

Appendix A
DWR Response to Comments

DWR Response to Comments

The public comment period on the DWR Draft Initial Study/Mitigated Negative Declaration (Draft IS/MND) was announced as June 15 to July 15, 2010. However, on July 1, DWR filed a Supplemental Initial Study/Mitigated Negative Declaration due to proposed minor technical changes and extended the comment period to July 31 to give the public and agencies ample time to review these changes. At the end of the public comment period, DWR had received a total of 8 letters (some with multiple comments) and 1 oral comment addressing the Draft IS/MND. DWR appreciates and thanks the agencies and individuals for taking time to review and submit comments on the Draft IS/MND. The comments are important to DWR. DWR has prepared written responses to the comments. The responses correct, clarify, and amplify text in the Draft Supplemental IS/MND, as appropriate. These changes do not alter the conclusions of the Draft Supplemental IS/MND. Comments that have been received for the BDCP public scoping process will be included in the BDCP EIR/EIS at a future date.

This Response is divided into two parts. Part I is a General Response to Comments which provides background and context for the activities proposed in the Draft IS/MND. Part II includes Specific Responses to the agency and individual comments. The letters and oral comments have been assigned a number, shown in the Index list below. DWR separated the comments into two sections: Section A includes comments from state and local public agencies and non-governmental organizations and Section B includes comments from individuals. Actual comments are provided in Appendix B. At the beginning of each response, the corresponding comment letter number is listed and the comment or a summary of the comment is provided. Where multiple letters or verbal comments had the same comment, DWR prepared one response and listed the comment numbers that are being addressed by the response or referenced the similar response after the comment.

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PART I

GENERAL RESPONSE TO COMMENTS

A. CEQA Review of the Draft IS/MND

The proposed Engineering Geotechnical Activities that are described in this draft Initial Study/Mitigated Negative Declaration (IS/MND) are subject to the California Environmental Quality Act (CEQA) process. The Draft IS/MND was prepared analyzing the potential of these activities to impact the environment. The legally required and standard period of time for reviewing a Negative Declaration is 30 days.

DWR filed a Notice of Intent to adopt a Draft IS/MND for the proposed Geotechnical Exploration Project at the State Clearinghouse on June 15, 2010. On June 13, 2010 DWR published the same Notice of Intent in the Sacramento Bee, the Stockton Record, the Davis Enterprise, the Contra Costa Times, and the Vacaville Reporter, newspapers with broad distribution in the counties the project is proposed. This Notice of Intent included information on the length of the public comment period, where to submit comments, and where copies of the Draft IS/MND could be obtained, including a computer on-line website address. Also, as required by CEQA, after DWR submitted the Notice of Intent and copies of the Draft IS/MND to the State Clearinghouse, the State Clearinghouse notified the following responsible and trustee agencies on June 15, 2010: Air Resources Board, Department of Boating and Waterways, California Highway Patrol, Caltrans Districts 3 and 10, Central Valley Flood Protection Board, the Delta Protection Commission, Department of Fish and Game, Native American Heritage Commission, Office of Emergency Services, Office of Historic Preservation, Department of Parks and Recreation, Regional Water Quality Control Board, The Natural Resources Agency, San Joaquin River Conservancy, and the State Lands Commission. DWR also consulted with the following responsible agencies: the Department of Fish and Game, the United States Army Corps of Engineers, the U.S. Coast Guard, the U.S. Fish and Wildlife Service, the State Lands Commission, the Central Valley Flood Protection Board, and the National Marine Fisheries Service. The Notice of Intent and IS/MND was also sent to the Recorder's offices of Sacramento, Solano, Yolo, San Joaquin and Contra Costa counties.

On July 1, 2010, DWR filed a Supplemental IS/MND due to proposed minor technical changes and extended the comment period to July 31, 2010 to give the public and agencies ample time to review these changes. The revised Notice of Intent was again provided to the aforementioned newspapers, counties, and public agencies.

DWR posted the IS/MND on <http://baydeltaconservationplan.com/default.aspx> from June 15 through July 31.

In addition, DWR provided copies to the following people on June 15 and June 30: Osha Meserve, Soluri Meserve, A Law Corporation, Sacramento, CA; Mr. Dante John Nomellini, Jr., Nomellini, Grilli, & McDaniel, Professional Law Corporation; Ms. Katie

Patterson, San Joaquin Farm Bureau Federation; and Mr. H. Jack Hanna, East Contra Costa Planning Commission.

B. Relationship to BDCP Process

The draft Supplemental IS/MND stated that DWR proposes the exploratory investigation activities to obtain necessary geotechnical information to support the preparation of a draft Environmental Impact Report/Environmental Impact Statement (EIR/EIS) for the Bay Delta Conservation Plan (BDCP)^[1] through preliminary engineering studies under the Delta Habitat Conservation and Conveyance Program (DHCCP). DWR requires Delta soils and groundwater information for conceptual design and construction costs of conveyance facilities and to identify possible constraints and feasibility in developing conveyance options. The activities are preliminary studies that will help DWR and others make decisions regarding what should be in the BDCP and do not foreclose options or commit DWR or any other agency to any action in the future. The discussion in the following paragraphs clarifies the relationship of the exploratory geotechnical activities to issues regarding the Delta and the BDCP process. Although these issues are outside the scope of this IS/MND, they are discussed here to provide some information and background so that the public and decision-makers can have a better understanding of the context in which the in-water on on-land exploratory drilling activities will take place and how they relate to the environmental issues regarding the BDCP.

The DHCCP is the management program for the investigative work for the BDCP, including the overwater and land drilling. There was a typographic error in the IS/MND where the DHCCP was referred to the Delta Habitat Conservation and Conveyance “Plan” rather than the Delta Habitat Conservation and Conveyance “Program”.

The Delta is under tremendous pressure to meet competing needs. The Delta is a community, with people who raise families and earn a living. The Delta also supports people across the state, acting as the water supply hub for two-thirds of Californians and is home to hundreds of aquatic and terrestrial species, many of which are unique to the area and several of which are threatened or endangered. The Delta of today is very different from the Delta of the past. To make matters more complicated, the Delta faces sea level rise, threats from earthquakes, continued land subsidence and higher winter flood flows.

DWR operates the State Water Project (SWP) which is a water storage and delivery system of reservoirs, aqueducts, power plants and pumping plants. The SWP makes deliveries to two-thirds of California's population. Its main purpose is to store water and distribute it to 29 urban and agricultural water suppliers in Northern California, the San Francisco Bay Area, the San Joaquin Valley, the Central Coast, and Southern California. Of the contracted water supply, 70 percent is allocated to urban users and 30 percent is allocated to agricultural users. The SWP provides supplemental water to approximately 20 million Californians and about 660,000 acres of irrigated farmland. Additional allocations are not provided under the BDCP.

The Delta is currently a conduit for water that is used for a wide range of in-stream, riparian and other beneficial uses. While some beneficial water users depend on the Delta for only a portion of their water needs, others are highly dependent on supplies from the Delta. While overall water supplies have remained finite, conflicts have arisen and intensified among Delta water users as total demands have increased for some water users and regulatory requirements for rare, threatened and endangered species have increased. With the forecast of reduced precipitation in the Sacramento and San Joaquin Valley watersheds, the struggle to meet these demands will be intensified. In addition, the levees in the Delta are at risk of failure from a number of causes, including seismic activity and sea level rise associated with climate change.

