shifting project description causes two separate but related points of concern: (1) the Draft EIR/EIS fails as an informative public-disclosure document; and (2) because the Draft EIR/EIS discusses project "alternatives" that far exceed the water export capacity of either the proposed BDCP project or the proposed WaterFix project, the discussion of those expanded water export options in this Draft EIR/EIS document opens the possibility that the lead agencies may approve a much larger project than either the BDCP or WaterFix projects without ever conducting further environmental impact review.

A Partially-Recirculated DEIR (RDEIR) is not the appropriate type of CEQA Document to evaluate the recently-proposed California WaterFix Project

Section ES.1.2.1 of the WaterFix RDEIR/SDEIS contends there is sufficient legal justification for both the state and federal lead agencies to use the combination of the 2013 BDCP DEIR/DEIS and the 2015 WaterFix RDEIR/SDEIS documents to evaluate the potential environmental impacts of the WaterFix project. While the CEQ's NEPA regulations allow a federal lead agency to use a supplement to a draft EIS when the

agency “makes substantial changes in the proposed action that are relevant to environmental concerns” (40 C.F.R. § 1502.9(c)(1)(i)), this is a point on which CEQA and NEPA differ.

Section ES.1.2.1 of the WaterFix RDEIR/SDEIS cites section 21092.1 of the Public Resources Code and section 15088.5 of the CEQA Guidelines as legal authority for DWR use a partially-recirculated draft EIR to evaluate the WaterFix project. (WaterFix RDEIR/SDEIS, p. ES-4, lines 24 – 27.) Section 21092.1 authorizes a CEQA lead agency to use the recirculation process when “significant new information” is added to an EIR prior to certification, but that statutory section does not define what the Legislature meant by its use of the phrase “new information.” Instead, the phrase “new information” has been broadly defined in the CEQA Guidelines as including changes in the proposed project, changes in the project’s environmental setting, or other additional data and information. (CEQA Guidelines, § 15088.5(a).) The use of the recirculation process to publicly vet significant new information regarding a project’s environmental setting, impacts, mitigation measures, or alternatives is clearly sanctioned by section 21092.1 and CEQA case law. But a lead agency’s use of the recirculation process to vet new information regarding significant changes to the proposed project being evaluated in the EIR is fundamentally inconsistent with well-established CEQA case law.

In *County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 193 and 199, the Court of Appeal said:

[A]n accurate, stable and finite project description is the *sine qua non* of an informative and legally sufficient EIR. The defined project and not some different project must be the EIR’s bona fide subject.

This statement has been cited by the Supreme Court and by the Court of Appeal in more than twenty published appellate opinions.

While section 15088.5 of the CEQA Guidelines purports to authorize use of a partially-recirculated draft EIR whenever the lead agency makes substantial changes to the proposed project after publication of the original draft EIR, such practice means that the project description in the EIR is evolving over time rather than remaining stable throughout the entire document. The Supreme Court has repeatedly said that courts should afford great weight to the Guidelines except when a provision is clearly unauthorized or erroneous under CEQA. (See, e.g., *Sunset Sky Ranch Pilots Assn. v. County of Sacramento* (2009) 47 Cal.4th 902, 907 fn. 3; *Muzzy Ranch Co. v. Solano*

County Airport Land Use Com. (2007) 41 Cal.4th 372, 380 fn. 2; *Laurel Heights Improvement Assoc. v. Regents* (1988) 47 Cal.3d 376, 391 fn. 2.) To the extent language in section 15088.5 is interpreted by a lead agency as allowing it to use an unstable or evolving project description in an EIR, such an interpretation of section 15088.5 would be clearly unauthorized and erroneous under CEQA.

If a CEQA lead agency chooses to make significant modifications to its proposed project after a draft EIR had been circulated for public review and prior to certification of that EIR, CEQA gives the lead agency only one option: start the CEQA process over by preparing a new draft EIR for that newly-defined project and then circulate that new document for public review. If the lead agency instead cuts corners by utilizing the recirculation process to patch a draft EIR prepared for a previously-proposed and subsequently-abandoned project, the agency has not proceeded in the manner required by law.

There are Significant Differences between California WaterFix and BDCP

The recently-proposed California WaterFix project is substantially different than the Bay Delta Conservation Plan project described by the lead agencies in the 2013 BDCP DEIR/DEIS.

The Bay Delta Conservation Plan or “BDCP” is defined in the Sacramento-San Joaquin Delta Reform Act of 2009 as “a multispecies conservation plan.” (Pub. Res. Code, § 85053.) Under federal law, a multispecies conservation plan is referred to as a habitat conservation plan (HCP), prepared and approved pursuant to section 10 of the federal Endangered Species Act (16 USC § 1539), while under state law such a plan is referred to as a natural community conservation plan, prepared and approved pursuant to the Natural Community Conservation Planning Act (Fish & G. Code, § 2800 et seq.). (See BDCP DEIR/DEIS, p. 1-15, lines 25 – 30, & p. 2-2, lines 5 – 10.)

The lead agencies’ November 2013 Public Draft BDCP proposes a collection twenty-two separate project components consisting of infrastructure projects and habitat restoration and enhancement programs; these project components are euphemistically identified in the Public Draft BDCP document as “conservation measures” CM 1 through 22. (See BDCP, section 3.4.) Taken together, these twenty-two separate project components comprise the overall “project” that is purportedly evaluated in the BDCP DEIR/DEIS. (See CEQA Guidelines, § 15378 [“‘project’ means the whole of an action”].) Component CM 1 includes construction of new water conveyance facilities and

operational plans for both existing and new facilities (BDCP, section 3.4.1), while components CM 2 through 22 “will restore over 80,000 acres of natural communities, including tidal natural communities, seasonally inundated floodplains, and adjacent transition uplands; enhance 20 miles of channel margin; and enhance seasonally inundated floodplain in the Yolo Bypass through operation of a modified Fremont Weir” (BDCP, Ex. Sum., p. 8). The duration of the BDCP project is described in section 1.4.5 of the Public Draft BDCP document as follows:

DWR is seeking take permits from the fish and wildlife agencies that remain in effect for a term of 50 years. The proposed 50-year permit duration is necessary to allow sufficient time for the proper implementation of the actions set out in the Plan and to realize the overall BDCP goals of water supply reliability and ecosystem restoration.

For purposes of CEQA and NEPA compliance, the lead agencies will “approve” the overall BDCP project when they submit applications for incidental take permits and a NCCP permit to the relevant federal and state fish and wildlife agencies. (BDCP DEIR/DEIS, section 1.6; see CEQA Guidelines, § 15352(a) [“‘approval’ means the decision by a public agency which commits the agency to a definite course of action in regard to a project”].) We anticipate that the lead agencies will promptly file the CEQA Notice of Determination and NEPA Record of Decision after formally deciding to submit such applications. (Pub. Res. Code, § 21108; 40 C.F.R. § 1505.2.) While the fish and wildlife agencies rather than the lead agencies have final authority to decide whether the BDCP, as drafted by the lead agencies, will be approved as governing HCP/NCCP document, the lead agencies will commit themselves to a definite course of action regarding the overall BDCP project at the time they each formally make a decision to submit their respective applications to the fish and wildlife agencies.

In contrast, the description of the California WaterFix project provided in the lead agencies’ various PR documents is much narrower than the BDCP project in both scope and process. We have attached two of these PR documents – two sets of Frequently Asked Questions (FAQs) prepared by the lead agencies, one undated and the other dated July 2015 – to ensure that these statements by the lead agencies regarding the WaterFix project are physically included within the final EIR/EIS document rather than simply included as part of the administrative record.

According to these FAQ documents, the WaterFix project would consist only of a new variation of the water conveyance facilities and operational plans described in the Public

Draft BDCP as component CM 1, and would omit the habitat restoration and enhancement programs described as components CM 2 through 22. A substantially-reduced subset of the twenty-one BDCP habitat programs have now been split off into a separate project – repackaged and renamed as California EcoRestore and limited to 30,000 acres – that might be considered and approved by either the WaterFix lead agencies or other agencies under an independent and unspecified timeline. (July 2015 FAQ, p. 6.) Significantly, while components CM 2 through 22 were identified as part of the proposed BDCP project rather than mitigation measures for water facility construction and operations, the lead agencies have now done a complete about-face and have recharacterized some habitat restoration activities – limited to approximately 2,300 acres – as mitigation for construction and operation of the WaterFix project. (July 2015 FAQ, pp. 4 & 6.)

Under WaterFix, the lead agencies will no longer be seeking approval of a HCP/NCCP multispecies conservation plan from the federal and state fish and wildlife agencies. Instead, the lead agencies now propose to engage in formal section 7 consultation with the UFWs and NMFS (16 USC § 1536) and to seek incidental take permits from the state DFW (Fish & G. Code, § 2081(b)). (July 2015 FAQ, p. 4.) In addition, the lead agencies are no longer seeking take authorization from the fish and wildlife agencies for a 50-year period. The WaterFix RDEIR/SDEIS fails to explain why a 50-year permit duration is no longer “necessary to allow sufficient time for the proper implementation of the actions set out in the [proposed project] and to realize the overall [project] goals of water supply reliability and ecosystem restoration,” as was the case with the BDCP project. (See BDCP, p. 1-26, lines 28 – 30.) The implication is that the goals and objectives of the WaterFix project are much different than those of the BDCP project, even though the WaterFix RDEIR/SDEIS does not make any revisions to Chapter 2 of the BDCP DEIR/DEIS.

The WaterFix Proposal requires Changes to the Public Draft BDCP

For the original BDCP DEIR/DEIS, DWR chose to utilize a document preparation procedure similar to the one described in section 15166 of the CEQA Guidelines, which allows a city or county to combine a local general plan (see Gov. Code, § 65300) and the EIR for that general plan into a single document. DWR’s decision to combine the Public Draft BDCP and the BDCP DEIR/DEIS into a single, unified document is reflected in Chapter 1, footnote 3, of the BDCP DEIR/DEIS, which states as follows:

The full Draft EIR/EIS should be understood to include not only the EIR/EIS itself and its appendices but also the proposed BDCP documentation including all appendices. For example, the Chapter 5, Effects Analysis, and its associated appendices are repeatedly referred to herein and include much of the substantial evidence supporting the environmental analysis and conclusions herein, and Chapter 3, Conservation Strategy, more fully describes the proposed project.

This footnote has not been altered in the WaterFix RDEIR/SDEIS, and therefore remains the lead agencies' definitive statement as to the intended contents of their combined draft CEQA/NEPA document for the proposed project. It is therefore our understanding that the full draft EIR/EIS is now almost 50,000 pages in length and includes the following component documents:

Document	pages
Public Draft BDCP, w/o appendices	2,740
BDCP appendices	6,251
2013 BDCP DEIR/DEIS (bare)	13,365
BDCP DEIR/DEIS appendices	17,863
WaterFix RDEIR/SDEIS, w/o appendices	2,927
WaterFix RDEIR/SDEIS appendices	5,976
Total page count	49,122

The final EIR/EIS will of course be a much larger document because it will also include all comments on the BDCP DEIR/DEIS and the WaterFix RDEIR/SDEIS, as well as the lead agencies' responses to those comments.

Because the Public Draft BDCP document has been physically integrated into the full DEIR/DEIS rather than simply being referenced, any change to the BDCP document is also a change to the Draft EIR/EIS. On the other hand, if the lead agencies make changes to the project description through the WaterFix RDEIR/SDEIS process but fail to make conforming changes within the Public Draft BDCP document, then the draft EIR/EIS is rendered internally inconsistent. That is exactly what has happened here.

