



April 17, 2020

Delta Conveyance Scoping Comments  
Attn: Renee Rodriguez  
Department of Water Resources  
P.O. Box 942836  
Sacramento, CA 94236

*Sent Via Email to [DeltaConveyanceScoping@water.ca.gov](mailto:DeltaConveyanceScoping@water.ca.gov)*

**RE: Scoping Comments regarding the Notice of Preparation of Environmental Impact Report for the Delta Conveyance Project**

Dear Ms. Rodriguez:

On behalf of the Natural Resources Defense Council, Defenders of Wildlife, The Bay Institute, and San Francisco Baykeeper, we are writing to provide scoping comments regarding the Notice of Preparation of Environmental Impact Report for the Delta Conveyance Project (“NOP”). As you know, in January 2013 a coalition including NRDC and Defenders of Wildlife proposed a single Delta tunnel as part of a portfolio alternative for the Delta and asked the State to evaluate the alternative.<sup>1</sup> NRDC remains open to the concept of new conveyance in the Delta, provided that new conveyance in the Delta is part of an enforceable portfolio that: (1) significantly improves conditions for native fish and wildlife, in part by substantially reducing water diversions from the Bay-Delta; (2) minimizes and avoids impacts to communities in the Delta from the construction and operation of such a facility; and, (3) includes significant investments in sustainable local and regional water supply projects to help offset reduced water diversions from the Delta.

We believe that credible and impartial environmental and economic analyses of a proposed project and alternatives are essential, in contrast to the fundamentally flawed analyses that DWR previously performed for the Bay Delta Conservation Plan (“BDCP”) and California WaterFix project, including the final EIR for which DWR ultimately withdrew certification. However, as discussed on the pages that follow, we are concerned that language in the NOP could prevent consideration of a reasonable range of alternatives, preclude analysis of impacts from the whole project, unreasonably limit consideration of the likely environmental impacts, and fails to

---

<sup>1</sup> This Portfolio Alternative for the Delta is available online at: <https://www.nrdc.org/resources/portfolio-based-conceptual-alternative-bay-delta>

provide a stable and accurate project description. We therefore strongly urge the Natural Resources Agency to reconsider the approach to the proposed project and analysis of environmental impacts described in the NOP.

**1. The Purpose Statement in the NOP is Unlawful and Cannot Justify Excluding Alternatives That Significantly Reduce Diversions from the Delta**

CEQA requires that the project description contain a clear statement of the project objectives, including the underlying purpose of the project. Cal. Code Regs., tit. 14, § 15124(b). The project’s purpose and objectives are relevant to defining the reasonable range of alternatives that must be considered in the DEIR. *Id.*, § 15126.6(a). However, DWR’s purpose and objectives in the NOP are inconsistent with State law and could limit consideration of feasible alternatives. DWR must revise the Purpose and Objectives statement and ensure that the statement does not limit meaningful consideration of alternatives that significantly reduce diversions from the Delta.

In contrast to DWR’s purpose and objectives for the BDCP/WaterFix, the purpose statement in this NOP omits any consideration of protecting and restoring the Bay-Delta ecosystem and/or the co-equal goals for the Delta, and instead makes the project purpose solely to “restore and protect” water diversions from the Delta, as the table below demonstrates.

BDCP/WaterFix	Single Delta Conveyance
“DWR’s fundamental purpose in proposing the BDCP is to make physical and operational improvements to the SWP system in the Delta necessary to restore and protect ecosystem health, water supplies of the SWP and CVP south-of-Delta, and water quality within a stable regulatory framework, consistent with statutory and contractual obligations.”	“DWR’s underlying, or fundamental, purpose in proposing the project is to develop new diversion and conveyance facilities in the Delta necessary to restore and protect the reliability of State Water Project (SWP) water deliveries and, potentially, Central Valley Project (CVP) water deliveries south of the Delta, consistent with the State’s Water Resilience Portfolio.”

This purpose statement in the NOP is inconsistent with state law, the best available science regarding climate change and ecosystem health, and the Newsom Administration’s publicly stated objectives for the project. DWR must significantly revise this proposed purpose statement to eliminate language suggesting the purpose is to increase water deliveries from the Delta to ensure that this language does not exclude consideration of a proposed project or alternatives that reduce water diversions from the Bay-Delta.