The BDCP is being developed under the Federal Endangered Species Act (ESA) and the California Natural Community Conservation Planning Act (NCCPA) and will undergo extensive environmental analysis that will include opportunities for public review and comment. The BDCP, which will likely include a new conveyance system and habitat restoration actions, is being developed to promote the recovery of endangered, threatened and sensitive fish and wildlife species and their habitats in the Sacramento-San Joaquin Delta in a way that will also protect and restore water supplies.

The BDCP is:

- Identifying conservation strategies to improve the overall ecological health of the Delta
- Identifying ecologically friendly ways to move fresh water through and/or around the Delta
- Addressing toxic pollutants, invasive species, and impairments to water quality
- Establishing a framework and funding to implement the Plan over time

When completed, the BDCP would provide the basis for the issuance of endangered species permits for the operation of the state and federal water projects. The plan would be implemented over the next 50 years. The heart of the BDCP is a long-term conservation strategy that sets the actions needed for a healthy Delta.

As the BDCP evaluates habitat, physical and operational alternatives necessary to restore the Delta ecosystem while providing water supply reliability, state and federal agencies are developing a joint Environmental Impact Report/Statement (EIR/EIS) to determine the environmental impacts of the BDCP. The draft BDCP EIR/EIS is expected to be ready for public review and comment in 2011. The draft BDCP EIR/EIS is being prepared by DWR, as the lead agency under the California Environmental Quality Act (CEQA), and several federal lead and co-lead agencies under the National Environmental Policy Act (NEPA), including the U.S. Bureau of Reclamation, the National Marine Fisheries Service and the U.S. Fish and Wildlife Service. A number of state agencies, including the Department of Fish and Game, are responsible agencies under CEQA.

As described in the Notices of Preparation, the draft BDCP EIR/EIS will review a range of habitat conservation and new water conveyance options in the Delta. A dual

conveyance/pipe-line tunnel design has been currently identified by the BDCP Steering Committee as the project for initial analysis. Several other water conveyance options are anticipated for consideration in the BDCP EIR/EIS, including a through Delta design(s) and various alignments.

C. Relationship to Overwater and Land Drilling

Some comments expressed opposition to proceeding with exploratory studies of any kind until a decision has been made whether to proceed with any kind of water conveyance facility. The overwater and land geotechnical exploratory activities are necessary to obtain information about possible intake structures and tunnels for different alignment options of the water conveyance facilities associated with the BDCP and to make an informed decision about future water conveyance facilities associated with the BDCP. Without the data obtained through these activities, DWR is unable to assess whether or not specific locations would be suitable and does not possess reliable data to permit preparation of a meaningful and accurate report on the impacts of the BDCP. The information obtained from the overwater exploratory drilling activities will be used for evaluating actions that may be included in the draft BDCP EIR/EIS that is being prepared to determine if such actions, including water conveyance options, may be feasible or reasonable.

This IS/MND analyzes the effects on the environment from overwater and land exploratory drilling activities that will be conducted to obtain information the DWR can use for multiple purposes and for later proposed projects. CEQA allows agencies to take actions to gather information as a separate independent project prior to the agency committing to a larger, later project that may use the information in analyzing the later project. See the discussion below in Section E regarding piecemealing. The data collection activities proposed by the Draft IS/MND fall within these CEQA procedures. Without the data obtained through these activities, the DWR would be limited in its ability to propose and assess potential alternative activities, facilities, and locations for water conveyance options in the future BDCP EIR/EIS. The activities do not foreclose options or commit DWR or any other agency to any action in the future.

D. Relationship to other Exploratory Work

Some comments asked how the overwater exploratory drilling activities are related to other exploratory work necessary to the BDCP process.

A variety of exploratory studies have been initiated or will be initiated over the next several years by DWR and others to provide information about the Delta that DWR can use for multiple purposes and for later proposed projects. As discussed above, although DWR has committed to preparing an EIR/EIS for the BDCP, the data collection activities can proceed independent of this future EIR/EIS because the activities will provide information that can be used in developing the details of the BDCP, its impacts and alternatives. The BDCP will include a programmatic analysis of habitat restoration targets in the Delta and an evaluation of other stressors. Projects later identified in the BDCP may require further CEQA review. For example, a conservation strategy to

improve the Fremont Weir and/or Yolo Bypass could require exploratory studies that are not included or contemplated in these activities.

CEQA allows agencies to take actions to gather information as a separate independent project prior to the agency committing to a larger, later project that may use the information in analyzing the later project as long as the activities do not foreclose options or commit DWR or any other agency to any action in the future. As the comments discuss, DWR has planned a number of field studies, including exploratory drilling studies. DWR has described these studies in a number of documents. It is expected that there will be additional studies not yet identified or described and that some of the studies will generate a need for more studies. Some studies have no environmental impact; others are the subject of environmental documents such as exemptions or negative declarations. To the extent that there is a relationship between different studies, it is described in the environmental document. See the discussion below in Section E on piecemealing.

E. Piecemealing

Some comments suggest that DWR is piecemealing CEQA projects. Commenters claim that the proposed overwater drilling project that is the subject of this IS/MND should be analyzed as part of: (a) the proposed Bay Delta Conservation Plan (BDCP) EIR/EIS that is being prepared by DWR as lead agency and several federal agencies pursuant to CEQA and NEPA, (b) other field studies intended to gather data for the development of the BDCP and the EIR for the BDCP, and (c) other Geotechnical Activities

DWR is not, as suggested by some of the comments, subdividing a single project into smaller individual sub-projects in order to avoid the responsibility of considering the environmental impact of the project as a whole. CEQA clearly contemplates that feasibility studies and preliminary investigations necessary to complete a CEQA review of a future project to which an agency is not yet committed may be studied separately. Data collection and feasibility projects that may be necessary to support possible future actions are properly analyzed under CEQA as a discrete project. Both the CEQA statute (Public Resources Section 21083) and the CEQA Guidelines (14 CCR Section 15306) provide exemptions for information collection activities that can be strictly for information gathering purposes or can be part of a study leading to an action that a public agency has not yet approved, adopted or funded as long as the activities do not result in a serious or major disturbance of an environmental resource.

Notwithstanding these exemptions, the fact that an information gathering activity may have the potential to significantly impact the environment means that an agency must consider whether to prepare a Negative Declaration or an EIR on the information gathering activities. It does not mean that the agency must prepare a Negative Declaration or an EIR on the action that the public agency is not yet considering approving, adopting or funding. The drilling activities are not piecemealing of a larger project, but rather “are necessary to make an intelligent decision about whether to proceed” with the water conveyance facilities associated with the Bay Delta Conservation Plan. Please refer to *No Oil, Inc. v City of Los Angeles* (1987) 196 Cal

App. 3d 223 referred to on page 23 of the CEQA Deskbook, 1999 Edition (Bass, Ronald E.; Herson, Albert I.; and Bogdan, Kenneth M.).