The lead agencies have described their proposal in so many different ways that it is not clear what version of the project is the proposed "project" for purposes of CEQA and NEPA evaluation. According to the Public Draft BDCP document, the water conveyance

infrastructure to be built as part of project component CM 1 would include three new north Delta intakes with a total combined intake capacity not exceeding 9,000 cfs. (BDCP, p. 3.4-12, lines 39 – 41.) The Public Draft BDCP implies that the proposed twin 40-foot diameter tunnels have been sized no larger than necessary to allow gravity flow of the maximum 9,000 cfs quantity from these three proposed intakes. (BDCP, p. 3.4-13, lines 1 – 3, & p. 4-11, Table 4-3.) “Diversions at the north Delta intake[s] would be greatest in wetter years and lowest in drier years, when south Delta diversions would provide the majority of the CVP and SWP south of Delta exports.” (BDCP, p. 3.4-12, lines 29 – 31.)

Yet ten of the fourteen “action” alternatives described in the DEIR/DEIS would have an export capacity of 15,000 cfs using the same twin 40-foot diameter tunnels. The DEIR/EIS does not explain how any of the ten 15,000 cfs export alternatives would “avoid or substantially lessen any of the significant effects of the project.” (CEQA Guidelines, § 15126.6(a); see also 40 C.F.R. § 1502.1.) Even more troubling, the DEIR/DEIS does not explain the inconsistency between its implication that the twin 40-foot diameter tunnels are no larger than necessary to convey the maximal 9,000 cfs flows from the three proposed north Delta intakes, but yet large enough to handle gravity flows of up to 15,000 cfs if two additional north Delta intakes are constructed.

Further, it is not clear whether the project described in the Public Draft BDCP, which functions as the project description in the draft EIR/EIS for purposes of CEQA and NEPA, is actually the project that the lead agencies intend to approve. According to their latest public statements, reflected in the two FAQ documents attached hereto, the lead agencies are now proposing to approve the WaterFix project and are deferring consideration of the EcoRestore project until some future time. But according to the 50,000-page draft EIR/EIS currently before the public, as augmented in July 2015 to include the WaterFix RDEIR/SDEIS, the state and federal lead agencies are still proposing to approve all twenty-two components of the BDCP project through a single project-approval action by each agency.

As a result of this shifting an unstable project description, there are at least three different projects described in the draft EIR/EIS as it currently exists. The draft EIR/EIS does not provide an adequate CEQA/NEPA environmental impact evaluation of any of these projects, but the first step in providing an adequate evaluation is for the lead agencies to settle on a single stable, accurate, and finite project description. The three different projects described or alluded to in the current draft EIR/EIS are the following:

- BDCP: up to 9,000 cfs export capacity; approximately 80,000 to 145,000 acres of habitat enhancement, restoration, or preservation; impacts to special status species to be mitigated through federal Section 10 HCP process and state NCCP process, with 50-year duration of commitments.
- California WaterFix: up to 9,000 cfs export capacity; project impact mitigation of approximately 2,300 acres of habitat restoration and up to 13,300 acres of habitat preservation; impacts to special status species to be mitigated through federal Section 7 consultation and state 2081(b) incidental take permit process. An additional approximately 30,000 acres of habitat may be enhanced or restored through the future and yet undefined California EcoRestore project, but approval and implementation of the WaterFix project is not dependent on approval of the EcoRestore project.
- “Super” BDCP: up to 15,000 cfs export capacity; approximately 80,000 to 145,000 acres of habitat enhancement, restoration, or preservation; impacts to special status species to be mitigated through federal Section 10 HCP process and state NCCP process, with 50-year duration of commitments.

WaterFix and BDCP cannot be evaluated in same Draft EIR/EIS

The differences between the WaterFix project and the BDCP project present the problem discussed by the Supreme Court in *Vineyard Area Citizens v. City of Rancho Cordova* (2007) 40 Cal.4th 412, namely, the requirement for a lead agency to discuss the reasonably foreseeable impacts of incomplete project implementation in its EIR. (*Id.* at p. 434.) In *Vineyard*, the City of Rancho Cordova proposed to adopt two planning documents: a conceptual community plan for a 6,000-acre area that envisioned more than 22,000 homes and as many as 60,000 people, and a specific plan for a 2,600-acre subarea of the community plan area that established land use and infrastructure plans for 9,886 homes. The City recognized that the two plans together constituted a single “project” for purposes of CEQA review, and therefore evaluated the net environmental impacts of the two plans by preparing a single EIR for the overall project. The City had firm water supplies for anticipated development in the 2,600-acre specific plan area, but sources of water to develop the remaining 3,400 acres of the community plan area were less certain. To mitigate for this uncertainty, the City’s EIR provided that development of the 3,400-acre would not be approved until firm water supplies were identified and evaluated through a future CEQA process.

The Supreme Court held that the City's EIR was legally inadequate because it failed to evaluate the reasonably foreseeable impacts of developing only the 2,600-acre specific plan area without also developing the remaining 3,400 acres of the community plan area. Although the City's EIR had evaluated the net impacts of the two plans being implemented in combination, it did not evaluate the impacts of the specific plan being implemented without the community plan. Given the uncertainty that the City would ever secure water supplies for development of the remaining 3,400 acres, it was reasonably foreseeable that only the 2,600-acre specific plan area would be developed, and that this reasonably foreseeable smaller project could have significant environmental impacts that were not identified and discussed in the EIR.

The courts have long been vigilant against agency attempts to piecemeal CEQA review. "The requirements of CEQA cannot be avoided by piecemeal review which results from 'chopping a large project into many little ones—each with a minimal potential impact on the environment—which cumulatively may have disastrous consequences.'" (*Rio Vista Farm Bureau Center v. County of Solano* (1992) 5 Cal.App.4th 351, 370.) In *Vineyard*, the Supreme Court held that adequate CEQA review also requires a lead agency to identify and evaluate the reasonably foreseeable environmental impacts of piecemeal or incomplete project approval and implementation.

By now proposing the WaterFix and EcoRestore projects as substitutes for the BDCP project, the lead agencies are acknowledging that approval and implementation of the BDCP project will be intentionally piecemealed. In addition, by fast-tracking approval and implementation of WaterFix while deferring analysis and consideration of EcoRestore – effectively de-linking the two sets of activities – the lead agencies are acknowledging that approval of their substitute projects will potentially be incomplete.

Despite the approximately 50,000 pages of environmental impact analysis included in the lead agencies' draft EIR/EIS, that draft document does not adequately identify and discuss the reasonably foreseeable significant environmental impacts of the WaterFix project being approved and implemented in isolation from other possible future projects, such as EcoRestore or project components CM 2 through 22 that were proposed as part of the apparently-abandoned BDCP project. Of course, any EIR/EIS for the WaterFix project must discuss the cumulative impacts of that project in combination with other past, present, and reasonably foreseeable future projects, but a cumulative impacts analysis is not a substitute for a project impact analysis. (Compare CEQA Guidelines, § 15126.2 with § 15130.) Because EcoRestore is now being proposed as a project separate and independent from WaterFix, any beneficial impacts of EcoRestore are relevant only

to a discussion of WaterFix's cumulative impacts, and cannot be used as mitigation or otherwise balanced against the significant adverse impacts that will be caused directly or indirectly by the WaterFix project. The current draft EIR/EIS does not provide such an impact analysis of the WaterFix project and is therefore inadequate to be used as the CEQA/NEPA document to support approval of that project.

The Draft EIR/EIS must not include Super BDCP as a Project Alternatives

The draft EIR/EIS evaluates ten alternatives to the BDCP project that would enable the lead agencies to export of up to 15,000 cfs from the north Delta rather than “only” the 9,000 cfs of export capacity that would be provided by the project described in the Public Draft BDCP. We will refer to these 15,000 cfs alternatives as “Super BDCP.” The lead agencies’ draft EIR/EIS – both as originally released for public review in 2013 and as augmented by the 2015 WaterFix RDEIR/SDEIS – does not adequately explain how increasing water exports from the north Delta would “avoid or substantially lessen any of the significant effects of the [BDCP] project.” (CEQA Guidelines, § 15126.6(a); see also 40 C.F.R. § 1502.1 [EIS “shall inform decisionmakers and the public of the reasonable alternatives which would avoid or minimize adverse impacts or enhance the quality of the human environment”].)

Given the apparent lack of any legitimate environmental reason for evaluating a Super BDCP project alternative – with sixty-seven percent more water export capacity – in the draft EIR/EIS, the County is concerned that a Super BDCP project or some equivalent-capacity variation thereof, rather than the 9,000 cfs BDCP project, may in fact be the bona fide subject of the draft EIR/EIS document.

In *Committee for a Progressive Gilroy v. State Water Resources Control Board* (1987) 192 Cal.App.3d 847, the City of Gilroy had prepared and certified an EIR for a wastewater treatment plant with a capacity of 6.4 million gallons per day (mgd). The City built the facility it had evaluated in the EIR, but the Regional Water Quality Control Board limited operation of the facility to 5.15 mgd. After the City made some improvements and management changes at the facility, the Regional Board gave the City authorization to operate up to a maximum flow of 6.1 mgd. The Committee challenged the Regional Board’s approval action, arguing that further CEQA review was required before the Regional Board could approve operation of the facility at the higher treatment capacity. The Court of Appeal disagreed, holding that the Regional Board’s approval simply authorized the City to operate the facility in a manner that had already been evaluated in the certified EIR was not a new project subject to a new EIR. (*Id.*, at pp.

862-863.) Because none of the factors that would require preparation of a subsequent or supplemental EIR were present (see Pub. Res. Code, § 21166; see also CEQA Guidelines, §§ 15162 & 15163), the Regional Board could have authorized the City to operate to operate the facility up to the full 6.4 mgd design capacity evaluated in the certified EIR without conducting any further CEQA review.

In light of the *Committee for Progressive Gilroy* decision and given the lead agencies' acknowledgment that the proposed twin 40-foot diameter tunnels could comfortably convey by gravity flow exports from the north Delta of up to 15,000 cfs, the County is justifiably concerned that the bona fide subject of the draft EIR/EIS, as augmented with the WaterFix RDEIR/SDEIS, could be a 15,000 cfs Super BDCP project rather than a 9,000 cfs project. For this reason, the County requests that all 15,000 cfs alternatives be deleted from the draft EIR/EIS document, and that a new DEIR/DEIS document that properly describes the true proposed project and discusses a properly focused range of reasonable project alternatives be circulated for public review and comment.

General Comments on Contents of WaterFix RDEIR/SDEIS

The WaterFix RDEIR/SDEIS is inadequate because it fails to describe and analyze alternatives that would improve rather than degrade water quality in the Delta

CEQA requires that an “*EIR shall describe a range of reasonable alternatives to the project, or to the location of the project, which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives. An EIR need not consider every conceivable alternative to a project. Rather it must consider a reasonable range of potentially feasible alternatives that will foster informed decisionmaking and public participation.*” (CEQA Guidelines, § 15126.6(a))

The WaterFix RDEIR/SDEIS is inadequate because it fails to consider and analyze feasible alternatives that incorporate additional storage and infrastructure to capture “new” water during periods of high flow in the Delta, as well as other more viable intake locations that would not harm key fish species. Both the south Delta and north Delta intake locations would significantly harm fish species. The south Delta intakes are unscreened or inadequately screened and cause reverse flows that increase entrainment and mortality of fish species in the Delta.

The north Delta intakes will reduce flow into and through the Delta, cause reverse flows in the north Delta, reduce migrating fish survival, and increase predation impacts. The

2013 Public Draft BDCP acknowledged that the north Delta intakes will have an adverse impact on key fish species. This is not offset by reducing exports from the south Delta because the south Delta intakes will continue to be used for 50% of the total exports and most of the exports will still be from the south Delta in dry periods.

The WaterFix RDEIR/SDEIS also fails to adequately analyze alternatives that incorporate increased Delta flows consistent with the Delta Flow Criteria developed by the SWRCB and Department of Fish and Wildlife in 2010. The analyses that were done (BDCP Alt. 8 and WaterFix Alt. 4H3) used the same configuration as the proposed project without incorporating any infrastructure such as new storage that would allow “new” water to be captured to offset the water being made available to help restore and sustain the Delta ecosystem. New alternatives involving higher Delta flows during dry periods and new storage would improve water quality in the Delta, as required by the 2009 Delta Reform Act, rather than degrade it.

