

Letter	Comment #	Comment	Relation to Final EIR/EIS
Central Delta Water Agency	1	The following comments are supplemental to our other submissions. 1. The Contra Costa Water District settlement agreement with DWR dated March 24, 2016 has changed the scope of the Project by introducing additional points of diversion, diversion quantities at such points and numerous other measures which have not been analyzed or commented on by the public. Failure to include such analysis in a recirculation of the subject EIS/EIR constitutes an inappropriate piecemeal of the project rendering the analysis of impacts inadequate. While proposed as mitigation for impacts to Contra Costa Water District the impacts of such mitigation on others must be incorporated in the current EIS/EIR. A copy of said agreement is attached.	Impacts of the CCWD settlement agreement have been examined and analyzed in Appendix 31B of the Final EIR/EIS. This comment does not raise any substantive new environmental information or analysis that was not previously addressed in the Final EIR/EIS.
Central Delta Water Agency	2	2. The "Water Infrastructure Improvements for the Nation Act" or the "WIIN Act" on December 16, 2016 became Public Law No. 114-322. In Subtitle J-California Water, Section 4001, the Secretary of the Interior and Secretary of Commerce are directed to "provide the maximum quantity of water supplies practicable to Central Valley Project agricultural, municipal and industrial contractors, water service or repayment contractors, water rights settlement contractors, exchange contractors, refuge contractors, and State Water Project contractors." While qualified it is obvious the bias is in favor of increased exports from the Delta in direct conflict with the reduced reliance on and enhancement of the Delta requirements in the California Delta Reform Act of 2009. Additionally there are very specific operational constraints such as the 1 to 1 inflow to export ratio for the increased increment of increased flow at Vernalis during the period April 1 through May 31 unless listed salmonid species are adversely impacted beyond the range anticipated for the duration of the listed salmonid biological opinion. Failure to include analysis of the impact of the WIIN Act on proposed operations, mitigation and consideration of alternatives in a recirculation of the subject EIS/EIR renders the same inadequate.	This comment relates to the WIIN Act. Please refer to Section 3.2, Other Relevant Information after Publication of the Final EIR/EIS, of the Developments after Publication of the Proposed FEIR document, Final EIR/EIS, for information on this Act's relationship to CA WaterFix. This comment does not raise any substantive new environmental information or analysis that would result in a new significant environmental impact.
Central Delta Water Agency	3	3. Separation of WaterFix from EcoRestore results in an inappropriate piece meal approach to the examination of impacts thereby understating the impacts of WaterFix. It is obvious that much of the habitat mitigation associated with the WaterFix predetermined deal is being intentionally separated to hide the true impacts of the tunnel project. EcoRestore must be included with WaterFix in a revised and recirculated EIS/EIR.	This comment claims that WaterFix and EcoRestore must be combined into a single project and analysis; otherwise, the impacts are not fully captured. DWR respectfully disagrees. See Master Response 8: Analysis of Project as a Whole. This comment does not raise any substantive new environmental information or analysis that was not previously addressed in the Final EIR/EIS.
Central Delta Water Agency	4	4. Analysis of the predetermined tunnel project fails to include adequate analysis of the Delta levees and channels portion of the Project. About 60% of the time and to some degree continuously the Project must convey water through the channels of the Delta. Maintenance of the channels and the levee system that is critical to the control of salinity therein must be included in the Project for a proper analysis of the true impacts. The Delta Plan Prioritization of State Investments in Delta Levees and Risk Reduction does not assure investment or risk reduction. The EIS/EIR should properly describe the Project as including the levees and channels, revise the analysis and recirculate.	Consistent with the legal principle that projects are only responsible for mitigating their own impacts and are not required to create net environmental or social benefits (see, e.g., State CEQA Guidelines Section 15126.4[a][4], citing <i>Dolan v. City of Tigard</i> , 512 U.S. 374 (1994)), the proposed project does not include a commitment to improve the current levee system except where the project explicitly includes levees in the project construction. However, it would provide additional adaptability to catastrophic failure of Delta levees by providing a mechanism to continue making water deliveries to State Water Project (SWP) and Central Valley Project (CVP) contractors and local and in-Delta water users with conveyance inerties even if the Delta were temporarily disrupted. Appendix 6A in the Final EIR/EIS discusses potential impacts of the proposed project on Delta levees and channels. This comment does not raise any substantive new environmental information or analysis that was not previously addressed in the Final EIR/EIS.
Central Delta Water Agency	5	5. The geotechnical analysis and design for the tunnels is not complete yet the impact analysis is based on precast concrete tunnel lining with a so-called high performance gasket to maintain water tightness. It is possible that upon proper investigation and design a welded steel or other structurally sufficient liner or some other measures may be required to withstand water	This comment does not raise any substantive new environmental issues that were not previously addressed in the Final EIR/EIS including Volume 2, Response to Comments and is similar to issues raised in RECIRC 1633. As discussed in Master Response 2, and as consistent with both CEQA and NEPA laws –precise engineering

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		hammer or even displacement due to settlement or seismic loading. Such further investigation may require further measures to address induced settlement adversely affecting levee integrity. The construction, operation and maintenance related impacts could be substantially different than those analyzed. The EIS/EIR should be revised to include analysis of a range of design alternatives and recirculated. Due to the significance of possible adverse impacts deferral of consideration of possible mitigation and the related impacts is irresponsible.	<p>or design details may undergo further refinement even after environmental review has been conducted.</p> <p>Also, see the Geotechnical Studies Environmental Commitment for a discussion on future geotechnical investigations to provide information required to support the design and construction of the water conveyance facilities. Section 9.3.4.2 in Chapter 9, Final EIR/EIS also discusses project commitments to avoid settlement issues due to the project.</p>
Central Delta Water Agency	6	6. It is apparent that the Project operations did not meet the D-1641 requirements during the current drought and will require Temporary Urgency Changes in the future to operate through droughts in the future. See attached testimony of John Leahigh before the SWRCB. The analysis of impacts due to degradation of Delta water quality from the Tunnel Project does not adequately include the possible range of impacts associated with more extended droughts or climate change. The most recent drought has had unprecedented impacts but should not be characterized as unanticipated. The current Water Quality Standards have relaxations based on water availability by year type including prior year conditions. The increased demand in our growing state, failure to develop the planned increase in water supply and the failure to operate projects so as to meet standards in anticipation of a series of dry years greatly increased the recent drought impacts. The February 2015 Publication of the Department of Water Resources titled California's Most Significant Droughts: Comparing Historical and Recent Conditions at page 31 (a copy of page 31 is attached) in Table 2.1 sets forth Dry Periods in Combined Reconstructed and Instrumental Periods for the Sacramento River and San Joaquin River Runoff extending back into the 900 AD period. Putting aside the issues of quantification of water availability when very limited data is available, the number of years in the dry periods is noteworthy. There were many dry periods extending for more than 6 years: for the Sacramento up to 10 and for the San Joaquin up to 13 years. The correlation to climate warming is not shown in the Table but there is a reference at the top right side of the page to the Medieval Climate Anomaly from 800 AD to as late as 1300 AD associated with severe droughts in the Southwest and California. The reference provides: "Paleoclimate data and climate modeling suggest that this period was characterized by cool surface waters in the eastern Pacific Ocean, or La Nina-like conditions (e.g., Seager et al. 2007)." A more complete analysis of likely impacts of water quality impacts should be included in the EIS/EIR which should be recirculated.	This comment questions the adequacy of the hydrologic and water quality assessment, which has been thoroughly addressed in the Final EIR/EIS and past responses to comments. The claim that the analysis of impacts due to degradation of Delta water quality does not adequately include impacts associated with more extended droughts or climate change is incorrect. The hydrologic (CALSIM) modeling was for an 82 year period of record, which includes extended dry periods, the basis of which has been explained. Climate change has been included and the methodology explained. The DSM2 modeling includes an extended five-year drought period (1987-1991), as has been previously explained. This comment does not raise any substantive new environmental information or analysis that was not previously addressed in the Final EIR/EIS.
Central Delta Water Agency	7	The following are a summary of comments on the Bay Delta Conservation Plan/California Water Fix Final EIR/EIS. The summary captures the most serious deficiencies unaddressed in the FEIR/S by theme to communicate the issues as succinctly as possible. To understand the true scope of the deficiencies, reference back to the original supporting comments is required.	This section is a description of the section. This comment does not raise any substantive new environmental information or analysis that was not previously addressed in the Final EIR/EIS.
Central Delta Water Agency	8	1) Project inconsistency with current plans, policies, regulations and existing commitments a) Regulations: i) Endangered Species Act- The No Action condition was determined by the OCAP Biological Opinions to results in jeopardy to listed species. The Water Fix project contains no actions that result in improving conditions for listed fish species or even mitigating impacts to species already identified by the OCAP BOs as being in jeopardy. A number of the impact analysis conclusions of the Water Fix for listed fish species were determined to be "Significant and Unavoidable" and their proposed mitigations did not reduce the impacts to "Less Than Significant". The Water Fix alternatives all result in degradation of water quality (Salinity, Dissolved Oxygen, Selenium, Mercury, etc.) in designated critical habitat for ESA Listed Species. The FEIR/S response to comment 2651, #44 confirms the methyl mercury significant and unmitigated impact degradation to designated critical habitat for listed fish species. FEIR/S	<p>This comment states that the proposed project will violate the ESA. This comment does not raise any substantive new environmental information or analysis that was not previously addressed in the Final EIR/EIS.</p> <p>See Section 5, Endangered Species Compliance, Developments after Publication of the Proposed Final Environmental Impact Report, for discussion on the BiOp and 2081(b) process.</p>

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		response to comment 2651, #105, "The effects of ongoing operations at Clifton Court Forebay, whether in the context of water quality or fisheries, are the result of the application of, and compliance with, existing regulatory requirements and are considered the baseline condition for purpose of analyses. The BDCP/CWF is not obligated to mitigate for these effects." This would be true if under the Existing Condition No Action the SWP had the required permits to operate the facility. The 9 th Circuit Court determined that DWR does not have the required permits (i.e. Incidental Take Permits) to operate the SWP. Obtaining these required permits to operate the SWP was the original purpose for the BDCP project. The impacts from the current operations have not been mitigated by any previous environmental project so these impacts remain unmitigated and the requisite permits unattained. By the Water Fix's own statement, after the Water Fix is implemented, these impacts would continue to be unmitigated. With these impacts unmitigated by any previous action and will not be mitigated by the Water Fix, the permits to operate the SWP should still not be attained. The SWP is currently in violation of the ESA for operating without these permits and the California Water Fix will continue to be in violation of the ESA for not satisfying these unmitigated and unpermitted impacts.	
Central Delta Water Agency	9	ii) California Water Code § 85021 - "The policy of the State of California is to reduce reliance on the Delta in meeting California's future water supply needs through a statewide strategy of investing in improved regional supplies, conservation, and water use efficiency." DWR and many of the municipal and agricultural water districts in the state are investing a huge proportion of their time and limited human and financial resources in the Water Fix. The water contractor agencies have stated that they will issue bonds to finance the construction of the Water Fix project. Their increase in public debt from the bonds makes each of the water contractor agencies less able to raise funds for other water projects that would improve their water source portfolios to water sources that do not rely upon the delta.	This comment states that the proposed project will violate the CA Water Code Section 85021. DWR respectfully disagrees. See Master Response 31: BDCP/California Water Fix and 2009 Delta Reform Act, p. 1-277. This comment does not raise any substantive new environmental information or analysis that was not previously addressed in the Final EIR/EIS.
Central Delta Water Agency	10	iii) California Water Code § 85021 - Water Fix does not include a NCCP as required.	This comment states that the proposed project fails to include an NCCP as required by CA Water Code Section 85021. DWR respectfully disagrees. Nothing in section 85021 requires that new conveyance be accompanied by an NCCP. To the extent that the commenter may have intended to invoke Water Code section 85320, that statute only requires an NCCP under a scenario in which something called the BDCP would be automatically incorporated into the Delta Plan. DWR is not pursuing such an approach under the California Water Fix. This comment does not raise any substantive new environmental information or analysis that was not previously addressed in the Final EIR/EIS.
Central Delta Water Agency	11	iv) California Water Code § 85054: "'Coequal goals' means the two goals of providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem. The coequal goals shall be achieved in a manner that protects and enhances the unique cultural, recreational, natural resource, and agricultural values of the Delta as an evolving place." The Water Fix Proposed Project only includes the minimum compensatory mitigation for significant impacts and has many "significant unavoidable" impacts which are not mitigated to less than significant which leaves the environment and resources in worse condition due to the project. The project does not include any actions to benefit habitat or the ecosystem so it does not protect, restore or enhance the delta ecosystem so it is not compliant with this legal requirement.	This comment states that the proposed project will violate the CA Water Code Section 85054. DWR respectfully disagrees. See Master Response 31: BDCP/California Water Fix and 2009 Delta Reform Act, pp. 1-275 – 1-276. This comment does not raise any substantive new environmental information or analysis that was not previously addressed in the Final EIR/EIS.
Central Delta Water Agency	12	v) California Water Code § 85086 - The Water Fix is not consistent with flow criteria for the delta contained in "Development of Flow Criteria for the Sacramento-San Joaquin Delta Ecosystem Prepared Pursuant to the Sacramento-San Joaquin Delta Reform Act of 2009", SWRCB, August 3, 2010. "Water Code section 85086 (See Appendix B), contained in the Delta Reform Act, was enacted as part of the comprehensive package of water legislation adopted in	This comment states that the proposed project will violate the CA Water Code Section 85086. DWR respectfully disagrees. See Master Response 31: BDCP/California Water Fix and 2009 Delta Reform Act, pp. 1-277 – 1-278. The State Water Resources Control Board (State Water Board) is responsible for