The discussion in Sections B and C above describe the relationship of the proposed project to the BDCP and to other exploratory or data gathering projects. While DWR could have chosen to consider all of the activities under a tiered or programmatic environmental document regarding the BDCP, it is not obligated to do so. The exploratory and information gathering activities are projects that may help in determining the proposed BDCP options and that may develop information that could be otherwise valuable to DWR in the future. The purpose of the geotechnical studies is not to “plan” the BDCP, but to obtain and provide potentially critical engineering and scientific information and data so that the decision-makers can decide where and whether to proceed, if at all, with the proposed water conveyance proponent of the BDCP; and if so, how best to design the conveyance system. In addition, while DWR could have chosen to consider all exploratory or information gathering activities in one environmental document, it is not obligated to do so. The activities, although related, are not interdependent.

F. Other water supply options

Some comments expressed opposition to exporting water from Northern California through the Delta to serve the water needs of the San Joaquin Valley and Southern California and argued that these water needs should be met by water conservation, desalination and other water management activities within the area served.

These comments are directed to the actions that will be the subject of the BDCP program. As discussed in Sections B and C, the activities that are the subject of this IS/MND are exploratory and information gathering activities that can be used in developing reasonable alternatives for the BDCP analysis. Without the data obtained through these activities, DWR would be limited in its ability to assess potential alternative activities, facilities, and locations for water conveyance options in the BDCP EIR/EIS.

The overwater and land exploratory geotechnical activities described in this IS/MND do not change how water is exported from the Delta, either currently or in the future. Nor do these activities foreclose options or commit DWR or any other agency to any action in the future.

This IS/MND is not the appropriate tool for evaluation or mandating the changes in how water is managed in the state. Many of these issues will be discussed in the BDCP EIR/EIS. In addition, there are a number of administrative and legislative efforts that could address these concerns as part of other comprehensive statewide processes. To the extent that the comments argue that DWR should consider or take a leadership role in establishing mandatory requirements regarding water reliability and growth, water conservation or comprehensive Delta solutions, they are not generally comments relating to an environmental issue resulting from the proposed project. However, some information and background on some of these issues is provided below so that the

public and decision makers can have a better understanding of the context of the issues and how they relate to the proposed project of overwater exploratory drilling activities and the BDCP. This information does not add significant new information to the IS/MND regarding impacts or mitigation measures and does not change the results or conclusions of the IS/MND.

Water conservation, water demand reduction and alternative water management tools such as desalination and water recycling are essential elements needed in facing California's water challenges. Higher levels of water conservation and more efficient water management practices are still unlikely to reduce the demand for State Water Project (SWP) and Central Valley Project (CVP) exports from the Delta considering the consistent increase in population within the SWP service area and reduction in the supply of other sources of water.

DWR has no authority to establish mandatory requirements regarding water reliability and growth; rather it supports local and regional water planning and conservation efforts through statewide grants and local assistance programs. However, demand reduction and water conservation strategies are important tools in water management planning and DWR is involved in a number of legislative and administrative actions designed to provide a regional or statewide approach to these strategies.

PART II
SPECIFIC RESPONSES TO AGENCY AND INDIVIDUAL COMMENTS

Section A.

**Specific Responses to State and Local Public Agencies
and Non-Governmental Organizations**

Three non-governmental organizations submitted letters to DWR, copies of which are provided in Appendix B. As noted in the Index above, DWR identifies each comment letter with the label “Agency” followed by a number. DWR’s responses to comments are provided following a summary of each letter.

Agency-1 Central Delta and South Delta Water Agencies

1. Unlawful Piecemealing/Segmentation

Commenter asserts DWR is piecemealing CEQA projects, specifically as broken out below:

- a. Unlawful Separation of the Geotechnical Activities Component of the BDCP from the overall BDCP.

DWR Response

See General Response Sections B, C, D, and E.

- b. Unlawful Separation of the Geotechnical Activities from Other Activities Associated with the BDCP “Field Studies”

DWR Response

See General Response Sections B, C and D.

- c. Unlawful Separation of the Geotechnical Activities from other Geotechnical Activities

DWR Response

See General Response Sections B, C and D.

- d. Incorporation of Opening and Reply Briefs filed in Legal Challenge to 2009 MND.IS

DWR Response

This case was dismissed by the Court as moot as the current IS/MND constitutes a new project. Therefore, incorporating these unrelated documents into this IS/MND is inappropriate. However, to the extent that the documents discuss the piecemealing issue, see General Response Section B, C, D, and E.

- e. The instant piecemealing violates the principles in Laurel Heights I.

DWR Response

See General Response Sections B, C, D, and E.

- f. The IS/MND fails to discuss the Delta Habitat Conservation and Conveyance Program (DHCCP).

DWR Response

The DHCCP is the management program for the investigative work for the BDCP, including the overwater drilling and land drilling. There was a typographic

error in the IS/MND where the DHCCP was referred to the Delta Habitat Conservation and Conveyance “Plan” rather than the Delta Habitat Conservation and Conveyance “Program”.

2. The IS/MND Fails to Adequately Describe the Project Location

Commenter asserts that the level of detail regarding the proposed exploration sites is unacceptable.

DWR Response

See the discussion in Sections B and C of the General Response. At this time, alternatives and actions are still being considered by the parties developing the BDCP and it is unnecessary and speculative for DWR to include additional details as to the nature and location of any proposed intake structure and tunnels for alternative options of any water conveyance facilities associated with the BDCP. DWR has not defined specific locations because (1) DWR does not have access to Temporary Entrance Permits (TEPs) for all properties within the project, and (2) locations are estimated to allow DWR to move those locations that have potential to have significant impacts on the environment. DWR has included a map in its Initial Study (Figure 1) of the proposed exploration area and has further outlined the over-water locations under “Project Activities.”

a. IS/MND fails to specify Maximum Number of Authorized Borings

Commenter asserts that listing “approximate” numbers is unacceptable and undermines the entire purpose of CEQA.

DWR Response

The IS/MND provides an estimate of the total number of borings proposed. The number is estimated to give DWR some flexibility in locations if there are issues with TEPs or it is determined that additional soils information is needed from a surrounding area. DWR will not exceed the approximated number of borings, unless it determines that there will not be any additional significant environmental impacts due to those added locations.

b. Unwarranted Deferral of Mitigation Measures

Commenter asserts that DWR’s failure to provide exact drilling locations constitutes the impermissible deferral of the formulation of enforceable mitigation measures until after the CEQA process has ended and project has been approved.

DWR Response

The IS/MND provides an estimate of the total number of borings proposed. The number is estimated to give DWR some flexibility in locations if there are issues with TEPs or it is determined that additional soils information is needed from a

surrounding area. The IS/MND sets forth specific and enforceable mitigation measures that will be implemented during the studies that reduce any potential significant environmental impact to an insignificant level. DWR will not exceed the approximated number of borings.

3. The MND fails to provide Details of “Reconnaissance Level Field Studies. Specifically, the following:

- Thus far, the MND/IS fails to meaningfully describe these surveys in a manner that would enable the potential individual or cumulative environmental impacts from the surveys to be meaningfully considered.
- If these surveys involve all of the activities in DWR’s TEP requests, then they clearly can have significant impacts. (See CDWA’s Reply Brief in the litigation over DWR’s 2009 MND/IS attached hereto as Attachment A.)
- Moreover, the MND/IS needs to thoroughly explain how the various TEP activities relate to the instant project. Are they part of it? Or does DWR deem them to be separate?

DWR Response

The project activities for the geotechnical exploratory activities are minor in scope and short term in duration, and conservation measures will be implemented to avoid, minimize and mitigate impacts to environmentally sensitive resources. Short-term impacts, reduced to less than significant impacts with conservation measures, include increased noise levels and small vibrations created primarily from the drill rig engine and short durations from the standard penetration tests. No long-term impacts are anticipated.

