

Chapter 5

**Regional and Local Agency
and Indian Tribe Comments**

Chapter 5

Regional and Local Agency and Indian Tribe Comments

This section contains copies of the comment letters received from regional and local government agencies and Indian Tribes, listed in Table 5-1. Each letter is followed by responses to the comments presented in that letter. Responses to comments are numbered individually in sequence, corresponding to the numbering assigned to comments in each comment letter. The responses are prepared in answer to the full text of the original comment. Some comment letters included many attachments to the comment letter. These attachments are included in Appendix B.

Table 5-1. Regional and Local Agency Comments Received on the Draft EIS/EIR

Code	Agency/Organization	Name
Regional		
CDWA*	Central Delta Water Agency	Dante John Nomellini, Manager and Co-Counsel
CCWD1	Contra Costa Water District	Richard A. Denton, Water Resources Manager
CCWD2	Contra Costa Water District	David Briggs, Water Resource Manager
FC	County of Fresno	Judith G. Case, Chairman Fresno County Board of Supervisors
HC	County of Humboldt	John Woolley, Board of Supervisors
KC	County of Kern	Raymond A Watson, 4 th District Supervisor
EBMUD	East Bay Municipal Utilities District	W. R. Alcott, Director of Water and Natural Resources
KCWA	Kern County Water Agency	James M. Beck, General Manager
RD800	Reclamation District 800	David Aladjem, Downey Brand LLP
SJC	San Joaquin County	Deeanne M. Gillick, Attorney at Law
SJWD	San Juan Water District	Shauna Lorance, General Manager
SDWA	South Delta Water Agency	John Herrick, Manager
SEWD	Stockton East Water District	Jeanne M. Zolezzi, Attorney at Law
TC	Trinity County	William E. Chambers, Chairman, Board of Supervisors
Z7WA	Zone 7 Water Agency	Vincent D. Wong Assistant General Manager

Code	Agency/Organization	Name
Local		
ANT	City of Antioch	William R. Galstan, Special Counsel
COO	City of Ontario	Gerald A. DuBois, Council Member
COS1	City of Stockton, Department of Municipal Utilities	Mark J. Madisen, Director of Municipal Utilities
COS2	City of Stanton	Brian Donahue, Mayor
COT*	City of Tracy	Debra Corbet, City Attorney
MWD/SDWA	Metropolitan Water District of Southern California and South Delta Water Agency	John Herrick (SDWA, Counsel and Manager), Tim Quinn (MWD, Vice President SWP Resources)
Indian Tribe		
HVT	Hopa Valley Tribe	Thomas P. Schlosser and Rob Roy Smith, Attorneys for the Hopa Valley Tribe
FOR/WWT	Friends of the River/Winnemem Wintu Tribe	Steve Evans (FOR, Conservation Director), Gary Mulcahy (WWT, Emissary and Government Liaison)

* These comment letters have attachments that are in Appendix B of this Final EIS/EIR.

This section also contains copies of a support comment letter that was adapted by each agency listed below (Table 5-2).

Table 5-2. Regional and Local Agency Support Letters

Code	Agency	Name
ACWD	Alameda County Water District	Paul Piraino,, General Manager
AVEKWA	Antelope Valley-East Kern Water Agency	Russell E. Fuller, General Manager
ACWA	Association of California Water Agencies	Steve Hall, Executive Director
BVID	Browns Valley Irrigation District	Walter Cotter, General Manager
CMWD	Calleguas Water District	Donald R. Kendall, Ph.D., P.E. General Manager
CLWA	Castaic Lake Water Agency	Dan Masnada, General Manager
CBMWD	Central Basin Municipal Water District	Robert Apodaca, President
CCWA	Central Coast Water Authority	William J. Brennan, Executive Director
CoVWD	Coachella Valley Water District	Steve Robbins, General Manager-Chief Engineer
CuVWD	Cucamonga Valley Water District	Robert A. DeLoach, General Manager/CEO
DPWD	Del Puerto Water District	William D. Harrison, General Manager
DWA	Desert Water Agency	David K. Luker, General Manager-Chief Engineer
DRWD	Dudley Ridge Water District	Dale K. Melville, Manager-Engineer

Code	Agency	Name
EMWD	Eastern Municipal Water District	Anthony J. Pack, General Manager Randy A. Record, President, Board of Directors
FMWD	Foothill Municipal Water District	William Pecs, General Manager
FWA	Friant Water Authority	Ronald D. Jacobsma, General Manager
KCWA2	Kern County Water Agency	James M. Beck
KDWD	Kern Delta Water District	L. Mark Mulkay, General Manager
KTWD	Kern-Tulare Water District	Steven C. Dalke, General Manager
LVMWD	Las Virgenes Municipal Water District	Charles Caspary, President of the Board
MWD	The Metropolitan Water District of Southern California	Debra C. Man Interim CEO/General Manager
MWA	Mojave Water Agency	Kirby Brill, General Manager
MWDOC	Municipal Water District of Orange County	Ed Royce Sr., Immediate Past President
PVWMA	Pajaro Valley Water Management Agency	Mary Bannister, Interim General Manager
RGWD	Rag Gulch Water District	Steven C. Dalke, General Manager
SDCWA	San Diego County Water Authority	Maureen A. Stapleton, General Manager
SGPWA	San Geronio Pass Water Agency	Jeff Davis, General Manager
SLDMWA*	San Luis & Delta-Mendota Water Authority	Daniel G. Nelson, Executive Director
SCVWD	Santa Clara Valley Water District	Joan Maher, Imported Water Unit Manager
TCWD	Tejon-Castaic Water District	Dennis Mullins, President
TVMWD	Three Valleys Municipal Water District	Robert G. Kuhn, President
TLBWS	Tulare Lake Basin Water Storage District	Brent L. Graham, General Manager
UWCD1	United Water Conservation District	Sheldon G. Berger. President, Board of Directors
UWCD2	United Water Conservation District	Sheldon G. Berger. President, Board of Directors
VWD	Vallecitos Water District	William W. Rucker, General Manager
WAKC	Water Association of Kern County	Loron J Hodge, Manager
WVWD	Walnut Valley Water District	Edwin M. Hilden, President, Board of Directors
WBMWD	West Basin Municipal Water District	William A. Baker, President
WWD	Westlands Water District	Jean Sagouspe, President
WRMWS	Wheeler Ridge-Maricopa Water Storage District	Wm. A. Taube, Engineer-Manager
Z7WA	Zone 7 Water Agency	Dale Myers, General Manager

* These comment letters have attachments that are in Appendix B of this Final EIS/EIR.

Comment Letter CDWA



CENTRAL DELTA WATER AGENCY

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February 7, 2006

Via Facsimile (916) 653-6077

Feb 07, 2006 00133

Paul A. Marshall
Department of Water Resources
South Delta Branch
Draft EIS/EIR Comments
1416 Ninth Street, 2nd Floor
Sacramento, CA 95814

Re: South Delta Improvements Program
Draft Environmental Impact Statement/Environmental Impact Report

Dear Ladies and Gentlemen:

Please receive the following comments:

Flood Control and Levee Stability

The DEIS concludes that the impacts are less than significant. The analysis appears to focus on gate capacity to pass a 100 year flood. The DEIS fails to provide the assumed channel flows at each barrier location and the before and after cross sections used in the analysis.

Even assuming that the flows used represent a 100 year flood, such a level of protection is inappropriate for design of what is in effect a blockage or dam in a major flood control channel or flooding.

Residential structures and a variety of public facilities are protected by the levee systems which are endangered by the proposed barriers. Of monumental importance is the RD 17 levee system which is across the San Joaquin River from the proposed Head of Old River Barrier. Even with the gates open the Head of Old River Barrier could increase flood flows down the San Joaquin River and could alter the direction and velocity of such flows so as to undermine, erode or increase seepage through or under the nearby levees. The appropriate level of protection for designing such a channel blockage would appear to be a project flood level of 1 in 500 years or at the very least a 1 in 200 year event.