First, the project purpose to “restore” State Water Project water deliveries suggests that the proposed project should maintain or increase water diversions from the imperiled estuary. However, increasing water diversions from the Delta is inconsistent with the best available science regarding both the effects of climate change and legally required protections for the Bay-Delta ecosystem. For instance, DWR’s 2019 Climate Change Vulnerability Assessment found that climate change is likely to reduce median State Water Project diversions from the Delta by 10% by 2050 (deliveries reduced by 312,000-acre feet per year). Other recent analyses, such as Ray *et al* 2020, also have concluded that climate change is likely to result in reduced SWP diversions from the Delta. Equally important, numerous analyses by state and federal agencies have concluded that increased protections for native fish and wildlife, including threatened and endangered species, are needed to prevent extinction and to comply with state laws, and that these increased environmental protections (e.g., increased instream flows, increased Delta outflow, improved temperature management, improved migratory survival through the Delta) would be likely to reduce diversions from the Delta.<sup>2</sup>

Similarly, the NOP’s stated purpose of increased SWP water diversions from the Delta, without any investment in local and regional water supplies to reduce reliance on the Delta, is inconsistent with state law. The Delta Reform Act established state policy to reduce reliance on the Delta and to meet state water needs through investments in sustainable local and regional water supply projects, such as improved water use efficiency and water recycling. Cal. Water Code § 85022. While the purpose statement in the NOP references the State’s Water Resilience Portfolio, the purpose statement does not explicitly require reduced reliance on the Delta, and it appears to focus on increasing (“restoring” to some higher level) water deliveries from the Delta. More generally, the reference to the Water Resilience Portfolio does nothing to cure the deficiencies in the NOP’s stated purpose. The Portfolio has not yet been finalized, does not commit any funding, fails to include enforceable deadlines, and fails to include linkages between the actions (including with new conveyance). The purpose and objectives should be revised to explicitly include reduced reliance on the Delta through a program of investments in local and regional sustainable water supply projects, and by deleting the word “restore” to avoid any implication that the project purpose is to increase water diversions from the Delta, rather than reducing water diversions as necessary to comply with the California Endangered Species Act and other state laws.

Third, the purpose statement and objectives in the NOP are inconsistent with the co-equal goals for the Delta established in the Delta Reform Act. That Act establishes co-equal goals of providing a more reliable water supply and protecting, restoring and enhancing the Delta ecosystem in a manner that protects and enhances the unique values of the Delta. *See* Cal. Water

---

<sup>2</sup> Examples include the Secretary of the Interior’s August 2016 memo to the President, the State Water Resources Control Board’s (“SWRCB”) 2010 Public Trust Flows report, the SWRCB’s 2017 Scientific Basis Report, the SWRCB’s July 2018 Framework for the Sacramento/Delta Update to the Bay-Delta Plan, the SWRCB’s January 2020 comments on the draft environmental impact report for operations of the State Water Project, and the State of California’s 60-day notice letter and filed complaint challenging the Trump Administration’s 2019 biological opinions.

Code § 85054. In contrast, the purpose and objectives in the NOP omits any consideration of ecosystem health and restoration, impacts to Delta communities. Such an approach is inconsistent with the Delta Reform Act, and the project purpose and objectives should be revised to incorporate restoration of the Bay-Delta ecosystem as a co-equal purpose to improving the physical reliability of the water delivery system.

Finally, the purpose statement and objectives in the NOP are inconsistent with the Newsom Administration's public statements regarding Delta conveyance. For instance, the Governor's 2019 State of State speech emphasized that in addition to protecting water supply, a single Delta tunnel project must also "preserve Delta fisheries," and that conveyance must be part of a portfolio with water recycling and water conservation. Similarly, the draft Water Resilience Portfolio Report (Recommendation 19.1) emphasized that a Delta tunnel must "protect water quality," "support ecosystem restoration," and "limit local impacts." The purpose and objectives in the NOP wholly omit any consideration of these essential attributes of a sustainable project.