Best management practices and conservation measures will be implemented by the DWR to avoid, minimize, and mitigate environmental impacts. Implementation of these measures will reduce the potential environmental impacts, including potential cumulative impacts, of the proposed activities to less than significant levels.

TEPs have been requested for many parts of the BDCP and are inclusive of all BDCP activities. This IS/MND does not include all activities proposed in the TEPs.

4. DWR Failed to Notify the Public and Agencies of the Public Comment Period for the IS/MND

a. DWR Failed to Provide Proper Notice of the June 14, 2010 Notice of Intent (NOI)

Commenter asserts that DWR did not comply with Public Resources Code sections 21092.3 and 21092 because Respondent reviewed the Sacramento Bee and could not

locate a copy of the Notice and because Contra Costa County did not post the notice until June 24, 2010 and it appears from commenter's investigation that Yolo and Sacramento counties did not post the NOI at all.

DWR Response

See General Response A.

b. DWR Failed to Provide Proper Notice of its July 1, 2010 Notice of Intent (NOI)

Commenter makes same assertion as outlined above under 4(a).

DWR Response

See General Response A.

5. Failure to Consult with All Responsible and Trustee Agencies

a. Failure to Consult with Reclamation Districts

Commenter asserts that Reclamation Districts constitute "responsible agencies" for the purposes of CEQA.

DWR Response

See General Response A.

The Reclamation Districts are not responsible agencies for the proposed drilling because DWR does not require any approval from them and they are not contributing funds to the proposed project. The general authority provided to the reclamation districts does not provide the reclamation districts with permitting authority over the State. The State is exempt from local government permitting activities unless the local entity has a clear and direct permit authority over the State. If DWR needs to enter onto land for preconstruction surveys, it will obtain a Temporary Entry Permit from the landowner, including any reclamation districts, if it is the landowner.

i. Seepage Concerns

Commenter asserts that Reclamation Districts should have been consulted regarding seepage concerns.

DWR Response

DWR's engineers will take steps to make sure that the property and levees will not be impacted by the proposed exploration. The majority of the proposed drill hole locations will not be performed near the toe or on the river levees. This exploration should not result in instability, seepage, or piping concerns for any of the property or levees in the vicinity; however, the affected reclamation districts

will be notified of our exploration plans prior to starting. The limited exploration that will occur on or near the toe of river levees (on the land side) will be performed after consultation with the affected reclamation districts.

ii. Access to Levees and Lands to Conduct Reconnaissance Level Field Surveys.

Commenter asserts that such surveying will require foot and/or vehicle access over reclamation district levees and perhaps over other reclamation facilities.

DWR Response

If DWR needs to enter onto land to conduct surveys, DWR will obtain a Temporary Entry Permit from the landowner, including the reclamation district, if it is the landowner.

b. Failure to Consult with Counties

Commenter asserts that the affected counties constitute responsible agencies under CEQA, and specifically, the DWR must obtain permits from the San Joaquin County Environmental Health Department to ensure that the borings do not contaminate, or create opportunities for contamination of, the underlying groundwater basins.

DWR Response

See Section A of the General Response regarding notice to counties and responsible and trustee agencies.

DWR, as a State agency, is exempt from county regulation unless express statutory requirements subject the State to the specific regulation. There is no express statute requiring the State to obtain a County permit for exploratory drilling activities that are described in this IS/MND. Similarly, the State is exempt from the county fee to obtain such a permit. As described in this IS/MND, the drilling work will be conducted in a manner that prevents any significant impacts to the environment.

c. Failure to Consult with Other Responsible and Trustee Agencies

Commenter asserts that the IS/MND fails to include a statement that consultation took place with “all responsible agencies and all trustee agencies”.

DWR Response

See Section A of the General Response regarding notice to counties and responsible and trustee agencies.

6. DWR Failed to Timely Provide a copy of the Notice of Intent and IS/MND to All Applicable Public Agencies

Commenter asserts that they believe that DWR did not comply with this requirement since it did not provide a copy of the Notice of Intent and the IS/MND to all of the affected Reclamation Districts and other types of public agencies with “jurisdiction by law over resources affected by the project.”

DWR Response

See Section A of the General Response regarding notice to counties and responsible and trustee agencies. Additionally, please see response to comment 5(a) above discussing reclamation districts.

7. Substantial Evidence Supports a Fair Argument that the Project May have a Significant Impact on the Environment.

a. There is a possibility that the Project will result in Substantial Levee Damage and Potential Levee Failure.

Commenter asserts his reliance upon a declaration and statement from Christopher H. Neudeck, R.C.E. opining that “there is a reasonable possibility that the proposed project as modified will substantially undermine the integrity of the levee systems.

DWR Response

Test pits will not be excavated near any levees and will be approximately a thousand feet from any levee. As far as borings, the deep (200 foot plus) borings will be greater than 100 feet from any levee. Borings planned on levees will be shallower; only up to 140 feet. DWR will avoid borings during high water events or terminate borings in advance of anticipated high water events. DWR will give notice to all reclamation districts before beginning drilling and will work with them when DWR will be drilling on or near the toe of their levees. DWR has documented over 4000 borings in the Delta. DWR has not been made aware of any of these borings causing the damage that Mr. Neudeck is concerned about. That does not mean that this cannot occur due to our drilling activities. His opinion underscores the increasing fragility and vulnerability of the Delta levee system, which is one of the reasons that Flood Management is currently evaluating and drilling on levees in the Delta.

Please see answer to 5(a)(i) above.

b. There is a possibility that the Project will result in Cumulatively Considerable Impacts on Multiple Aspects of the Environment

Commenter asserts that the IS/MND is deficient for failing to discuss the “effects of past projects, the effects of other current projects, and the effects of probable future projects”. The IS/MND should meaningfully address the cumulative impacts of the instant project in light of the anticipated, reasonably foreseeable impacts from the BDCP.

DWR Response

See General Response Sections B, C and D. There is a discussion of cumulative impacts in Section XVIII Mandatory Findings of Significant, found within the Initial Study beginning on page 89.

8. The MDN/IS Fails to Demonstrate Why There is No Reasonable Possibility that the Proposed Borings will Result in Potential Groundwater Contamination

Commenter asserts that the IS/MND should thoroughly explain why there is no reasonable possibility that the underlying groundwater will be contaminated by the drilling fluid from any one of the hundreds of proposed borings.

DWR Response

The drilling technology that will be employed for this project is exactly the same drilling technology currently used throughout the state of California to construct domestic, municipal, and commercial groundwater supply wells. The drilling fluid used in drilling the borings is a mixture of water and bentonite, a naturally occurring clay. This drilling fluid will be circulated through a closed system to prevent any other materials from being introduced during the drilling process. Drilling fluid has the consistency of a thick mud, therefore it is only able to penetrate a very short distance, a fraction of an inch to a few inches, into underground openings or fractures that contain groundwater. Because it is clay that is contained in the drilling fluid, it does not dissolve or degrade, it simply continues to exist as clay. Thus, the drilling process does not result in the contamination of underlying groundwater.

a. Boring Standards

Commenter asserts that the IS/MND does not state that the landside or overwater borings, except landside “groundwater monitoring wells”, will be constructed to any particular standards. Commenter asserts that the IS/MND must explain that various standards and how they will be complied with.