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		<p>November 2009. Water Code section 85086 requires the State Water Resources Control Board (State Water Board) to use the best available scientific information gathered as part of a public process conducted as an informational proceeding to develop new flow criteria for the Delta ecosystem to protect public trust resources. The purpose of the flow criteria is to inform planning decisions for the Delta Plan and the BDCP." (http://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/deltaflow/docs/final_rpt80310.pdf, page 2, paragraph 1) The SWRCB developed the flow criteria as required by the Delta Reform Act, but the Water Fix proposed alternatives operations are not consistent with this SWRCB flow criteria. The Delta Reform Act required the SWRCB to produce "flow criteria for the delta" it did not require the update of the Bay-Delta Plan. The Water Fix provides only 50% of the Water Board Delta Plan flow requirements from April - June. The Water Fix must conform to the flow criteria in the Delta Plan Flow Standards, not the Bay-Delta Plan in order to be compliant with the Delta Reform Act. The SWRCB considered these flow criteria to be necessary for the protection of fish in the delta and any less flow regime proposed by the Water Fix operations are not, by definition, fully protective of fish species in the delta.</p>	<p>developing and modifying the Bay-Delta Water Quality Control Plan which establishes water quality control measures needed to provide reasonable protection of beneficial uses of water in the Bay-Delta Watershed. The State Water Board is in the process of developing and implementing updates to the Bay-Delta Plan and flow objectives for priority tributaries to the Delta to protect beneficial uses in the Bay-Delta watershed. Phase 1 of this work involves updating San Joaquin River flow and southern Delta water quality requirements included in the Bay-Delta Plan. Phase 2 involves other comprehensive changes to the Bay-Delta Plan to protect beneficial uses not addressed in Phase 1 (Delta outflows, Sacramento River inflows, Suisun Marsh salinity, Delta Cross Channel Gate closure, export limits, reverse flows). Phase 3 involves changes to water rights and other measures to implement changes to the Bay-Delta Plan from Phases 1 and 2. Phase 4 involves developing and implementing flow objectives for priority Delta tributaries outside of the Bay-Delta Plan updates. This update does not affect any water quality impacts addressed in the Final EIR/EIS. DWR will comply with any and all regulations set by the State Water Board.</p> <p>This comment does not raise any substantive new environmental information or analysis that was not previously addressed in the Final EIR/EIS.</p>
Central Delta Water Agency	13	<p>vi) California Water Code§ 85320(b) (2) (F) requires the BDCP EIR to include analysis of "The resilience and recovery of Delta conveyance alternatives in the event of catastrophic loss caused by earthquake or flood or other natural disaster." In order to qualify to be potentially judged consistent with the Delta Stewardship Council Delta Plan, the Water Fix must include this analysis. The Water Fix has incorrectly deferred this analysis to the final EIR/S. Resilience of the CVP/SWP water supplies from delta levee failures is one of the stated core rationale for the need for the project. The EIR/S failed to provide an analysis of Proposed Project and alternatives for this fundamental need of the project in the public drafts of the document. How the CVP/SWP recovers from a levee failure event has impacts that must be disclosed in the BDCP EIR/S and be made available for public comment. The impacts to water supply, the environment and how the proposed conveyance interacts with and potentially exacerbates environmental impacts from a levee failure are material disclosures that are required that are missing from the revised public draft EIR/S. Avoidance, minimization and mitigation measures developed to improve conveyance alternative resilience to a levee failure will have environmental impacts that are currently not identified, described, evaluated or disclosed in the EIR/S. These material omissions of content required by the California Water Code must be included in a revised and recirculated public draft EIR/S.</p>	<p>The proposed project would provide additional adaptability to catastrophic failure of Delta levees by providing a mechanism to continue making water deliveries to State Water Project (SWP) and Central Valley Project (CVP) contractors and local and in-Delta water users with conveyance interties even if the Delta were temporarily disrupted. Appendix 6A in the Final EIR/EIS discusses potential impacts of the proposed project on Delta levees and channels. This comment does not raise any substantive new environmental information or analysis that was not previously addressed in the Final EIR/EIS.</p>
Central Delta Water Agency	14	<p>vii) 23 CCR Section 5003 requires reduced reliance upon delta water supplies. The Water Fix increases reliance on delta water supplies. The water contractor agencies have stated that they will issue bonds to finance the construction of the Water Fix project. Their increase in public debt from the bonds makes each of the water contractor agencies less able to raise funds for other water projects that would improve their water source portfolios to water sources that do not rely upon the delta.</p>	<p>This comment states that the proposed project will violate the CA Water Code Section 5003. DWR respectfully disagrees. See Master Response 31: BDCP/California Water Fix and 2009 Delta Reform Act, p. 1-277 (addressing Water Code section 85021, which is the authority for 23 CCR 5003). Notably, nothing about the existence of new conveyance, which would modernize the State Water Project and allow operations more conducive to reducing impacts on fish, precludes various water contractors receiving SWP and CVP water from independently taking steps to reduce their reliance on Delta water supplies. Many such contractors are already aggressively taking steps to conserve water and develop other supplies.</p> <p>This comment does not raise any substantive new environmental information or</p>

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			<p>analysis that was not previously addressed in the Final EIR/EIS.</p> <p>DWR recognizes and intends to fully comply with its obligations under the 2009 Delta Reform Act, but the legal requirements and the precise manner of compliance varies between the BDCP alternatives and non-HCP alternatives. As discussed in Appendix 3I, <i>BDCP Compliance with the 2009 Delta Reform Act</i>, Alternatives 1A through 9 in the Draft EIR/EIS were developed in a manner to comply with the BDCP-specific habitat conservation plan (HCP)/natural community conservation plan (NCCP) requirements set forth in Water Code Sections 85320 et seq. As discussed in Appendix 3J, <i>Alternative 4A (Proposed Project) Compliance with the 2009 Delta Reform Act</i>, the proposed project (Alternative 4A) and Alternatives 2D and 5A are not being proposed to fulfill the requirements of an HCP/NCCP, meaning Water Code Sections 85320 et seq. would not apply to these non-HCP alternatives. The proposed project (Alternative 4A) and Alternatives 2D and 5A would follow a different path to demonstrate consistency with the Delta Plan. The Delta Plan is currently the subject of ongoing litigation that could affect the its policies and recommendations or interpretation of the Delta Reform Act. On June 24, 2016, Sacramento Superior Court Judge Michael P. Kenny ruled the Delta Plan invalid (<i>Delta Stewardship Council Cases</i>, JCCP 4758), pending the DSC’s remedying certain deficiencies identified in his ruling. Subsequently, the DSC filed notices of appeal in the four coordinated cases where petitioners prevailed in part. Those notices automatically stay the effect of Judge Kenny’s ruling, leaving the Delta Plan in place pending the outcome of the appeals in the coordinated cases. Thus, the Delta Plan and the DSC’s consistency certification process may undergo changes depending on the outcome of the litigation, including the resolution of all appeals.</p> <p>Prior to initiating implementation of the proposed project, Alternative 4A (California WaterFix), DWR must submit a written certification that the project is consistent with the applicable policies in the Delta Plan (Water Code Section 85225; 23 California Code of Regulations [CCR] Section 5002, subd. (b)). In addition, under the Delta Plan regulations, if consistency with one or more individual policies in the Delta Plan is infeasible, DWR may certify that the California WaterFix is, on the whole, consistent with the coequal goals themselves (23 CCR Section 5002, subd. (b)(1)). See Master Response 24, <i>Delta as Place</i>, for a more specific response to comments regarding Delta as Place.</p>
Central Delta Water Agency	15	viii) 23 CCR Section 5007 requires that no project implemented in the delta may impair future potential for implementation of habitat restorations. The Water Fix EIR/S modeling sensitivity analysis shows that with the implementation of their conveyance that water quality is additionally significantly degraded with any combination of habitat restoration. If the Water Fix conveyance is constructed prior to the OCAP BO RPA habitat restoration projects, the water quality impacts of the habitat restorations will effectively preclude them from being implemented in the future.	This comment states that the proposed project will violate the CA Water Code Section 5007 and impair future potential for implementation of habitat restoration. DWR respectfully disagrees. Section 5007 is concerned with protecting areas for potential future habitat restoration, as shown in Appendix 5 to the Delta Stewardship Council regulations. All of the areas at issue are terrestrial locations. Nothing about the California Water Fix precludes the restoration of the areas shown. Even if, as the commenter alleges, the project will have some adverse water quality effects, such effects will not preclude habitat restoration on the land. The locations for new conveyance facilities are not within the future habitat restoration locations shown in Appendix 5. The scale and extent of future habitat restoration efforts under CalEcoRestore will be determined over time with individual analyses for individual proposals under that program. Means of mitigating water quality effects will be addressed in connection with such

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			proposals. This comment does not raise any substantive new environmental information or analysis that was not previously addressed in the Final EIR/EIS.
Central Delta Water Agency	16	ix) 23 CCR Section 5007 requires that no habitat is created that increase the risk of invasive species colonization. The Water Fix creates new invasive species opportunities by soil and sediment disturbance; earthmoving; construction equipment moving from site to site with no equipment sanitation plan; tunnels, intakes, pumping plant, new forebay and other in water structures that provide habitat for quagga and zebra mussels; tunnel muck disposal which is disturbed soil which will colonize with exotic and invasive species first; etc.	<p>This comment states that the proposed project will violate 23 CCR Section 5007 and increase the risk of invasive species colonization. Section 5007 says nothing about invasive species. The commenter must have intended to cite section 5009, which provides that “The potential for new introductions of or improved habitat conditions for nonnative invasive species, striped bass, or bass must be fully considered and avoided or mitigated in a way that appropriately protects the ecosystem.”</p> <p>A number of environmental commitments are discussed in various resource chapters and Appendix 3B aimed at mitigating any increase in risk of invasive species colonization (Develop and Implement a Barge Operations Plan; Fund the California Department of Boating and Waterways Programs for Aquatic Weed Control; AMM6 Disposal and Reuse of Spoils, Reusable Tunnel Material, and Dredged Material; AMM7 Barge Operations Plan; AMM11 Covered Plant Species; EC4 Tidal Natural Communities Restoration; EC7 Riparian Natural Community Restoration; EC8 Grassland Natural Community Restoration). Mitigation measures discussed in the resource chapters also address potential invasive species issues (MM AG-1).</p> <p>This comment does not raise any substantive new environmental information or analysis that was not previously addressed in the Final EIR/S.</p>
Central Delta Water Agency	17	x) 23 CCR Section 5009 requires that projects are not growth inducing. The Water Fix is growth inducing by increasing the quantity of water supply available and increasing water supply reliability.	<p>This comment states that the proposed project will violate the CA Water Code Section 5009 and induce growth. Section 5009 says nothing about growth-inducement. In any event, the project will not be growth-inducing in the Delta. Once construction is finished, and the construction work force is demobilized, only a relative handful of DWR employees will be needed to operate the new facilities. These facilities, moreover, are not the kind that will facilitate new, unplanned development (as might be the case with oversized water or sewer lines or oversized roads).</p> <p>This comment does not raise any substantive new environmental information or analysis that was not previously addressed in the Final EIR/EIS.</p>
Central Delta Water Agency	18	xi) 23 CCR Section 5010 requires that projects respect local land zoning and not convert prime farmland. The Water Fix tunnel muck disposal changes land use to a permanent non-farmable condition. All of the acres converted by the project to non-farm land uses are classified as prime farmland. The Water Fix project violates this CCR and fails to adequately mitigate the conversion of prime farmland.	<p>This comment states that the proposed project will violate 23 CCR Section 5010. Section 5010 only applies to new “residential, commercial, and industrial development,” and reusable tunnel material does not come under any of these categories. Furthermore, although the EIR/EIS conservatively assumes that RTM piles will be permanent, there is an Environmental Commitment that contemplates reusing the material where possible. (See Appendix 3B, § 3B.2.18, “Disposal and Reuse of Spoils, Reusable Tunnel 8 Material (RTM), and Dredged Material.”</p> <p>This comment does not raise any substantive new environmental information or analysis that was not previously addressed in the Final EIR/EIS.</p>
Central Delta Water	19	xii) 23 CCR Section 5011 requires that projects respect local land zoning and not convert Williamson Act contracted lands. Water Fix results in thousands of acres of Williamson Act lands	This comment states that the proposed project will violate 23 CCR Section 5011. Section 5011 does not include the absolute prohibition suggested by the

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Central Delta Water Agency	20	xiii) 23 CCR Section 5012 requires project not disrupt levee protection. The Water Fix conflicts with levee protection by making several levee beaches and engages in construction actions within the protected area for structural integrity of the levees. The Water Fix project also alters the public priority in funding future levee protections by making the CVP/SWP water supplies less vulnerable to levee failures.	This comment states that the proposed project will violate 23 CCR Section 5012. Section 5012 does not contain any language remoting supporting this contention. This comment does not raise any substantive new environmental information or analysis that was not previously addressed in the Final EIR/EIS.
Central Delta Water Agency	21	xiv) 23 CCR Section 5015 requires that projects not impair or interfere with flood protection. The Water Fix violates with this requirement by constructing in flood waterways and reducing flood flow capacity from diminished channel cross sections. The proposed water diversion structures occur in the channel of the Sacramento River. The Water Fix has conducted no 2D or 3D modeling of these structures to determine if they impair flood flow capacity of the channel.	This comment states that the proposed project will violate 23 CCR Section 5015. Again, the commenter misrepresents the content of the regulation at issue. It actually provides that “No encroachment shall be allowed or constructed in any of the following floodplains unless it can be demonstrated by appropriate analysis that the encroachment will not have a significant adverse impact on floodplain values and functions[.]” At this language only applies to specified floodplains, none of which include the portions of the Sacramento River where diversion structures will be built. In any event, the diversion structures will be “on-bank,” meaning that they will not intrude into the River. This comment does not raise any substantive new environmental information or analysis that was not previously addressed in the Final EIR/EIS.
Central Delta Water Agency	22	xv) NEPA and CEQA - The Water Fix proposes to separate essential elements of the project to separate future environmental documents which is piece-mealing, e.g. project level analyses even though the Water Fix project is pursuing construction-related permits even prior to the approval of the FEIR/S.	This comment states that the proposed project will violate NEPA and CEQA by piecemealing the project. This general comment was addressed in the Responses to Comments contained in the Final EIR/EIS. See, in particular, Master Response 8: Analysis of Project as a Whole. This comment does not raise any substantive new environmental information or analysis that was not previously addressed in the Final EIR/S.
Central Delta Water Agency	23	xvi) CEQA Guidance 5125(d) states that a "EIR shall discuss any inconsistencies between the proposed project and applicable general plans and regional plans." The Water Fix construction foot print and mitigations physically overlap and conflict with on-going HCPs and general plans of San Joaquin County, Yolo County and Solano County. The Water Fix has not proposed how their intended use of these specific parcels with conflicting use and objectives will be resolved with these other agencies and plans.	Inconsistencies between the proposed project and applicable general plans and regional plans are discussed in Chapter 13, Land Use, Final EIR/EIS. Potential incompatibilities with other HCPs in the affected region was considered for each alternative as part of the discussion of impact BIO-192, discussed at considerable length at the end of Chapter 12 of the Final EIR/EIS (see pp. 12-3820 – 12-3850). There is no obligation to consider potential inconsistencies with draft HCPs. (<i>Chaparral Greens v. City of Chula Vista</i> (1996) 50 Cal.App.4th 1134, 1144-1146.) This comment does not raise any substantive new environmental information or analysis that was not previously addressed in the Final EIR/EIS.
Central Delta Water	24	xvii) 40 C.F.R. Section 1502.B- "Environmental documents should be well-organized and written in plain language so that decision-makers and the public can understand them." The EIR/S is	This comment states that the document violates 40 CFR Section 1502.B. DWR respectfully disagrees. See Master Response 38: Length and Complexity of the 1

