

Common Response 7.1

General CEQA and Approach to the Analysis

Introduction

This introduction provides important context to this common response. A similar introduction is provided in each common response to ensure that the reader has the appropriate context when reviewing common responses. For ease of reference, a table of contents is included after this introduction to guide readers to specific subject areas.

Protecting the San Francisco Bay/Sacramento-San Joaquin Delta (Bay-Delta) watershed and its many beneficial uses of water is one of the State Water Resources Control Board's (State Water Board) primary responsibilities and top priorities. In response to declines of several native aquatic species since the Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Watershed (Bay-Delta Plan or Plan) was last comprehensively updated, the State Water Board commenced a process to update the Bay-Delta Plan for the Sacramento River and its tributaries, Delta eastside tributaries (including the Calaveras, Cosumnes, and Mokelumne Rivers), and Delta for the reasonable protection of fish and wildlife beneficial uses, referred to as the Sacramento/Delta Update to the Bay-Delta Plan. The Bay-Delta Plan identifies beneficial uses of water to be protected in the Bay-Delta watershed, water quality objectives and program of implementation to achieve the reasonable protection of those beneficial uses, monitoring, evaluation, and special study provisions. The State Water Board's proposed action to update the Bay-Delta Plan is supported by a Staff Report/Substitute Environmental Document (Staff Report), which provides an evaluation of the environmental impacts and economic effects in support of consideration of different alternatives to update the Bay-Delta Plan to achieve reasonable protection of fish and wildlife beneficial uses in the Sacramento/Delta. The Staff Report is functionally equivalent to an environmental impact report (EIR) under the California Environmental Quality Act (CEQA) but also provides the additional analyses that support the State Water Board's consideration of the action under the Clean Water Act and Porter-Cologne Water Quality Control Act (Porter-Cologne Act).

Development of the final Staff Report and final draft Bay-Delta Plan were informed by several opportunities for public comment over multiple years. This common response may address issues that were raised during any of those public comment periods. In September 2023, the State Water Board released the 2023 draft Staff Report evaluating different alternatives for the Sacramento/Delta Update to the Bay-Delta Plan for public review and comment. Following release of the 2023 draft Staff Report, the State Water Board released draft amendments to the Bay-Delta Plan in October 2024 (2024 draft Plan) for public review and comment that incorporated alternatives identified in the 2023 draft Staff Report with revisions based on public comments. The State Water Board released revised draft Plan updates in July 2025 (July 2025 revised draft Plan), but delayed public comment on that version of the Plan pending further updates, though some parties did submit public comments on the July 2025 draft. Responses to those comments are included in the Staff Report. In December 2025, the State Water Board released Chapter 13, *Revised Proposed Plan Amendments*, as a limited recirculation of the 2023 draft Staff Report (2025 partially recirculated draft Staff Report) together with the December 2025 revised draft Plan for public review and comment. Both of these documents reflect the updated proposed project, referred to as the revised proposed Plan amendments, which brings together in the Bay-Delta Plan program of

implementation a voluntary agreement (VA) pathway that incorporates commitments identified in the Healthy Rivers and Landscapes (HRL) proposal and would apply to specified HRL water rights, and a regulatory pathway based on the proposed Plan amendments that would apply to other water rights and to any HRL water rights no longer covered under the VA pathway. In August 2026, the State Water Board released a final draft Bay-Delta Plan that included refinements to the revised proposed Plan amendments based on public comments received on the December 2025 revised draft Plan. At the same time, the State Water Board released this final Staff Report, including responses to comments previously received on the draft Staff Report. The final Staff Report informs the State Water Board's consideration of adoption of the Sacramento/Delta updates to the Bay-Delta Plan.

With respect to the CEQA impact conclusions, it is important that they be understood in the context of the overall nature of the proposed project, which is intended to be a restoration action. CEQA only considers changes that could negatively impact the existing environment and does not recognize or offset negative changes with improvements that could result from an environmentally beneficial project. Here, the impacts that could potentially result from implementation of the restoration action occur in a system that has been highly altered, and the project would be expected to improve conditions for native fish and wildlife in the Sacramento/Delta watershed over time. However, the project will also result in changes in hydrology and changes in water supply that could result in some potentially significant adverse environmental impacts at certain times and locations that must be analyzed under CEQA. These potentially significant environmental impacts should be viewed in light of the overall purpose and goals of the Sacramento/Delta Update to the Bay-Delta Plan.

The State Water Board reviewed and considered all comments related to CEQA and developed this common response to address recurring comments and common themes. In particular, this common response addresses, but is not limited to, the following topics.

- General CEQA overview
- Adequacy of the project description
- Scope and level of detail
- Impact analysis
- Mitigation measures

This common response references related common responses, as appropriate, where recurring comments and common content themes overlap with other subject matter areas. For responses to comments regarding the water quality control planning process, please see Common Response 1.2, *Water Quality Control Planning Process*. For additional information on the revised proposed Plan amendments, please see Common Response 1.3, *Revised Proposed Plan Amendments*. For responses to comments concerning the Staff Report's economic analysis, including comments related to municipal water supply economic effects, please see Common Response 8.1, *Economic Analysis and Other Considerations*.