The WaterFix RDEIR/SDEIS is inadequate because it assumes away significant adverse impacts on water quality without doing any detailed modeling runs

The 2013 BDCP DEIR/DEIS concludes that the BDCP project will have significant adverse impacts on water quality in the Delta. The BDCP DEIR/DEIS described these significant adverse impacts as unavoidable, despite State policy and antidegradation statutes requiring that Bay-Delta projects not only contribute to achieving both of the coequal goals, but also contribute to improving water quality in the Delta (2009 Delta Reform Act, Cal. Water Code § 85020(e)). The BDCP DEIR/DEIS failed to offer any meaningful, binding, or effective mitigation for these significant adverse impacts.

The July 2015 California WaterFix RDEIR/SDEIS concludes that the new alternatives (4A, 2D, and 5A) will not have any significant impacts on water quality in the Delta. Apparently, the lead agencies new position is that the significant adverse impacts identified in the BDCP DEIR/DEIS were avoidable after all, but this change in position is not explained in the WaterFix RDEIR/SDEIS or supported by any substantial evidence.

The WaterFix RDEIR/SDEIS assumes away these significant adverse impacts without supporting those assumptions with any detailed model runs, and only using “brief sensitivity analyses” (WaterFix RDEIR/SDEIS Appen. B, p. B-1) based on flawed modeling studies used for the BDCP DEIR/DEIS. Comments on the BDCP DEIR/DEIS by the North Delta Water Agency, Contra Costa Water District, City of Antioch, and others identified significant problems with those studies and the modeling tools that were

used. The WaterFix RDEIR/SDEIS acknowledges that the CALSIMII model has since been updated (*id.*, at p. B-3), but the RDEIR/SDEIS fails to provide the public and regulatory agencies with new, corrected, detailed model runs. Instead, the CALSIM II model runs from the BDCP DEIR/DEIS were “used as is ... to remain consistent with the draft EIR/EIS modeling.” (*Ibid.*) As a result, all errors and shortcomings of the original modeling are repeated in the WaterFix RDEIR/SDEIS’s sensitivity analyses.

The conclusions reached in the WaterFix RDEIR/SDEIS that there are no significant adverse water quality impacts are purely speculative and optimistic, without any accurate analysis to support them.

Sensitivity Analyses based on completely different operating rules and climate change conditions are not a substitute for full model runs

The conclusions reached in the WaterFix RDEIR/SDEIS are based on “brief sensitivity analyses” that DWR acknowledges are not full model runs.

The WaterFix RDEIR/SDEIS revised language of the BDCP DEIR/DEIS to state: “Understanding the uncertainties and limitations in the modeling and assessment approach is important for interpreting the results and effects analysis, including assessment of compliance with water quality objectives.... In light of these limitations, the assessment of compliance is conducted in terms of assessing the overall direction and degree to which Delta chloride would be affected relative to a baseline, and discussion of compliance does not imply that the alternative would literally cause Delta chloride to be out of compliance a certain period of time. In other words, the model results are used in a comparative mode, not a predictive mode.” (WaterFix RDEIR/SDEIS Appen. A revision to Appen. 8G, p. 8G-1): The WaterFix RDEIR/SDEIS is inadequate because it fails to carry out full model runs that simulate the full impacts of the proposed project.

The WaterFix RDEIR/SDEIS states that Alternative 4 CALSIM II models from draft EIR/EIS were used as-is for the Alternative 4A sensitivity analysis, without including any recent updates and improvements that have been made to the CALSIM II. (WaterFix RDEIR/SDEIS Appen. B, p. B-3.) The WaterFix RDEIR/SDEIS says the reason for not using the most recent, corrected versions of the CALSIMII flow operations model was “to remain consistent with the draft EIR/EIS modeling.” (*Ibid.*) As discussed in detail in comments by the North Delta Water Agency, Contra Costa Water District, the City of Antioch, and others on the BDCP DEIR/DEIS, the modeling used in that 2013 DEIR/DEIS was seriously flawed and the models themselves have been updated.

The sensitivity analysis approach in the WaterFix RDEIR/SDEIS is not valid and does not inform the Alternative 4A impact analysis in the REIR/EIS, and in fact may result in misleading results. For example, the water quality sensitivity analyses were carried out using the BDCP project Alternative 4 at late long term (year 2060 future conditions, 65,000 acres of habitat restoration and 45 cm of sea level rise), but the impact analysis in the WaterFix RDEIR/SDEIS is done at the early long term (year 2025, 25,000 acres of habitat restoration and 15 cm of sea level rise) conditions. Because the water quality analyses still included sea level rise, the effect of seawater is simulated to be much greater at late long term than at early long term.

The WaterFix RDEIR/SDEIS is inadequate because it uses the same flawed modeling used in the BDCP DEIR/DEIS and a “brief sensitivity analysis” to analyze and disclose the environmental impacts of a project of statewide importance that is likely to cause significant harm to the Delta ecosystem and other Delta beneficial uses. (WaterFix RDEIR/SDEIS Appen. B, p. B-1.) In addition, the WaterFix RDEIR/SDEIS acknowledges that “there is notable uncertainty in the results of all quantitative assessments that refer to modeling results, due to the differing assumptions used in the modeling and the description of the No Action Alternative (ELT).” (WaterFix RDEIR/SDEIS, p. 4.2-18).

The WaterFix RDEIR/SDEIS states: “Based on the sensitivity analyses, optimizing the design and siting of restoration areas is expected to be able to reduce EC and chloride increases in Suisun Marsh, relative to Existing Conditions and the No Action Alternative, to levels that would be less than significant.” (WaterFix RDEIR/SDEIS, p. ES-27, line 16.) As discussed above, the sensitivity analyses were performed under quite different conditions (late long term with additional sea level rise and much more habitat restoration, 65,000 acres) than the preferred alternative, Alternative 4A (early long term, less sea level rise, no shift in the Emmaton compliance location, and no significant amount of habitat restoration). The WaterFix RDEIR/SDEIS makes no firm commitments to mitigate the expected impacts by implementing habitat restoration at optimized sites. Only a small amount of habitat restoration is being considered as part of California EcoRestore, most of which is already required under the OCAP Biological Opinions. There is no longer a commitment by the WaterFix lead agencies to conduct that habitat restoration in a manner that would mitigate impacts to Suisun Marsh or Barker Slough, or to mitigate other expected Delta water quality impacts. There is no substantial evidence included or cited in the WaterFix RDEIR/SDEIS to support the optimistic expectation that water quality impacts will be reduced to less than significant

levels. Detailed modeling studies and analysis are necessary to identify the impacts of Alternative 4A and to recommend appropriate mitigation measures.

Sensitivity Analyses show a large range of potential water quality impacts at Barker Slough and in Suisun Marsh

The Sensitivity Analyses were based on the flawed modeling for Alternative 4, Scenario H3 at late long term, i.e., 2060 conditions with habitat restoration (which is no longer included with new Alternative 4A), and not updated using the most recent versions of the CALSIMII and DSM2 models. The following two figures show the range of EC at Barker Slough for the following sensitivity analyses used by DWR:

SA1 BDCP Draft EIR/EIS Alternative 4, Scenario H3 at LLT

SA2d Same as SA1 but with compliance at Emmaton and daily flow variations

SA4 Same as SA1 but with Suisun Marsh Control Gate operations consistent with the NAA

SA4a Same as SA4 but without the 65,000 acres of tidal habitat restoration

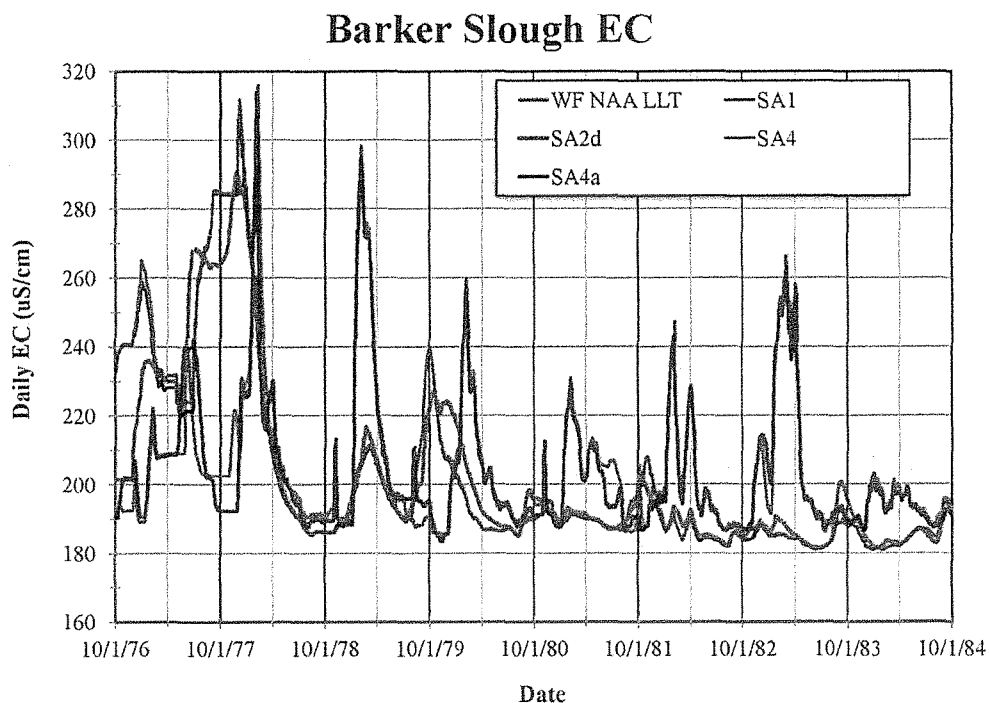


Figure 1: Daily EC values at Barker Slough from the sensitivity analyses for the period October 1976 through September 1984.

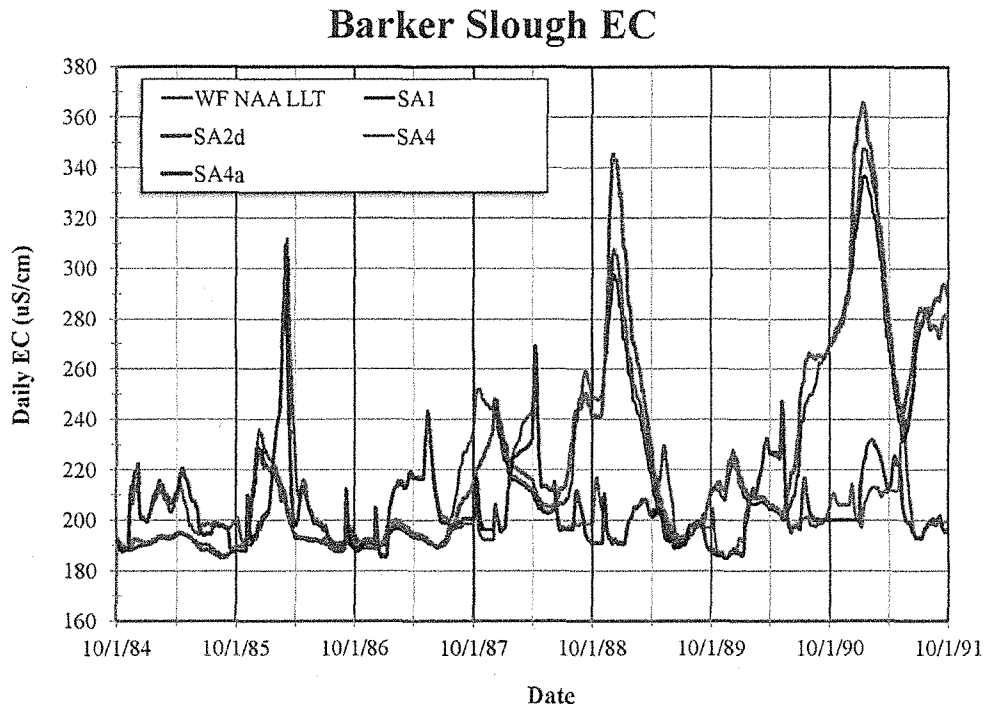


Figure 2: Daily EC values at Barker Slough from the sensitivity analyses for the period October 1984 through September 1991.