We therefore urge DWR to significantly revise the purpose and objectives of Delta conveyance to eliminate any suggestion that the project's purpose is to increase water diversions from the Delta, to explicitly require reduced reliance on the Delta and investments in local and regional water supply projects as part of a true portfolio, and to incorporate protection and restoration of the Bay-Delta ecosystem as a co-equal purpose of the project.

## **2. The DEIR Must Consider a Reasonable Range of Alternatives**

CEQA requires that an environmental impact report analyze a reasonable range of alternatives to the proposed project, including a no project alternative. Cal. Pub. Res. Code §§ 21002, 21061, 21100; tit. 14, Cal. Code Regs. § 15126.6. Here, a reasonable range of alternatives must include not only one or more alternatives that reduce diversions from the Delta, but also one or more alternatives that include a single Delta tunnel as part of a portfolio of local and regional water supply investments. However, language in the NOP does not appear to consider alternatives that reduce diversions from the Delta and fails to include new conveyance as part of an enforceable portfolio of local and regional water supply projects.

First, because the purpose and objectives of a project define what alternatives are reasonable, *id.* at § 15126.6(a), as discussed *supra* it is essential that the State revise the NOP's purpose and objectives to ensure consideration of alternatives that significantly reduce diversions from the Bay-Delta as needed to comply with state and federal laws. Here, the NOP identifies a range of alternatives based on size of new conveyance (from 3,000 to 7,000 cfs), but it does not identify a range of operational criteria. Instead, it suggests that the alternatives would "increase DWR's ability to capture water during high flow events," and that it would identify "initial operating criteria" rather than a range of operational criteria. However, that approach to operations ignores: (1) the best available science regarding the need to substantially increase Delta outflows and reduce diversions to protect fish and wildlife during portions of most water year types, including wetter years; (2) more restrictive pumping limits in the South Delta to offset the new

environmental impacts caused by the North Delta diversion facility(ies); (3) the best available science showing that diversions from the North Delta reduce salmon survival when flows below the proposed intakes are less than 35,000 cfs (Perry *et al* 2018).

While it is true that the Supreme Court in 2008 upheld the final EIR for the CALFED program despite the fact that the document did not consider a reduced export alternative, *In re Bay-Delta Programmatic Environmental Impact Report Coordinated Proceedings*, 43 Cal. 4th 1143, 1168 (2008), changes in state law and the best available scientific information demonstrate that a EIR for this project must consider alternatives that reduce diversions from the Bay-Delta. For instance, the subsequent enactment of the Delta Reform Act now makes ecosystem restoration a co-equal purpose with improving water supply reliability and establishes state policy to reduce reliance on the Delta. Similarly, the best available science regarding the effects of climate change and ecosystem restoration demonstrate that reduced water diversions are needed to meet water quality standards and comply with state and federal endangered species acts. As a result, the EIR for this project must consider alternatives that result in reduced diversions from the Delta, even as the physical reliability of the system may be improved with new conveyance.

Second, in order to be consistent with the Delta Reform Act the DEIR must consider one or more alternatives that include new conveyance as part of a portfolio of local and regional water supply investments. The 2013 Portfolio Alternative for the Delta provides one model for this approach, and the terms and conditions proposed by NRDC *et al* in our opening statement to the SWRCB for the WaterFix change in point of diversion hearing provides another portfolio alternative that should be considered. The CALFED EIR/EIS provides another potential model for analyzing Delta conveyance as part of a broader program; that final EIR analyzed the effects of the CALFED program, including program elements such as habitat restoration, water conservation, new Delta conveyance, water quality improvements, and improved flows and fish screens to protect fish and wildlife. Similarly, here CEQA analysis of a single tunnel Delta conveyance project as part of a portfolio that reduces reliance on the Delta and invests in local and regional water supply projects could utilize both programmatic and project level analysis of different program elements.