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The critical issue is not whether the gates can pass a 100 year flood but rather at what increase in flood water elevation and with what effects on flow patterns and velocities. Appendix G does not even reflect consideration of the potential impact to Union Island, Stark Tract or RD 17 (which protects parts of Stockton, Lathrop and Manteca). The analysis concludes:

CDWA-1

“The results indicate that the gates will result in less than 0.5-foot increase in average upstream level during a dry year and less than a 1-foot effect during a wet year.”

“The maximum variation for the wet year 1983 is forecast for the Grant Line Canal for the LOD 2020 condition at 0.50 foot.”

“These results indicate a negligible impact on levee stability as a result of the increase in upstream water level.”

The Final Recommendations Report of the California Floodplain Management Task Force dated December 2002 recommends that protection should exceed the 100 year flood level and that design should focus on the “Reasonable Foreseeable Flood”. The report provides further in a proposed Executive Order:

“In the siting, design, and construction of State structures in floodplains, state agencies generally should strive to exceed NFIP design standards in accordance with a complete flood risk analysis of a site and preserve natural floodplain functions and benefits to the extent feasible.”

The NFIP limitation of .1 foot increase in the flood level elevation would appear to be exceeded at all barrier locations and the desired higher level of protection is obviously not provided.

The DEIS relies on a November 1992 stability failure analysis prepared by the U.S. Army Corps of Engineers and appears to totally ignore the 2003 CESPCK LEVEE TASK FORCE “Recommendations for Seepage Design Criteria, Evaluation and Design Practices” Report Prepared For The Sacramento District U.S. Army Corps of Engineers dated July 15, 2003, which was signed by the Chief, Division of Engineering, California Department of Water Resources. Of particular focus is underseepage both at the flood stage and at intermediate sustained water levels.

The barriers or gates can and should at the least be designed to be flood neutral. This can be accomplished by setting back the levees at the gate or barrier locations a sufficient distance such that there is no increase in flood levels at a “Reasonably Foreseeable Flood” level. The

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DEIS does not reflect a competent or good faith effort to examine and/or mitigate the flood-related impacts.

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Scour and Sedimentation

The DEIS reflects that gate operation itself even without increases in export pumping will at times cause more of the exported water to flow through Middle River and parts of Old River to the export pumps. Increased export pumping will also increase such flows. There are two well known locations where significant scour has occurred which would appear to be the result of flow to the export pumps. One is at the northeast corner of Woodward Island where scour removed the cover over the top of the buried EBMUD pipelines. The other is at the southeast corner of Woodward Island where the Middle River flow from the north turns west into Woodward Canal and North Victoria Canal and thence into Old River to proceed south to the export pumps. The Woodward Island levee at this later site appears to be suffering from undercutting and increasing underseepage. This problem was called to your attention in previous comments to the Draft EIR/EIS - Interim South Delta Program submitted January 31, 1997, with corrections February 3, 1997, a copy of which is attached hereto. DEIS Chapter 5.6 Sediment Transport concludes there are no significant sedimentation or scouring impacts as a result of implementation of any of the alternatives. Although it is clear that gate operations and increased exports each add to the reverse flows in Middle River and that adverse impacts have been brought to the attention of DWR, there is no analysis or explanation to support the conclusion except as to the effects in the immediate vicinity of the gates/barriers.

CDWA-2

It is crystal clear that water depths in the channels surrounding Coney island have become more shallow. While the locals believe that reduced water levels due to pumping is the cause, DWR and other supporters of the export projects contend that the real problem is regional sedimentation unrelated to export pumping. The DEIS fails to analyze or attempt to explain the regional sedimentation in a meaningful way. One would expect natural sedimentation to move downstream with flood flows. With export pumping and barrier/gate operations, reversed direction of net flow is increased and therefore the increased trapping of sediments in the region would be a logical result.

Water Levels

Aside from the impacts of increased water levels affecting levee stability as discussed above, there is the recognized but understated lowering of water levels so as to adversely impact navigation, irrigation and other public trust values.

CDWA-3

DEIS Figure 4-1 shows reduced water levels upstream of the Grantline Canal Barrier for all alternatives for a period beginning in April and extending through September. Figure 2-3 shows minor spot dredging and some conveyance dredging in limited portions of the affected

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area. The water level and the resulting volume of water upstream of the gates must be sufficient to 1) provide adequate dilution of salts and a variety of contaminants, 2) assure adequate depths for navigation and environmental purposes and provide an adequate water supply for irrigation. It is not clear from the discussion or analysis that the project is committed to achieve such objectives or what impacts will result.

CDWA-3

The DEIS reflects adverse water levels downstream of the barriers but understates the extent of the impact. Figure 2-3 shows minor spot dredging in the southwesterly portion of Victoria Canal, North Canal and conveyance dredging in West Canal but no dredging in Old River around Coney Island, other portions of Victoria Canal and North Canal or areas of Middle River north of Hwy. 4. Navigation both recreational and commercial and irrigation diversions in these areas are already adversely affected by export project operations and the proposed gate operation and increased exports will clearly increase the adverse impacts.

Reduced water levels will reduce the rate of flow through existing irrigation diversion facilities. In the case of pumps, there will be an increase energy consumption and loss of efficiency. The reduced rate of flow is likely to increase the time needed to accomplish irrigations and result in increased costs and in some cases reduced crop yields.

In the case of siphon operation, there is in addition to the concern for so-called "Tidal Levels" a real problem with loss of prime or suction due to wave action. The wave action from vessels could be affected by changes in channel configuration as well as changes in "Tidal Levels". The DEIS does not appear to address such concern.

Navigation

In addition to the water level and sedimentation issues discussed above, it would appear that there is no "boat lock" proposed for the Middle River barrier. (DEIS 7.4-22) With growing populations, the need for recreational opportunity will increase. A major landowner on Drexler Tract has expressed concern that future recreational opportunity will be greatly diminished due to the lack of a boat lock in the Middle River barrier. The area of concern is located in close proximity to Hwy 4 and extends easterly to Tracy Blvd.

CDWA-4

The under utilization of portions of the south Delta for recreation is due in substantial part to the unmitigated impacts of export project operations. The DEIS lacks a comparison to pre-SWP and CVP conditions which would greatly assist decision makers and the public in evaluating alternatives and appropriate mitigation.

CDWA-5

Passage of commercial vessels for emergency and routine levee work should be included in gate and barrier design.

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Water Quality

The DEIS concludes there are no significant impacts on water quality as a result of implementation of the project alternatives. (DEIS 5.3-2) This conclusion is based on an unsupported determination that unless there is a violation of a water quality objective, or a 5% long term increase in baseline average salinity or an increase on a monthly basis of more than 10% of an applicable objective, the impact is not significant.

CDWA-7

Water Quality Objectives are set only for specific locations and do not provide generalized protection of water quality for agriculture. Of particular concern to the Central Delta Water Agency are areas along the Stockton Ship Channel, the portions of Old River and Middle River south of the San Joaquin River and the various connecting channels. There are no water quality objectives protecting such areas. Even in the areas protected by a water quality objective there are existing salinity problems which will clearly be aggravated by any increase in salinity.

CDWA-8

The DEIS ignores the clear nondegradation policy of the State as well as the nondegradation policy in the Federal Clean Water Act.

Additionally, it is universally recognized that increased salinity in water at the levels relevant herein are detrimental. As explained in Department of Water Resources, the California Water Plan Update Bulletin 160-93 at pages 131 and 132 (CDWA-14)

CDWA-9

“Salty irrigation water presents several costly problems for farmers. In many agricultural areas, it is common to recirculate irrigation water a number of times to increase irrigation efficiency. Salty water can be recycled fewer times than water that is initially low in salt. Also, more salty water must be used for irrigation than is required when using supplies low in salt. The requirement to use more water results in significant additional cost for pumping and handling the water and, perhaps, additional cost to purchase the water.