DWR Response

Soil borings and CPTs are small diameter holes in the ground, and as such a “standard” does not exist. They are simply holes in the ground, which will be filled with a cement/bentonite mixture upon completion of drilling and testing activity. With the exception of groundwater monitoring wells that may be constructed in selected borings, nothing else will be constructed in either the soil or CPT borings. As the commenter correctly noted, all groundwater monitoring wells will be constructed in accordance with California regulatory standards (DWR 74-81 and DWR 74-90).

9. Impacts to Nearby Levees and Drainage Systems

DWR Response

See response to 5(a)(i) and 7(a) above.

10. Mitigation Monitoring Program

Commenter asserts that it does not recall DWR ever adopting a mandatory reporting or monitoring program for the 2009 IS/MND. DWR should fully explain the details of that program and how the public can verify that all of the various mitigation measures are being duly complied with.

DWR Response

CEQA requires that each public agency adopt objectives, criteria, and specific procedures to administer its responsibilities under the Act and the CEQA Guidelines (Section 21082). Mitigation measures are the specific requirements which will minimize, avoid, rectify, reduce, eliminate, or compensate for significant environmental effects. See Section 15370 of the CEQA Guidelines for a full definition. An agency must adopt a mitigation monitoring and reporting program with an agency adopts a mitigated negative declaration (MND) pursuant to [§21080](#). A mitigation monitoring and reporting program has been included with the Final IS/MND.

11. NEPA

Comment asserts that without NEPA compliance that the project cannot lawfully proceed.

DWR Response

DWR and the Bureau of Reclamation are preparing a joint draft BDCP EIR/EIS. However, the Bureau of Reclamation is not a co-lead agency for the exploratory geotechnical activities covered in this IS/MND. See the discussion in Section B of the General Response regarding the relationship to the BDCP.

DWR has obtained authorization for activities in waterways under the Clean Water Act from the Army Corps of Engineers (ACOE) under a Nationwide Permit (NWP #6). The ACOE, as a federal agency, is subject to NEPA, and has conducted a NEPA analysis for all NWP. A NWP is a form of general permit which authorizes a category of activities throughout the nation. These permits are valid only if the conditions applicable to the permits are met. If the conditions cannot be met, a regional or individual permit would be required. NWP #6 approves survey activities, including core sampling, seismic exploratory operations, plugging of seismic shot holes and other exploratory-type bore holes, soil survey, sampling, and historic resources surveys.

12. Water Commission

Commenter asserts that Section 150 of the California Water Code established a California Water Commission that must advise DWR on matters of water policy.

DWR Response

Members have been appointed to the Water Commission but have not been confirmed by the California Legislature. DWR is not legally constrained from carrying out its mission in the absence of a California Water Commission.

13. Compliance with OSHA Standards

Commenter asserts that the IS/MND should be revised to explain what steps DWR will take to comply with OSHA.

DWR Response

Compliance of Cal-OSHA requirements are standard operating procedures. These procedures are passed through to the Contractors, Subcontractors and Consultants obligation to comply with required State, and local laws, rules, statutes and regulations of governing or regulatory bodies applicable to the program, and the work performed by the Contractors, Subcontractors and Consultants.

In addition, the Contractors, Subcontractors and Consultants are required to comply with all special project construction safety requirements or field safety plans when they have been communicated to them. Where there is a conflict among standards, programs, or plans the most stringent safety practice shall apply.

Contractors, Subcontractors and Consultants shall prepare and submit to the DHCCP Program Safety Manager for a review of completeness an IIPP (Injury Illness Prevention Program), in accordance with Cal OSHA Title 8 Subchapter 4 Construction Industry Safety Orders and Cal OSHA Title 8 Subchapter 7 General Industry Safety Orders.

This basic program shall be followed by the Contractors, Subcontractors and Consultants for the control and/or elimination of unsafe practices by employees under the Contractors, Subcontractors and Consultants direction, during all work phases of the DHCCP.

Monitoring and auditing of the Contractors, Subcontractors and Consultants safety performance and work areas shall be made by the DHCCP Program Safety Manager and documented on the Construction Safety Inspection Report.

Contractors, Subcontractors and Consultants are required to conduct documented daily safety audits at all of their DHCCP site work locations and is Contractors, Subcontractors and Consultants responsibility to take all necessary precautions to prevent injuries to their employees, and prevent unsafe working practices or other infringements of Safety Plans, Programs, or breach of any Cal-OSHA regulations.

The Program Manager has given the authority to the DHCCP Team to issue suspend work orders to cease operations and take urgent and appropriate action to make safe the work area, and to prevent unsafe working practices or other infringements of Safety Plans, Programs, or breach of any Cal-OSHA regulations.

14. Incorporation of Prior Comments on BDCP NOP/NOI

Agency 8 attached prior comments that they submitted on the Notice of Preparation and Notice of Intent to Prepare an EIR/EIS for the BDCP and asked that they be incorporated herein by reference.

DWR Response

All comment letters, including attachments are part of the record of this environmental document. Comments relating to the Notice of Preparation or Notice of Intent for the BDCP, however, are outside the scope of the proposed exploratory drilling activities covered in the IS/MND. Responses to issues raised regarding the BDCP will be discussed in the BDCP EIR/EIS. See the discussion on the relationship to the BDCP in Section B of the General Response.

15. Enclosure of Documentation Supporting the Piecemealing and Other Allegations

Agency 8 attached documentation to support its Piecemealing argument and other allegations in the comments.

DWR Response

All comment letters, including attachments are part of the record of this environmental document. Comments relating to the Notice of Preparation or Notice of Intent for the BDCP, however, are outside the scope of the proposed exploratory drilling activities covered in the IS/MND. Responses to issues raised regarding the BDCP will be discussed in the BDCP EIR/EIS. See the discussion on the relationship to the BDCP in Section B of the General Response and a discussion of piecemealing in Section E of the General Response.

16. The South Delta Water Agency's Joinder in these Comments

Commenter asserts that the South Delta Water Agency joins in these comments and they are hereby also being submitted on its behalf.

DWR Response

DWR thanks commenter for their comment.

Agency-2 Stone Lakes National Wildlife Refuge Association

1. DWR is Piecemealing Projects

Commenter asserts that the environmental impact of the Geotechnical studies should be reviewed together with the impacts of the proposed BDCP and that the project being reviewed now is basically the same as the project reviewed in 2009. In addition, commenter believes that the environmental impacts of the geotechnical studies should be reviewed together with the impacts of the proposed BDCP.

DWR Response

See General Response Sections B, C, D, and E.

2. SLNWRA concerned about direct and indirect impacts on Stone Lakes NWR from the construction and operation of these massive new facilities (intakes planned west of Stone Lakes NWR).

DWR Response

See General Response Sections B, C and D.

3. Activities coincide with time period that Greater Sandhill Cranes winter at Stone Lake.

Commenter asserts that noise and other disturbances may impact the three roost sites within Stone Lakes NWR as well as the foraging sites located on adjacent farmlands. Commenter further asserts that the ½ mile buffer listed in the MND would not adequately protect the Sand Hill Cranes.