Finally, the NOP indicates that the scoping process will inform operations to be analyzed in the DEIR. We strongly suggest that the DEIR include a range of operational alternatives that strengthen protections for fish and wildlife, including: (1) one or more alternatives that are consistent with the operations outlined in the SWRCB's July 2018 Framework for the Sacramento/Delta Update to the Bay-Delta Plan; (2) one or more alternatives that are consistent with the operational criteria identified by NRDC *et al* in our opening statement to the SWRCB for Phase 2 of the water rights proceeding for the California WaterFix project.<sup>3</sup> These operational requirements include significant increases in Delta outflow to protect longfin smelt, Delta Smelt, and other native fish species, and prohibitions on diversions from new conveyance

---

<sup>3</sup> Available online at:

[https://www.waterboards.ca.gov/waterrights/water\\_issues/programs/bay\\_delta/california\\_waterfix/opening\\_statements/docs/part2/opening\\_nrdc.pdf](https://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/california_waterfix/opening_statements/docs/part2/opening_nrdc.pdf)

when flows at Freeport are less than 35,000 cfs to protect salmon (*see Perry et al 2018*). In order to comply with state and federal laws, the proposed project must strengthen environmental protections as compared to the environmental baseline.

### **3. The Scope of the DEIR Must Include Analysis of Effects of the Whole Project of SWP/CVP Operations and Facilities, Including Upstream Operations**

CEQA requires that the DEIR analyze the effects of the whole project on the environment. CEQA Guidelines § 15378 (definition of “project” means “the whole of an action”). The definition of a project is broadly construed in order to maximize protection of the environment. *Nelson v. County of Kern*, 190 Cal.App.4th 252, 271 (2010). The whole of the action analyzed in this DEIR must include upstream operations of the SWP and CVP, and it must consider not only short-term effects of construction and operations, but also effects of operations in the long term in light of the likely effects of climate change.

While there is language in the NOP suggesting that the DEIR will consider upstream effects, other language in the NOP suggests that the DEIR will not fully consider effects from operations of the SWP and CVP upstream of the Delta. The NOP acknowledges on page 6 that the scope of the environmental review may include State Water Project contract amendments relating to paying for Delta conveyance, and that the geographic scope includes areas upstream of the Delta. In contrast, the NOP on page 9 suggests that the DEIR will only examine changes in flow in the Delta and exclude consideration of changes to flow and water temperature upstream. Moreover, DWR’s recent DEIR for operations of the State Water Project failed to adequately consider environmental impacts from operations of the CVP and SWP upstream of the Delta, raising further concerns about the language in this NOP. As discussed in more detail in our comments on that DEIR, because the State Water Project and Central Valley Project are operated as a coordinated system, and because operations in the Delta affect operations upstream, the DEIR must consider effects of SWP and CVP operations throughout the Bay-Delta watershed, including effects in the Feather River below Oroville Dam and in the Sacramento River below Shasta Dam.

Second, although the NOP does not identify the temporal duration or extent of environmental analysis, it is essential that the DEIR consider both short-term and long-term effects of the proposed project and alternatives. Short-term effects would include effects of more than ten years of construction and the subsequent operation of the project; long-term effects would include operations, including the effects of climate change, decades from now. Long-term effects must be considered because: (1) the SWP, including Delta conveyance, is intended to be operated for decades; (2) SWP contractors would likely be paying for the project for decades; and, (3) because the California Endangered Species Act requires that the State Water Project fully mitigate impacts in light of the effects of climate change, regardless of whether and to what extent SWP operations contributed to climate change. *Environmental Protection Information Agency v. Calif. Dep’t. of Forestry and Fire Protection*, 44 Cal. 4th 459, 513 (2008). The DEIR

must therefore consider the effects of operations of the SWP in light of the effects of climate change over a time period that extends at least until 2070.