Also plotted for comparison purposes is the No Action Alternative developed for the WaterFix RDEIR/SDEIS for late long term. The WaterFix RDEIR/SDEIS only presented the water quality data as the averages for each month of the year for the short period modeled, water years 1976-1991, and for the water year 1987-1991 drought period. The 1976-1977 drought period was not included in the drought averaging.

As shown in Figures 1 and 2, the changed circumstances of removing 65,000 acres of habitat restoration could reduce EC at Barker Slough during drought periods (relative to the BDCP DEIR/DEIS proposed project, SA1) but increase EC significantly in normal and wetter years.

The WaterFix RDEIR/SDEIS only presents bromide concentration changes at Barker Slough and Belden's Landing as period averages (Appendix B, Tables Br-1 and Br-2) but does present chloride concentration changes at these two locations as period averages for each month of the year (Tables Cl-6 and Cl-7). The bromide and chloride concentrations are derived from the simulated EC data using two different methods. However, the

corresponding presentation of EC data (Table EC-8A) does not show the averages for Barker Slough or Belden's Landing. This is a significant omission.

However, as noted by the Delta Independent Science Board in their September 30, 2015 review of the WaterFix RDEIR/SDEIS, the presentation of data in this environmental document is "sufficiently incomplete and opaque to deter its evaluation and use by decision makers, resource managers, scientists and the broader public." The use of long-term averages in the tables in Appendix B masks the significant changes in water quality at Barker Slough and Belden's Landing and fails to disclose significant adverse water quality impacts.

Depending on where the habitat restoration needed to mitigate the significant adverse impacts of the WaterFix preferred alternative is implemented, and where the habitat restoration for California EcoRestore is implemented, the water quality impacts at Barker Slough and in Suisun Marsh could be significant. The timing of those impacts will also vary depending on the degree of habitat restoration. It is crucial that these impacts be determined, analyzed using full model runs, disclosed, and then either avoided or mitigated before any decisions regarding the WaterFix project are made by the lead agencies and regulatory agencies such as SWRCB and the Army Corps.

The following figures (Figures 3 and 4) show the EC data for each month of the 16-year sensitivity analysis simulation period (192 data points) in the form of scatter plots. The EC data for Barker Slough and Belden's Landing for Sensitivity Analysis #4 (no habitat restoration) are plotted as a function of the WaterFix No Action Alternative. Both are at late long term.

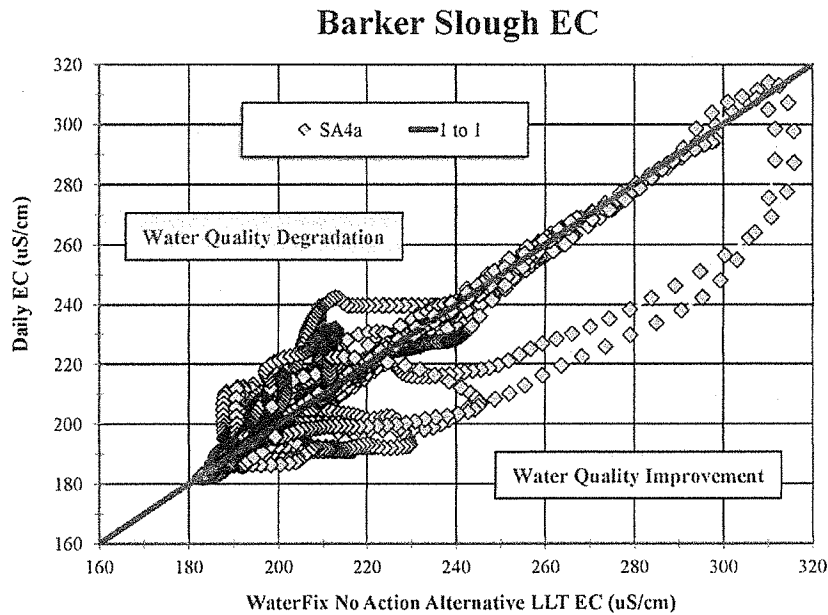


Figure 3: Scatter plot of daily EC values at Barker Slough from the WaterFix sensitivity analyses with no restoration (SA4a, LLT) for the period October 1975 through September 1991. Some peak EC are reduced relative to the No Action equivalent but significant adverse impacts occur at other times.

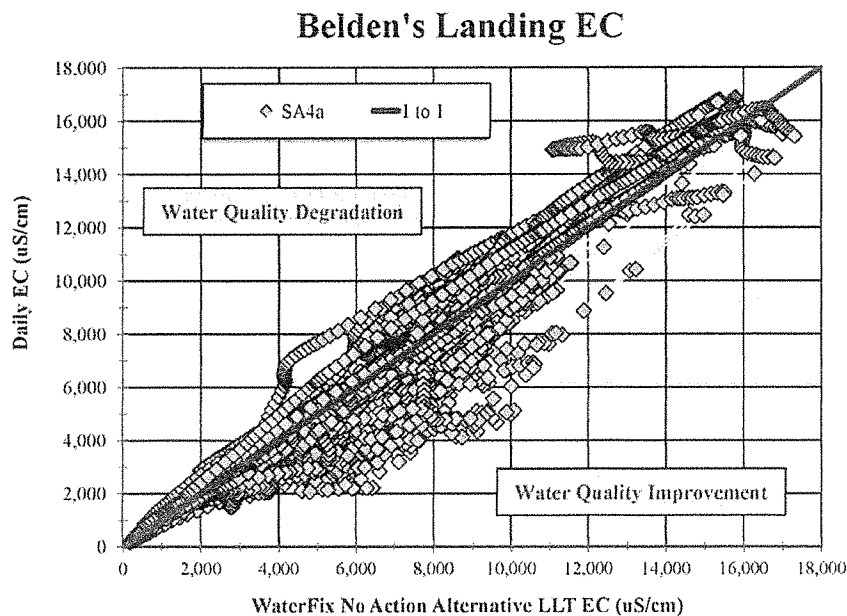


Figure 4: Scatter plot of daily EC values at Belden's Landing from the WaterFix sensitivity analyses with no restoration (SA4a, LLT) for the period October 1975 through September

1991. There are some reductions in EC relative to the No Action equivalent but significant adverse impacts occur at other times.

Some peak ECs at Barker Slough are reduced relative to the No Action equivalent but significant adverse impacts occur at other times. There are some reductions in EC relative to the No Action equivalent at Belden's Landing but significant adverse impacts occur at other times. The presentation of water quality data must present the data in sufficient detail to fully disclose the daily or month to month variations in water quality, in particular the occasions when salinities increase significantly. It is not acceptable to only present long-term averages that obscure and reduce the significant impacts on urban and agricultural water users, and the Delta ecosystem.

The WaterFix RDEIR/SDEIS is inadequate because it fails to present analysis data in a form that discloses the daily or month to month impacts of the proposed project on water quality and fails to avoid or provide definitive mitigation for these significant impacts on water quality.

The WaterFix RDEIR/SDEIS presents unsubstantiated water quality data for the new alternatives

The WaterFix RDEIR/SDEIS is inadequate and confusing for the public and decisionmakers because it claims that Alternatives 4A, 2D, and 5A were evaluated and that the evaluation was at early long term. Of particular concern are the tables in Appendix B, *Supplemental Modeling Results for New Alternatives*, that claim to present the water qualities for Alternative 4A for Scenario H3 and H4 at early long term when no full model runs or even sensitivity runs were performed for those cases.

Detailed Comments on Contents of the WaterFix RDEIR/SDEIS

Executive Summary

Page ES-8, line 33

The WaterFix RDEIR/SDEIS states: "the other alternatives evaluated in the WaterFix RDEIR/SDEIS, Alternative 4A, 2D, and 5A, are evaluated at the Early Long-Term (ELT) timeframe because the project implementation period is anticipated to be shorter." This is not correct. No full model runs for these three alternatives were carried out and the "brief sensitivity analyses" of water quality impacts that were performed were at late long term (2060 rather than 2025 conditions). The sensitivity analyses were based on flawed Alternative 4 model runs from the BDCP DEIR/DEIS, never included all the components

of the preferred alternative 4A, and most included 65,000 acres of habitat restoration and much greater sea level rise and seawater intrusion.

The WaterFix RDEIR/SDEIS inaccurately claims that Alternatives 4A, 2D, and 5A were evaluated, and that the evaluation was at early long term. Of particular concern are the tables in Appendix B, Supplemental Modeling Results for New Alternatives, that claim to present the water qualities for Alternative 4A for Scenario H3 and H4 at early long term when no full model runs or even sensitivity runs were performed for those cases.

Section ES.1.3 (page ES-9): Areas of Known Controversy

The WaterFix RDEIR/SDEIS identifies an insufficient range of reasonable project alternatives as one known area of controversy. The range and adequacy of project alternatives is an issue of concern to the public as well as to governmental agencies. Of the fifteen project alternatives described in the BDCP DEIR/DEIS, only one (Alternative 9) was substantially different in terms of infrastructure than the others. The others all involved new intakes in the north Delta with an isolated conveyance system linking various configuration of three to five intakes to the SWP and CVP export pumps in the south Delta. The adverse environmental impacts on aquatic species and water quality in the Delta were not significantly different whether the isolated conveyance was a canal, pipeline or tunnel or whether it followed an eastern or western alignment. The three new “sub-alternatives” added by the WaterFix RDEIR/SDEIS are very similar to the earlier fourteen in terms of intake location and isolated conveyance, and again fail to reduce exports during drier months and capture more water in wetter months when it is surplus to the needs of the Delta, or otherwise contribute to achievement of the coequal goals.

A new Draft EIR/EIS is warranted that includes new alternatives that are substantially different than those already studied, e.g., incorporating new storage, actions to reduce demand on the Delta – such as water reuse – especially during drier periods, levee strengthening, and fully analyzes and discloses, avoids, and mitigates their impacts.

Section ES.1.4.3 (page ES-12): Cumulative Impact Analyses

The WaterFix RDEIR/SDEIS includes additional reasonably foreseeable proposed projects that, when considered together with the action alternatives, could have a significant cumulative effect. The analysis includes a discussion of the California Water Action Plan, California EcoRestore, and the Sustainable Groundwater Management Act to better describe the roles of the new Delta conveyance facilities and habitat restoration in the context of the state’s comprehensive vision for water management.

The proposed project fails to produce any significant improvement in water supply reliability, degrades rather than improves water quality in the Delta, harms key fish species (BDCP Executive Summary), and otherwise fails to meet the state and federal statutory requirements to contribute to achieving the coequal goals. The California Water Action Plan includes additional actions such as new storage that will be necessary. As such the WaterFix RDEIR/SDEIS should have analyzed operations of the preferred alternative in the future with new storage, actions to reduce demand, and the long overdue habitat restoration required by the SWP and CVP biological opinions. DWR also indicated, in the BDCP Draft EIR/EIS, its intent to request that the compliance location for the Emmaton standard be moved to Three Mile Slough. The new alternatives do not include this change in compliance location to reduce the significant adverse water quality impacts of the BDCP alternatives, but a future request that this compliance location be shifted is reasonably foreseeable and should also be modeled as a cumulative impact.

The WaterFix RDEIR/SDEIS also notes that the SWRCB is working on revising its Water Quality Control Plan to increase flows on the San Joaquin River (Phase 1) and in the Delta and the other tributaries. The cumulative impact of these flow increases on the proposed project and the viability of the new intakes and twin tunnels once the increased flows are implemented by the SWRCB must be fully analyzed.

Page ES-15

The WaterFix RDEIR/SDEIS says their alternative implementation strategy (Alternatives 4A, 2D, and 5A) focuses on the conveyance facility improvements necessary for the SWP to address more immediate water supply reliability needs, and allows for other state and federal programs to address the long-term conservation efforts for species recovery through programs separate from the proposed project. This is further confirmation that the WaterFix proposal is contrary to the 2009 Delta Reform Act because it only attempts to achieve one of the coequal goals.