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Agency		poorly organized and is not accessible to the public for reasonable comprehension in its current form. As is, the RDEIR/SDEIS does not comply with the requirement to being easily understood by the public or decision makers.	EIR/EIS. This comment does not raise any substantive new environmental information or analysis that was not previously addressed in the Final EIR/EIS.
Central Delta Water Agency	25	xviii) 404 (b) (1) requires the selection of the Least Environmentally Damaging Project Alternative (LEDPA) for permitting. The proposed project that the Water Fix has applied for permits to the USAGE and SWRCB is not the LEDPA. Of the current alternatives in the FEIR/S, other alternatives have smaller footprints and result in less conversion of wetland habitat. The BDCP/Water Fix did not analyze a number of other project alternatives which also may be the LEDPA, which the federal agencies subject to this 404 (b) (1) requirement must analyze. These other potential LEDPA alternatives which meet the project purpose and need and objectives more fully than the proposed project include, but are not limited to: fisheries criteria compliant screens on the south delta intakes, western delta intakes, Sacramento Deep Water Ship Channel Conveyance, distributed central delta intakes, upstream of delta storage, downstream of delta storage, etc.	This comment states that an appropriate LEDPA was not identified. This comment does not raise any substantive new environmental information or analysis that was not previously addressed in the Final EIR/EIS. Because Clean Water Act Section 404 is a separate US. Army Corps of Engineers permitting process, the NEPA analysis does not reference the LEDPA but instead presents analyses of all of the alternatives for purposes of comparison and consideration by decision-makers. The Final EIR/EIS presents a reasonable range of 18 alternatives that vary by facilities proposed, operational scenarios and restoration types and amounts. This range of alternatives is considered more than adequate for the purposes of CEQA and NEPA. The Clean Water Act section 404 regulatory compliance process is separate from the CEQA/NEPA process, and involves its own procedures and policies. This comment does not raise any new issues that were not considered in the Final EIR/EIS. To the extent that the commenter is attacking the EIR/EIS for not including certain alternatives that the commenter believes would impact fewer acres of wetlands than Alternative 4A, DWR points the commenter to Appendix 3A of the Final EIR/EIS, which explains why various possible alternatives were not carried forward for full analysis in the EIR/EIS.
Central Delta Water Agency	26	xix) Delta Reform Act (SBX7 1) specifies that the BDCP must be an HCP/NCCP, so the Water Fix Proposed Project and new alternatives are in violation of the act. "85053. "Bay Delta Conservation Plan" or "BDCP" means a multispecies conservation plan." The act also defines co-equal goals for the BDCP, "85054. "Coequal goals" means the two goals of providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem. The coequal goals shall be achieved in a manner that protects and enhances the unique cultural, recreational, natural resource, and agricultural values of the Delta as an evolving place." The BDCP/Water Fix is not a multispecies conservation plan as required by the act. The BDCP also does not meet the co-equal goals as specified by the act as it is now only a water conveyance project that does not even reasonably meet that project need as it does not improve water delivery reliability. Of the 24 or so criteria identified in the EIR/S for certification of compliance with the Delta Plan, the Proposed Project complies with exactly none of them – see previously submitted comments for a description of the failure for each criteria. The DWR and the Delta Stewardship Council must not certify the BDCP as being compliant with the Delta Plan. Water Fix also does not include an analysis of delta and conveyance recovery in the event of an earthquake or flood as required by the Act.	The California Department of Water Resources (DWR) recognizes and intends to fully comply with its obligations under the 2009 Delta Reform Act, but the legal requirements and the precise manner of compliance varies between the BDCP alternatives and non-HCP alternatives. As discussed in Appendix 3I, BDCP Compliance with the 2009 Delta Reform Act, Alternatives 1A through 9 in the Draft EIR/EIS were developed in a manner to comply with the BDCP-specific habitat conservation plan (HCP)/natural community conservation plan (NCCP) requirements set forth in Water Code Sections 85320 et seq. As discussed in Appendix 3J, Alternative 4A (Proposed Project) Compliance with the 2009 Delta Reform Act, the proposed project (Alternative 4A) and Alternatives 2D and 5A are not being proposed to fulfill the requirements of an HCP/NCCP, meaning Water Code Sections 85320 et seq. would not apply to these non-HCP alternatives. The proposed project (Alternative 4A) and Alternatives 2D and 5A would follow a different path to demonstrate consistency with the Delta Plan. The Delta Plan is currently the subject of ongoing litigation that could affect the its policies and recommendations or interpretation of the Delta Reform Act. On June 24, 2016, Sacramento Superior Court Judge Michael P. Kenny ruled the Delta Plan invalid (Delta Stewardship Council Cases, JCCP 4758), pending the DSC's remedying certain deficiencies identified in his ruling. Subsequently, the DSC filed notices of appeal in the four coordinated cases where petitioners prevailed in part. Those notices automatically stay the effect of Judge Kenny's ruling, leaving the Delta Plan in place pending the outcome of the appeals in the coordinated cases. Thus, the Delta Plan and the DSC's consistency certification process may undergo changes depending on the outcome of the litigation, including the resolution of all appeals.

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			<p>Prior to initiating implementation of the proposed project, Alternative 4A (California WaterFix), DWR must submit a written certification that the project is consistent with the applicable policies in the Delta Plan (Water Code Section 85225; 23 California Code of Regulations [CCR] Section 5002, subd. (b)). In addition, under the Delta Plan regulations, if consistency with one or more individual policies in the Delta Plan is infeasible, DWR may certify that the California WaterFix is, on the whole, consistent with the coequal goals themselves (23 CCR Section 5002, subd. (b)(1)). See Master Response 24, Delta as Place, for a more specific response to comments regarding Delta as Place.</p>
Central Delta Water Agency	27	xx) California Water Action Plan - There is no species recovery plan as part of Water Fix and the project results in reduced water supply reliability for other delta water users.	<p>The California WaterFix is one component, among many, of the California Water Action Plan. The California Water Action Plan recognizes that all Californians have a stake in the future of our state’s water resources, and that a series of actions are needed to comprehensively address the water issues before us. The five-year agenda spells out a suite of actions in California to improve the reliability and resiliency of water resources and to restore habitat and species — all amid the uncertainty of drought and climate change.</p> <p>This comment does not raise any substantive new environmental information or analysis that was not previously addressed in the Final EIR/S.</p>
Central Delta Water Agency	28	xxi) Sacramento Valley Regional Water Quality Control Board Basin Plan - The Water Fix proposed project and alternatives do not meet the Basin Plan Flow Criteria requirements for the Sacramento River and for Delta Outflows and violates water quality standards. The Water Fix proposed project and alternatives meets only 50% of the Basin Plan's flow volume criteria in most months. The Water Fix water rights petition hearing to move their point of diversion disclosed that the Water Fix will fail to meet water quality standards in some water year types.	<p>The preferred alternative, Alternative 4A, assumes the current SWRCB Decision 1641 and BiOp requirements and thus would meet the current flow, water quality and other requirements currently established to protect beneficial uses. Alternative 8 does address an increased outflow scenario and its effects are fully analyzed. It is not appropriate to assume potential revisions to the Water Quality Control Plan (WQCP) in the Final EIR/EIS analyses, but the Final EIR/EIS does provide supplemental information for the SWRCB in Appendix 5E, which explores a range of Delta outflows in the context of those proposed under the preferred alternative. Should the SWRCB adopt a new Delta WQCP, DWR would comply with its requirements.</p> <p>For more information on operational criteria, please see Master Response 28, Volume 2, Final EIR/EIS.</p> <p>This comment does not raise any substantive new environmental information or analysis that was not previously addressed in the Final EIR/S.</p>
Central Delta Water Agency	29	xxii) Davis-Dolwig- Requires that the water contractors pay for all costs to operate and deliver SWP water supplies which includes costs for mitigations for impacts caused by the SWP operations. The Water Fix proposes to use of general taxpayer funds to mitigate impacts of water operations, e.g. purchase supplemental "environmental" water supplies to use a carriage water for export water.	<p>The commenter appears to be referring to the Davis-Dolwig Act (Water Code section 11900 – 11925). Water Code section 11913.1 created the “Davis-Dolwig Account” within the California Water Resources Development Bond Fund. In creating the account, the Legislature described its intent “to appropriate funds sufficient to cover the costs incurred by [DWR] for recreation and fish and wildlife enhancement specified pursuant to Section 11912, subject to legislative review and approval.” Section 11912, in turn, provides that DWR “in fixing and establishing prices, rates, and charges for water and power, shall include as a reimbursable cost of any state water project an amount sufficient to repay all costs incurred by the department, directly or by contract with other agencies, for the preservation of fish and wildlife and determined to be allocable to the costs of the project works</p>

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			<p>constructed for the development of that water and power, or either. Costs incurred for the enhancement of fish and wildlife or for the development of public recreation shall not be included in the prices, rates, and charges for water and power, and shall be nonreimbursable costs." This language protects the water contractors from being charged for fish and wildlife enhancements while requiring them to pay for preservation of fish and wildlife, also known as mitigating the impacts on fish and wildlife, attributable to the SWP. Here, consistent with these principles, the contractors will be paying for the costs of mitigating the impacts of the California Water Fix, so the commenter's contention is incorrect.</p> <p>The comment does not raise any new environmental issues that were not considered in the Final EIR/EIS.</p>
Central Delta Water Agency	30	<p>b) Policies: i) Bureau of Reclamation - Water Fix conflicts with Reclamation's area of origin policy and the Water Fix climate change analysis is not consistent with the Department of Interior's Climate Change Analysis requirements.</p>	<p>This comment states that the preferred alternative conflicts with Reclamation's area of origin policy. DWR respectfully disagrees. See Master Response 26: Area of Origin and Other Legal Water Users.</p> <p>This comment does not raise any substantive new environmental information or analysis that was not previously addressed in the Final EIR/S.</p>
Central Delta Water Agency	31	<p>c) Existing Commitments: i) NMFS and USFWS OCAP BO RPAs- The Water Fix Proposed Project does not implement the OCAP BO RPAs which are existing, but unfulfilled commitments of the SWP and CVP. The Water Fix Proposed Project, by its lack of implementation and compliance with the OCAP BO RPAs, perpetuates the condition that the fisheries agencies determined would result in jeopardy of listed species. The Water Fix EIR/S includes a sensitivity analysis that demonstrated that any combination of habitat restorations, specifically including those that are already existing obligations of the CVP/SWP as OCAP BO RPAs, result in significantly increased water quality impacts. By the FEIR/S analysis, if the Water Fix is constructed, it will preclude the future OCAP BO RPA implementation. The BDCP EIR/S is inconsistent with the OCAP EIS in that the proposed project and new alternatives no longer include implementation of the OCAP BO RPAs prior to or concurrently with the construction of the proposed new conveyance facilities and modification of existing facilities related to water conveyance. The BDCP EIR/S proposed project must be made consistent with the OCAP BO EIS as these are concurrent documents with the same lead agencies and the OCAP BO is part of the baseline condition of the BDCP EIR/S. Therefore the assumption of RPA implementation prior to CVP/SWP modification and construction must take supremacy over the Water Fix Proposed Project assumption of modifying existing and constructing new facilities prior to implementation of the OCAP BO RPAs.</p>	<p>The commenter states that they do not believe that WaterFix would implement the RPAs. The RPAs are being implemented independently of this project. DWR is working directly with NMFS and USFWS to ensure that the CWF aligns with the RPAs. Please see Master Response 45, Volume 2, Final EIR/EIS for more information about the RPA assumptions used in model scenarios and reasons for these.</p>
Central Delta Water Agency	32	<p>ii) 2007 BDCP MOU Planning Agreement- The BDCP was required to include OCAP BO RPAs and the HCP/NCCP as part of the project, etc. The California Water Fix project does not include any of these required elements so it is inconsistent with the Planning Agreement the original project was based upon.</p>	<p>This comment states that the California WaterFix is inconsistent with the terms of the Planning Agreement. The Planning Agreement does not apply to the California WaterFix, as it is not an HCP/NCCP. This comment does not raise any substantive new environmental information or analysis that was not previously addressed in the Final EIR/S.</p>
Central Delta Water Agency	33	<p>iii) CVP/SWP Coordinated Operating Agreement - The project proposal to potentially wheel CVP water through an SWP owned and operated Water Fix conveyance facility means that the current proportionality of water storage to water delivery between CVP and SWP water contractors will be altered by the Water Fix project. Water wheeling only occurs when there is excess capacity in the system so there will be conditions that the SWP will disproportionately receive water deliveries than the CVP water contractors as compared to existing conditions/No Action. The change in proportion of water deliveries between the SWP and CVP water contractors clearly triggers the necessity to alter the existing Coordinated Operating Agreement</p>	<p>Several comments made on the Draft EIR/EIS and the RDEIR/SDEIS addressed this issue as well. As noted in several comment responses (ex. RECIRC 2836-4, RECIRC 2491-1), the proposed project does not seek any new water rights nor reduction in total water rights issued to DWR and Reclamation. DWR operates and maintains the SWP and would continue to do so as part of the implementation of the proposed project related to the SWP. Reclamation operates the CVP in coordination with the SWP through the Coordinated Operation Agreement. Reclamation's action in relation to the proposed project would be to adjust CVP</p>