Generally, the most salt-tolerant crops are not the ones having highest value. Therefore, given a salty water supply, a farmer may be required to grow less valuable crops than is possible when low-salt irrigation water is available.

Finally, crop yields fall as salt in the irrigation water increases beyond the optimal ranges specific to individual crops.”

In addition to the question of whether or not there will be a substantial loss in crop yield, there are obvious impacts associated with the increased water diversion and the drainage pumping of the additional water for leaching. Changes in farming practices, application of soil amendments and drainage improvements cost money and could result in detrimental

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environmental impacts.

The testimony of Rudy Mussi (CDWA-9a, b & c) and Kurt Sharp (CDWA-8), farmers in the area of concern, confirms the salt damage to their crops and the fact that increased salt means increased crop damage.

CDWA-9

The restraining characteristics of the soils in much of the Delta must be recognized in analyzing the impacts of increased salinity. The drainage characteristics of the soil including the permeability of the soil, the depth of the water table and the constraints of required farm practices are critical.

In addition to the loss of crop yield, it is clear that increased diversion of water for leaching, installation and operation of additional drainage improvements and the addition of more water and soil amendments will result from salinity increases.

The significance of increased salinity is well documented. DWR Bulletin 160-93 The California Water Plan Update at pages 130-132 outlines the many impacts resulting from reduced water quality. As to the impact on urban consumers, the bulletin provides:

“Many studies have cited the impacts of water quality on the value of water to urban consumers, and all have cited the difficulty of expressing quality impacts in a simple way. A 1989 review of consumer impacts of the mineral content of Delta water proposed a generalized cost of \$0.68 per acre-foot per milligram per liter of incremental total dissolved solids. The current generalized value would be about \$0.80 per acre-foot per milligram per liter (adjusted using the Consumer Price Index), or about \$0.30 per pound of dissolved mineral matter in the water. The impact of this added cost can be quite significant.”

Failure to Protect the Public Interest and Public Trust

Although the Department of Water Resources has many duties, some of which have the potential for conflict, its duties to protect the public interest and comply with the Watershed Protection Act, Delta Protection Act and San Joaquin River Act cannot be accorded a junior priority to its duties as operator of the State Water Project.

The Water Code provides:

“§ 102. State ownership of water; right to use

All water within the State is the property of the people of the State, but the right to the use of water may be acquired by appropriation in the manner provided

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by law.

“§ 105. Development for public benefit

It is hereby declared that the protection of the public interest in the development of the water resources of the State is of vital concern to the people of the State and that the State shall determine in what way the water of the State, both surface and underground, should be developed for the greatest public benefit.

§ 107. Declarations of state policy

The declaration of the policy of the State in this chapter is not exclusive, and all other or further declarations of policy in this code shall be given their full force and effect.

In the case of National Audubon Society v. Superior Court, 33 Cal.3d 419, the California

Supreme Court at page 446 found:

“c. The state has an affirmative duty to take the public trust into account in the planning and allocation of water resources, and to protect public trust uses whenever feasible.”

DWR is, of course, a Department of the State. It cannot set aside its public trust or public interest responsibilities and even for a time play a role as mere permit holder and exporter. The DEIS as prepared by DWR fails to set forth any alternatives directed specifically at protecting the public interest and public trust with a priority over exporting water.

CDWA-10

Apart from the more general public trust and public interest responsibilities there are a number of statutes which specifically apply to this matter.

Water Code section 12232 which provides:

“§ 12232. Duty of state agencies not to cause degradation of quality of water

The State Water Resources Control Board, the State Department of Water Resources, the California Water Commission, and any other agency of the state having jurisdiction, shall do nothing, in connection with their responsibilities, to cause further significant degradation of the quality of water in that portion of the San Joaquin River between the points specified in Section 12230.” (Emphasis added.)

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Water Code section 12230 provides:

“§ 12230. Legislative findings and declaration

The Legislature hereby finds and declares that a serious problem of water quality exists in the San Joaquin River between the junction of the San Joaquin River and the Merced River and the junction of the San Joaquin River with Middle River; that by virtue of the nature and causes of the problem and its effect upon water supplies in the Sacramento-San Joaquin Delta, it is a matter of statewide interest and is the responsibility of the State to determine an equitable and feasible solution to this problem.”

Brandt Bridge is of course clearly within the area of concern.

Water Code section 12201 provides:

“§ 12201. Necessity of maintenance of water supply

The Legislature finds that the maintenance of an adequate water supply in the Delta sufficient to maintain and expand agriculture, industry, urban, and recreational development in the Delta area as set forth in Section 12220, Chapter 2, of this part, and to provide a common source of fresh water for export to areas of water deficiency is necessary to the peace, health, safety and welfare of the people of the State, except that delivery of such water shall be subject to the provisions of Section 10505 and Sections 11460 to 11463, inclusive, of this code.”

“§ 12202. Salinity control and adequate water supply; substitute water supply; deliver

Among the functions to be provided by the State Water Resources Development System, in coordination with the activities of the United States in providing salinity control for the Delta through operation of the Federal Central Valley Project, shall be the provision of salinity control and an adequate water supply for the users of water in the Sacramento-San Joaquin Delta. If it is determined to be in the public interest to provide a substitute water supply to the users in said Delta in lieu of that which would be provided as a result of salinity control no added financial burden shall be placed upon said Delta water users solely by virtue of such substitution. Delivery of said substitute water supply shall be subject to the provisions of Section 10505 and Sections 11460 to 11463, inclusive, of this code.”

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“§ 12204. Exportation of water from delta

In determining the availability of water for export from the Sacramento-San Joaquin Delta no water shall be exported which is necessary to meet the requirements of Sections 12202 and 12203 of this chapter.” (Emphasis added.)

Water Code section 11460 provides:

“§ 11460. Prior right to watershed water

In the construction and operation by the department of any project under the provisions of this part a watershed or area wherein water originates, or an area immediately adjacent thereto which can conveniently be supplied with water therefrom, shall not be deprived by the department directly or indirectly of the prior right to all of the water reasonably required to adequately supply the beneficial needs of the watershed, area, or any of the inhabitants or property owners therein.”

Environmental Water Account

The DEIS fails to set forth any alternative to the Environmental Water Account such that the SWP and CVP export pumps would be required to shut down to fully mitigate their respective impacts. The Environmental Water Account has not been defined nor subjected to environmental review for operations beyond 2007. The DEIS has failed to incorporate environmental review of an EWA program beyond 2007.

CDWA-11

Aquatic Vegetation

Reverse flows and shallow water levels are currently trapping large quantities of water hyacinth in the vicinity of Coney Island. On the Old River side the hyacinth accumulate on the Coney Island Bridge supports and coupled with reverse flow of water toward Clifton Court Forebay and the federal pumps exert a damaging force on the bridge. The hyacinth also block portions of the entire water surface such that navigation, fish and wildlife and recreational resources are adversely impacted. The DEIS fails to address such impacts.

CDWA-12

Failure to Consider Alternatives for Protection of Fish

Appendix B contains a series of charts showing SWP and CVP Fish Salvage Density Patterns together with export pumping rates. See Figures B-3,4,5,6,,17,20,23,26,29,31 and 32. The DEIS should include alternatives which would eliminate the Head of Old River Barrier and entirely preclude export pumping during periods of significant “fish density”. This could be

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done on an adaptive management basis tied to actual take or sampling of fish populations. The alternatives could range from zero export pumping during the period April 15 to May 15 pulse flow period to zero pumping during a period extending from January through the middle of June. The alternatives should include consideration of projects south of the Delta which could make up for reductions in water supply due to reduced export pumping. Such projects among others could include increased conservation, water reclamation, brackish and sea water desalting, groundwater banking of local and imported water, interconnections among regional water suppliers which would allow for the sharing of surplus water and expansion of grey water systems.