DWR Response

The greater sandhill crane (*Grus canadensis tabida*) is listed as a state-threatened species under the California Endangered Species Act (Fish and Game Code, sections 2050 et seq.). The species was listed by the California Fish and Game Commission in 1983. The greater sandhill crane is also designated as a state Fully Protected species. The classification of Fully Protected was the State's initial effort in the 1960s to identify and provide additional protection to those animals that were rare or faced possible extinction.

Lists were created for fish, mammals, amphibians and reptiles, birds and mammals. Many fully protected species have also been listed as threatened or endangered species under the more recent endangered species laws and regulations.

Fully Protected species may not be taken or possessed at any time and no licenses or permits may be issued for their take except for collecting these species for necessary scientific research and relocation of the bird species for the protection of livestock. Section 2080 of the Fish and Game Code prohibits "take" of any species that the commission determines to be an endangered species or a threatened species. Take is defined in section 86 of the Fish and Game Code as "hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill."

The greater sandhill crane has no federal regulatory status, but is covered under the Migratory Bird Treaty Act (MBTA). The MBTA makes it illegal for people to "take" migratory birds, their eggs, feathers or nests. Take is defined in the MBTA to include by any means or in any manner, any attempt at hunting, pursuing, wounding, killing, possessing or transporting any migratory bird, nest, egg, or part thereof.

DWR will make every effort to conduct geotechnical exploration activities no closer than ½ mile of an actively used roost of the greater sandhill crane and no closer than ¼ mile from the high use foraging areas (as defined by Gary Ivey, Delta greater sandhill crane authority) during the greater sandhill crane roosting season (October 1 to March 1).

Agency-3 Reclamation District 999

- I. Preparation of an EIR is required under CEQA for this Project
- A. Commenter asserts that DWR is piecemealing the project to evade review under CEQA.

DWR Response

See General Response Sections B, C and D.

- B. The Project description is unclear and uncertain.

Commenter asserts that the MND fails to adequately identify the locations where the drilling will occur and this makes it impossible to conduct a complete analysis of the impacts and to develop site-specific mitigation measures.

DWR Response

See the discussion in Sections B and C of the General Response. The IS/MND provides an estimate of the total number of borings proposed. The number is

estimated to give DWR some flexibility in locations if there were issues with TEPs or it is determined that additional soils information is needed from a surrounding area. The avoidance measures ensured by pre-drilling observations by environmental scientists are in place for site specific mitigation measures, specifically moving the location to avoid impacts. DWR will not exceed the approximated number of borings.

C. The project entails potential significant impacts

Commenter asserts that there are significant impacts associated with the biological resources, hydrology, hazardous materials, noise, water quality, air quality and greenhouse gases.

1. Significant impacts are associated with use of hazardous materials

Commenter asserts that there are significant impacts to fisheries regarding the use of hazardous materials and that special status species occur within the project area during the work window.

DWR Response

DWR's proposed actions as described in the IS/MND were presented to DFG, ACOE, FWS, and NMFS during the permit application process. FWS provided a Biological Opinion and/or Letter of Concurrence for species presently listed as protected under the Endangered Species Act including Delta smelt. As a purely precautionary measure, an ESA Section 10 Permit, or "Incidental Take Permit," has been authorized from FWS, which provides additional avoidance and minimization conditions from that will be adhered to by DWR.

The precise impacts of the project cannot be known; however, In a letter of concurrence issued to DWR by NMFS, the results of a engineering geotechnical study demonstrated that the project was not likely to adversely affect Sacramento river winter-run Chinook salmon, Central Valley spring-run Chinook salmon, Central Valley steelhead, and Southern DPS North American green sturgeon or their designated critical habitat. This determination is based on DWR implementing all avoidance and minimization measures identified in the IS/MND beginning on page ___.

DWR consulted with the California Department of Fish and Game for work within waterways and for species under the CESA under their jurisdiction. DFG provided comments on the draft IS/MND as well as a 1602 Streambed Alteration Agreement for the work covered under this IS/MND. DFG has determined, pursuant to Fish and Game Code that the project could substantially adversely affect fish or wildlife resources and has included measures in the Agreement necessary to protect those resources and to reduce impacts to less than significant levels. The Agreement provides avoidance and minimization measures to avoid adverse impacts to fish and wildlife resources. These measures are included in the IS/MND beginning on page ____.

The drilling technology that will be employed for this project is exactly the same drilling technology currently used throughout the state of California to construct domestic, municipal, and commercial groundwater supply wells. The drilling fluid used in drilling the borings is a mixture of water and bentonite, a naturally occurring clay. This drilling fluid will be circulated through a closed system to prevent any other materials from being introduced during the drilling process. Drilling fluid has the consistency of a thick mud, therefore it is only able to penetrate a very short distance, a fraction of an inch to a few inches, into underground openings or fractures that contain groundwater. Because it is clay that is contained in the drilling fluid it does not dissolve or degrade, it simply continues to exist as clay. Thus, the drilling process does not result in the contamination of underlying groundwater.

Furthermore, bentonite clay has the same particle size and chemical composition of clays that currently exist throughout the Delta. These clays behave as inert substances that do not dissolve or degrade when they come in contact with surface- or ground-water. Hence, there is no impact on the environment as a result of the introduction of bentonite clay in an area that already consists of extensive clay deposits.

2. The project involved significant impacts associated with noise

Commenter asserts that the project's sound impacts are significant and that the project activities are likely to cause behavioral alterations in fish.

DWR Response

DWR received a Letter of Occurrence from NMFS for the BDCP Geotechnical Exploratory Activities on August 13, 2010, which stated that based on the applicant's stated periods of construction activities, the presence of listed salmonids should be minimal within the action area due to the species migration timing. Further, impacts to listed winter-run or spring run Chinook salmon and Central Valley steelhead should therefore be discountable due to the low likelihood of their presence in the action area during the geotechnical boring activities. In addition, Green sturgeon may occur within the action area during the stated construction season as juveniles, subadults, and adults as these life stages are known to occur in the Delta waterways year round...however, due to the closed system of the borings operation, and with an estimated peak sound intensity level range below that of the Agreement in Principle for Interim Criteria for Injury to Fish from Pile Driving Activities (June 12, 2008), the level of exposure related to the drilling action is likely to be insignificant should green sturgeon be present during the proposed action.

During the standard penetration test, the expected frequency of the strikes is about 30 to 40 blows per minute for a maximum of about 5 minutes (in the Delta it is generally less than one minute) at every 5 feet of vertical drilling depth. Normally the test takes less than 1 minute and even less in soft soils.

Vibratory hammers are never used for standard penetration tests (SPT). This is typical done for pile driving process only. The reason for this is that the vibration will liquefy loose sandy/silty materials when acquiring soil samples for further laboratory testing. Soil samples collected from the field will not be representative of the material below if this method is used. Information produced in the laboratory testing is critical in the design process especially for foundation mitigation.

On October 16, 2009, DWR conducted noise levels measurements of drilling at the surface approximately 1 meter and 15 meters from the activities using Cel Dig Sound Survey Metter. Decibel measurements of drilling at 1meter were 86.8 to 88 dB peak while measurements for 15 meters were approximately 92 to 96.4 dB peak. The noise generated by drilling or SPT is short in duration. The hammer is a 140 lb weight dropped 30 inches and the decibel range measured in the air for SPT is around 84. In an Agreement in Principle for Interim Criteria for Injury to Fish from Pile Driving Activities dated June 12, 2008 (See Attachment 1) NMFS, USFWS, California Department of Transportation, Department of Fish and Game, and US Federal Highway Administration establish a level of 206 dB peak and 187 dB accumulated Sound Exposure Level to prevent injury to fish from pile driving activity. Thus, the estimated noise level from the drilling and SPT is within a range that is below levels set by those agencies.