#### **4. The Environmental Baseline Should Include ESA and CESA Requirements at the Time the NOP was Issued, as well as Existing Habitat Restoration Obligations**

CEQA requires that the proposed project and alternatives be analyzed against the existing environmental conditions (the “environmental baseline”), in order that the Project’s environmental impacts can be meaningfully analyzed and compared to alternatives. Cal. Code Regs., tit. 14, § 15125(a); see *County of Amador v. El Dorado County Water Agency*, 76 Cal.App.4th 931, 952 (1999); *Neighbors for Smart Rail v. LA County Metropolitan Transit Authority*, 57 Cal. 4th 310, 315 (2013). That environmental baseline is generally existing conditions at the time of the Notice of Preparation. Cal. Code Regs., tit. 14, § 15125. Under CEQA, the DEIR must “delineate environmental conditions prevailing absent the project, defining a ‘baseline’ against which predicated effects can be described and quantified.” *Neighbors for Smart Rail*, 57 Cal.4th 439, 447 (2013) (citing *Communities for a Better Environment v. South Coast Air Quality Dist.*, 48 Cal.4th 310, 315 (2010)). The purpose is to provide a “realistic baseline that will give the public and decision makers the most accurate picture practically possible of the project’s likely effects.” *Neighbors for Smart Rail*, 57 Cal.4th at 449 (citing *Communities for a Better Environment*, 48 Cal. 4th at 322, 325, 328).

The NOP was issued on January 15, 2020. Accordingly, the environmental baseline should include the operational requirements under CESA and the ESA that were in effect on that date, including the full requirements of the 2008 and 2009 biological opinions and the related incidental take permits and consistency determinations under CESA for operations of the SWP. In addition, although the vast majority of the habitat restoration requirements of those prior CESA/ESA permits had not been implemented at the time of the NOP, excluding these existing mitigation and compliance obligations from the environmental baseline in this DEIR would bias the environmental analysis and would be misleading to the public and decisionmakers. See *Neighbors for Smart Rail*, 57 Cal. 4th at 457.

#### **5. The DEIR Must Provide an Accurate and Stable Project Description**

It is black letter law that, “[a]n accurate, stable and finite project description is the sine qua non of an informative and legally sufficient EIR.” *County of Inyo v. City of Los Angeles*, 71 Cal. App. 3d 185, 193 (1977). An EIR must provide a clear explanation of the nature and scope of the proposed project, otherwise it “is fundamentally inadequate and misleading.” See *Communities for a Better Environment v. City of Richmond*, 184 Cal.App.4th 70, 84-85 (2010). Here, the lack of clarity as to the role of the Bureau of Reclamation must be resolved before the DEIR can be issued.

The NOP admits that the Bureau of Reclamation “may” have a role in the project, and that the objectives of the project “potentially” include water deliveries of the Central Valley Project.

However, the operations of the Bureau of Reclamation are coordinated with the operations of the State Water Project pursuant to the Coordinated Operating Agreement, and the DEIR must have clarity as to Reclamation's operations and whether Reclamation will participate in the conveyance project. For instance, if the Bureau of Reclamation does not participate in the conveyance project, how will the State Water Project ensure no injury to the Bureau of Reclamation if Old and Middle River flows must be less negative, or Delta outflow must be increased, to offset and fully mitigate adverse impacts from operations and construction of new conveyance and the State Water Project? Similarly, how will the State Water Project ensure no injury to south of Delta wildlife refuges that rely on the Bureau of Reclamation for delivery of water that sustains endangered species and millions of Pacific Flyway birds? In addition, Reclamation's participation is likely to affect questions of sizing and operations of Delta conveyance that are essential to resolve before release of the DEIR. Similarly, DWR must ensure that the proposed project is reasonably certain to implement the proposed environmental flow conditions to maintain water quality and protect fish and wildlife, and the DEIR cannot lawfully rely on DWR providing a "proportional share" of such environmental and water quality measures, if the full measures are not reasonably certain to occur. *See* Cal. Code Regs., tit. 14, § 15126.2.

NRDC *et al* raised similar issues regarding a lack of a stable and accurate project description in our January 6, 2020 comments<sup>4</sup> on DWR's recent DEIR regarding operations of the State Water Project, which inconsistently described the role of the Bureau of Reclamation, and as a result, provided misleading analysis of the potential environmental impacts of the proposed project and alternatives. To comply with CEQA, the DEIR must provide a clear and consistent description of the Bureau of Reclamation's role in the proposed project and alternatives and ensure that all operational measures are reasonably certain to occur.