The new conveyance facilities will not improve conditions for endangered and threatened aquatic species in the Delta. Instead, reverse flows in the south Delta will continue, exports from the south Delta will actually increase during drier months, Clifton Court Forebay will remain unscreened, and the new north Delta intakes will harm key fish species. (Draft BDCP, Executive Summary.) Implementing the conveyance facilities will exacerbate rather than help resolve many of the concerns with the current south Delta conveyance system. The WaterFix RDEIR/SDEIS also fails to present any evidence or

arguments why implementing new conveyance separately will allow for implementing habitat restoration projects on an expedited schedule through the state's EcoRestore program. These are restoration projects required under the biological opinions and there is no guarantee that these programs will be implemented or completed.

Page ES-26

The WaterFix RDEIR/SDEIS states that "the cause of the modeled increases in bromide in Barker Slough, which was driving the impact conclusion for almost all alternatives, is due to the assumptions regarding tidal habitat restoration not due to conveyance facility operations." No full model runs were performed for Alternative 4A to support this statement, and the brief sensitivity analyses do not provide adequate support. There are also no full model runs to support the speculation that "because new alternatives 4A, 2D, and 5A contain a lower acreage of tidal restoration, significant impacts with regard to bromide are not expected under these alternatives."

Page ES-27, line 16

The WaterFix RDEIR/SDEIS speculates that "based on the sensitivity analyses, optimizing the design and siting of restoration areas is expected to be able to reduce EC and chloride increases in Suisun Marsh, relative to Existing Conditions and the No Action Alternative, to levels that would be less than significant." The brief sensitivity analyses are not full model runs and were not even carried out for the preferred alternative configuration and operations. The CEQA requirement to avoid or mitigate significant adverse impacts requires more than an expectation that as yet specified habitat restoration will not result in significant adverse water quality impacts. The full, albeit flawed, model runs for Alternative 4 clearly indicate the impacts of habitat restoration on water quality at Barker Slough and in Suisun Marsh. The habitat restoration to be done as part of WaterFix, EcoRestore, and other relevant programs must be analyzed in the environmental documentation from the proposed WaterFix project and disclosed, not piecemealed and postponed.

An established best estimate of the habitat restoration activities under WaterFix and, as part of the Cumulative Impacts Analysis, EcoRestore and other relevant BDCP habitat programs that are no longer part of WaterFix, is required. This requires full model runs as well as analysis and disclosure of the water quality impacts.

Page ES-27, line 36

Because Alternatives 4A, 2D, and 5A were not fully modeled for the WaterFix RDEIR/SDEIS, it is not possible to be certain that they would not result in significant impacts for EC related to objective exceedance in the Sacramento River at Emmaton, or would not result in substantial degradation in the western Delta due to increased chloride concentrations, or would have less adverse water quality effects in the western Delta related to EC, or would have fewer exceedances of the fish and wildlife EC objective between Prisoners Point and Jersey Point. The same applies to speculation regarding bromide concentration impacts at Barker Slough (p. ES-28, line 18).

The WaterFix RDEIR/SDEIS contains inadequate information to support this speculation regarding water quality impacts. A new Draft EIR/EIS must be prepared that models, analyzes, discloses and avoids or mitigates the impacts of the new alternatives and habitat restoration on water quality in the western Delta. The new Draft EIR/EIS must then be released for public review and comment.

Section 1: Introduction**Page 1-5, line 34**

The WaterFix RDEIR/SDEIS discusses CEQA Guidelines § 15088.5, which provides examples of disclosure that constitute “significant new information” for purposes of requiring recirculation of a revised EIR. Because the WaterFix RDEIR/SDEIS is so fundamentally and basically inadequate and conclusory in nature, meaningful public review and comment has been precluded. As found by the Delta Independent Science Board (September 30, 2015 review comments), the WaterFix RDEIR/SDEIS is “sufficiently incomplete and opaque to deter its evaluation and use by decisionmakers, resource managers, scientists, and the broader public.”

There are also feasible project alternatives considerably different from the two types of alternatives previously analyzed that would clearly lessen the environmental impacts of the proposed WaterFix project, but the lead agencies have declined to consider them. Such alternatives include the following: modified project components that increase Delta flows to restore and sustain fish populations (2010 Delta Flow Criteria); new storage to enable new water to be captured, stored, and conveyed to the California Aqueduct and Delta Mendota Canal; levee strengthening to protect the Delta and export water supply and water quality; and actions to reduce demand for water from the Delta. These types of alternatives should have been considered as part of a holistic solution. Most of these are

identified in the July 2014 California Water Action Plan, which DWR helped to prepare, and some are required by the 2009 Delta Reform Act.

Page 1-20, line 35: San Joaquin Delta Estuary Water Quality Control Plan (Bay-Delta WQCP).

The 2009 Delta Reform Act states that an order by the SWRCB approving any change petitions for the proposed project shall include appropriate Delta flow criteria and shall be informed by the analysis performed pursuant to Section 85086 of the Water Code (Cal. Water Code § 85086(c)(2)). The intent of the 2009 Delta Reform Act was that development of the BDCP and WaterFix project alternatives would also be informed by the Delta flow criteria developed by the SWRCB and Department of Fish and Wildlife.

The WaterFix RDEIR/SDEIS is inadequate because it fails to present alternatives compatible with, and including, increased Delta flow requirements consistent with the 2010 Delta Flow Criteria as required by State statutes. The legal reasoning for this is contained in the September 29, 2015 letter from NRDC, et al., sent to Tom Howard at the SWRCB¹. This letter is hereby incorporated into the County's comments by reference. (See *Consolidated Irrigation Dist. v. Superior Ct.* (2012) 205 Cal.App.4th 697, 723.)

Section 2: Substantive Draft EIR/EIS Revisions

Page 2-6, line 31

The sensitivity analyses conducted by the lead agencies were performed at late long term (2060) rather than early long term (2025), which is the chosen future reference time for the WaterFix RDEIR/SDEIS. The sensitivity analyses were based on, and relative to, earlier modeling of BDCP Alternative 4 at late long term. This alternative is very different than the WaterFix project, and the earlier BDCP modeling was flawed; the CALSIMII and DSM2 models have since been updated. The sensitivity analyses did not include these updates and corrections.

Full model runs for the alternatives must be produced. The statewide importance of the proposed project and the high level of public controversy require that the modeling results be disclosed for public review and comment now rather than slipped into a Final

¹

http://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/california_waterfix/early_petition_comments/docs/nrdc_obegi093015.pdf

EIR/EIS document, leaving little chance for serious regulatory agency and public review and discussion.

Page 2-8, line 2-9

It is not acceptable to merely anticipate that the new alternatives 2D, 4A, and 5A, will contain a much lower acreage of tidal restoration, and therefore the new alternatives will not have significant impacts with respect to EC and chloride in Suisun Marsh. A range of reasonably expected habitat restoration projects and acreages in the north Delta and Suisun Marsh under WaterFix and EcoRestore must be analyzed using full detailed model runs to quantify and disclose the potential significant adverse impacts to water quality in this region.

Page 2-13

The WaterFix RDEIR/SDEIS claims that “it is now known that the cause of the modeled increases in bromide in Barker Slough, which was driving the impact determinations for almost all alternatives, is assumptions regarding CM4 implementation, not operations in CM1.” The WaterFix RDEIR/SDEIS fails to perform full model runs to determine whether this is correct. It is also not sufficient to speculate that “because the new alternatives (2D, 4A, and 5A) contain a lower acreage of tidal restoration, significant impacts with regards to bromide are not expected under these alternatives.”

Section 4: New Alternatives: Alternatives 4A, 2D, and 5A

Section 4.2.7, pages 4.2-18 and 4.3.4-1: Water Quality

The WaterFix RDEIR/SDEIS states: “In general, the significance of this difference is the assessment of bromide, chloride and EC for the No Action Alternative (ELT), relative to Existing Conditions, likely underestimates increases in bromide, EC, and chloride that could occur, particularly in the west Delta. Nevertheless, there is notable uncertainty in the results of all quantitative assessments that refer to modeling results, due to the differing assumptions used in the modeling and the description of the No Action Alternative (ELT).”

Because of the statewide importance of developing a Delta solution that achieves both of the coequal goals, the public controversy surrounding the WaterFix project, and the extremely high cost of the new intakes and tunnels, it is very important that the models and modeling be refined. For example, daily rather than monthly timesteps should be used in the CALSIMII model, and the differing assumptions should be reconciled to

reduce the acknowledged “notable uncertainty.” A substantial amount of uncertainty was introduced by the lead agencies’ decision to cut corners and use only “brief sensitivity analyses” based on earlier flawed modeling runs rather than performing new, updated full model runs.

Page 4.3.4-24, line 4

The WaterFix RDEIR/SDEIS notes the significant differences between Alternative 4A and the modeling conducted for Alternative 4 in the early long term. The WaterFix RDEIR/SDEIS also claims “there are several factors related to the modeling approach that may result in modeling artifacts that show objective exceedance, when in reality no such exceedance would occur. The County agrees with the statement made in the WaterFix RDEIR/SDEIS: *“The result of all of these factors is that the quantitative modeling results presented in this assessment is not entirely predictive of actual effects under Alternative 4A, and the results should be interpreted with caution.”*

The lead agencies’ apparent rush to release the WaterFix RDEIR/SDEIS without performing full model runs of the new alternatives or correcting the prior model runs for the BDCP alternatives is unacceptable, inconsistent with accepted scientific practices, and contrary to the requirements of CEQA and NEPA. Presenting tables of water quality impacts in Appendix B for Alternative 4A at early long term when no such analyses were actually performed is also unacceptable.

Section 5: Revisions to Cumulative Impacts Analyses

Page 5-78, line 23: Electrical Conductivity

The WaterFix RDEIR/SDEIS claims: “Implementation of facilities operations and maintenance under these action alternatives, along with Mitigation Measure WQ-11, would not be expected to contribute substantially to this adverse cumulative condition for EC, because no additional exceedance of Bay-Delta WQCP EC objectives would be expected, and substantial long-term degradation with respect to EC would be avoided.”

Degradation of water quality in the Delta cannot be judged in terms of exceedance of the SWRCB’s Bay-Delta water quality standards. Significant impacts can occur to urban and agricultural water uses even when water quality standards are not exceeded. For example, farmers in the north Delta, including Solano County, have developed farming practices and crops that rely on very fresh water. Increasing salinities in this area will have a significant adverse impact on these beneficial uses, even if SWRCB chloride

standards are not exceeded. The environmental documentation must be revised to acknowledge that increasing salinities by even a small percentage can be a significant adverse water quality impact.

WaterFix RDEIR/SDEIS Appendix A

Appendix A, Chapter 8, page 8-53

The WaterFix RDEIR/SDEIS states: “In reality, staff from DWR and Reclamation constantly monitor Delta water quality conditions and adjust operations of the SWP and CVP in real time as necessary to meet water quality objectives. These decisions take into account real-time conditions and are able to account for many factors that the best available models cannot simulate.... Thus, it is likely that some objective exceedances simulated in the modeling would not occur under the real-time monitoring and operational paradigm that will be in place to prevent such exceedances.”

It is not sufficient to speculate “it is likely that” some predicted exceedances will not occur in practice when there is no substantial evidence presented in the WaterFix RDEIR/SDEIS to support such a statement. To the extent DWR and Reclamation staff will need to increase flows or reduce exports through real time operations monitoring and adjustments in order to meet water quality objectives, staff will reduce flows and increase exports in subsequent months to meet water delivery commitment, which could cause adverse impacts that are not disclosed in the WaterFix RDEIR/SDEIS. The WaterFix RDEIR/SDEIS is inadequate because it fails to analyze and disclose, using actual water quality model runs, the significant adverse impacts of the proposed project and provide reasonable estimates of the frequency of water quality objective exceedances, and disclose how the project will likely operate in real time.