Potential effects of sound underwater can be estimated, knowing the pressure difference between air and water differs by +26 dB, and the sound intensity in air versus water is 63 dB. Therefore the sound intensity level from our hammer of 90 dB (re 20 μ Pa) in air would translate in water to (90 dB + 62 dB) resulting in 152 dB (re 1 μ Pa). For reference to other sound intensity in water, see attached table of underwater sound levels (Attachment 2) including open ocean ambient noise of about 100 dB and whale songs of about 180 dB. The measured sound levels of the BDCP In-Water drilling or SPT of 152 dB is between the range of open ambient sound and natural sounds for whales.

The maximum amount of energy produced by a typical SPT hammer is approximately 350 foot-pounds. That would be with an efficiency of 100% which drillers never reach. Drillers normally achieve hammer efficiencies of about 75% resulting in about 263 foot-pounds. A typical small pile driver however would have energies greater than 9,000 foot-pounds. That's about 3.9% of the energy produced by a typical small pile driver. In comparison, large pile drivers can produce over 390,000 foot-pounds of energy.

3. Project involves potential significant air quality and greenhouse gas impacts

Commenter states that mitigation measures described in the document are not adequate. Commenter states that the claim that "data obtained from this project will better characterize the land structure for designing a possible alignment for the Bay

Delta Conservation Plan and thus contribute to an optimization of California water resource use” implies that BDCP would reduce overall energy use by the State Water Project.

DWR Response

The activities identified as providing air quality mitigation should not be considered mitigation for project effects that are significant environmental impacts. These activities should more accurately be characterized as project features and practices that will minimize to the extent possible the emissions of GHGs from the project. As the GHG emissions of the project have no significant impact and the project does not contribute to a considerable cumulative impact, no mitigation is required for the project. These activities are included to show that DWR will take all appropriate steps and use feasible practices to reduce GHG emissions from the project to the maximum extent possible.

While these activities are not being used as mitigation per se, DWR does not agree that the California Attorney General’s Office or any other entity with legal or air quality jurisdiction has stated that these measures fail to constitute mitigation. The reference provided by the commenter (http://www.ag.ca.gov/globalwarming/pdf/GW_mitigation_measures.pdf) lists several potential strategies (focused on land development projects) that could be used to mitigate for significant impacts caused by GHG emissions. However, the document also explicitly states that the potential strategies are “...examples; the list is not intended to be exhaustive” (underlining preserved from original document). Thus, indicating that omission of a mitigation strategy from the list does not indicate that it is inadequate or unacceptable as a mitigation strategy.

Additionally, the GHG reduction strategies listed in the document come from the State’s Greenhouse Gas Reduction Plan, otherwise known as the Climate Change Scoping Plan, which is the implementation plan for Assembly Bill 32 (AB32). Specifically, the California Air Resources Board as the agency designated to implement AB32 has established a Tire Inflation Program as one of its “Early Action Activities” aimed at reducing GHG emissions statewide; therefore inclusion of a tire inflation program at the project level would be entirely appropriate as a measure to reduce project level GHG emissions.

Paragraph has been modified to address comment. The new paragraph:

The proposed project is designed to gather data to better characterize the land structure in areas of the Delta where a potential future water conveyance could be proposed. The data gathered from this project will help inform project design including construction methods, conveyance alignment, and conveyance type (open channel or tunnel). In completing the design of a proposed conveyance system this additional information will contribute to developing alternatives that move water most efficiently with the least potential environmental impacts.

4. An EIR must be prepared due to the Project's Significant impacts

Commenter asserts that there are significant impacts associated with the use of hazardous materials, noise and potentially significant Air Quality and Greenhouse Gas Impacts

DWR Response

See General Response Sections B, C and D regarding the relationship to BDCP and to the other exploratory and information gathering activities.

An initial study was prepared to assess the proposed activity's potential effects on the environment and the significance of those impacts. It was determined that the proposed drilling would not have any significant environmental effects due to the fact that construction impacts are minor and short term. No cumulative impacts were identified. Short-term impacts resulting from the project include increased noise levels and small vibrations created primarily from the drill rig engine and short durations from the Standard Penetration Tests. No long-term impacts are anticipated.

Mitigation measures will be implemented to bring environmental impacts of the proposed activities to less than significant levels within the project area. Specifically, potential impacts to biological resources, geology and soil (erosion), air quality and greenhouse gas impacts, hazardous materials and hydrology (flow patterns) and water quality will be mitigate to less than significant levels.

D. MND approach to Mitigation is Deficient

Commenter asserts that the general mitigation measures are insufficient and suggested mitigation measures that could mitigate or lessen the significant impacts of the project.

DWR Response

The MND adequately describes the general activity location and potentially significant impacts and mitigation measures to reduce the impacts to a less than significant level to be employed for *all* drill sites. In addition, the various permits required by the Project, including the DFG Streambed Alteration Agreement, the U.S. Army Corps of Engineers Nationwide Permit 6 (pursuant to Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act), the Regional Water Quality Control Board Clean Water Act, Section 401 permit, and the letters of concurrence from USFWS and NOAA Fisheries contain various provisions and measures with which DWR must comply.

CEQA Guidelines, section 15126.4, subdivision (a)(2), provides that "[m]itigation measures must be fully enforceable through permit conditions, agreements, or other legally binding instruments." Here the mitigation measures satisfy the requirements of section 15126.4, subdivision(a)(2). In the event of a spill or

plume, a series of natural agencies are to be contacted, including the Office of Spill Prevention, DFG, NOAA, and the USFWS. All spills are to be cleaned up and reported to the respective agencies within 24 hours. The MND and the DFG Streambed Alteration Agreement requires that an environmental scientist (or biological monitor) be present at all times. The Streambed Alteration Agreement requires that construction personnel receive environmental awareness training, including “descriptions of sensitive species and procedures to follow in the event a sensitive species is encountered. The MND further provides that if a sensitive species is encountered, activities shall cease until appropriate corrective measures have been completed or it has been determined that the species will not be harmed. All activities are to take place in the approved work window, determined to be when species are at their lowest abundance.

Commenter further suggests the following specific mitigation measures: (1) use of side scanning sonar to select drilling sites; (2) use of established work windows; (3) specific biological monitor walkabout, equipment and permitting requirements; (4) sampling of drilling mud before and after use; and (5) in-water hydroacoustic monitoring. The use of side scanning sonar and in-water hydroacoustic monitoring is scientifically unreliable and, according the expertise of DWR staff, facially infeasible. DWR has adopted the use of established work windows, the sampling of drilling mud and has a biological monitor on site.

E. Cumulative Impacts Analysis is Inadequate

Commenter asserts that the cumulative impact analysis in the MND is defective because it does not consider a complete list of cumulative projects.

DWR Response

See General Response Sections B, C and D and DWR’s Response to item 3 above.