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		(COA). The Water Fix has not included the impacts of this conflict with this existing contractual obligation in the project analysis or disclosure. Updating the Coordinated Operating Agreement will have CVP/SWP system-wide operating implications as it will alter which of the upstream storages are releasing, when they are releasing and how much they are releasing in order to meet water deliveries, minimum flows and manage statutory water quality compliance. The Water Fix EIR/S failed to disclose or analyze any of these impacts of the project and is in conflict with the existing COA.	operations specific to the Delta to accommodate new conveyance facility operations and/or flow requirements under the proposed project, in coordination with SWP operation. Operations for the proposed project would still be consistent with the criteria set by the FWS (2008) and NMFS (2009) BiOps and State Water Resources Control Board Water Right Decision 1641 (D-1641), subject to adjustments made pursuant to the adaptive management process as described in the 2008 and 2009 BiOps (RDEIR/SDEIS Executive Summary ES.2.2). The proposed project does not propose any changes to the existing CVP/SWP Coordinated Operating Agreement. This comment does not raise any substantive new environmental information or analysis that was not previously addressed in the Final EIR/S.
Central Delta Water Agency	34	2) Contracting issues related to direction of the EIR/S preparation. a) California Department of Fish and Wildlife (CDFW) or the State Water Resources Control Board should have been the state CEQA Lead Agency as they will rely upon the EIR to issue 303, 401 and other permits for the project. DWR is the project proponent/applicant as a state agency, but they will not issue any permits for the project. Not only was DWR less qualified in terms of needs of the document to be state CEQA lead agency, but DWR consistently abused the position of being both project proponent and lead agency in displaying consistent bias in the process for a predetermined outcome - see issue #11 Predecisional Process.	This section describes the commenter's view that the CEQA lead agency should have been a different agency. This issue has been addressed previously. Please see RDEIR/SDEIS comment letter RECIRC 2509, Comments 14 and 15, Volume 2, Final EIR/EIS. DWR was a proper lead agency under the criteria set forth in CEQA Guidelines section 15051, subdivision (a): "If the project will be carried out by a public agency, that agency shall be the Lead Agency even if the project would be located within the jurisdiction of another public agency."
Central Delta Water Agency	35	b) US Fish and Wildlife (USFWS), National Marine Fisheries Service, or Corps of Engineers (USACE) should have been the federal NEPA Lead Agency as they will rely upon the EIS to formulate other supporting documents (Biological Assessments, Biological Opinions) and consider issuance of 401, 404, and other permits for the project. Reclamation is the project proponent/applicant as a federal agency, but they will not issue any permits for the project, nor as the Water Fix proposes will Reclamation own or operate the conveyance facility. Reclamation violated its own contracting requirements when it abrogated its responsibilities for directing and managing the EIS to DWR and its contractors run by the Hallmark Group which Reclamation and other federal agencies had no part in the process to review or select. The Hallmark Group directed work on the development of the EIS, but was not part of any team reviewed or selected by the Federal Lead Agencies or that conformed to their contracting regulations. Hallmark materially directed the EIS project schedule, policy and technical issue resolution, and content reviews in the EIR/S.	This section describes the commenter's dissatisfaction with the NEPA process for CWF. The lead agencies have responded to this comment previously. Please see RDEIR/SDEIS comment letter RECIRC 2509, Comment 14, Volume 2, Final EIR/EIS. The CEQ NEPA Regulations provide flexibility with respect to the division of labor between lead and cooperating agencies. Where more than one federal agency could make a claim to be the lead agency, the following factors come into play (in descending order of importance): (1) Magnitude of agency's involvement; (2) Project approval/disapproval authority; (3) Expertise concerning the action's environmental effects; (4) Duration of agency's involvement; and (5) Sequence of agency's involvement. (40 CFR § 1501.5.) These factors support the choice of Reclamation as the agency. As operator of the CVP, Reclamation will use the new conveyance facility.
Central Delta Water Agency	36	c) NEPA regulations provide that the lead agency, not the applicant, is ultimately responsible for selecting the environmental contractor to prepare an EIS. 40 CFR 1506.5(c). Reclamation, FWS and NMFS were the BDCP federal lead agencies at the time the contractors were selected and yet they did not select or even participate in the selection of the ICF International team which prepared the Water Fix EIS. HDR was contracted to write the BDCP EIR/S, but the Water Fix DEIR/S, RDEIR/S and FEIR/S were prepared by ICF International, a subcontractor under the original HCP contract.	This section describes the commenter's dissatisfaction with the NEPA process for the proposed project. The lead agencies have responded to this comment previously. Please see RDEIR/SDEIS comment letter RECIRC 2509, Comment 14, Volume 2, Final EIR/EIS. It is generally true that, under section 1506.5(c) the federal lead agency must prepare an EIS by itself or hire a contractor to do so. There is an exception, however, where joint federal/state documents are concerned, which is the case here.
Central Delta Water Agency	37	d) Jeffery Kightlinger, General Manager, Metropolitan Water District (MWD) has publicly said MWD won't pay more for the project until the project is approved. Significant work is required to complete the approval of the project so MWD as the largest cost share partner of the project is compelling the EIR/S contractor to perform work for free which is effectively a "payoff" from the EIR/S contractor for awarding or keeping the contract which is illegal.	This comment states that statements made by Metropolitan Water District's GM indicate that the Final EIR/EIS contractor is working for free in order to keep the contract. This characterization is not accurate; nor is the claim of improper conduct. This comment does not raise any environmental issues related to the Final EIR/EIS.
Central	38	e) Water Fix has committed numerous Federal contracting law violations, e.g. Federal Advisory	DWR, as CEQA lead agency, and Reclamation, as NEPA lead agency, have

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Delta Water Agency		Committee Act (FACA). The EIR/S lead agencies allowed consultants for the water contractors not under the EIR/S contract to participate in closed (non-public) meetings to provide directions to the development of the EIR/S, e.g. alternatives screening and formulation other than the proposed project/action, Hallmark Group direction of EIR/S schedule and resolutions to technical issues. The Water Fix also committed FACA violations by providing draft EIR/S materials that were not accessible to the public to water contractor consultants not under the Water Fix EIR/S contract. The Water Fix also utilized written material from the water contractor consultants not under contract for the EIR/S in the EIR/S, e.g. the Purpose and Need and Project Objectives of the EIR/S were written by the ICF International contract team attorney which had no role in the EIR/S contract.	maintained control over the contents of the EIR/EIS, despite (appropriately) seeking input from parties that will be directly affected by the project, and that will be funding the project (if it is funded). The EIR/EIS thus reflects the independent judgment of DWR and Reclamation, consistent with CEQA and NEPA. Federal agencies are not prohibited by the FACA from obtaining or providing information or input from or to individuals or entities on issues of concern to the agency whether or not there is a contractual relationship. This comment does not raise any environmental issues related to the Final EIR/EIS.
Central Delta Water Agency	39	The FEIR/S responses to most of our comments related to contracting and procedural violations by the project was to say th[sic] "Contracting issues by State and Federal entities are overseen by contracting offices." Most of the contracting issues they d[sic] deny or correct and most of the responses they did provide were non-responses, such as the quote above.	This section describes the commenter's dissatisfaction with responses to their previous comments. All comments were reviewed and responded to thoughtfully and adequately. This comment does not raise any substantive new environmental information or analysis that was not previously addressed in the Final EIR/EIS.
Central Delta Water Agency	40	3) EIR/S Alternatives Fail to Reasonably Meet Project Objectives and Purpose and Need The Proposed Project and current alternatives do not reasonably meet the EIR/S purpose, need and project objectives. a) The Proposed Project (alt 4A) no longer includes a habitat restoration component (other than compensatory mitigation). With no habitat restoration as the "co-equal" goal requires, the proposed project is an alternative that fundamentally failed to meet half of the core purpose, need and objective for the project and therefore should have failed to pass alternative screening process.	This section describes the commenter's view that the proposed project does not meet the co-equal goal. This topic has previously been commented on and responded to in the Final EIS/EIS. Please see the response to Comment Letter RECIRC 2651, Comment 29 Volume 2, Final EIR/EIS. Please also refer to Master Response 8, Analysis of Project as a Whole, and Master Response 31: BDCP/California Water Fix and 2009 Delta Reform Act, Volume 2, Final EIR/EIS, for more information about requirements of meeting co-equal goals.
Central Delta Water Agency	41	b) The EIR/S Purpose and Need identifies "regulatory assurance and stability" as a main purpose, need and objective for the project. The new alternatives with ESA compliance without an HCP/NCCP does not provide a "no surprises" or regulatory assurances project result. The lack of regulatory assurances resulting from the new alternatives means they completely fail to meet this critical project criteria. This failure to meet any aspect of this critical "no surprises" project purpose and need means that these alternatives fail to reasonably satisfy the purpose and need and therefore should have never been considered viable project alternatives. Other alternatives that do achieve regulatory stability should have been considered prior to alternatives which do not. An example project alternative that does meet the full purpose and need of the project, but was not analyzed in the EIR/S or addressed in the alternatives screening process is an aquatic species only HCP/NCCP that includes fish criteria compliant screens at Clifton Court Forebay. An alternative such as this would meet all of the criteria stated in the purpose and need and yet it is unaddressed in the EIR/S.	This section describes the commenter's view that purpose and need do not provide a "no surprises" or regulatory assurances project result. This comment has been responded to previously. Please see the response to Comment letter RECIRC 2651, Comment 29, Volume 2, Final EIR/EIS. The language cited by the commenter merely refers to a desire to operate within a "stable regulatory framework." No mention is made of the need for a no-surprises provision in an approved HCP/NCCP. The commenter also exaggerates the importance of this one element of a very detailed set of project objectives and a detailed purpose and need statement. To be included in an EIR, an alternative need only meet "most" of basic objectives of the project. (CEQA Guidelines, § 15126.6, subd. (a).) Under NEPA, alternatives should be reasonable and meet the purpose and need. (40 CFR § 1502.14; 43 CFR 46.415(b) [DOI NEPA Regulations].)
Central Delta Water Agency	42	c) "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." The revised EIR/S did not alter these stated CEQA project objectives. Let's take these needs and objectives point by point. The new alternatives do not restore or protect ecosystem health. The new alternatives only mitigate for the impacts of implementing the project and do no restoration that is above and beyond just they consider to be feasible to repair damage that the project causes. Numerous project impacts were determined to be "significant and unavoidable" and were not mitigated or in some cases even minimized due to feasibility. Therefore, even after mitigations, the environment and ecosystem are worse off with the project than the No Action condition. None of the Water Fix alternatives restore natural flow regimes in the delta as the purpose and	This section describes the commenter's view that the non-HCP alternatives do not align with the stated CEQA project objectives. This comment has been responded to previously. Please see the response to Comment letter RECIRC 2651, Comment 30, Volume 2, Final EIR/EIS. The California Water Fix <i>does</i> meet this fundamental purpose in that the reduced reliance on south Delta pumps will reduce the reverse flow phenomenon and entrainment in the south Delta.

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		<p>need requires. The alternatives just reduce the amount of unnatural flow regime caused by the CVP/SWP operations by less than 40%. Other flow related affects from reduced western and southern delta contributory flows are completely unaddressed by any project alternative. All of the project alternatives also fail to meet the criteria to restore the water supplies as the project results in very little additional water as compared to the No Action/No Project condition and fails to result in a restoration of water supplies to the previous D1641 levels. None of the alternatives restore water quality and in fact the alternatives precipitate some potentially catastrophic impacts on water quality that were determined to be significant and unavoidable by the EIR/S. Other significant water quality impacts caused by the alternatives were incorrectly omitted from the findings of the EIR/S, e.g. dissolved oxygen, algal blooms, Selenium, Bromine, etc. All in all, none of the project alternatives meet any of these identified project purpose, need or objective.</p>	
Central Delta Water Agency	43	<p>d) In summary of the Purpose and Need, the project alternatives do not restore habitat, do not protect ecosystems, do not restore water supply, do not restore water quality (and in fact degrades it), do not result in a stable regulatory framework, is not consistent with existing laws and statutes and fails to fulfill several essential existing contractual obligations of the project. Out of the 7 components of the Purpose and Need identified in the EIR/S, the project alternatives fail to reasonably meet every single one of them. These proposed project and other new alternatives should have never been advanced to full analysis in the EIR/S and should, by any reasonable or consistently applied standard, never have passed the alternatives screening process.</p>	<p>This section describes the commenter's opinion that the project does not meet the Purpose and Need. Please see Master Response 3 Volume 2, Final EIR/EIS, regarding purpose and need and the response to Comment letter RECIRC 2651, Comment 30, Volume 2, Final EIR/EIS.</p>
Central Delta Water Agency	44	<p>e) The project fails to meet the identified EIR/S Project Objectives. "The fundamental purpose, in turn, gives rise to the following project objectives, which were presented in the Notice of Preparation for this EIR: Respond to the applications for incidental take permits for the covered species that authorize take related to:</p> <ol style="list-style-type: none"> 1. The operation of existing SWP Delta facilities and construction and operation of facilities for the movement of water entering the Delta from the Sacramento Valley watershed to the existing State Water Project (SWP) and Central Valley Project (CVP) pumping plants located in the southern Delta; 2. The implementation of any conservation actions that have the potential to result in take of species that are or may become listed under the ESA, pursuant to the ESA at § 10(a)(1)(B) and its implementing regulations and policies; 3. The diversion and discharge of water by Mirant LLC for power generation in the Western Delta." The proposed project and new Water Fix alternatives fail to reasonably meet these project objectives too. The new alternatives do not include "covered species" as the Water Fix project does not include a HCP or NCCP. The EIR/S does not address impacts of large portions of the CVP/SWP system, e.g. reservoirs, upstream affects above reservoirs, south of delta conveyance operations and leakage, service area water delivery (e.g. salt accumulation) and downstream of service area drainage impacts. Because these impacts of the on-going operations of the CVP/SWP are not evaluated, disclosed, characterized, quantified, avoided, minimized or mitigated by the project, the EIR/S may not be used as the basis to justify issuance of ITPs on the existing CVP/SWP operations. The ITPs based on the EIR/S can only cover what is evaluated in the EIR/S and that would be the proposed project and impacts within the delta. In the objective to have ITPs that cover the existing and ongoing CVP/SWP impacts and the rest CVP/SWP infrastructure, the Water Fix alternatives and EIR/S fails to meet this project objective. The new alternatives still pump 60% of the diversions from the south delta and the project has done nothing to mitigate for these on-going impacts nor have the alternatives included any substantial compensatory actions to make up for these on-going impacts. Given the ongoing impacts to fisheries from the proposed south delta operations and the lack of 	<p>This comment states that the project fails to meet the identified EIR/S project objectives. This comment was responded to previously in Comment letter RECIRC 2651, Comment 29, Volume 2, Final EIR/EIS. The commenter's interpretations of all of the objectives at issue are subjective and are not binding on DWR or Reclamation, which interpret and apply the objectives differently.</p>