Appendix A, Chapter 8, page 8-219

The WaterFix RDEIR/SDEIS discusses the effects of site-specific restoration areas proposed under CM 4 on bromide concentrations in Barker Slough, stating as follows: “It is anticipated that these efforts will be able to reduce the level of projected increase, though it is unknown whether it would be able to completely eliminate any increases.” The WaterFix RDEIR/SDEIS further states: “If sufficient operational flexibility to offset bromide increases is not practicable/feasible under Alternative 4 operations, and/or siting and design of restoration areas cannot feasibly reduce bromide increases to a less than significant level without compromising the benefits of the proposed areas, achieving

bromide reduction pursuant to this mitigation measure would not be feasible under this alternative.”

If Mitigation Measure WQ-5 (Avoid, Minimize, or Offset, as Feasible, Adverse Water Quality Conditions; Site and Design Restoration Sites to Reduce Bromide Increases in Barker Slough) is insufficient to fully mitigate the significant adverse bromide impacts in the Barker Slough region, additional mitigation measures must be developed.

Appendix A, Chapter 8, page 8-225: 303(d) Listed Water Bodies–Relative to No Action Alternative

The WaterFix RDEIR/SDEIS states: “Modeling results indicated that monthly average chloride concentrations at source water channel locations for the Suisun Marsh (Appendix 8G, Figures Cl-5, Cl-7 and Cl-8) would increase substantially in some months during October through May compared to the No Action Alternative conditions, but sensitivity analyses suggest that operation of the Salinity Control Gates and restoration area siting and design considerations could reduce these increases. However, the chloride concentration increases at certain locations could be substantial, depending on siting and design of restoration areas. Thus, these increased chloride levels in Suisun Marsh are considered to contribute to additional, measureable long-term degradation in Suisun Marsh that potentially would adversely affect the necessary actions to reduce chloride loading for any TMDL that is developed.”

It is not sufficient to merely do sensitivity analyses, especially when even the sensitivity analyses indicate that the proposed project will cause significant adverse impacts to water quality in Suisun Marsh. These significant impacts must be avoided or fully mitigated. Full model runs of the flows and exports in the Delta, and corresponding water quality variations, must be conducted. Based on the results of these model runs, all identified significant water quality impacts must be mitigated or avoided.

Appendix A, Chapter 8, page 8-228

The WaterFix RDEIR/SDEIS continues to propose aspirational water quality mitigation measures that defer development and identification of specific mitigation measures until after the project is completed. There are no commitments on behalf of the lead agencies that any mitigation will actually be identified or implemented. Mitigation Measure WQ-7 (Conduct Additional Evaluation and Modeling of Increased Chloride Levels and Develop and Implement Phased Mitigation Actions) and Mitigation Measure WQ-7c (Consult with Delta Water Purveyors to Identify Means to Avoid, Minimize, or Offset for

Reduced Seasonal Availability of Water That Meets Applicable Water Quality Objectives) are open ended and put much of the onus for project impact mitigation on the impacted parties.

The significant water quality impacts of the proposed project must be avoided or fully mitigated by the project proponents at no financial or resource cost to the impacted parties. Measures to avoid or fully mitigate all adverse water quality impacts and contributions to improvement of water quality in the Delta (Wat. Code, § 85020) must be incorporated into the CEQA/NEPA document and made available for public review and comment.

Appendix A, Chapter 8, page 8-237

The revised language provided in the WaterFix RDEIR/SDEIS states: “As discussed in Chapter 5, Water Supply, Section 5.3.1, Methods for Analysis, under extreme hydrologic and operational conditions where there is not enough water supply to meet all requirements, CALSIM II uses a series of operating rules to reach a solution that is a simplified version of the very complex decision processes that SWP and CVP operators would use in actual extreme conditions. Thus, it is unlikely that the Emmaton objective would actually be violated due to dead pool conditions. However, these results indicate that water supply conditions could be either under greater stress or under stress earlier in the year, and levels at Emmaton and in the western Delta may increase as a result, leading to EC degradation and increased possibility of adverse effects to agricultural beneficial uses.”

It does not necessarily follow that because the CALSIMII model is not able to handle extreme conditions that exceedances of the Emmaton objective are unlikely. Limitations in the CALSIMII model could result in exceedances being underestimated. Because of the statewide importance of finding a solution to the drastic problems of the Delta, it is imperative that the CALSIMII model be upgraded to adequately account for extreme conditions, such as the current drought situation, and to simulate daily rather than monthly time steps. The adverse impacts to agricultural beneficial uses indicated by the results must also be fully mitigated. New, accurate modeling must be conducted that analyzes project operations using an upgraded CALSIM II model and full model runs for flow and export operations and water quality over the full simulation period.

Appendix A, Appendix 8H, page 8H-1

The WaterFix RDEIR/SDEIS states: “The sensitivity analysis modeling runs were limited to the Existing Conditions, No Action Alternative, and Alternative 4 Scenario H3, but the findings from these analyses can generally be extended to other scenarios of Alternative 4 and the other project alternatives.” Because the sensitivity analyses were applied to Alternative 4 at late long term, they are not representative of Alternative 4A at early long term, which has almost no habitat restoration and significantly less sea level rise and seawater intrusion.

The WaterFix RDEIR/SDEIS also states: “DWR and USBR have every intention of operating SWP and CVP facilities by fine tuning reservoir storage and exports in real time to meet D-1641 standards, and any changes to D-1641 as adopted by the SWRCB. Actual operations are continuously adjusted to respond to reservoir storages, river flows, exports, in-Delta demands, tides, and other factors to insure compliance to regulatory requirements to the extent possible.” Because of the failure of the WaterFix RDEIR/SDEIS to actually model the new alternatives and revise the flawed modeling used for the 2013 BDCP DEIR/DEIS alternatives, actual operations of the WaterFix would likely be much different than what is described in the WaterFix RDEIR/SDEIS. For example, exports may need to be reduced in a given month and compensating increases made in a subsequent month, thereby shifting impacts to other more critical months.

Appendix A, Appendix 8H – Attachment 1, page 3

BDCP EIR/EIS Water Quality Sensitivity Analysis

The Draft Technical Memorandum, included as an attachment to the WaterFix RDEIR/SDEIS, states: *“DSM2 sensitivity runs listed above were simulated at LLT conditions. NAA DSM2 run at LLT accounts for 45 cm sea level rise at the Golden Gate Bridge. Alt4 H3 DSM2 runs at LLT account for 65,000 acres of restoration in addition to the 45 cm sea level rise. Even though the sensitivity analyses were performed at LLT, the factors identified to explain modeled salinity exceedances at LLT are expected to be valid similarly at Early Long-term (ELT) conditions.”*

This speculation is not correct. The late long term conditions in the Delta will include a significant amount of additional seawater intrusion, especially at locations like Barker Slough (as shown by the sensitivity analyses). Comparing two simulations with a lot of seawater intrusion (subtracting one from the other) is very different from comparing two

simulations under conditions with significantly less seawater intrusion (i.e., at early long term).

It is also incorrect to claim that “the Lead Agencies have determined that they may reasonably rely on the modeling conducted for Alternative 4 to accurately predict the environmental effects of Alternative 4A.” (*Id.*, p. 4.2-18.) As is acknowledged in the WaterFix RDEIR/SDEIS on page 4.3.4-24, “*the quantitative modeling results presented in this assessment is(sp) not entirely predictive of actual effects under Alternative 4A, and the results should be interpreted with caution.*”

WaterFix RDEIR/SDEIS Appendix B

Page B-3

The WaterFix RDEIR/SDEIS states: “For the Alternative 4A sensitivity analysis Alternative 4 CALSIM II models from draft EIR/EIS were used as is, without including any recent updates to the CALSIM II since the draft EIR/EIS was completed, to remain consistent with the draft EIR/EIS modeling.”

The environmental analyses and disclosures of impacts in the WaterFix RDEIR/SDEIS are inadequate because of flaws identified for the earlier BDCP model runs and CALSIMII and DSM2 models, and are exacerbated by the failure to include the recent updates to the models and revise the earlier modeling runs. The approach chosen by the lead agencies therefore does not allow any reliable verification of whether the draft EIR/EIS modeling could be used to inform Alternative 4A impact analysis in the RDEIR/SDEIS.

Appendix F: Supplemental Modeling Results at ELT for 3 Alternative 4 at H1 and H2

Page F-1

WaterFix RDEIR/SDEIS Appendix F presents the CALSIM water operations modeling results for Alternative 4 for operational scenarios referred to as “Scenarios H1 and H2” at early long term. These two scenarios from the BDCP DEIR/ EIS do not include the Fall X2 required by the biological opinions and found by the SWRCB to be necessary to restore and sustain recovery of fish species in the Delta. Recent court decisions confirmed the validity of the USFWS’s biological opinion requirement to meet Fall X2 in wet and above normal years.

The WaterFix RDEIR/SDEIS does not explain why a project that has a stated objective of improving conditions for key fish species also proposes SWP and CVP operations that do not include the Fall X2 required by the applicable biological opinions. The failure of the project to conform to these biological opinions would result in continued to harm key fish species. This is contrary to the state and federal requirements to contribute to achieving the coequal goals.

BAY DELTA CONSERVATION PLAN / CALIFORNIA WATER FIX

BAY DELTA CONSERVATION PLAN/CALIFORNIA WATER FIX
PARTIALLY RECIRCULATED DRAFT ENVIRONMENTAL IMPACT REPORT/
SUPPLEMENTAL DRAFT ENVIRONMENTAL IMPACT STATEMENT

July 2015

California WaterFix (Alternative 4A)/Recirculated Environmental Analysis Frequently Asked Questions

1. What is the purpose and need for California WaterFix (Alternative 4A)?

The California Department of Water Resources' (DWR's) primary purpose in proposing California WaterFix (Alternative 4A) is to make the physical and operational improvements to the California's main water delivery system in the Sacramento-San Joaquin Delta (Delta) that will protect water supplies, restore and protect ecosystem health, and improve water quality within a stable regulatory framework.

The Delta has long been an important resource for California, providing municipal, industrial, agricultural and recreational uses, fish and wildlife habitat, and water supply for 25 million Californians. However, the Delta is in crisis. There is an urgent need to improve the conditions for threatened and endangered fish species within the Delta. Improvements to the conveyance system are needed to respond to increased demands upon and risks to water supply reliability, water quality, and the aquatic ecosystem.

2. What is the new California Environmental Quality Act (CEQA)/National Environmental Policy Act (NEPA) preferred alternative?

California WaterFix (Alternative 4A) has been identified as the new CEQA and NEPA Preferred Alternative, replacing Alternative 4 (the proposed Bay Delta Conservation Plan). Alternative 4A includes an underground conveyance facility, three northern intakes capable of diverting a combined total of up to 9,000 cubic feet per second, and mitigation measures and environmental commitments to meet the requirements of CEQA, NEPA, the federal Endangered Species Act (ESA) Section 7, section 2081(b) of the California Endangered Species Act (CESA), and other environmental requirements. California WaterFix (Alternative 4A) achieves the co-equal goals by securing state water supplies from climate change and seismic risk, and improving operations and environmental conditions to benefit fish species. California WaterFix (Alternative 4A) was developed in response to public and agency input, as well as an interest in exploring multiple regulatory approaches (e.g. Section 7 consultation) to achieving the dual goals.

3. Who are the lead agencies for California WaterFix (Alternative 4A)?

The Partially Recirculated Draft Environmental Impact Report/Supplement Draft Environmental Impact Statement (RDEIR/SDEIS) associated with California WaterFix (Alternative 4A) is a joint document prepared by DWR as the CEQA lead

agency and the Bureau of Reclamation (Reclamation) as the NEPA lead agency. The National Marine Fisheries Service (NMFS) and United States Fish and Wildlife Service (USFWS) serve as NEPA cooperating agencies, and the lead agencies will consult with NMFS and USFWS under Section 7 of the ESA. The California Department of Fish and Wildlife serves as a CEQA responsible and trustee agency and will be considering the issuance of the Section 2081(b) permit after EIR/EIS approval.