#### **6. The NOP Inaccurately Discusses the Relationship to the BDCP/WaterFix EIS/EIR**

Pages 10-11 of the NOP inaccurately describes the BDCP/WaterFix EIS/EIR process, because it fails to acknowledge that DWR withdrew its Notice of Determination and withdrew certification of the final EIR. *See* DWR, Rescission of Notice of Determination (NOD) – State Clearinghouse Number – 2008032062, May 2, 2019.<sup>5</sup> The NOP properly acknowledges that the "proposed Delta Conveyance Project is a new project and is not supplemental to these past efforts **or tiered from previous environmental compliance documents.**" (emphasis added). DWR must ensure that the DEIR does not tier to the fundamentally flawed final EIR for the BDCP/WaterFix project.

---

<sup>4</sup> That comment letter and supporting documents are incorporated by reference.

<sup>5</sup> This document is available online at: <https://ceqanet.opr.ca.gov/2008032062/9/Attachment/gFURwX>. It is hereby incorporated by reference.

**7. The DEIR Must Analyze Potentially Significant Impacts, Including Effects of Waiving Protective Operational Requirements During Droughts, Effects Upstream of the Delta in Light of Climate Change, and Cumulative Impacts, Using Credible Methods of Analysis**

CEQA requires that a DEIR accurately assess potential environmental impacts from the proposed project and alternatives, using credible methods of analysis. *See, e.g., Cal. Code Regs., tit. 14, § 15151; Laurel Heights Improvement Assn. v. Regents of University of Cal.*, 47 Cal.3d 376, 409 (1988). DWR's recent DEIR for the operations of the State Water Project violated this fundamental principle by using analytical methods that are not scientifically credible, failing to consider the effect of waiving operational measures that protect fish and wildlife during droughts, and failing to analyze all likely significant impacts of the project, as discussed in NRDC et al's January 6, 2020 comments on the DEIR for operations of the State Water Project. The following potentially significant impacts should be considered in this DEIR:

- A. *Effects on Fish and Wildlife Upstream of the Delta:* The DEIR must consider potentially significant effects of upstream operations of the CVP and SWP in light of climate change, including:
  - a. the effects of changes in instream flows on survival of salmon and other fish migrating downstream;
  - b. the effects of water temperatures on salmon and other fish species that spawn and rear below dams, as a result of SWP/CVP reservoir storage and releases;
  - c. the effects of redd dewatering on salmon as a result of CVP/SWP operations.
- B. *Effects on Fish and Wildlife in the Delta:* The DEIR must consider potentially significant effects of CVP and SWP operations in the in light of climate change, including:
  - a. The effects of entrainment, salvage and loss of all four runs of Chinook salmon, Delta Smelt, Longfin Smelt, steelhead, sturgeon, and other native fish and wildlife;
  - b. The effects of SWP/CVP operations on survival of all four runs of salmon through the Delta, including effects of Old and Middle River flows, import: export ratios, Delta Cross Channel gate operations, and Sacramento River flows at Freeport;
  - c. The effects of increased entrainment and loss of sediment and reduced turbidity downstream of the proposed new Delta conveyance facility on Delta Smelt, longfin smelt, all four runs of Chinook salmon, and other species;
  - d. The effects of reduced flows below the proposed North Delta conveyance intakes on survival of salmonids through the Delta;
  - e. The effects of Delta outflow on the abundance and survival of Longfin Smelt, Delta Smelt, salmon, and other species.
- C. *Effects on Water Quality in the Delta:* The DEIR must consider potentially significant effects of CVP and SWP operations in light of climate change on water quality in the Delta, including:
  - a. The effects of reduced turbidity, changes in residence times, changes in flows, and other operational changes on the magnitude, duration, and frequency of harmful algal blooms;

- b. The effects of operations on salinity, residence time, and water temperatures in the Delta, particularly in light of sea level rise and climate change.
- D. *Effects during Droughts:* As discussed in our January 6, 2020 comments, DWR has admitted that waivers of protective operations are “reasonably foreseeable” during future droughts, similar to the waivers of water quality standards and ESA/CESA protections during 2013-2015. The DEIR must account for the impacts of waiving or weakening these protections during future droughts, because the analysis of environmental impacts must rely on measures that are reasonably certain to occur.
- E. *Effects on avian and terrestrial species:* The DEIR must consider potentially significant effects of project construction and CVP and SWP operations on avian and terrestrial species, including:
  - a. Impacts to wildlife in south of Delta wildlife refuges from changes in water supply;
  - b. Construction impacts to wetland-dependent wildlife in the Delta; and
  - c. Impacts to wildlife from increased frequency and/or extent of crop-idling water transfers.