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		<p>mitigations for these impacts, the project should not be awarded ITPs on the proposed new facilities or operations either. Mirant does not appear to be in the new alternatives so this criteria is failed as well. Out of the 3 Project Objective criteria, the proposed project and new alternatives fail all 3. These alternatives never should have been advanced for analysis in the EIR/S and the lead and responsible agencies must not approve alternatives that do not meet the stated project objectives.</p>	
Central Delta Water Agency	45	<p>f) The Proposed Project and new alternatives fail to meet other Project Objectives. "To improve the ecosystem of the Delta by:</p> <ol style="list-style-type: none"> 1. Providing for the conservation and management of covered species through actions within the BDCP Planning Area that will contribute to the recovery of the species; and 2. Protecting, restoring, and enhancing certain aquatic, riparian, and associated terrestrial natural communities and ecosystems. 3. Reducing the adverse effects to certain listed species of diverting water by relocating the intakes of the SWP and CVP; "The proposed project and new alternatives do not contain actions that contribute to species recovery. The habitat restorations included in these new alternatives are only feasible compensatory mitigations (but not mitigated to less than significant in many cases) for the impacts of implementing the project. The proposed project and new alternatives have no component that contributes to conservation or restoration of the listed or affected species. The new alternatives do not "protect" or "restore" or "enhance". The third objective is flawed and is predecisional. It is appropriate to say that an objective is for the project to reduce the impacts of water diversions. It is inappropriate for a project objective to predecisionally dictate how that objective may be accomplished as it precludes other and potentially better and more effective methods of achieving the objective. Relocating the intakes is potentially one method of reducing the impacts of water diversions although the locations selected by the project just move the location of impact and do not change the nature of the impacts. The new diversion location exposes more salmonids to the diversion operations than the existing south delta facilities. The new diversion locations are still within the range of critical habitat for the delta and Longfin smelt (as well as all of the listed salmonid runs) so those species are still impacted by the proposed project diversion operations. The EIR/S failed to demonstrate or conclude specifically that the relocated intakes resulted in a reduction of adverse effects to the listed species so the new alternatives failed to meet this project objective. Further, due to the predecisional outcome of this project objective, the EIR/S also failed to consider other alternatives that would have successfully reduced diversion operation effects on listed species. It is impossible for the EIR/S to refute that improvements at the south delta diversions, e.g. fish screens, behavioral devices to steer fish away from the intakes and improved fish salvage equipment and processes would not also result in a reduction in the effects of diversion operations on listed fish species. In fact, the modification of the existing diversion facilities to reduce water diversion impacts more reasonably meets this project objective than moving the intake locations as under the new alternatives with the new intake locations, the old unimproved south delta intakes are still operated 60% of the time. 	<p>This comment states that the proposed project and new alternatives fail to meet the identified EIR/S project objectives. This comment was responded to previously in Comment letter RECIRC 2651, Comment 32, Volume 2, Final EIR/EIS. Again, the commenter's interpretations of all of the objectives at issue, as well as the manner in which the commenter applies those interpretations to the project alternatives, are subjective and are not binding on DWR or Reclamation, which interpret and apply the objectives differently.</p>
Central Delta Water Agency	46	<p>g) The Proposed Project and new alternatives fail to meet Project Objectives to restore water supply deliveries. "Restore and protect the ability of the SWP and CVP to deliver up to full contract amounts, when hydrologic conditions result in the availability of sufficient water, consistent with the requirements of State and federal law and the terms and conditions of water delivery contracts and other existing applicable agreements." All of the EIR/S alternatives considered to date fail to meet this project objective. None of the alternatives yield substantially more water deliveries than the No Action/No Project and none of them make any significant progress to restoring deliveries to D1641 quantities. The EIR/S not only failed to</p>	<p>This comment states that the proposed project and new alternatives fail to meet the identified EIR/S project objectives. This comment was responded to previously in Comment letter RECIRC 2651, Comment 33, Volume 2, Final EIR/EIS. Again, the commenter's interpretations of all of the objectives at issue, as well as the manner in which the commenter applies those interpretations to the project alternatives, are subjective and are not binding on DWR or Reclamation, which interpret and apply the objectives differently.</p>

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		meet this project objective with the current alternatives, but it failed to analyze the project alternatives proposed that would allow for this objective to be satisfied. An example of an alternative not analyzed in the EIR/S that would allow increased water deliveries under a broader range of hydrologic condition are the implementation of increased upstream and/or downstream storage. The additional storage upstream and downstream of the delta would allow more water to be exported during times of winter-time high flows and to extend periods of flows conditions that water can be exported during the early spring.	
Central Delta Water Agency	47	h) The Proposed Project and new alternatives fail to meet other Project Objectives to include a NCCP. "To ensure that the BDCP meets the standards for an NCCP by, among other things, protecting, restoring, and enhancing aquatic and terrestrial natural communities and ecosystems that support covered species within the Plan Area." The Water Fix Proposed Project and new alternatives do not include an NCCP, so they completely fail to meet this project objective. Other reasonable alternatives that must be considered that do meet this objective would be a NCCP that only covers aquatic species.	This comment states that the proposed project and new alternatives fail to meet the identified EIR/S project objectives. This comment was responded to previously in Comment letter RECIRC 2651, Comment 34, Volume 2, Final EIR/EIS. Again, the commenter's interpretations of all of the objectives at issue, as well as the manner in which the commenter applies those interpretations to the project alternatives, are subjective and are not binding on DWR or Reclamation, which interpret and apply the objectives differently.
Central Delta Water Agency	48	i) The Proposed Project and new alternatives fail to meet other Project Objectives to improve the conveyance for climate change. "To make physical improvements to the conveyance system in anticipation of rising sea levels and other reasonably foreseeable consequences of climate change." The project alternatives partially satisfy this objective in that the north delta intakes as somewhat less affected by sea-level rise than the current south delta intakes, but these alternatives still rely upon the south delta intakes for 60% of their diversions so the amount of improvement in protection from sea-level rise from these alternatives is modest at best and does absolutely nothing to improve the system to compensate for climate change. Further, the EIR/S is deficient in its analysis of this project purpose and need as future climate change and sea level rise are only qualitatively analyzed in the project Late Long Term (LLT).	This comment states that the proposed project and new alternatives fail to meet the identified EIR/S project objectives. This comment was responded to previously in Comment letter RECIRC 2651, Comment 35, Volume 2, Final EIR/EIS. Again, the commenter's interpretations of all of the objectives at issue, as well as the manner in which the commenter applies those interpretations to the project alternatives, are subjective and are not binding on DWR or Reclamation, which interpret and apply the objectives differently.
Central Delta Water Agency	49	j) The Proposed Project and new alternatives fail to meet other Project Objectives to improve the conveyance for public health and safety from earthquakes. "To make physical improvements to the conveyance system that will minimize the potential for public health and safety impacts resulting from a major earthquake that causes breaching of Delta levees and the inundation of brackish water into the areas in which the SWP and CVP pumping plants operate in the southern Delta." All of the current alternatives only partially satisfy this project objective as none of them address the full CVP/SWP system vulnerabilities to earthquakes, i.e. California Aqueduct failures from the same (and more likely source) earthquakes they are worried about in the delta, and they have traded one type of risk (levee failure) for another risk (conveyance tunnel failure) which were never compared or analyzed in the EIR/S. Further, the EIR/S is deficient in its analysis of this project purpose and need as the draft EIR/S does not include an analysis of the resilience of the conveyance system from a levee failure event or disclose the measures to avoid, minimize or mitigate the impacts from an earthquake event on the proposed project and alternatives. Without this statutorily required analysis, (California Water Code 85320(b) (2) (F)), it is impossible for the reader, decision maker to determine if any of the alternatives even partially fulfill this project objective.	This comment states that the proposed project and new alternatives fail to meet the identified EIR/S project objectives. This comment was responded to previously in Comment letter RECIRC 2651, Comment 36, Volume 2, Final EIR/EIS. Again, the commenter's interpretations of all of the objectives at issue, as well as the manner in which the commenter applies those interpretations to the project alternatives, are subjective and are not binding on DWR or Reclamation, which interpret and apply the objectives differently.
Central Delta Water Agency	50	k) The Proposed Project and new alternatives fail to meet other Project Objectives to protect and restore water supply and ecosystem health. "To develop projects that restore and protect water supply and ecosystem health and reduce other stressors on the ecological functions of	This comment states that the proposed project and new alternatives fail to meet the identified EIR/S project objectives. This comment was responded to previously in Comment letter RECIRC 2651, Comment 37, Volume 2, Final EIR/EIS. Again, the

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		the Delta in a manner that creates a stable regulatory framework under the ESA and NCCPA." The proposed project and new alternatives do not include "other stressors" conservation measures or a NCCPA (or a stable regulatory framework) so they completely fail to meet this project objective and should not have been included as alternatives in the EIR/S. The Proposed Project and new alternatives do not accomplish any of the objective to restore or protect water supply or the ecosystem.	commenter's interpretations of all of the objectives at issue, as well as the manner in which the commenter applies those interpretations to the project alternatives, are subjective and are not binding on DWR or Reclamation, which interpret and apply the objectives differently.
Central Delta Water Agency	51	l) In summary of the Project Objectives, out of the 6 components of the objective, the proposed project does not reasonably meet any of them. The original BDCP alternatives only partially satisfy 3 out of the 6 components of these project objectives. Many project alternatives were available to more reasonably meet the project objectives, but none were included for analysis in the EIR/S. A project alternative that was an aquatic species only HCP/NCCP with fish criteria compliant fish screens at Clifton Court that integrated the OCAP B0 RPA habitat restorations would meet all 6 Project Objective requirements.	This comment states that the proposed project and new alternatives fail to meet the identified EIR/S project objectives. This comment was responded to previously in Comment letter RECIRC 2651, Comment 37, Volume 2, Final EIR/EIS. Again, the commenter's interpretations of all of the objectives at issue, as well as the manner in which the commenter applies those interpretations to the project alternatives, are subjective and are not binding on DWR or Reclamation, which interpret and apply the objectives differently.
Central Delta Water Agency	52	m) The proposed project does not meet the first section of the project purpose. "The purposes of the proposed actions are to achieve the following. 1. Consider the applications for incidental take permits for the covered species that authorize take related to the actions listed below. a. The operation of existing SWP Delta facilities. b. The construction and operation of facilities and/or improvements for the movement of water entering the Delta from the Sacramento Valley watershed to the existing SWP and CVP pumping plants located in the southern Delta. c. The implementation of any conservation actions that have the potential to result in take of species that are or may become listed under the ESA, pursuant to the ESA at section 21 10(a)(1)(8) and its implementing regulations and policies." The Water Fix Proposed Project and new alternatives fail to reasonably meet these project purposes too. The new alternatives do not include "covered species" as they are not HCP/NCCPs. Purpose 1 a) does not make sense as a federal purpose. The federal purpose cannot be for the continued operation and permitting of a state facility. Further, the EIR/S fails to accomplish this purpose anyway. The EIR/S does not address impacts of large portions of the CVP/SWP system, e.g. reservoirs, upstream affects above reservoirs, south of delta conveyance operations and leakage, service area water delivery (e.g. salt accumulation) and downstream of service area drainage impacts. Because these impacts of the on-going operations of the CVP/SWP are not evaluated, disclosed, characterized, quantified, avoided, minimized or mitigated by the project, the EIR/S may not be used as the basis to justify issuance of ITPs on the existing CVP/SWP operations. The ITPs based on the EIR/S can only cover what is evaluated in the EIR/S and that would be the proposed project and impacts within the delta. In the objective to have ITPs that cover the existing and ongoing CVP/SWP impacts and the rest CVP/SWP infrastructure, all of the project alternatives fail to meet this project purpose. The Proposed Project and new alternatives still pump 60% of the diversions from the south delta and the project has done nothing to mitigate for these on-going impacts nor have the alternatives included any substantial compensatory actions to make up for these on-going impacts. Given the ongoing impacts to fisheries from the proposed south delta operations and the lack of mitigations for these impacts, the project should not be awarded ITPs on the proposed new facilities or operations. Purpose 1 c): The new alternatives are not HCP/NCCPs so the project is not covered for ITP of species that may become listed under the ESA. Out of the 3 project purposes here, the proposed project and new alternatives fail all 3 so these alternatives never should have been advanced for analysis in the EIR/S and the lead and responsible agencies must not approve alternatives that do not meet the stated project purposes.	This comment states that the proposed project and new alternatives fail to meet the identified project purpose. This comment was responded to previously in Comment letter RECIRC 2651, Comment 39, Volume 2, Final EIR/EIS. The commenter's interpretations of the project purpose, as well as the manner in which the commenter applies that purpose to the proposed project, are subjective and are not binding on DWR or Reclamation, which interpret and apply the purpose differently.