Commenter appears to have confused the analysis of “cumulative impacts” required in an EIR and the analysis required in an initial study as to whether incremental project impacts are “cumulatively considerable” so as to require preparation of an EIR. Commenter cites CEQA Guidelines § 15130, which applies only to preparation of EIRs rather than CEQA Guidelines § 15065, subd. (a)(3), pertaining to initial studies [agency must find that a project may have significant effect on the environment if “the incremental effects of an individual project are significant when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects”]. When, as here, there is no substantial evidence of any individual potentially significant effect, DWR may reasonably rely on the expertise of its staff and experts and conclude that the effects of the project will not be cumulatively considerable, and need not require an EIR on that basis. (Please see *Sierra Club v. West Side Irrigation District* (2005) 128 Cal.App.4th 690, 701-702).

F. Segmentation of the Project from Review of the Overall BDCP is Impermissible.

Commenter asserts that the Project has no independent utility and but for the BDCP, DWR would not proceed with the project and thus review of the Project cannot be properly separated from review of the overall BDCP project.

DWR Response

See General Response to Section B, C and E.

II. There is no "II." in letter

III. The Project requires Federal Permits and NEPA review

A. Applicability to Army Corps of Engineers (ACOE) Nationwide Permit (NWP) #6. Commenter asserts that reliance on an NWP is not permissible and DWR is required to obtain an Individual Permit in order to comply with section 10 of the Rivers and Harbors Act and the Clean Water Act.

Commenter further asserts the NWP #6 is inapplicable since the use of one or more than one NWP for a single and complete project is prohibited. Further, reliance upon a NWP is inappropriate for activity which may occur in the proximity of a public water supply intake except where the activity is for repair of the public water supply intake structures or adjacent bank stabilization.

Comment further asserts that the ACOE complies with the requirements of NEPA by preparing an environmental assessment and that such an assessment must be prepared for this Project.

DWR Response

DWR has obtained authorization for activities in waterways under the Clean Water Act from the Army Corps of Engineers (ACOE) under a Nationwide permit (NWP #6). NWP #6 allows for certain survey activities including core sampling, seismic exploratory operations and plugging of seismic shot holes and other exploratory-type bore holes, soil and survey and sampling, and historic resource surveys. The ACOE guidelines specify that multiple NWPs are not available for a single project, and one NW permit may not be used for multiple projects. DWR is not using multiple NWPs for this project.

As stated in Nationwide Permit Summary 33 CFR Part 330; NWP #6 covers both sections 10 and 404 of the Rivers and Harbors Act.

Permits received through a separate authorization process conducted by another agency are neither discussed in, nor prohibited by, the ACOE guidelines. Instead, ACOE specifies that an ESA Incidental Take permit (Section 7 not Section 10 of the Endangered Species Act) may be acquired to supplement a

NWP. DWR consulted with FWS through the ACOE on species covered under the ESA under their jurisdiction. An Incidental Take Permit (Section 7 permit) has been authorized from FWS, which provides additional avoidance and minimization conditions which DWR will implement. ACOE, as a federal agency, must comply with the requirements set forth in NEPA prior to issuing a NWP. In addition the FWS and NMFS may also be involved in the process.

B. NEPA review must be conducted

Commenter also asserts that NEPA review must be conducted.

DWR Response

DWR and the Bureau of Reclamation are preparing a joint draft BDCP EIR/EIS. However, the Bureau of Reclamation is not a co-lead agency for the exploratory geotechnical activities covered in this IS/MND. See the discussion in Section B of the General Response regarding the relationship to the BDCP.

DWR will be obtaining authorization for activities in waterways under the Clean Water Act from the Army Corps of Engineers (ACOE) under a Nationwide permit (NWP #6). The ACOE, as a federal agency, is subject to NEPA, and has conducted a NEPA Analysis for all NWPs. A NWP is a form of general permit which authorizes a category of activities throughout the nation. These permits are valid only if the conditions applicable to the permits are met. If the conditions cannot be met, a regional or individual permit will be required. NWP #6 approves survey activities, including core sampling, seismic exploratory operations, plugging of seismic shot holes and other exploratory-type bore holes, soil survey, sampling, and historic resources surveys.

IV. The Project would lead to “take” under the ESA and CESA

Commenter asserts that the project will lead to “take” due to the work window and the use of bentonite clay.

DWR Response

Section 2080 of the Fish and Game Code prohibits "take" of any species that the commission determines to be an endangered species or a threatened species. Take is defined in section 86 of the Fish and Game Code as "hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill."

Furthermore, bentonite clay is a naturally occurring clay that has the same particle size and chemical composition of clays that currently exist throughout the Delta. These clays behave as inert substances that do not dissolve or degrade when they come in contact with surface- or ground-water. Hence, there is no impact on the environment as a result of the introduction of bentonite clay in an area that already consists of extensive clay deposits.

DWR's proposed actions under as described in the IS/MND were presented to DFG, ACOE FWS, and NMFS during the permit application process. FWS provided a Biological Opinion and/or Letter of Concurrence for species presently listed as protected under the Endangered Species Act. As a purely precautionary measure, an ESA Section 10 Permit, or "Incidental Take Permit," has been authorized from FWS, which provides additional avoidance and minimization conditions from that will be adhered to by DWR.

The precise impacts of the project cannot be known; however, In a letter of concurrence issued to DWR by NMFS, the results of a engineering geotechnical study demonstrated that the project was not likely to adversely affect Sacramento river winter-run Chinook salmon, Central Valley spring-run Chinook salmon, Central Valley steelhead, and Southern DPS North American green sturgeon or their designated critical habitat. This determination is based on DWR implementing all conservation and protective measures identified in the IS/MND to avoid or minimize adverse effects to fish and fish habitat.

DWR consulted with the California Department of Fish and Game for work within waterways and for species under the CESA under their jurisdiction. DFG provided comments on the draft IS/MND as well as a 1602 Streambed Alteration Agreement for the work covered under this IS/MND. DFG has determined, pursuant to Fish and Game Code that the project could substantially adversely affect fish or wildlife resources and has included measures in the Agreement necessary to protect those resources and to reduce impacts to less than significant levels. The Agreement provides avoidance and minimization measures to avoid adverse impacts to fish and wildlife resources. These measures are included in the IS/MND.

V. Conclusion

Commenter reaffirms that an EIR is necessary and that the project cannot be analyzed separately from the BDCP.

DWR Response

See General Response A through E.

Section B.

Specific Responses to Private Individual Comments

Individual-1 Clare M. Spensley

Commenter asserts that DWR does not publish many of the letters and comments sent in from those who are opposed to the diversions of water from the Delta.

DWR Response

See General Response A to F.

Individual-2 Sherry Wyllie

Commenter asserts that drilling into the Delta and rushing more water south is not a good idea.

DWR Response

See General Response A to F.

Individual-3 Mary Jeanette Arriaga

Commenter asserts that the plan of drilling and proposed tunnel is another way to moving water from Northern California to Southern California.

DWR Response

See General Response A to F.

Individual-4 Mark Pruner, Delta C.A.R.E.S.

Commenter requested a hard copy of the Mitigated Negative Declaration.

DWR Response

DWR provided a hard copy of MND 7/19/2010.

Individual-5 Lee Higgins, Chevron

Commenter provided DWR with information regarding abandoned pipelines.

DWR Response

DWR appreciates comments and information provided by Chevron. DWR also conducts Underground Storage Alert checks prior to drilling in any location.