CDWA-13

Given the state of decline of the Pelagic fisheries in the Bay/Delta estuary, there is no justification for any increase in exports during periods of significant "fish density".

Lack of Appropriate Base Case

The DEIS includes a "No Action Alternative" with average annual total exports of 5,902,000 acre feet including average annual transfers of 250,000 acre feet.

CDWA-14

A Base Case alternative which includes D-1485 as modified by the 1992 CVPIA requirements, the 1993 winter-run Chinook Salmon Biological Opinion and the March 6, 1995 Biological Opinion for the Effects of Long Term Operations of the CVP and SWP for Delta Smelt would provide decision makers and the public with a more meaningful comparison. It is important to recognize that D-1485 was primarily directed at protection of striped bass and did not address the broader range of fish species now of concern.

D-1485 candidly provided at page 13:

"While the standards in this decision approach without project levels of protection for striped bass, there are many other species, such as white catfish, shad and salmon, which would not be protected to this level. To provide full mitigation of project impacts on all fishery species now would require the virtual shutting down of the project export pumps. . ."

The DEIS fails to provide any alternative which approaches a virtual shutting down of the project export pumps and therefore fails to provide any alternative which will fully protect the "public trust".

CDWA-15

Attached hereto are "Additional Comments on SDIP DEIS" and the following:

- 1) January 31, 1997 Corrected 2-3-97 Re: Draft EIR/EIS - Interim South Delta Program
- 2) Testimony of Kurt Sharp
- 3) Testimony of Rudy Mussi

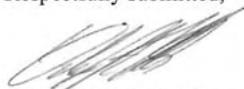
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- 4) Page 3-10 from Draft Program - Environmental Impact Report for the Consolidated and Conformed Place of Use
- 5) Sources and Circulation of Salt in the San Joaquin River Basin by Leslie F. Grober

Respectfully submitted,



DANTE JOHN NOMEILLINI
Manager and Co-Counsel

DJN:ju
Enclosures

Additional Comments on SDIP DEIS

1. Scope of Impact Analysis.

One of the three (3) purported “needs for the proposed action” is the following:

“Increase exports to south-of-Delta contractors. There are unmet water supply needs, with respect to quantity and reliability, south of the Delta for agriculture, municipal and industrial, and environmental uses.” (Draft EIS/EIR, hereinafter “DEIS,” Appendix A, p. A-2, emphasis in original.)

Before the Projects or any other responsible agency can authorize a project to meet those needs, both CEQA and NEPA require that they first, i.e., prior to such authorization, thoroughly investigate, discuss, and analyze the potential environmental impacts that “may” directly or indirectly result from such authorization. If after the result of such an investigation, discussion and analysis it turns out that there are potentially substantial adverse environmental impacts, then those impacts must be avoided or mitigated to the extent feasible.

For example, as CEQA Guidelines section 15064, subdivision (d), explains:

“In evaluating the significance of the environmental effect of a project, the Lead Agency shall consider direct physical changes in the environment which may be caused by the project and reasonably foreseeable indirect physical changes in the environment which may be caused by the project.” (Emphasis added.)

To conduct such a mandatory consideration for the instant project which seeks to satisfy unmet south-of-the-Delta water needs with increased exports, the lead agencies must identify where those increased exports are going to come from and where they are going to be delivered after they are exported. The lead agencies must also identify when such exports and deliveries are going to occur. The fundamental CEQA and NEPA tasks are to investigate, discuss and analyze how all aspects of the environment (both in-Delta and out-of-Delta) may be directly or indirectly affected by exporting water to meet those needs which, in the absence of the proposed project, would not be exported to meet those needs. Thus far, such a good faith, threshold investigation, discussion and analysis is lacking.

For example, while the DEIS states that the increased exports may come from “water transfers” from “areas upstream of the Delta on tributaries of the Sacramento and San Joaquin [Rivers],” the DEIS fails to evaluate the potential environmental impacts which may result in either those particular areas where the transfers take place or the areas receiving those transfers. (DEIS, p. 2-15.) As the DEIS explains:

“Potential effects of transfers in areas upstream of the Delta on tributaries of the Sacramento and San Joaquin, and within areas received the transfers, are not

CDWA-16

CDWA-17

addressed because of the speculative nature of the amount, timing, source, and use of transfers that occur in any particular water year.” (DEIS, p. 2-15.)

CDWA-17

As noted above, CEQA Guidelines section 15064, subdivision (d), requires lead agencies to address "direct physical changes in the environment which may be caused by the project" and "reasonably foreseeable indirect physical changes in the environment which may be caused by the project." (Guidelines, § 15064, subd. (d), emphasis added.) Thus, a lead agency cannot refuse to analyze the impacts from water transfers since it cannot say for certain what the details of those transfers will be, rather, in such a situation it must analyze impacts that "may" result from reasonably foreseeable transfers.

To the extent no transfers are reasonably foreseeable, the under CEQA and NEPA it is premature and unlawful for the lead agency to authorize any transfers at this time. As the California Supreme Court made clear nearly two decades ago, while environmental review of "future action" related to a project, i.e., in this case the export of water made available from water transfers, may be deferred in appropriate circumstances:

“[I]f the future action is not considered at [the outset], it will have to be discussed in a subsequent EIR before the future action can be approved under CEQA.” (Id. at p. 396, emphasis added.)

Thus, neither the Projects nor the US Army Corps, nor another other agency, can lawfully authorize any such transfers without first properly examining their potential environmental impacts. To the extent the Projects fail to so examine those impacts in the instant environmental review process, then the Project’s authorization of increased exports must expressly exclude the authorization of any such transfers.

The same is true for whatever the source of water may be which the Projects intend to export pursuant to this project, i.e., sources other than "water transfers," e.g., reservoir re-operation, etc. The full range of potential direct and indirect impacts to the entirety of the affected environment, i.e., from the source of the water to the ultimate place of delivery, must be examined prior to the Projects’, or any other agencies’, authorization to export such water. Thus far, the DEIS fails to both adequately identify the sources of water to be exported by the project as well as examine said full range of impacts resulting from the export of such water.

a. **Reservoir Releases.**

To the extent the source of water to be exported by the project comes from reservoir releases, then the DEIS must at a minimum do the following, which it thus far has not done: (1) sufficiently set forth and describe the affected reservoirs’ historic and current "release programs;" (2) provide an adequate analysis of how those release programs may be modified by the implementation of the SDIP; and (3) provide an adequate investigation, discussion and analysis of how the environment, including downstream water quantity and quality and aquatic resources

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may be adversely impacted by any such modifications. (See County of Amador v. El Dorado County Water Agency (1999) 76 Cal.App.4th 931.)

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b. **Drainage Impacts from Use of Exported Water.**

With regard to the evaluation of impacts in the areas where exported water will ultimately be delivered, one of the critical direct and/or indirect impacts which the DEIS must properly evaluate is the potential for such exported waters to be delivered to areas which directly drain surface and subsurface waters, and, hence, the various pollutants contained in such waters, into the San Joaquin River or delivered to upslope areas which generate hydraulic pressure which thereby increases the drainage of waters from the downslope lands into the San Joaquin River. The potential for such impacts is widely recognized and well-established. (See e.g., "Discharges of agricultural drainage, containing salts, selenium, boron, molybdenum, and other trace elements, have degraded the water quality of the San Joaquin River" [SWRCB's "Draft Program Environmental Impact Report for the Consolidated and Conformed Place of Use," p. 3-10, attached hereto].)¹

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The proposed project clearly intends to facilitate exports of water to such areas, however, the DEIS fails to properly investigate, discuss, analyze, and ultimately mitigate to the extent feasible, the potential impacts from those exports on the water quality in the San Joaquin River.