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Central Delta Water Agency	53	<p>n) The Proposed Project and new alternatives do not meet the second section of the project purpose.</p> <p>"2. Improve the ecosystem of the Delta by implementing the actions listed below.</p> <p>a. Providing for the conservation and management of covered species through actions within the BDCP Planning Area that will contribute to the recovery of the species.</p> <p>b. Protecting, restoring, and enhancing certain aquatic, riparian, and associated terrestrial natural communities and ecosystems.</p> <p>c. Reducing the adverse effects on certain listed species due to diverting water." Comments in response - a) The Proposed Project and new alternatives do not contain actions that contribute to species recovery. The habitat restorations included in these new alternatives are only sufficient to mitigate for the impacts of implementing the project and have no component that contributes to conservation or restoration of the affected species. b) The Proposed Project and new alternatives do not "protect" or "restore" or "enhance". c) Relocating the intakes is potentially one method of reducing the impacts of water diversions although the locations selected by the project just move the location of impact and do not change the nature of the impacts. The new diversion location exposes more salmonids to the diversion operations than the existing south delta facilities due to the populations that migrate through the Sacramento River as compared to the size of population that migrates through the area of the south delta where the current CVP and SWP diversions are located. The new diversion locations are still within the range of critical habitat for the delta- and Longfin smelt so those species are still impacted by diversion operations. The EIR/S failed to demonstrate or conclude specifically that the relocated intakes resulted in a reduction of adverse effects to the listed species so the new alternatives failed to meet this project objective. Further, due to the predecisional nature of the related CEQA project objective, the EIR/S also failed to consider other alternatives that would have successfully reduced diversion operation effects on listed species. It is impossible for the EIR/S to refute that improvements at the south delta diversions, e.g. fish screens, behavioral devices to steer fish away from the intakes and improved fish salvage equipment and processes would not also result in a reduction in the effects of diversion operations on listed fish species. In fact, the modification of the existing diversion facilities to reduce water diversion impacts more reasonably meets this project objective than moving the intake locations as under the new alternatives with the new intake locations, the old unimproved south delta intakes are still operated 60% of the time.</p>	<p>This comment states that the proposed project and new alternatives fail to meet the identified project purpose. This comment was responded to previously in Comment letter RECIRC 2651, Comment 40, Volume 2, Final EIR/EIS. Again, the commenter's interpretations of the project purpose, as well as the manner in which the commenter applies that purpose to the proposed project and alternatives, are subjective and are not binding on DWR or Reclamation, which interpret and apply the purpose differently.</p>
Central Delta Water Agency	54	<p>o) The Proposed Project and new alternatives do not meet the third section of the project purpose.</p> <p>"3. Restore and protect the ability of the SWP and CVP to deliver up to full contract amounts, when hydrologic conditions result in the availability of sufficient water, consistent with the requirements of state and federal law and the terms and conditions of water delivery contracts held by SWP contractors and certain members of San Luis Delta Mendota Water Authority, and other existing applicable agreements." First, it is inappropriate for a federal purpose to be to restore and protect a state facility and operations. This purpose must be revised to one that has a federal nexus. All of the EIR/S alternatives considered to date fail to meet this project purpose. None of the alternatives yield substantially more water deliveries than the No Action/No Project and none of them make any significant progress to restoring deliveries to D1641 quantities. The water supply is not protected from disruption or reduction in quantity from new and additional environmental compliance operational constraints as the Proposed Project and new alternatives do not include an HCP/NCCP and therefore there are no regulatory assurances or stability from the Water Fix project. The EIR/S not only failed to meet this project purpose with the current alternatives, but it failed to analyze the project alternatives identified in the public scoping process that would allow for this purpose to be satisfied. These other</p>	<p>This comment states that the proposed project and new alternatives fail to meet the identified project purpose. This comment was responded to previously in Comment letter RECIRC 2651, Comment 41, Volume 2, Final EIR/EIS. Again, the commenter's interpretations of the project purpose, as well as the manner in which the commenter applies that purpose to the proposed project and alternatives, are subjective and are not binding on DWR or Reclamation, which interpret and apply the purpose differently.</p>

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		alternatives identified, but not analyzed in the EIR/S were for additional upstream and/or downstream water storage which would allow this purpose to be achieved. Since additional storage is the only strategy identified that does meet this purpose and with the inclusion of other components to these alternatives, e.g. south delta diversion fish screen improvements, are successful in meeting all the project purpose and screening criteria. The EIR/S must include these water storage alternatives as there is no reasonable or equally applied screening criteria that preclude them.	
Central Delta Water Agency	55	p) The Proposed Project and new alternatives do not meet the purpose of a co-equal goal of protecting and restoring water supply and the ecosystem. "The above Purpose Statement reflects the intent to advance the coequal goals set forth in the Sacramento-San Joaquin Delta Reform Act of 2009 of providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem." The Proposed Project and new alternatives do not treat habitat restoration and species conservation as a coequal goal to water conveyance. The Water Fix has foisted habitat and species conservation aspects of the original BDCP project to some other project, California EcoRestore, which has no schedule, staffing, or funding identified. The Water Fix Proposed Project and new alternatives not only completely fail this project purpose but it is in violation of the Delta Reform Act because it no longer includes the required NCCP. The Water Fix must consider an alternative that does meet this objective which would be an aquatic only species NCCP. This alternative would be more co-equal goal and would not be in violation of the 2009 Delta Reform Act.	This comment states that the proposed project and new alternatives fail to meet the co-equal goals of the Delta Reform Act. This comment was responded to previously in Comment letter RECIRC 2651, Comment 42, Volume 2, Final EIR/EIS. Again, the commenter's interpretations of the project purpose, as well as the manner in which the commenter applies that purpose to the proposed project and alternatives, are subjective and are not binding on DWR or Reclamation, which interpret and apply the purpose differently.
Central Delta Water Agency	56	q) The Proposed Project and new alternatives do not reasonably meet the purpose of enhancing water delivery amounts significantly above the No Action. "As indicated by the "up to full contract amounts" phrase, alternatives need not be capable of delivering full contract amounts on average in order to meet the project purposes. Alternatives that depict design capacities or operational parameters that would result in deliveries of less than full contract amounts are consistent with this purpose." Yes, but in order to reasonably meet the intent of this project purpose the alternatives must consistently and reliably deliver more water than the No Action/No Project alternatives. All of the EIR/S alternatives fail to reasonably meet this purpose as they do not deliver significantly more (e.g. 10% more like other flow-related significance criteria) water than the No Action/No Project.	This comment states that the proposed project and new alternatives fail to meet its stated purpose. This comment was responded to previously in Comment letter RECIRC 2651, Comment 43, Volume 2, Final EIR/EIS. Again, the commenter's interpretations of the project purpose, as well as the manner in which the commenter applies that purpose to the proposed project and alternatives, are subjective and are not binding on DWR or Reclamation, which interpret and apply the purpose differently.
Central Delta Water Agency	57	r) The Proposed Project and new alternatives do not reasonably meet the need to improve conditions for listed fish species. "There is an urgent need to improve the conditions for threatened and endangered fish species within the Delta." The Proposed Project and new alternatives fail to meet this project need as the Water Fix does not contribute to the protection and restoration of fish species and habitat and in fact results in the degradation of water quality and adversely modifies designated critical habitat for listed fish species. The EIR/S failed to consider other alternatives such as an aquatic species only HCP/NCCP that included fish criteria compliant fish screens on Clifton Court Forebay SWP intakes which would have fully met this stated project need.	This comment states that the proposed project and new alternatives fail to improve conditions for listed fish species. This comment was responded to previously in Comment letter RECIRC 2651, Comment 44, Volume 2, Final EIR/EIS. The commenter's interpretations of the project need, as well as the manner in which the commenter applies that project need to the proposed project and alternatives, are subjective and are not binding on DWR or Reclamation, which interpret and apply the project need differently.
Central Delta Water Agency	58	s) The Proposed Project and new alternatives do not reasonably meet the need to improve water supply for increased demands or to address water supply reliability, water quality or aquatic habitat. "Improvements to the conveyance system are needed to respond to increased demands upon and risks to water supply reliability, water quality, and the aquatic ecosystem." None of the EIR/S project alternatives deliver significantly more water so they fail to meet this project need to respond to increased demands. The Proposed Project and new alternatives do not include an HCP/NCCP so there is no assurance of water supply reliability from new environmental operational constraints from new listed species or from degradation in conditions to existing listed species so they fail to meet this project need. Water supply reliability from earthquake risk has only been partly addressed by any of the BDCP alternatives	This comment states that the proposed project and new alternatives fail to improve conditions for listed fish species. This comment was responded to previously in Comment letter RECIRC 2651, Comment 45, Volume 2, Final EIR/EIS. Again, the commenter's interpretations of the project need, as well as the manner in which the commenter applies that project need to the proposed project and alternatives, are subjective and are not binding on DWR or Reclamation, which interpret and apply the project need differently.

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		(only addressed risks in the delta and not elsewhere and shifted one source of risk for another new risk) and could be better and more fully addressed by other project alternatives (e.g. upstream and downstream storage). All of the EIR/S project alternatives result in a degradation to water quality as compared to the No Action/No Project so they all fail this project need. The Proposed Project and new alternatives do not respond to increased demands on the aquatic ecosystem as the project makes no improvements to the system other than compensatory mitigation of the impacts from implementing the project so these alternatives also fail to meet this project need.	
Central Delta Water Agency	59	We realize the comments on the EIR/S Purpose, Need and Project Objectives are repetitive, but the source material of this section of the EIR/S was repetitive. With these comments, we have demonstrated that each and every one of the stated Purpose, Need, and Project Objective are not reasonably (or in most cases at all) met by the Proposed Project and new alternatives of the California Water Fix. We have identified several project alternatives in public scoping, and public comments on the EIR/S which do more reasonably and completely meet these criteria, but they were not analyzed in the EIR/S. With the Proposed Project, new alternatives and original alternatives not meeting the Purpose, Need or Project Objectives and with other proposed alternatives more reasonably meeting the purpose and need and objectives, but were not analyzed in the Water Fix is a failed project and the EIR/S is deficient and incomplete. The Water Fix response to comments indicates that they have modified the purpose and need and project objectives and claims that the Proposed Project and new alternatives do meet these new purpose and needs. If it is true the purpose and need have been modified, these have never been subject to public comment and they have not been published in a revised public notice.	This comment summarizes prior comments in the letter. In addition, regarding purpose and need, This comment was responded to previously in Comment letter RECIRC 2651, Comment 29, Volume 2, Final EIR/EIS. See also Final EIR/EIS, Appendix 3A and Master Response 4: Alternatives Development.
Central Delta Water Agency	60	4) The FEIR/S introduces material new information - The FEIR/S includes numerous analyses and disclosures which were deferred from the PDEIR/S and RDEIR/S. Following are a couple selected examples identified from reviewing a little over 100 responses to comments from the thousands of comment responses. a) FEIR/S Comment 2651, 29 response - "The project objectives and purpose and need statement have been revised somewhat to reflect the change in project approach mentioned in this comment. The RDEIR/SDEIS's underlying project purpose is now to make physical and operational improvements to the system to restore and protect ecosystem health, water supplies of the SWP and CVP south of the Delta and water quality within a stable regulatory framework, consistent with statutory and contractual obligations." The project purpose and need and project objectives have been revised, but not renounced or provided opportunity for the public to comment on them. Saying that they were "somewhat altered" when half of the core purpose of the project was dropped is a significant and misleading understatement. An altered purpose and need is fundamental material new information in the FEIR/S is something that NEPA and CEQA requires recirculation of the EIR/S for public comment.	Refinements made to the RDEIR/SDEIS found in the Final EIR/EIS are minor and would not require recirculation. This comment does not raise any substantive new environmental information or analysis that was not previously addressed in the Final EIR/EIS. See also Final EIR/EIS, Volume 2, Master Response 46: Recirculation and Scoping.
Central Delta Water Agency	61	b) FEIR/S Comment 2651, 29 (and 71) response - "The RDEIR/SDEIS discloses slightly revised project objectives and purpose and need statement..." This is an untrue statement as the Purpose and Need and Project Objectives in the RDEIR/S were specifically identified by the Water Fix as not having been altered from the initial DEIR/S. If the purpose and need and project objectives have been modified, it was as new material information in the FEIR/S.	Refinements made to the RDEIR/SDEIS found in the Final EIR/EIS are minor and do not require recirculation. Case law allows agencies to refine their project objectives without recirculation. (See, e.g., <i>Habitat & Watershed Caretakers v. City of Santa Cruz</i> (2013) 213 Cal.App.4th 1277, 1300.) This comment does not raise any substantive new environmental information or analysis that was not previously addressed in the Final EIR/EIS.
Central Delta Water Agency	62	c) FEIR/S Comment 2651, 35 response - "The Final EIR/EIS included quantitative impact analyses of changes in conditions between Existing Conditions and the No Action Alternative and Alternatives 2D, 4A, and 5A due to climate change and sea level rise at Years 2025-2030 period." These analyses were not previously provided for public comment in the REIR/S and this	Refinements made to the RDEIR/SDEIS found in the Final EIR/EIS are minor and would not require recirculation. This comment does not raise any substantive new environmental information or analysis that was not previously addressed in the Final EIR/EIS.