In order to accurately assess potentially significant impacts, the DEIR must use credible methods of analysis, such as the Winter-Run Life Cycle Model, and cannot use statistically improper methods, such as the statistical manipulation that DWR used to analyze impacts to longfin smelt from reduced Delta outflow in its recent DEIR for Operations of the State Water Project. Moreover, to accurately assess the impacts of the proposed project and alternatives in light of climate change, DWR should use CALSIM 3 or another model that uses CMIP5 projections of climate change, given that NMFS and other agencies have concluded that CMIP3 projections are not the best available science and underestimate the likely adverse effects of climate change on hydrology and water temperatures. As noted above, the analysis of impacts must only rely on protective operations and mitigation measures that are reasonably certain to occur. Any impact that results in reduction in survival or abundance of species listed under CESA is a significant impact for which mitigation is required, as we noted in our January 6, 2020 comments to DWR:

Given the imperiled status of these species, the further reductions in abundance and survival caused by the proposed project constitute mandatory findings of significant impacts under CEQA. The populations of Delta smelt, Longfin smelt, winter-run Chinook salmon, and spring-run Chinook salmon already are not self-sustaining (particularly without hatchery supplementation of salmonids) and are declining in abundance, and the proposed project would further “cause a fish or wildlife population to drop below self-sustaining levels.” Cal. Code Regs., tit. 14, § 15065(a)(1).<sup>6</sup>

Finally, in its recent DEIR on the operations of the State Water Project, DWR has admitted that with respect to the adverse effects on fish and wildlife caused by operations of the State Water

---

<sup>6</sup> Moreover, any reductions in abundance and survival of listed species under the proposed project compared to the baseline demonstrates that the proposed project is not fully mitigating impacts as required by CESA, and thus that the proposed project is inconsistent with the project objectives.

Project, together with similar effects caused by the CVP, other dams and water diversions in the Bay-Delta watershed, and habitat modifications in the watershed, “This overall cumulative impact is significant.” In light of the acknowledged significant and adverse cumulative impacts, and the State Water Projects’ disproportionately large proportion of those effects (including the State Water Project’s settlement contractors on the Feather River and implementation of the Coordinated Operating Agreement with the CVP), the DEIR must carefully consider the cumulative impacts of the proposed project, particularly in light of pending proposals for Sites Reservoir and other water storage and diversion projects. Given that CALSIM modeling of Sites Reservoir and other reasonably foreseeable projects is available, the DEIR’s analysis of cumulative impacts should include quantitative analysis and not simply rely on qualitative analysis.

## 8. Conclusion

We are concerned that the approach to the Delta Conveyance Project and environmental analysis described in the NOP is significantly flawed. Those concerns are heightened by DWR’s recent deeply flawed DEIR for Operations of the State Water Project, and by the continuing delay of the State Water Resources Control Board’s update of the Bay-Delta Water Quality Control Plan. Before the State and public considers a new Delta Conveyance Project or other major water storage and diversion projects that are likely to significantly worsen environmental conditions in the Delta, the State Water Resources Control Board should first establish updated flow and water quality standards that will achieve salmon doubling, prevent extinction, and protect and restore native fish and wildlife and the health of the Bay-Delta watershed.

We strongly encourage the Natural Resources Agency to reconsider the approach identified in the NOP, consistent with these comments. We would be happy to discuss these comments further with the Natural Resources Agency at your convenience.

Thank you for consideration of our views.

Sincerely,



Doug Obegi  
NRDC



Rachel Zwillinger  
Defenders of Wildlife



Gary Bobker  
The Bay Institute



Jon Rosenfield, Ph.D.  
The Bay Institute