The DEIS states:

"The potential indirect effects of the SDIP providing increased CVP deliveries that would add to the salt load at Vernalis were considered in the CALSIM salinity estimates at Vernalis that were used in DSM2. However, most of the additional CVP deliveries would be made to the CVP San Luis Unit contractors (e.g., Westlands Water District). Most of the CVP deliveries to water districts along the San Joaquin River are DMC exchange contractors who already

¹ See also, SWRCB's Decision 1641 at page 83 wherein the SWRCB states with regard to salinity: "[T]he SWRCB finds that the actions of the CVP are the principal cause of the salinity concentrations exceeding the objectives at Vernalis. The salinity problem at Vernalis is the result of saline discharges to the river, principally from irrigated agriculture, combined with low flows in the river due to upstream water development. The source of much of the saline discharge to the San Joaquin River is from lands on the west side of the San Joaquin Valley which are irrigated with water provided from the Delta by the CVP, primarily through the Delta-Mendota Canal and the San Luis Unit. The capacity of the lower San Joaquin River to assimilate the agricultural drainage has been significantly reduced through the diversion of high quality flows from the upper San Joaquin River by the CVP at Friant. The USBR, through its activities associated with operating the CVP in the San Joaquin River Basin, is responsible for significant deterioration of water quality in the southern Delta." (See <http://www.waterrights.ca.gov/hearings/decisions/WRD1641.pdf> at "pdf" p. 95.)

receive their full allocation of Delta water in almost all water years. Changes in the Vernalis EC estimates caused by the SDIP were negligible.” (DEIS, p. 5.3-14.)

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That paragraph does not fulfill the lead agencies CEQA or NEPA obligations with respect to addressing the exported water’s potential adverse impacts on the water quality in the San Joaquin River.

For starters, the lead agency’s CEQA and NEPA duty is by no means limited to addressing “salinity” impacts from drainage of exported water into the San Joaquin River. For example, as CEQA Guidelines section 15382 explains, the lead agency’s duty is to investigate and evaluate the project’s potential to result in “significant effect[s] on the environment” which are defined as:

“[A] substantial, or potentially substantial, adverse change in any of the physical conditions within the area affected by the project including land, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic significance.” (Emphasis added.)

It is well-recognized that drainage from exports to areas which directly or indirectly drain into the San Joaquin River can and do contain numerous other contaminants which the lead agency has a CEQA duty to properly investigate and evaluate. (As noted above, see e.g., “Discharges of agricultural drainage, containing salts, selenium, boron, molybdenum, and other trace elements, have degraded the water quality of the San Joaquin River” [SWRCB’s “Draft Program Environmental Impact Report for the Consolidated and Conformed Place of Use,” p. 3-10, attached hereto].)

The lead agencies’ duty is likewise not limited to avoiding or lessening impacts to agricultural water users which the Vernalis Salinity Standard is intended to protect. For example, under CEQA, the duty is to “assess[] the impact of a proposed project on the environment” which is far-reaching duty that extends well beyond impacts to agricultural water users. (See e.g., CEQA Guidelines, §§ 15126.2, subd. (a), 15064, 15065 & 15382.)

Pursuant to the same Guidelines sections referenced above, the lead agencies’ duty is by no means limited to evaluating impacts at Vernalis. Instead, the lead agencies are required to evaluate “substantial, or potentially substantial, adverse change[s] in any of the physical conditions within the area affected by the project . . .” (CEQA Guidelines, § 15382.) The area affected by drainage from exports to the CVP service areas, for example, extends considerably beyond Vernalis. The area affected is roughly a “sixty mile reach of the lower SJR [San Joaquin River] from Lander Avenue to Vernalis . . .” (See “Sources and Circulation of Salt in the San Joaquin River Basin, p. 2, attached hereto.)

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i. **Assuming Arguendo the Lead Agencies' Obligation is to Only Consider Impacts on the Vernalis Salinity Standard The Lead Agencies Nevertheless Fail to Fulfill that Obligation.**

Assuming arguendo that the lead agencies CEQA and NEPA responsibilities to consider the drainage impacts from exports on the water quality in the San Joaquin River is limited solely to consider impacts on salinity and on agricultural users downstream of Vernalis (which is clearly is not so limited), the lead agencies' consideration of such impacts is still inadequate.

First, the lead agencies' DEIS "must demonstrate that the significant environmental impacts of the proposed project were adequately investigated and discussed . . ." (Guidelines, § 15125, subd. (c), emphasis added.) As CEQA Guidelines section 15003, subdivision (d), similarly provides:

"The EIR is to demonstrate to an apprehensive citizenry that the agency has, in fact, analyzed and considered the ecological implications of its action."

Thus far, it cannot be fairly said that the DEIS has made those demonstrations. To the contrary, the DEIS demonstrates that the project's potential adverse drainage impacts on the water quality in the San Joaquin River were not meaningfully addressed or evaluated.

Such a demonstration is lacking since there is a threshold failure to provide sufficient "facts and analysis [and] detail sufficient to enable those who did not participate in its preparation to understand and to consider meaningfully the [project's potential drainage impacts on the water quality in the San Joaquin River]." (*Association of Irrigated Residents, supra*, 107 Cal.App.4th 1383 at 1390.) As the court explains in *Santiago County Water Dist. v. County of Orange* (1981) 118 Cal.App.3d 818, 831, in order "to allow the EIR to fulfill its informational purpose":

"The EIR must contain facts and analysis, not just the bare conclusions of a public agency. An agency's opinion concerning matters within its expertise is of obvious value but the public and decision-makers, for whom the EIR is prepared, should also have before them the basis for that opinion so as to enable them to make an independent, reasoned judgment." (Emphasis added.)

And as the court further explains in *Al Larson Boat Shop, Inc. v. Board of Harbor Commissioners* (1993) 18 Cal.App.4th 729, 740, "The EIR must effectively disclose to the public the 'analytic route the . . . agency traveled from evidence to action.' [Citations.]"

The DEIS comes no where close to containing the requisite "facts and analysis" or disclosure of the "analytic route" necessary to enable the public and the decision makers to make "an independent, reasoned judgment," of either (1) the amount of drainage water the project may introduce into to the San Joaquin River, in the form of surface or subsurface return flows; or (2) the extent such introduction of drainage water may result in potentially substantial impacts on the

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water quality in the San Joaquin River via the introduction of salt, boron, selenium and other contaminants. Instead, the above-referenced paragraph in the DEIS mentioning the potential for such drainage impacts merely provides the bare conclusions (i.e., "Changes in the Vernalis EC estimates caused by the SDIP were negligible" [DEIS, p. 5.3-14]) without any meaningful explanation of how the lead agencies arrived at those conclusions.

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In order to enable the public and the decision makers to make "an independent, reasoned judgment" of the validity of that conclusion, the public and the decision makers would, at a minimum, need a good faith disclosure of what factors and assumptions the EIR preparers took into consideration in arriving at that conclusion. For example, precisely where did the EIR preparers assume the water would be delivered? When did they assume the water would be delivered and how did they assume they water would be used? Did the EIR preparers take into consideration both surface and subsurface return flows? Did the EIR preparers take into consideration the hydraulic pressure influence on return flows? Similarly, there is no disclosure of information concerning when, where and how such return flows were measured. Were the measurements taken along all significant stretches of the San Joaquin River or just a few select locations?

Assuming answers to such questions could be found somewhere in the administrative record, it is inappropriate to require the public and the decision makers "to painstakingly ferret out" such answers. (Planning and Conservation League v. Department of Water Resources (2000) 83 Cal.App.4th 892, 911.) "An adequate EIR requires more than raw data; it requires also an analysis that will provide decision makers [and the public] with sufficient information to make intelligent decisions. (See, e.g., Guidelines, § 15151.)" (County of Amador v. El Dorado County Water Agency (1999) 76 Cal.App.4th 931, 955.) The potential for adverse drainage impacts on the water quality in the San Joaquin River from Delta exports is far too well-recognized to not merit a thorough, up-front and good faith disclosure and discussion in the text of the actual DEIS.