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		is material new information in the FEIR/S. The response also claims that quantitative analysis of climate change and sea level rise was conducted for the REIR/S, which we believe to be a false statement as the late long term climate change and sea-level rise analyses were qualitative discussions based on non-climate change modeling assumption model results.	
Central Delta Water Agency	63	d) FEIR/S Comment 2651, 57 response - "Master Response 16 describes what could happen if a levee broke from a seismic or other event. Additional information is also provided in Appendix 3E, Potential Seismic and Climate Change Risks to SWP/CVP Water Supplies." This is material new information in the FEIR/S on the impacts of the project under conditions that are mandated for analysis by California Water Code. These material new analyses and impacts must be recirculated in a revised draft for public comment.	Refinements made to the RDEIR/SDEIS found in the Final EIR/EIS are minor and would not require recirculation. This comment does not raise any substantive new environmental information or analysis that was not previously addressed in the Final EIR/EIS.
Central Delta Water Agency	64	e) FEIR/S Comment 2651, 72 response - "Appendix 3A of the Final EIR/EIS was updated to discuss how Alternative 4A, 2D and SA meet the alternatives screening criteria." This represents additional new material information in the FEIR/S that the public has not been allowed the adequate opportunity to comment on as required by NEPA and CEQA.	Refinements made to the RDEIR/SDEIS found in the Final EIR/EIS are minor and would not require recirculation. This comment does not raise any substantive new environmental information or analysis that was not previously addressed in the Final EIR/EIS.
Central Delta Water Agency	65	f) FEIR/S Comment 2651, 87 response - "The environmental analysis in this Final EIR/EIS is presented to disclose significant environmental impacts and provide mitigation measures to reduce these effects to acceptable levels." Again, this response identifies new material information that has not been provided adequate opportunity for public comment.	Refinements made to the RDEIR/SDEIS found in the Final EIR/EIS are minor and would not require recirculation. This comment does not raise any substantive new environmental information or analysis that was not previously addressed in the Final EIR/EIS.
Central Delta Water Agency	66	g) FEIR/S Comment 2651, 108 response - "In the Final EIR/EIS Alternative 4A CALSIM II and DSM2 modeling, this sweeping velocity restriction was considered in estimating the diversion at the north Delta intakes. DSM2 considers this sweeping velocity restriction on a tidal timescale. The analysis of effects described in the EIR/EIS was based on this modeling." This response clearly indicates that new modeling and analysis were done in the FEIR/S. It also misrepresents DSM2 as an operations model, when it is only a water quality model. Without time and access to the modeling and analysis done, as the public, we are being denied our rights under NEPA and CEQA to comment on the project and material new information included in the environmental document.	Refinements made to the RDEIR/SDEIS found in the Final EIR/EIS are minor and would not require recirculation. This comment does not raise any substantive new environmental information or analysis that was not previously addressed in the Final EIR/EIS. The inclusion of new modeling in a final EIR does not trigger recirculation, provided that the new modeling does not reveal new significant effects or any substantial increase in the severity of a previously-disclosed effect. (See, e.g., <i>San Francisco Baykeeper v. California State Lands Commission</i> (2015) 242 Cal.App.4th 202, 224-225; <i>Beverly Hills Unified School Dist. v. Los Angeles County Metropolitan Transportation Commission</i> (2015) 241 Cal.App.4th 627, 660-666.)
Central Delta Water Agency	67	h) FEIR/S Comment 2652, 16 comment - "There is a large portion of the tunnel muck disposal area on Boulidin Island that is not represented. This map is the only place where the project discloses the discrete footprint of the impacts and a significant area of the impacts has been omitted from the maps. The map must be revised to disclose the exact location of all of the areas of the project impact and the public be allowed to review and comment upon it." Response for Comment 2652, 15 and 55 - "This portion of the map book has been revised." The public must be allowed to comment on this material new information only now disclosed in the FEIR/S.	Refinements made to the RDEIR/SDEIS found in the Final EIR/EIS are minor and would not require recirculation. This comment does not raise any substantive new environmental information or analysis that was not previously addressed in the Final EIR/EIS.
Central Delta Water Agency	68	i) FEIR/S Comment 2652, 18 response - "Please refer to Final EIR/EIS Appendix 3B (Environmental Commitments), Section 3B.2.8 "Develop and Implement a Barge Plan", as well as "Mitigation Measure TRANS-1 a: Implement Site-Specific Construction Traffic Management Plan" in Chapter 19, Transportation, for additional information regarding barge construction impacts." This is all material new information only now introduced in the FEIR/S to address some of the deficiencies and omissions of the REIR/S. NEPA and CEQA both require that the public be provided the opportunity to comment on new material information.	Refinements made to the RDEIR/SDEIS found in the Final EIR/EIS are minor and would not require recirculation. This comment does not raise any substantive new environmental information or analysis that was not previously addressed in the Final EIR/EIS.
Central Delta Water Agency	69	j) FEIR/S Comment 2652, 21 response - "The area identified is for transmission tower relocation and was inadvertently omitted from the RDEIR/SDEIS map books. This oversight has been corrected for this Final EIR/EIS." This is all material new information only now introduced in the FEIR/S to address some of the deficiencies and omissions of the REIR/S.	Refinements made to the RDEIR/SDEIS found in the Final EIR/EIS are minor and would not require recirculation. This comment does not raise any substantive new environmental information or analysis that was not previously addressed in the Final EIR/EIS.

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Central Delta Water Agency	70	k) FEIR/S Comment 2652, 22 (and 24) response - "In the Final EIR/EIS the description of the proposed project, Alternative 4A, was modified to include slurry wall installation to protect local groundwater conditions under construction. Slurry walls would be constructed around the construction site at the intakes, tunnel shafts, and forebays to reduce the effect of dewatering wells. No dewatering would be required along the tunnel alignment. The effects on groundwater at locations with slurry wall installations would not result in significant effects as compared to Existing Conditions. Please see slurry wall environmental commitments in Appendix 3B which are included in the project design. Mitigation measures have been identified in the EIR/EIS to reduce the impacts to less than significant as compared to Existing Conditions. Mitigation Measures AG-1, GW-1, GW-S, and WQ-11 will reduce the impacts to a level of less than significant." The FEIR/S has introduced significant material new information from those provided for public comment in the DEIR/S or REIR/S by changing the project description, performing additional analysis, making new impact calls and applying new mitigations.	Refinements made to the RDEIR/SDEIS found in the Final EIR/EIS are minor and would not require recirculation. See the discussion on groundwater impacts in section 3.1, of the Developments after Publication of the Proposed Final Environmental Impact Report. This comment does not raise any substantive new environmental information or analysis that was not previously addressed in the Final EIR/EIS.
Central Delta Water Agency	71	l) FEIR/S Comment 2652, 37 response - "Updated modeling was completed for the Final EIR/S for Alternatives 2D, 4A, and 5A without habitat restoration." This is material new information that must be provided adequate opportunity for public comment as required by NEPA and CEQA. In conclusion regarding material new information, the FEIR/S is saying that it modified the Purpose and Need and Project Objectives, changed maps, conducted additional modeling and analysis, made new impact calls and proposed new mitigations in the FEIR/S after the RDEIR/S. The public has not been provided the opportunity to review or comment upon any of this material new information. This is in violation of both NEPA and CEQA requirements for public review and access. The FEIR/S must be recirculated as a public draft for comment.	Refinements made to the RDEIR/SDEIS found in the Final EIR/EIS are minor and would not require recirculation. This comment does not raise any substantive new environmental information or analysis that was not previously addressed in the Final EIR/EIS.
Central Delta Water Agency	72	5) Water Quality impacts - These include increases in the severity, frequency and geographic extent of DO sags, salinity tolerance exceedances, toxic algal blooms, etc. - Water quality degradation from the project adversely modifies designated critical habitat of listed species. A number of the analyses to quantify and disclose this impact have been omitted from the EIR/S or the topics have been subjectively and incompletely addressed. These analytical deficiencies include: a) Missing analyses - The EIR/S failed to utilize available and suitable DO models to analyze dissolved oxygen project impacts.	This section describes the commenter's view that the water quality impact analysis was deficient. It does not raise any new environmental issues which were not discussed in the Final EIR/EIS. Please refer to Final EIR/EIS, Volume 2, Master Response 14, Water Quality, for more information.
Central Delta Water Agency	73	b) Errors in modeling assumptions - Our previous (and unaddressed in the FEIR/S) comments identify baseline mischaracterizations, assumptions that are inconsistent with the project description, e.g. Suisun Marsh Salinity Gate operation, unspecified source of "supplemental" water releases and no impact analyses of these additional water sources, etc.	This section describes the commenter's view that errors were made in modeling assumptions. It does not raise any new issues which were not discussed in the Final EIR/EIS. For more information, please refer to Final EIR/EIS, Volume 2, Master Response 30, Modeling.
Central Delta Water Agency	74	c) Interpolation of different scenario modeling results for the impact analysis of the Proposed Project which had different operational conditions and the interpolation rationale was not disclosed; inconsistency between water year type operating rules under the modeling vs. operations that occur in practice (i.e. operating to a different water year type operating rules even though hydrologic conditions meet a different water year type criteria), use of truncated periods of hydrologic record (16 years instead of the available 82) that contain unrepresentative proportions by water year type which skews analytical results and interpretation, sea level and climate change scenarios not included in late long term modeling, etc.	A number of comments raised the opinion that alternative modeling assumptions or models should have been different than what was in modeling used in the analysis (ex. RECIRC 2508-6, RECIRC 2510-22, RECIRC 2511-2) which were addressed in the Final EIR/EIS. This section describes the commenter's view that errors were made in modeling assumptions. This comment does not raise any substantive new environmental information or analysis that was not previously addressed in the Final EIR/EIS. For more information, please refer to Final EIR/EIS, Volume 2, Master Response 30, Modeling. Although Master Response 14, Water Quality, does not specifically explain why DSM2 uses a 16-year hydrological period rather than an 82-year period, the EIR/EIS itself does. On page 8-142, Chapter 8 (Water Quality) of the Final EIR/EIS says the following: DSM2 was utilized to simulate the 16-year, 1976–1991 hydrologic

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			<p>period of record. This hydrologic period of record contains a sequence of water years that contains all water year types: wet, above normal, below normal, dry, and critical. This hydrologic period is bracketed at each end by two critical years: 1976 and 1977 at the beginning of the period and 1990 and 1991 at the end of the period. This hydrologic period also contains an extended drought period, 1987–1991. Additional information regarding the selection of the simulation period is provided in Appendix 5A, Section D (Additional Modeling Information).</p> <p>At the very end of Appendix 5A, Section D, is an August 2013 internal DWR memorandum in which DWR’s leading modelers explain at length why the using a 16-year period is actually more accurate than using an 82-year period. (See Final EIR, Appendix 5A, Section D, pp. 5A-D208 – 5A-D217.) According to this memo, “the hydrology that is used in the CalSim simulations that provides input to DSM2 is not as accurate as in the 16-year period.” The memo further explains that</p> <p>in general the quality of hydrologic data is less reliable the further back in time one goes. The input hydrology for the 82-year CalSim simulation period consists of good gage data from about the 1950’s to 2003; however, this data only provides a “best estimate” of data from the 1950’s back to 1922. For CalSim, which is run on a monthly time-step and analyzes system performance, it helps to have more data with which to evaluate the performance. Traditionally, the early period has been thought to be desirable to simulate for the evaluation of system performance because it contains an extended drought period (1928 – 1934). There is also, however, an extended drought period (1987 – 1991) in the more recent years with more accurate gage data, which is used in DSM2 as discussed above. The driest two-year drought also occurs in the later period with more accurate gage data. Thus, while using estimated input data allows for longer simulations, the data for the early years of simulation (1922 – 1950’s) is acknowledged to be of lower quality. In contrast, DSM2 models the 16-year period with recent high quality data and includes hydrologic variability similar to the 82-year period, as discussed above.</p> <p>(Final EIR/EIS, Appendix 5A, Section D, p. 5A-D212.)</p>
Central Delta Water Agency	75	d) New modeling was conducted and presented in the FEIR/S. Presumably the new modeling was done to address deficiencies in the REIR/S and impact calls were altered due to this new information. The public has not been provided an opportunity to review and comment on this material new information as NEPA and CEQA require.	<p>DWR maintains that refinements made to the RDEIR/SDEIS found in the Final EIR/EIS are minor and would not require recirculation. See Master Response 30, Volume 2 of the Final EIR/EIS, regarding modeling in the Final EIR/EIS.</p> <p>The inclusion of new modeling in a final EIR does not trigger recirculation, provided that the new modeling does not reveal new significant effects or any substantial increase in the severity of a previously-disclosed effect. (See, e.g., <i>San Francisco Baykeeper v. California State Lands Commission</i> (2015) 242 Cal.App.4th 202, 224-225; <i>Beverly Hills Unified School Dist. v. Los Angeles County Metropolitan Transportation Commission</i> (2015) 241 Cal.App.4th 627, 660-666.)</p>
Central	76	6) Alternatives not analyzed due to inconsistently applied and flawed alternatives screening	This comment states that there are alternatives that were erroneously screened