4. Why is there a recirculated environmental document?

The RDEIR/SDEIS has been prepared to provide the public and interested agencies an opportunity to review engineering refinements made to the water conveyance facilities; to introduce new sub-alternatives (Alternatives 4A, or California WaterFix, 2D and 5A); and, to include updated environmental analyses that in part were conducted in response to issues raised in the more than 12,000 comments received on the 2013 Bay Delta Conservation Plan (BDCP) Draft EIR/EIS.

5. What is the difference in the regulatory strategy between the BDCP (Alternative 4) and California WaterFix (Alternative 4A)?

DWR's initial regulatory strategy proposed a habitat conservation plan, presented as Alternative 4 in the 2013 BDCP Draft EIR/EIS (i.e. a conservation plan that seeks 50-year permits as a Habitat Conservation Plan (HCP) through Section 10 of the ESA and a Natural Community Conservation Plan (NCCP) through the California Natural Community Conservation Planning Act (NCCPA)). The proposed habitat conservation plan would provide for both broad-scale regional habitat restoration and new Delta water delivery infrastructure for the State Water Project (SWP). California WaterFix (Alternative 4A) reflects an alternative regulatory strategy (through federal ESA Section 7 consultation and the CESA Section 2081(b) permit process) to meet the project purpose and need and includes the new Delta water delivery infrastructure for the SWP, the same as proposed in Alternative 4, without a habitat conservation plan. California WaterFix (Alternative 4A) allows for other state and federal programs to address broader habitat conservation efforts over a shorter timeframe.

Both Alternative 4 and 4A propose new infrastructure (updated in the RDEIR/SDEIS) to modernize the SWP's water delivery system to address water supply reliability needs in conjunction with related ecosystem improvements, such as significantly reducing reverse flows and direct impacts to fish species associated with the existing south Delta intakes.

6. Why did the state select the alternative regulatory strategy of California WaterFix (Alternative 4A) as the preferred alternative?

California WaterFix (Alternative 4A) would allow for an alternative implementation strategy for the new Delta water delivery infrastructure under

Section 7 of the ESA and Section 2081(b) of CESA, and reflects the lead agencies interest in exploring alternate regulatory approaches that could facilitate expeditious progress on Delta solutions. California WaterFix (Alternative 4A) was developed in response to input from the 2013 BDCP Draft EIR/EIS comment period as well as from agencies' comments regarding the challenges with meeting the standards required to issue long-term assurances associated with compliance with Section 10 of the ESA and the NCCPA. These challenges relate to the difficulties in assessing species status and issuing assurances over a 50-year period, in light of climate change, and accurately factoring in the benefits of long-term conservation in contributing to the recovery of the covered species. There were also questions raised as to the ability to implement large-scale habitat restoration and an interest in early implementation of certain restoration actions, untethered to the water infrastructure approval.

7. What is the difference between ESA Section 7 consultation and Section 10 permitting? What is the difference between compliance with the NCCPA and Section 2081 CESA permitting?

A project's compliance with the Federal ESA varies depending on federal agency involvement and the project's potential effects to listed species. Where a project is proposed by a non-federal entity and the proposed project would "take" a listed species, Section 10 of the ESA provides USFWS and NMFS with the authority to issue incidental take permits with an approved HCP. Where a project would involve the take of a species listed under CESA, the California Fish and Game Code provides the California Department of Fish and Wildlife (DFW) with the authority to allow for take of listed species and issue assurances for a larger list of covered species, with an approved NCCP and through a Section 2081(b) incidental take permit.

The primary requirement for issuance of the incidental take permit is that the action must minimize and fully mitigate the impacts of the proposed take. Where long-term assurances are sought for a range of actions affecting a large list of covered species (as with the BDCP), the HCP/NCCP necessarily requires detailed documentation as to the potential effects to those species, sufficiency of mitigation for those effects, and sufficiency of funding for that mitigation over the entire permit term. Like the BDCP, these types of HCPs/NCCPs can also require a complicated Implementation Agreement to specify management actions over the life of the permit.

Section 7 of the ESA requires that federal agencies ensure their actions do not jeopardize the continued existence of a listed species or adversely modify or destroy critical habitat. Section 7 may require formal consultation with USFWS and NMFS where the federal action could adversely affect a listed species, including where take could occur. Through formal consultation, USFWS and NMFS issue biological opinions that may, among other things, authorize the

taking of the listed species. Measures may be required as part of the opinion to minimize the impacts of take; however, because no long-term assurances are issued for a large list of covered species, the same level of detailed documentation as to the potential effects to species, sufficiency of mitigation for those effects, and sufficiency of funding for that mitigation over the entire permit term is not required. The duration of the ESA authorization under Section 7 does not have a "permit term" or Implementation Agreement and instead the authorization and management of actions relate to the triggers for re-initiation of consultation.

California WaterFix (Alternative 4A) is not presented as habitat conservation /natural community conservation plans according to ESA Section 10 and the NCCPA. A 50-year permit and long term assurances are not being sought and the proposed BDCP habitat restoration and stressor reduction measures (i.e., CM2 through CM21) that are presented in the Draft BDCP (and proposed to meet that stringent requirements of Section 10 of the ESA and NCCPA) are not carried forward fully for California WaterFix (Alternative 4A), except where elements of the former conservation measures are retained to mitigate the potential impacts of the proposed project in compliance with CEQA, NEPA, and other environmental regulatory permitting requirements. Under the proposed California WaterFix (Alternative 4A), compliance with the federal ESA would be achieved by Reclamation, and DWR as the permit applicant, under Section 7 through formal consultation with the USFWS and NMFS. Under California WaterFix (Alternative 4A), take authorization for state-listed species would be obtained by DWR through Section 2081(b) of CESA and DFW's incidental take permit process.

8. Why is the BDCP still referenced in the environmental analysis?

All alternatives will be included for decision-makers to consider. The alternatives, including Alternative 4 (BDCP), and the environmental analysis in the 2013 BDCP Draft EIR/EIS, along with the additional alternatives and environmental analysis contained in the RDEIR/SDEIS and comments received on the both documents, will be considered in agency decision-making when preparing the Final EIR/EIS and determining whether to approve the proposed project. The analysis for Alternative 4 also forms the basis for California WaterFix (Alternative 4A) due to the overlap in the proposed conveyance facilities. California WaterFix (Alternative 4A) has been added to the environmental analysis as the new CEQA and NEPA preferred alternative. No final decisions have been made regarding the proposed action or in selecting an alternative; those decisions will only occur after the completion of the environmental review process.

9. What has changed since the 2013-2014 Public Draft EIR/EIS?

The recirculated environmental documents cover several substantive changes, including:

- Introduction of three new sub-alternatives -- Alternative 4A (California WaterFix) as the new preferred alternative, Alternative 2D, and Alternative 5A. These alternatives were designed to reduce environmental effects, respond to public and agency input, and explore multiple regulatory approaches.
- Design modifications to Alternative 4 (also applied to Alternatives 4A, 2D and 5A) to reduce impacts to Delta communities, minimize disturbances or dislocation to greater sandhill cranes, and improve the long-term reliability and operation of the conveyance facilities.
- Updated Fish and Aquatic Habitat analysis to include additional rationale for impact conclusions and methods for determining impacts.
- Additional Water Quality analysis and modeling to more accurately characterize the potential for exceedances of water quality standards, resulting in the reduction of several water quality impacts to less than significant.
- Inclusion of downstream effects, including an assessment of water quality and fish and aquatic resources in the San Francisco Bay.
- Updated engineering, construction assumptions, performance standards, and air quality models for the Air Quality, Health Risk Assessment, Traffic and Noise impact analysis.
- Updated analyses of water facility construction to include geotechnical investigations
- Inclusion of Additional NEPA Determinations -- includes NEPA determinations on conclusions previously deemed "No Determination."

10. Will the public have an opportunity to comment?

Yes. The public can comment on the recirculated environmental analysis from July 10, 2015 through August 31, 2015. Comments received on the RDEIR/SDEIS will be considered in the Final EIR/EIS and decision-making process.

11. What is the proposed operational structure for the conveyance facilities?

Implementation of California WaterFix (Alternative 4A) will include operations of both new and existing water conveyance facilities ("dual conveyance") once the new north Delta facilities are operational. The dual conveyance facilities will be operated as directed by California WaterFix environmental compliance requirements, and in compliance with the USFWS (2008) and NMFS (2009) Biological Opinions and D-1641 guidelines. These operations may be subject to adjustments through an adaptive management process consistent with and similar to the program already described in the 2008 and 2009 Biological Opinions. The proposed project incorporates existing criteria from the 2008 and 2009 Biological Opinions (including Fall X2) and adds additional criteria for spring outflow and new minimum flow criteria at Rio Vista from January through August.

12. Will habitat restoration/protection be proposed as part of California WaterFix (Alternative 4A)?

Based on ongoing review of potential construction and operation impacts, mitigation for California WaterFix (Alternative 4A) construction and operation will include about 2,300 acres of habitat restoration and up to 13,300 acres of habitat protection (e.g. conservation easements). This additional acreage will focus primarily on preserving the existing cultivated lands habitat and working landscape values in the Delta. DWR and Reclamation anticipate these revised acreage targets for habitat restoration and protection will be the maximum amount required for mitigation. Final determinations will be based on actual project impacts and consultation with fish and wildlife agencies. All habitat restoration and protection costs for California WaterFix (Alternative 4A) will be paid for exclusively by water agencies benefiting from the project.

13. What additional habitat restoration does the state of California plan to implement?

Separate from California WaterFix (Alternative 4A) and over the next 5 years, California will pursue more than 30,000 acres of critical Delta habitat restoration under the California EcoRestore program, pursuant to pre-existing regulatory requirements such as the 2008 and 2009 Biological Opinions and various enhancements to improve the overall health of the Delta ecosystem. Proposition 1 funds and other state public dollars will be directed exclusively for public benefits unassociated with any regulatory compliance responsibilities.

14. What is the anticipated yield for California WaterFix (Alternative 4A)?

California WaterFix (Alternative 4A) is estimated to include an average annual yield of 4.9 million acre-feet and provides the greatest complement to local water supply projects by allowing the safe capture of water in wet and above-normal years so that it can be stored and used in dry years.

15. What is the anticipated cost for California WaterFix (Alternative 4A)?

The cost to fix California's primary water delivery system is estimated at \$14.9 billion – or about \$5 a month for urban water users – and will be paid for by public water agencies that rely on the supplies.

16. When will the lead agencies respond to my comments on the Draft EIR/EIS and the recirculated environmental document?

DWR and Reclamation, as the state and federal lead agencies, will consider and prepare responses to all substantive comments received during the public review periods for the Draft EIR/EIS (December 13, 2013 through July 29, 2014) and RDEIR/SDEIS (July 10, 2015 through August 31, 2015). Responses will appear in the Final EIR/EIS, which is the next milestone in the environmental planning process. Comments will be sorted, coded, and logged into a tracking system,

categorized by subject area, and then a response to the comment will be drafted. The comments will be assessed both individually and collectively and the Final EIR/EIS will include copies of the comments received and the responses prepared. If the EIR/EIS was changed in response to comments, these changes will be referenced in the responses.

17. When can the public expect a Final EIR/EIS?

Following completion of the RDEIR/SDEIS public review period, DWR and Reclamation will prepare a Final EIR/EIS. The timing associated with preparation and publication of the Final EIR/EIS will depend on the volume and nature of the comments received on the Draft EIR/EIS and RDEIR/SDEIS. To allow sufficient time to adequately meet all requirements associated with completion of a Final EIR/EIS, it is anticipated this document will be available in late 2015 or early 2016.