Finally, since the CALSIM model wherein "[t]he potential indirect effects of the SDIP providing increased CVP deliveries that would add to the salt load at Vernalis were [presumably in some fashion] [']considered[']" (DEIS, p. 5.3-14) assumes that releases will be made from New Melones to offset any increased salt loads at Vernalis from SDIP in order to meet and maintain the Vernalis Salinity Standard, the lead agencies have a CEQA and NEPA duty to examine the full range of potential environmental impacts from requiring New Melones to make those releases. For example, such an examination would evaluate where such releases would have gone in the absence of the SDIP and evaluate how all aspects of the environment may be directly or indirectly affected by redirecting those releases to offset the increased salt loads at Vernalis caused by the SDIP.

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Moreover, since USBR contractors, such as Stockton East Water District, have a Water Code section 11460 prior right to New Melones water that cannot be directly or indirectly deprived by the Project's operations, the DEIS must fully address the potential for SDIP to so result in such direct or indirect deprivation and describe potentially feasible mitigation measures

to ensure that such an unlawful deprivation does not occur. The SDIP project purports to not impede on water rights, yet the DEIS fails to provide the basic environmental analysis to demonstrate that SDIP will not so impede on the water supplies of senior and paramount water right holders. An impact on water supplies that deprives a senior or paramount water right holder of its legally entitled water supply is not your run of the mill “significant impact” for CEQA and NEPA purposes. Instead, since such impacts are contrary to law, such impacts must be entirely avoided rather than merely “mitigated to the extent feasible.” A potential mitigation measure to entirely avoid such impacts would be to require the Projects to offset any such increased salt loads at Vernalis from SDIP with dilution water from a source other than New Melones.

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Whatever actions are taken by the Projects or otherwise to offset SDIP’s impacts on the water quality in the San Joaquin river at Vernalis (or upstream of Vernalis), the entire purpose of CEQA and NEPA is to compel the lead agencies to address the potential environmental impacts from those actions on all aspects of the environment. Thus far, the DEIS fails to demonstrate that such impacts have been properly investigated, discussed, analyzed, mitigated or avoided.

ii. **Conducting and Disclosing the Omitted Investigation and Analysis of Drainage Impacts on the Water Quality in the San Joaquin River Would Have Been Reasonably Feasible.**

“When assessing the legal sufficiency of an EIR, the reviewing court focuses on adequacy, completeness and a good faith effort at full disclosure. [Citation.] Analysis of environmental effects need not be exhaustive, but will be judged in light of what was reasonably feasible. (*Association of Irrigated Residents*, *supra*, 107 Cal.App.4th 1383, 1390.)

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A meaningful investigation, disclosure and analysis of SDIP’s potential drainage impacts on the water quality in the San Joaquin River would clearly be “reasonably feasible.” There is in fact a well-known computer model, the “SJRIO Model,” which is specifically designed to evaluate such impacts. The description of the model at pages 2 and 3 of “Sources and Circulation of Salt in the San Joaquin River Basin, attached hereto, shows that it is particularly apt for the task of exploring and evaluating JPOD’s potential drainage impacts on the water quality in the San Joaquin River.

While there may be other methods or models to meaningfully address SDIP’s potential drainage impacts on the water quality in the San Joaquin River, the existence of this model demonstrates that the evaluation and disclosure of SDIP’s potential drainage impacts on the San Joaquin is most certainly “reasonably feasible.”

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2. **Thresholds of Significance.**

The DEIS states at page 3-6:

“The threshold of significance, or significance criteria, for each resource category varies depending on the resource and standards, if any, set by regulating agencies. These criteria are used to evaluate the significance of an impact.”

CDWA-23

The DEIS should be revised to clarify, and its assessment of the significance of impacts should be amended to take into consideration, “the fact that a particular environmental effect meets a particular threshold cannot be used as an automatic determinant that the effect is or is not significant.” (Protect The Historic Amador Waterways v. Amador Water Agency (2004) 116 Cal.App.4th 1099, 1109.)

The DEIS should further be revised to acknowledge, and its assessment of the significance of impacts should be amended to take into consideration, that one of the paramount and overriding standards for water quality is the SWRCB's "Anti-Degradation Policy," i.e., the SWRCB 1968 Resolution No. 68-16 entitled, "Statement of Policy with Respect to Maintaining High Quality of Waters in California." Said Anti-Degradation Policy provides in pertinent part:

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“Whenever the existing quality of water is better than the quality established in [water quality control] policies [such as the standards set forth in various SWRCB and Regional Water Quality Control Board Water Quality Control Plans] as of the date on which such policies become effective, such existing high quality will be maintained until it has been demonstrated to the State that any change will be consistent with maximum benefit to the people of the State, will not unreasonably affect present and anticipated beneficial use of such water and will not result in water quality less than that prescribed in the policies.

The Federal EPA requires all states to adopt an "antidegradation policy" similar to the SWRCB's Resolution 68-16. (See 40 C.F.R. 131.12.) Resolution 68-16 is further intended to, and does, implement Water Code section 13000 which requires the SWRCB to regulate all "activities and factors which may affect the quality of the waters of the state" such that they "attain the highest water quality which is reasonable."

Accordingly, as far as thresholds of significance are concerned, the SWRCB's Resolution 68-16 and Water Code section 13000 provide thresholds that go well beyond those set forth in the SWRCB and RWQCB's Water Quality Control Plan, or in any other national, statewide or regional plan or policy. Thus far, the DEIS fails to properly recognize and take into consideration SWRCB's Resolution 68-16 and Water Code section 13000.

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3. **Alternative Analysis.**

The alternative section of the DEIS is deemed the “core” and “heart” of the DEIS under CEQA and NEPA, respectively. The DEIS must present a “reasonable range” of alternatives to the proposed project which as CEQA explains will “permit a reasoned choice [among alternatives to the project]” and “foster informed decision making and public participation.” (Guidelines, § 15126.6, subds. (f) & (a), respectively.)

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Since the instant project is composed of two (2) separate components (i.e., the physical/structural component and the operational component) with each component being separately and independently adopted at a different point in time, both CEQA and NEPA require that the DEIS provide a reasonable range of alternatives to each component. Thus far, the DEIS has failed to do so.

a. **Physical/Structural Component.**

The current range of alternatives to the physical/structural component lacks the requisite variety necessary to fully the purposes of the DEIS’s alternative analysis. Since the this component is independent of the operational component and an alternative for this component will be selected regardless of what alternative, if any, is ultimately selected for the operational component, at a minimum each of the physical/structural component alternatives should be evaluated under the assumption that no operational component is selected. As it stands, each of the physical/structural components assume an operational component which includes exports at 8,500 cfs. Since the operational component will not be selected until a later date, if ever, and since the nature of the operational component that is ultimately selected, if any, is unknown and could very well be, as a result of further fishery studies, etc., dramatically different than what the currently contemplated operational components consist of, as it stands the DEIS fails to provide a meaningful range of alternatives for the physical/structural component and improperly analyzes such alternatives assuming an operational component which includes exports at 8,500 cfs.

CDWA-26

The DEIS also wrongfully rejects a reduced export alternative for detailed analysis in the DEIS’s range of reasonable alternatives. When it came to screening alternatives for inclusion in said range, there were only two (2) objectives that are applicable to the physical/structural component: (1) minimize the loss of San Joaquin River salmon as a result of operation of the Project’s export facilities; and (2) improve the reliability of the SDWA to divert water needed to meet consumptive use needs within its boundaries by maintaining adequate water quality and quantity. (See DEIS, Appendix A, p. A-2).

CDWA-27

It is well-settled under CEQA, for example, that to be eligible for inclusion in the EIR’s range of reasonable alternatives the alternative need not meet “all” of the project’s basic objective, only “most” of those objectives. (See e.g., Guidelines, § 15126.6, subd. (a).) The DEIS explains that a reduced export alternative would fully meet the first objective and would

partially meet the second objective. (See DEIS, Appendix A, p. A-7&8 and A-13, respectively.) Thus, a reduced export alternative would meet “most” of the project’s basic objectives and should not have been rejected on the grounds that it did not fully meet the second objective.