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Delta Water Agency		<p>criteria. The REIR/S states that there is no reason for the restriction of the actions of the project to be limited to the delta without the HCP/NCCP yet several project alternatives were previously excluded from consideration due to this arbitrary and capricious geographic constraint. The FEIR/S states (comment 2651, # 78) " ... the Plan Area identified for BDCP alternatives in the Draft EIR/EIS was retained for non-HCP alternatives (including Alternative 4A) to maintain consistency across alternatives on the area within the Delta that is evaluated." So the EIR/S is saying that the previous rationale for excluding alternatives from consideration due to the original arbitrary and capricious geographic boundary is no longer relevant with the scope change of the project, but for "consistency" they will continue not to consider some alternatives which better meet the project purpose and need which were only excluded based on their geographic location outside of the delta. Some alternatives that were not analyzed much more reasonably met the purpose, need and project objectives than the Proposed Project and current alternatives. Several of these should likely become the LEDPA as compared to the Proposed Project. Alternatives that were dismissed from further consideration and full analysis in the EIR/S due to inconsistent application of screening criteria and flawed and capricious geographic location screening criteria include, but are not limited to: HCP/NCCP of aquatic species only, fish criteria compliant fish screens on Clifton Court Forebay with CVP intake plumbed into it, Western Delta Intakes, Distributed Central Delta Intakes, Sacramento Deep Water Ship Canal as conveyance, Upstream and/or downstream storage, etc. According to the FEIR/S comment 2651, #104 the fish criteria compliant fish screens at Clifton Court were dismissed from further consideration at alternatives screening due to "Screening the intakes at Clifton Court Forebay was analyzed during the water conveyance alternative development process and is described in the 2013 Public Draft EIR/EIS, Appendix 3A. This alternative was eliminated from further evaluation because initial results of recent studies, including information included in the recent NMFS biological opinions, supported a phased approach that would emphasize improvements to operations of fish handling facilities and reduced predator potential within Clifton Court Forebay prior to further analysis of installation of fish screens." This is a screening criteria that was not applied to any other alternative nor is this a relevant rationale to dismiss an otherwise functional alternative that meets the project purpose and need. A report, for a different project, for a different purpose, from a non-lead agency that merely expresses a preference of one investigation prior to another is not a reasonable rationale for excluding an otherwise viable alternative from consideration.</p>	<p>out from further consideration due to an "arbitrary" geographic constraint. The non-HCP alternatives involve fewer acres of restoration as mitigation for construction and operation of the water conveyance facilities, but those areas would still fall within the Plan Area that had been analyzed for HCP alternatives. The alternatives that were excluded from consideration were entirely outside of the Delta. See Final EIR/EIS Appendix 3A and Master Response 4: Alternatives Development.</p> <p>This comment does not raise any substantive new environmental information or analysis that was not previously addressed in the Final EIR/EIS.</p>
Central Delta Water Agency	77	<p>7) Alternatives are not analyzed at a Project Level of Detail - Missing project level detail includes (but are not limited to): daily water operations of the intakes (tidal operations and impacts); in-water excavation plans including location, size, timing, volumes and equipment used; cofferdams locations, size, number of sheet piles, and equipment used; tunnel muck volumes and disposal distribution; tunnel muck contaminant characterization and disposal plans; tunnel muck and construction materials haul volumes and route; construction equipment use, location and timing; cement volumes by batch plant location, habitat mitigation designs; number of workforce by timing by location; mitigation quantification; wildlife surveys on only some affected construction footprint, etc. Mitigations are proposed with no supporting descriptions or substance, e.g. Storm Water Prevention Plan, Erosion Control and Sediment Control Plan, Reusable Tunnel Material Management Plan, Fish Rescue Plans, Fish Predation Reduction Plan, Dredging Plan, etc. Noise models did not include terrain, ground cover or structures. The clearing and grubbing schedule and equipment was not disclosed or analyzed. FEIR/S comment 2652, #19 Response - "Details about the barge and tugboat size were not included ..." FEIR/S comment 2652, #19 Response - "The project proponents will consult relevant parties, such as landowners, reclamation districts, flood protection agencies, federal and state agencies with jurisdiction in the Delta, and counties, in developing site-specific spoil, ATM, and dredged</p>	<p>As stated in Final EIR/EIS, Volume 2, Master Response 2, a document must include sufficient detail so that the environmental consequences of an action can be properly understood and evaluated by the decision-makers and the public. Both CEQA and NEPA contemplate that such review is necessarily limited by the "rule of reason" and by what can feasibly be achieved under the circumstances of a particular project or action. The level of detail that is reasonable or feasible for a project as large and complex as the California WaterFix is, naturally, not the same as what could reasonably be expected for a smaller, less complex project. This comment does not raise any substantive new environmental information or analysis that was not previously addressed in the Final EIR/EIS.</p> <p><i>In Citizens for a Sustainable Treasure Island v. City and County of San Francisco</i> (2014) 227 Cal.App.4th 1036, 1048, the Court of Appeal explained that, regardless of the label given to an EIR by a lead agency, the "courts strive to avoid attaching too much significance to the titles in ascertaining whether a legally adequate EIR has been prepared for a project." The court went on to say that "the 'fact that this EIR is labeled a "project" rather than a "program" EIR matters little...' for purposes</p>

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		<p>material reuse plans." The FEIR/S does not include site specific spoil, RTM and dredged material plans. All of these project elements are part of the construction of the conveyance, but they are not disclosed at a site specific or project level of detail. Therefore any construction-related permits for these activities must be subject to a subsequent environmental document and public comment before these permits are issued. Construction dewater locations, volumes, timing, water treatment and discharge locations were not identified. There is no equipment sanitation procedure described for oil contaminants, weeds and invasive species to prevent their transport from site to site. Location and number of piles to be driven were not identified. Even when specific numbers are provided the range given is so broad as to be meaningless to a project level impact analysis, e.g. "bank protection would be from 100' to 2,200 ft" which is a range of 21 times.</p>	<p>of its sufficiency as an informative document." (<i>Ibid.</i>) "The level of specificity of an EIR is determined by the nature of the project and the "rule of reason" [citation], rather than any semantic label accorded to the EIR.'" (<i>Ibid.</i>) Thus, "it is unconstructive to ask whether the EIR provided 'project-level' as opposed to 'program-level' detail and analysis. Instead, [the courts] focus on whether the EIR provided 'decision makers with sufficient analysis to intelligently consider the environmental consequences of the project.'" (<i>Id.</i> at p. 1052.) If the answers to these questions are affirmative, "the EIR is legally sufficient, regardless of whether it is a project or a program EIR." (<i>Ibid.</i>)</p>
Central Delta Water Agency	78	<p>8) The Water Fix project is not the same project as the BDCP. The BDCP NOP and NOI don't describe the Water Fix project - see issue 9. The dropping of the HCP/NCCP from the Water Fix is in direct violation of the BDCP planning agreements and other water codes (see issue #1) which require an HCP/NCCP. The Water Fix does not include the BDCP required "co-equal" goals of habitat restoration and conveyance, it only includes conveyance so it only meets 50% of the core portion of the BDCP project scope. The Water Fix claims that the other half of the co-equal goal is being met by a separate project, California EcoRestore. This claim of the other half of the project core objective being met by a separate project is further evidence that the Water Fix project is not the same project as was noticed, scoped and disclosed in the BDCP process. At this point no one would believe that the BDCP noticing, scoping and draft environmental documents cover the California EcoRestore project, but the Water Fix EIR/S is telling us to that it does for the Water Fix project. This is not true as both the Water Fix and Eco Restore are fundamentally different projects than the BDCP. The analysis of the BDCP purpose and need and project objectives in issue# 3 demonstrates that the Water Fix Proposed Project meets almost none of the stated Purpose, Need or Project Objective of the BDCP. Water Fix disbanded the BDCP Steering Committee which was the BDCP project proponent, so the project proponents for the Water Fix (and lead and cooperating agencies) are not the same as the BDCP. The Water Fix project is not, by any measure, the same project as the BDCP. Since the Water Fix project is not the same as the BDCP, the Water Fix project has not completed the required public noticing, scoping or public draft environmental documents.</p>	<p>Please see Final EIR/EIS, Volume 2, Master Response 4 and Master Response 46 on why inclusion of the non-HCP alternatives within this document was appropriate. On page 2 of the Executive Summary, Final EIR/EIS, the following language explains how the California WaterFix, as well as new sub-alternatives 2D and 5A were formulated in response to public input and represent modifications to earlier approaches, rather than whole new approaches:</p> <p>By July 2014, at the end of the public review period, the Lead Agencies had received numerous comments on the proposed BDCP from other agencies and members of the public. Many of these comments included concrete suggestions regarding how, from the commenters' perspectives, the project (i.e., Alternative 4, the BDCP) could be improved. For example, some people urged the Lead Agencies to reduce the level and scope of the construction activities, as well as the sheer size of the proposed facilities, as means of reducing air quality and noise impacts. Other commenters noted that Alternative 4 as then envisioned included substantial amounts of construction activity within Staten Island, which is prime habitat for the greater sandhill crane. Many commenters argued that, because the proposed project would lead to significant, unavoidable water quality effects, DWR could not obtain various approvals needed for the project to succeed (e.g., approval by the State Water Resources Control Board of new points of diversion for north Delta intakes). Yet others suggested that DWR should pursue a permit term shorter than 50 years due to the levels of uncertainty regarding both the future effects of climate change and the long-term effectiveness of habitat restoration in recovering fish populations. Still other comments suggested that the proposed conveyance facilities should be separated from the habitat restoration components of the BDCP, with the latter to be pursued separately.</p> <p>Consistent with this public input, the Lead Agencies have substantially modified Alternative 4 to reduce its environmental impacts and have formulated new sub-alternatives that would seek incidental take authorization for a period of far less than 50 years, and would include only limited amounts of habitat restoration.</p> <p>This comment does not raise any substantive new environmental information or analysis that was not previously addressed in the Final EIR/EIS.</p>

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Central Delta Water Agency	79	9) NOP and NOI disclosures for the BDCP are inadequate for the Water Fix The BDCP NOI and NOP do not describe or disclose any of the features of the Water Fix Proposed Project. The Water Fix project description omissions include a tunnel conveyance, and tunnel muck disposal areas (which is a substantial portion of the project footprint). The NOI and NOP mostly describe project components that are not part of the Water Fix Project. These NOI and NOP descriptions that do not apply to the Water Fix include a HCP and NCCP, ecosystem restoration, species and habitat goals, and covered species. Of the 7 bullets of project objectives identified in the NOI and NOP, 5 of them do not apply to the currently proposed Water Fix project. That means that only 28% of the NOP and NOI project description still applies to the Water Fix. The Water Fix FEIR/S claims the project Purpose and Need and Project Objectives were modified in the REIR/S. If they were, that is further evidence that the public noticing of the BDCP project is not representative of the California Water Fix project. Water Fix is not adequately noticed by the BDCP NOI and NOP and the Water Fix project must be renoticed and rescoped.	This comment relates to noticing requirements. See Response to comment 78 above and Master Response 46 in Volume 2 of the Final EIR/EIS regarding Recirculation and Scoping.
Central Delta Water Agency	80	10) Failure to utilize best available science and flawed analyses. The EIR/S failed to utilize available information and analytical tools. As an example, there are several existing dissolved oxygen (DO) modeling tools that the analysis ignored and instead addressed DO in a rationally flawed and incomplete qualitative discussion. The EIR/S also failed to conduct 2D or 3D modeling of water velocities at the intakes to analyze fisheries entrainment or impingement or intake sediment load analysis, etc. There are a number of instances when impact conclusions reached are not supported by the underlying analysis and discussion. Some impact conclusions are contradictory to the supporting analysis and discussion. All DEIR/S impact conclusions of "No Determination" and "Uncertain" were changed to "No Impact" in the RDEIR/S with no other changes in analysis, discussion or supporting rationale.	<p>Please see Final EIR/EIS, Volume 2, Master Response 30. The RDEIR/S/DEIS discussed why the changes described in the comment occurred and why this decision was sufficient. Although the ESA requires the use of best available science, the same is not true of NEPA and CEQA. Fundamentally, CEQA requires agencies to support their determinations with substantial evidence. For NEPA, the Administrative Procedure Act only requires that NEPA actions not be arbitrary, capricious, and wholly lacking in evidentiary support.</p> <p>This comment does not raise any substantive new environmental information or analysis that was not previously addressed in the Final EIR/EIS.</p>
Central Delta Water Agency	81	11) Predecisional Process that precluded outcomes other than the proposed project. The EIR/S, in all phases of development, was rife with predecisional language, especially in the Purpose and Need and Project Objectives and in the alternatives development and screening process. The purpose and need capriciously limited any action of the project or alternative to the statutory delta geographic area. The rationale given was that it was to focus the HCP/NCCP actions to the area most affected by the CVP/SWP operations. This logic was flawed and we have submitted comments addressing these flaws. The Water Fix no longer includes the HCP/NCCP so even their flawed logic in limiting the geographic scope of project actions to meet the purpose and need is no longer applicable. Regardless, the Water Fix failed to consider any project alternatives outside of the delta. This is because the project had decided prior to the analysis, that they would not entertain project concepts outside of the delta. The project violated even this precept when it included operation of the Suisun Marsh Salinity Gates in the proposed project operations as this facility is located outside of the statutory delta. In addition to pervasive predecisional language and process in the EIR/S, there are numerous predecisional public statements by agency officials with authority to direct the development of the EIR/S and by officials with decision making authority for the NOD and ROD. This predecisional bias towards a specific outcome prior to the conclusion of the environmental analysis process and certification of the documents is further evidenced by unauthorized irretrievable commitment of resources, e.g. formation and staffing of DHCCP and DCE for preferred alt conveyance, land condemnation process only for the proposed project conveyance route, pursuit of permits (SWRCB, USACE) for only preferred alt, etc. This predecisional bias also resulted in an unequal level of effort and level of detail between alternatives, e.g. ground surveys for preferred alternative conveyance route but not others, engineering detail on tunnels not on other alts, sensitivity analyses done for preferred alt and not others, etc. NEPA requires an equal level of	Please see Master Response 4, Volume 2 of the Final EIR/EIS for more information on alternatives development. This comment does not raise any substantive new environmental information or analysis that was not previously addressed in the Final EIR/EIS.

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		treatment between all of the project alternatives. The FIER/S must be revised to remove all predecisional language and to bring all alternatives to an equal level of analysis and information disclosure. This revised document must be recirculated for public comment.	
Central Delta Water Agency	ATT 1	CDWA John Leahigh SWRCB DWR Ex61 5-31-16	This attachment is testimony of John Leahigh presented for the hearing proceedings regarding petition filed by the Department of Water Resources and U.S. Bureau of Reclamation requesting change in point of diversion for the California WaterFix. This attachment does not raise any substantive new information or analysis that was not previously addressed in the Final EIR/S.
Central Delta Water Agency	ATT 2	CDWA DWR California's Most Significant Droughts Feb 2015 pg31 1-30-16	This attachment is Exhibit SDWA-173 presented for the hearing proceedings regarding petition filed by the Department of Water Resources and U.S. Bureau of Reclamation requesting change in point of diversion for the California WaterFix. See Section 4, State Water Board Change Petition Process, Developments after Publication of the Proposed Final Environmental Impact Report, for discussion on State Water Recourses Control Board hearing materials.
Central Delta Water Agency	ATT 3	CDWA Contra Costa Water District DWR agmt 3-24-16	This attachment is Exhibit DWR-334 presented for the hearing proceedings regarding petition filed by the Department of Water Resources and U.S. Bureau of Reclamation requesting change in point of diversion for the California WaterFix. See Section 4, State Water Board Change Petition Process, Developments after Publication of the Proposed Final Environmental Impact Report, for discussion on State Water Recourses Control Board hearing materials.