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Frequently Asked Questions

1. What is California WaterFix?

California WaterFix is a proposal backed by the administrations of Governor Edmund G. Brown Jr. and President Barack Obama to change how we divert water from the Sacramento-San Joaquin Delta. The Delta is a source of water for two-thirds of California's population and one-third of its irrigated farmland. The plan seeks to accomplish three primary goals that have long bedeviled state and federal policymakers:

1. Allow for more natural flows in the Delta to benefit salmon, smelt, and other species
2. Increase water supply reliability by giving the water projects that divert from the Delta more flexibility to move water without harming fish
3. Guard the Delta water diversion point from natural disaster disruption, such as earthquake or flood.

The proposal involves construction of three new intakes, each with a maximum diversion capacity of 3,000 cubic feet per second, on the east bank of the Sacramento River between Clarksburg and Courtland in the north Delta. Each intake site would employ state-of-the-art on-bank fish screens and, although the diversions would be located outside of the main range for delta and longfin smelt, the fish screens would be designed to meet delta smelt criteria. Two 40-foot-wide underground pipelines would carry the diverted water by gravity flow approximately 30 miles to the expanded Clifton Court forebay where two pumping plants would be constructed to maintain optimal water levels in the forebay for the existing State Water Project (SWP) and Central Valley Project (CVP) pumping facilities. Those existing pumps would lift the water into the canals that flow hundreds of miles to supply San Joaquin Valley farms and cities as far away as San Diego.

The North Delta intakes would be operated with the existing south Delta pumping facilities as a "dual conveyance system" which would be a significant upgrade from the existing system. The existing south Delta pumps pull water from nearby channels in an unnatural direction, called "reverse flows," which can draw fish off their migratory path into predator-rich channels.

Besides the environmental imperative to restore more natural flows to the Delta, there are infrastructure security reasons to modernize the Delta water conveyance system. The Delta's peat soil, composed of thousands of years' worth of rotted tules and other wetland plants, oxidizes when dried and tilled.

Now many of the approximately 60 islands that make up the Delta – most are farmed – are sunken as much as 20 feet below sea level in their centers. Should an earthquake, flood, or some other force knock down those levees, the sunken islands would fill up with water, drawing saltwater from San Francisco Bay eastward toward the SWP and CVP south Delta water intakes. Water supplies could be disrupted for weeks, months, or years, depending upon the extent of the damage.

2. What is California EcoRestore?

The Delta hardly resembles the vibrant estuary of 200 years ago. Starting with the Gold Rush, people drained the Delta's marshes. They also dredged and straightened its meandering channels so that they could farm its rich, peat soil. People built levees -- mounds of earth -- along the channels to hold back water, and in many places, lined those channels with big rocks to protect the levees from being scoured by water. In this way, the Delta lost not just its wetlands but also the riverside forest that shaded and harbored native fish. California EcoRestore is an initiative by state and federal water and wildlife agencies to restore 30,000 acres of Delta wildlife habitat over the next four years. The types of habitat targeted include tidal wetland, floodplain, and channel margin.

3. How do California WaterFix and California EcoRestore relate to the Bay Delta Conservation Plan?

Federal and state water and wildlife agencies, in cooperation with the public water districts that depend upon water delivered from the Delta, launched the Bay Delta Conservation Plan (BDCP) in 2007. The effort aimed to find a way to accomplish dual goals:

- Enhance, protect and restore the Delta ecosystem and;
- Improve the reliability of water supplies for California.

After hundreds of public meetings and extensive analysis, a draft BDCP and corresponding environmental analysis was released in December 2013 for public review. The plan was a habitat conservation plan under Section 10 of the U.S. Endangered Species Act and a natural community conservation plan (NCCP) under the state Natural Community Conservation Planning Act. Regional habitat conservation plans and NCCPs cover a wide range of species over a large landscape, and include commitments and assurances for a specific permit term (the BDCP requested a 50-year term). The draft BDCP included a preferred alternative with the same basic water conveyance changes that are now embodied in California WaterFix. The draft plan also included 145,000 acres of protected or restored habitat related to meeting the requirements of the federal and state laws for contributions to the recovery of the covered species in conjunction with the assurances requested for the 50-year permit.

Review of thousands of public comments received on the draft BDCP and its draft environmental impact documents raised considerable doubts as to whether a Section 10/NCCP approach -- with a 50-year term -- is realistic, given the uncertainty about future ecological conditions under climate change, as well as a lack of scientific data about how the Delta's estuary might respond to habitat restoration.

In April 2015, the principal backers of the BDCP -- the California Department of Water Resources and the U.S. Bureau of Reclamation -- announced a pivot in their approach to accomplishing the dual goals of ecosystem restoration and water supply reliability. They have chosen to study additional alternatives to modernize the Delta's water conveyance system and achieve the dual goals through implementation of the North Delta intakes and associated conveyance facilities, including the tunnels. These "sub-alternatives" would achieve compliance with the U.S. Endangered Species Act through the Section 7 consultation process and California Endangered Species Act through obtaining a 2081b incidental take permit and would not include long-term assurances for water project operators. The California Department of Water Resources has identified one of these sub-alternatives, Alternative 4A (California WaterFix), as its proposed project.

At the same time, the state and federal governments, through California EcoRestore, will pursue a more aggressive short-term schedule for habitat restoration in the Delta -- 30,000 acres launched over the next four years -- so that scientists may learn from the effort and ideally help native species begin to recover.

The draft BDCP and associated Draft EIR/EIS are still "live" documents; they will be referenced in several of the sub-alternatives evaluated in the Partially Recirculated Draft Environmental Impact Report (EIR)/Supplemental Draft Environmental Impact Statement (EIS). Those documents are scheduled for public review in June 2015. The BDCP website is still available, and all the documents are available there for continued public reference. There is a new website [CaliforniaWaterFix.com] for information about specifically Alternative 4A, the new proposed project under the California Environmental Quality Act (CEQA).

4. What caused federal and state agencies to shift from a habitat conservation plan?

The U.S. Fish and Wildlife Agency, National Marine Fisheries Service, and California Department of Fish and Wildlife face great uncertainty about how climate change will affect the recovery of native fish in the Delta. (The average early spring snowpack in the Sierra Nevada has decreased by about 10 percent during the last century, a loss of 1.5 million acre-feet of snowpack storage, and

there has been an observed rise in sea level of seven inches at the Golden Gate over the past century.)

Through the extensive analysis of the draft BDCP, it became increasingly clear that it would not be feasible for the state and federal governments and public water agencies to put in place enough funding and water (in terms of water available for Delta outflow to San Francisco Bay) to deal with all contingencies that could affect species recovery over the next 50 years. In other words, the terms of a 50-year permit would be too high, given uncertainty, for the state and federal government and Delta water users to bear.

However, California's water supply for 25 million people remains vulnerable, as do the existing risks to sensitive aquatic species without this upgrade. We cannot in good conscience set aside these risks, so we are seeking to implement a proposed project with a reduced long-term objective with more limited authorizations under the federal and state endangered species acts to get this project started.

We are also going to immediately move forward with a goal of starting 30,000 acres of fish and wildlife habitat restoration over the next four years. Separating the habitat conservation from water conveyance allows for the evaluation of the new intakes and pipelines on their merits, while habitat restoration can immediately proceed with the objective of restoring the Delta ecosystem.

5. Will the changed permitting process require new environmental analysis?

What is the process and timeline going forward?

The Partially Recirculated Draft EIR/Supplemental EIS that analyzes this change is expected in late June 2015. A new Notice of Intent will be published by the U.S. Bureau of Reclamation in the Federal Register to announce the availability of the Recirculated Draft EIR/Supplemental Draft EIS. The alternatives in the original Draft EIR/EIS remain the same, and they are still part of the required range of alternatives to be considered in the Recirculated draft. Additional alternatives will also be presented in the Partially Recirculated Draft EIR/Supplemental Draft EIS, including Alternative 4A, also known as California WaterFix, which is the new CEQA proposed project. There will be a 45-day comment period associated with the Partially Recirculated Draft EIR/Supplemental Draft EIS.

6. What habitat restoration efforts will be included as part of the mitigation for California WaterFix?

California Water Fix will include approximately 2,100 acres of habitat restoration to mitigate for the potential adverse impacts of the construction and operation of the new water facilities. These costs will be paid for exclusively by water agencies benefiting from the project.

7. How will California EcoRestore be funded?

California EcoRestore aims to break ground on – and in some cases complete – at least 30,000 acres of habitat restoration in the next four years. Over this time period, we expect costs to reach at least \$300 million. Much of that will be borne by the public water agencies that buy water from the SWP, operated by the California Department of Water Resources, and the CVP, operated by the U.S. Bureau of Reclamation. The public agencies that take delivery of water from those two Delta-based projects are responsible for creation of 25,000 acres of various kinds of habitat deemed beneficial to threatened and endangered native fish.

Roughly \$130 million from the state and federal water project contractors will be needed to get moving on restoration in the next three or four years. It's likely that the completion of all of these projects will add significantly to that estimated cost. Their total obligation will be based on what's needed to finish these projects and be in compliance with their regulatory obligations.

California EcoRestore must be realistic to succeed. Habitat restoration is complicated and difficult. It involves negotiation, acquisition, permitting, design, construction, engineering, collaboration with landowners and local interests, mitigation, and financing. The Brown Administration committed to turning back the clock on 30,000 acres of altered Delta landscape. The state has a big involvement and firm commitment to making this happen for the sake of our natural heritage, regardless of who funds individual projects.

Currently, the state plans to administer at least \$75 million through Proposition 1 public funding over the next four years, including Delta restoration funds directed to the Delta Conservancy and the Department of Fish and Wildlife, as well as multi-benefit flood protection funds through the Department of Water Resources.

AB 32 Greenhouse Gas Reduction Fund investments will likely provide between \$20 and \$30 million, though the final amount will be determined through the state budget process.

8. How will this change affect the overall cost of the preferred water conveyance project?

The estimated \$15 billion cost of the new intakes, pipelines, operation, maintenance and mitigation will not change. All of those costs will be borne by the public water agencies that depend upon the SWP and CVP.

9. Why can't California just reduce the amount of water it diverts from the Delta?

California must continue its substantial investments in local and regional projects that involve conservation, recycling, stormwater capture, new connections

among suppliers, and other ways to improve the efficiency with which we use water and build drought resilience. All of these actions have gained us at least two million acre-feet in additional supply in the last 20 years, and that effort will continue under the Governor's comprehensive California Water Action Plan: http://resources.ca.gov/docs/california_water_action_plan/Final_California_Water_Action_Plan.pdf.

Keeping pace with rising demand and creating a buffer of supply to cope with the vagaries of climate change will require steady progress on using water more efficiently, shoring up the reliability of existing supplies, and using new techniques to expand supplies. To also replace water supply lost as Delta deliveries decline would significantly increase costs and leave local water districts vulnerable to shortages. Desalination and water recycling projects, for example, are more expensive per acre-foot than California WaterFix and take considerable time for planning, permitting, and implementation.

10. How was the capacity of California WaterFix chosen?

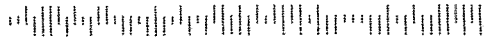
A facility capable of diverting up to 9,000 cubic feet per second of water from the Sacramento River provides the greatest complement to local water supply projects because it is the only project that can take full advantage of water that is available in wet and above-normal years. A smaller project costs more and captures less supply.

A 9,000-cfs facility includes the following benefits:

- Reduce south Delta reverse river flows and minimize entrainment of fish that spawn in or migrate through the Delta
- Enhance ability to store surplus outflows and reduce diversions during periods when fish are vulnerable
- Improve drinking water quality and ability of local water districts to meet public health standards
- Support efforts to expand groundwater recharge and recycling to help meet California's new mandate to bring groundwater basins into sustainable patterns of pumping and recharge
- Enhance seismic protection with ability to provide a base supply while Delta levees are repaired

Furthermore, operational redundancy through two pipelines is important during outage scenarios, such as periodic maintenance or a catastrophic event like an earthquake. In addition, a single bore tunnel would require a tunnel size of 60 feet or more. A tunnel this large would set an engineering precedent. It would also increase overall project risk due to increased equipment needs (more tunnel boring machines, etc.), potential leaks, added ground pressure, and engineering uncertainties that would need to be tested.

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