Furthermore, the DEIS fails to provide the requisite facts and analysis to support its conclusion that “[b]ecause reduction of CVP and SWP exports can worsen water quality in the south Delta and does not improve the ability of south Delta farmers to divert, [a reduced export alternative] does not meet the local objective” (DEIS, Appendix A, p. A-13.) The facts and analysis supporting that conclusion are not disclosed. Moreover, it is clear that a permanent gate, for example, “can” worsen water quality and not improve the ability of some south Delta farmers to divert if that gate is not accompanied by other measures to offset or mitigate those impacts, e.g., dredging and agricultural pumps, etc. Thus, dredging, for example, could be incorporated along with a reduced export alternative just as dredging is incorporated along with the other physical/structural alternatives. Thus far there appears to be no good faith attempt to design a reduced export alternative “package” as was done with the other alternatives which would collectively fully satisfy “most” of the basic objectives of the physical/structural component. Such a reduced export alternative should therefore have been fully presented and included in the DEIS range of alternatives and compared and contrasted with the other alternatives. The lead agencies’ rejection of a such an alternative for inclusion in that range is contrary to law and not supported by substantial evidence.

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b. Operational Component.

According to the DEIS there was only one project objective for the operation component used to develop a range of reasonable alternatives to that component. That objective was the following:

“Increase water supply to SWP and CVP water contractors through increased diversions into CCF and maximize the frequency of 8,500 cfs pumping at SWP Banks facility.” (DEIS, Appendix A, p. A-13.)

Under CEQA and NEPA a lead agency cannot present an unduly narrow project objective which unfairly limits the range of potential alternatives. Here, the lead agencies have done precisely that. This “objective” is far too narrow to fulfill the purposes of an alternative analysis under CEQA and NEPA.

The “true” underlying “basic” objectives should be more fairly described as meeting the water needs of water users south of the Delta and modifying the rate of exports from the Delta to minimize impacts to fish and other water users. The lead agencies’ “preferred method” to meet those “true” objectives is apparently to “increase diversions into CCF and maximize the frequency of 8,500 cfs pumping.” (*Ibid.*) However, the entire purpose of the mandatory alternative analysis under CEQA and NEPA is for the lead agency to develop and discuss in

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detail alternatives to their preferred method to meet the project's basic objectives. As discussed above, the range of alternatives to the preferred method must contain sufficient variety to "permit a reasoned choice [among alternatives to the project]" and "foster informed decision making and public participation." (Guidelines, § 15126.6, subs. (f) & (a), respectively.) Thus far, the range of alternatives to the operation components falls far short from providing the requisite variety.

CDWA-28

As with the range of alternatives for the physical/structural component, the range of alternatives for the operational component should also include an alternative that calls for a reduction, or at least no increase, in total annual exports from the Delta and, instead, attempts to meet the water needs of water users south of the Delta by providing them alternative non-export water supplies or otherwise helping them to reduced their demand for export water supplies. A reduced export alternative could help meet the other underlying basic objective, i.e., help minimize the impacts from exports on fish and other water users, (1) by either reducing total annual exports from the Delta or by not increasing such amounts and/or (2) by altering the timing of exports to avoid such impacts without increasing total annual exports over existing levels.

Rather than undertake a good faith effort to develop such a reduced (or not increased) export alternative, the DEIS has seemingly ignored such an alternative presumably on the grounds that it would not meet the overly narrow project "objective" for the operational component. If that is indeed the basis for ignoring that alternative, that basis is contrary to law since that "objective" is too narrow for CEQA and NEPA purposes. Such a reduced export can meet the underlying objectives of the operational component and, thus, should be developed and included in the DEIS' range of alternatives and compared and contrasted with the other alternatives in order to provide some semblance of variety in the DEIS' range of alternatives for the operational component.

It should be further noted that such a reduced (or not increased) export alternative can still be fairly said to meet "most" of even the unduly narrow stated objectives for the operational component. That objective is at least a two part objective, i.e., (1) increase water supply to SWP and CVP water contractors through increased diversions into CCF, and (2) maximize the frequency of 8,500 cfs pumping at SWP Banks facility. (DEIS, Appendix A, p. A-13.) As noted above, alternatives need only meet "most" of the project's basic objectives, not "all" of them. An alternative that does not increase total annual exports can still be designed to "maximize the frequency of 8,500 cfs pumping at SWP Banks facility." Simply because such an alternative may not maximize such pump as much as an alternative that seeks to also maximize total annual exports, does not mean that such an alternative does not meet that project objective. To the contrary, such an alternative still strives to maximize such pumping. Whether any particular alternative meets the objectives better than another objective is not the test for inclusion in the DEIS' range of alternatives. Which alternative is the "best" and should be adopted is a determination which the decision makers must ultimately make upon review of the alternatives in the DEIS.

An alternative that does not increase total annual exports can also fully meet the objective to “increase water supply to SWP and CVP water contractors through increased diversions into CCF” Such increases can be offset by decreases to CVP water contractors through the CVP’s Tracy pumping plant, e.g., to benefit fish and wildlife or water levels or quality in the south Delta, such that the total amount of annual exports from the Delta is reduced or not increased over existing levels.

CDWA-28

Thus, it is clear that a reduced (or not increased) export alternative can fully meet “all” (and certainly “most”) of the unduly narrow stated objectives for the operational component. Accordingly, such an alternative is eligible for inclusion in the DEIS’s range of alternatives to the operational component and the failure to so include such an alternative is contrary to law and the evidence.

Responses to Comments

CDWA-1

The tidal gates proposed in the SDIP Stage 1 are described in Chapter 2 of the Draft EIS/EIR as bottom hinged flap gates, which will be lowered to the bottom during all major flood flow events. No changes in the flood flow conveyance in the San Joaquin River or other south Delta channels will occur. The head of Old River gate will not change the flow diversion into Old River nor change the velocities along the San Joaquin River either upstream or downstream of the head of Old River. Additional flood effect evaluations of the effects of dredging in Middle River are being made by DWR, in consultation with SDWA and Central Delta Water Agency (CDWA) engineers. These modeling studies will be used to determine if additional measures are needed to ensure that there are no impacts on flood control in the south Delta. If additional measures are needed that are not described in the SDIP Draft EIS/EIR, a subsequent document will be produced to complete the CEQA and NEPA compliance.

CDWA-2

Sedimentation and scour problems in the south and central Delta are complex phenomena that are attributable to several factors, including exports from the Delta. However, the SDIP evaluation found that there are no significant impacts or changes in scour or sedimentation in the Delta as a result of the SDIP (see Section 5.6 of the Draft EIS/EIR). Therefore, there are no mitigation measures relative to sedimentation and scour proposed for the SDIP.

DWR has dredged in several areas in Old River between Coney Island and Union Island, and modified diversions to improve conditions for local farmers. This was done under the Temporary Barriers Program because the barriers may lower water levels in the reaches downstream of the barriers. The DSM2 modeling for the SDIP indicate there should not be further problems in this area. However, DWR will continue to work with local farmers to jointly address sedimentation issues should they arise.

CDWA-3

One of the SDIP objectives is to increase the minimum stage in south Delta channels, upstream of the tidal gates. This will be accomplished with the tidal gates in Stage 1, as indicated by the minimum, average, and maximum monthly stage values simulated with the DSM2 model, shown in Section 5.2. Several siphons and pump intakes, including some downstream of the proposed gates, will be extended to alleviate any further problems with obtaining reliable water supply from these channels.

CDWA-4

There is no boat lock proposed for the Middle River gate. The upper section of Middle River is a narrow channel and is therefore inaccessible to most watercraft. This existing condition, as well as the assumption that the upstream end of Middle River will remain narrow and inaccessible to most watercraft even after the implementation of the SDIP, indicates that a boat lock at this location is not needed. During the period when the current temporary barrier is in place, a boat ramp is operated to allow access to the channel. Only small boats can be carried across the rock barrier. Because the permanent gate will be open during flood tide periods each day, small boats will be able to pass through the gates at some times each day. With the SDIP dredging along the upper end of Middle River, small boats will more easily enter from the head of Middle River for recreation opportunities. Boats heading from the vicinity of the gate toward the head of Old River, when the gates were closed, would travel down Victoria Canal and West Canal to Grant Line Canal and then east to upper Old River. Therefore, there would be no change in accessibility to Middle River.

CDWA-5

CEQA and NEPA require that the lead agency compare project impacts to the existing conditions and the future no action conditions. For the SDIP draft EIS/EIR, DWR and Reclamation evaluated the effects of the SDIP compared to these baselines. No comparisons with pre-SWP or CVP conditions have been made.

Please also see Master Response G, *No-Barrier Conditions Compared with the No-Action Baseline*.

CDWA-6

During design of the gates and boatlocks, DWR and Reclamation considered the types and sizes of boats that generally travel in this area of the Delta. The proposed gate design is a bottom-hinged gate that would lie flat on the channel bottom when it is in the open position. DWR would operate the gates on a real-time basis and would be able to open the gates to allow emergency vessels to pass should it be necessary. Additionally, the boat locks have been designed to accommodate most boats that would be present in the south Delta as the locks are each 20 feet wide and 60 feet long. (McQuirk pers. comm.)

CDWA-7

Three numerical water quality significance criteria are used for the SDIP. The first is that no violations of established water quality objectives are allowed. The second is that no monthly changes of more than 10% of the objective (or 10% of

the average value if there are no objectives) is allowed. The third is that the overall change must be less than 5% of the average. Because some monthly changes were increases and some were decreases, water quality impacts were generally judged to be significant only if the average increase was more than 5% of the baseline average. Therefore, a few simulated monthly changes of more than the 10% criteria were allowed.

CDWA-8

The SDIP evaluation of water quality impacts using the DSM2 model includes all Delta channels. The analysis shows very small changes in locations other than those in the south Delta channels. Changes in salinity at central Delta locations can be generally evaluated from the data shown for Jersey Point and Old River at State Route 4. These salinity changes are the result of CALSIM shifts in Delta outflow schedules to satisfy the 150 mg/l chloride objective at Rock Slough, and the higher San Joaquin River flows past Stockton. In several locations throughout the south Delta, simulations show that water quality would be improved by the SDIP.

CDWA-9

In Delta agricultural areas, irrigation water is generally not recirculated within the island or tract. The salinity of water used for irrigation depends on the salinity of water in the Delta channels. The salinity in Delta channels is protected by the salinity objectives in D-1641, including Jersey Point and Emmaton for regulating salinity intrusion from Suisun Bay, and Vernalis and Brandt Bridge for regulating San Joaquin River salinity. The changes in salinity caused by the SDIP are small relative to these protective objectives.

CDWA-10

The SDIP is intended to balance the needs of the environment with the needs of the water users south of the Delta. Impacts identified as potentially significant will be mitigated to a less-than-significant level to ensure minimal effects on the environment.

CDWA-11

Please see Master Response E, *Reliance on Expanded Environmental Water Account Actions for Fish Entrainment Reduction*.

CDWA-12

The large quantity of water hyacinth biomass floating in the south Delta channels is a known factor affecting navigation and recreation. These weed mats also affect the trashracks at the CVP Tracy fish facility and the SWP Skinner fish facility. The SDIP will, however, have no direct impact that would increase the water hyacinth or the damages that result from these nuisance weeds.

CDWA-13

Please see Master Response D, *Developing and Screening Alternatives Considered in the South Delta Improvements Program Draft EIS/EIR*, and Master Response B, *Relationship between the South Delta Improvements Program and the Pelagic Organism Decline*.

CDWA-14

The existing conditions at the time that the Notice of Preparation was filed for SDIP in 2002, including the Temporary Barriers Program, is the most appropriate baseline for the SDIP. Please also see Master Response G, *No-Barrier Conditions Compared with the No-Action Baselines*.

CDWA-15

Please see Master Response D, *Developing and Screening Alternatives Considered in the South Delta Improvements Program Draft EIS/EIR*.

CDWA-16

The CALSIM2 model was used as a tool to determine the potential movement, including amount and timing, of water in the CVP and SWP systems. CALSIM2 output provides monthly averages and is based on the 73-year historical hydrological record. Given the existing facilities, regulations, and constraints on the system, the additional export capacity and how it would affect each system are predicted. The additional export capacity does not necessarily result in increased availability of water. Only in years where conditions permit increased amounts of water in north-of-Delta storage facilities would the increased export capacity be used. Nevertheless, the increased export capacity would result in increased exports in some years. The effects of exporting additional CVP and SWP water are evaluated in each applicable resource section and the growth-inducing section. However, as explained in the growth-inducing analysis, determining exactly where and how water would be used is speculative.

CDWA-17

The SDIP Draft EIS/EIR does not authorize any transfers. The increased export capacity at SWP Banks may allow more transfers than would otherwise occur under the existing regulatory limit. DWR and Reclamation made a good faith effort to disclose the potential sources and delivery locations of the potential transfers based on historical data. This does not necessarily predict future actions of the transferring agencies. Transfers are not an action that DWR and Reclamation are taking. However, the increased ability to transfer water is an indirect effect of the SDIP. As such, the effects of this increased export operation are assessed for each resource. If and when transfers occur, the transferring parties are responsible for the necessary permits and environmental compliance regarding their particular action.

CDWA-18

The CALSIM model results are the basis for the evaluation of SDIP changes in flows below each CVP and SWP reservoir. No local reservoir operations would be affected. The flow changes are small, and no significant impacts on fish habitat conditions were identified.

CDWA-19

Please see Master Response Q, *Effects of the South Delta Improvements Program on San Joaquin River Flow and Salinity*.

CDWA-20

The SDIP Draft EIS/EIR cannot provide a complete water and contaminant mass-balance analysis for increased deliveries. These deliveries would be made to existing CVP and SWP contractors, which receive their full water contact amounts in some wet years. The indirect effects that might occur in years when more of the contract deliveries are made cannot be tracked with any currently available model or evaluation methodology.

CDWA-21 and CDWA-22

Please see Master Response Q, *Effects of the South Delta Improvements Program on San Joaquin River Flow and Salinity*.

CDWA-23 and CDWA-24

Meeting an established objective threshold is just one of the significance criteria used for judging water quality impacts. Anti-degradation is the policy basis for using long-term average change criteria.

The anti-degradation policy is still in effect within the basin. The 1968 resolution cited was intended to address discharges of waste to waterways. Immediately following the cited portion, Resolution 68-16 reads as follows:

Any activity which produces or may produce a waste or increased volume or concentration of waste and which discharges or proposes to discharge to existing high quality waters will be required to meet water discharge requirements which will result in the best practicable treatment or control of the discharge necessary to assure that (a) a pollution or nuisance will not occur and (b) the highest water quality consistent with maximum benefit to the people of the State will be maintained.

Analysis contained in Section 5.3 of the Draft EIS/EIR shows that the SDIP would neither create pollution or a nuisance. Additionally, water (under SDIP Stage 2) for wetlands and farmers, coupled with improved water quality, is expected to provide a benefit to the people of the state.

CDWA-25, CDWA-27, and CDWA-28

Please see Master Response D, *Developing and Screening Alternatives Considered in the South Delta Improvements Program Draft EIS/EIR*.

CDWA-26

Please see Master Response D, *Developing and Screening Alternatives Considered in the South Delta Improvements Program Draft EIS/EIR*.