Table of Contents

Common Response 7.1 General CEQA and Approach to the Analysis.....	1
Introduction.....	1
Overview and Approach to Analysis.....	4
Project in the Context of CEQA	4
Identification and Evaluation of Reasonably Foreseeable Methods of Compliance and Response Actions	6
Baseline	9
Recirculation	10
Adequacy of the Project Description.....	12
Description of the Proposed Plan Amendments and Proposed VAs	13
Scope and Character of Project Described and Analyzed	14
Scope and Level of Detail of the Analyses.....	15
General Methods and Modeling Approach	17
Impact Analysis.....	19
Enforceability of VA and Regulatory Pathway Habitat Restoration Measures.....	21
Mitigation Measures	21
Adequacy, Deferral, and/or Feasibility	22
Impacts of Mitigation.....	25
Funding for Mitigation Measures and Replacement Supplies.....	25
References Cited.....	27

Overview and Approach to Analysis

Project in the Context of CEQA

Protecting the Bay-Delta watershed and its many beneficial uses of water is one of the State Water Board's primary responsibilities and top priorities. The Sacramento/Delta update is intended to revise the Bay-Delta Plan fish and wildlife objectives and program of implementation to address prolonged and precipitous declines of native aquatic species in the Sacramento/Delta and the ecosystem they depend on (2023 draft Staff Report, Chapter 1, *Executive Summary*, Section 1.1, *Introduction*.) In other words, the Bay-Delta Plan update is an action for protection of the environment.

CEQA authorizes the Secretary of the Natural Resources Agency to certify that an agency's regulatory program is the equivalent of CEQA review when the program meets certain criteria, including when the enabling legislation of the regulatory program includes protection of the environment among its principal purposes and contains authority for the agency to adopt rules for the protection of the environment. (Pub. Resources Code, § 21080.5) Importantly, certification by the Secretary of the Resources Agency means that the regulatory program of the state agency is exempt from CEQA's requirements for preparing EIRs, negative declarations, and initial studies if certain conditions are met.

The Secretary of the Natural Resources Agency certified the State Water Board and regional water boards' basin planning process as a "certified regulatory program" under CEQA. (Cal. Code Regs., tit. 14, § 15251, subd. (g).) Thus, the State Water Board is allowed to use a written report in lieu of an EIR or a negative declaration as the environmental analysis for its Bay-Delta Plan updates. This written report in lieu of an EIR is referred to as a substitute environmental document (SED). (Cal. Code Regs., tit. 23, §§ 3775 et seq.) The Staff Report fulfills the requirements of CEQA and the State Water Board's CEQA regulations to analyze the environmental effects of the Plan amendments, as well as requirements of the Porter-Cologne Act and other applicable requirements. The SED portion of the 2023 draft Staff Report is primarily contained in Chapters 7, 9, and 13, each titled *Environmental Analysis*, although other parts of the Staff Report also provide support and context. Please refer to Chapter 1, *Executive Summary*, for additional information on the organization of the Staff Report.

Analyzing an environmental protection project in the context of CEQA is a unique challenge. CEQA was adopted by the Legislature to maintain a quality environment for the people of California, in part by understanding the "relationship between the maintenance of high-quality ecological systems and the general welfare of the people of the state, including the enjoyment of the natural resources of the state." CEQA explains that legislation was necessary because "the capacity of the environment is limited" and "every citizen has the responsibility to contribute to the preservation and enhancement of the environment." It directs all state agencies that regulate the activities of private individuals, corporations, and other public agencies which are found to affect the quality of the environment to "regulate such activities so that major consideration is given to preventing environmental damage, while providing a decent home and satisfying living environment for every Californian." (Wat. Code, § 21000.) CEQA further directs the state to prevent "the elimination of fish or wildlife species due to man's activities, ensure that fish and wildlife populations do not drop below self-perpetuating levels, and preserve for future generations representations of all plant and animal communities and examples of the major periods of California history." (Wat. Code, § 21001.)

The State Water Board's action to update the fish and wildlife objectives in the Bay-Delta Plan fit with CEQA's broad objectives, including by addressing a precipitous decline in the aquatic ecosystem that has reduced some fish populations below self-perpetuating levels. Under CEQA, a project proponent analyzes potentially significant *adverse* impacts on environmental resources by comparing those to the existing baseline, even if that baseline is environmentally degraded and even when the project itself is environmentally beneficial. The CEQA environmental analysis does not compare the project's potentially adverse impacts on the project's environmental benefits. For example, a change in water supply to achieve improved instream flows to restore fish populations is analyzed under CEQA as a potentially significant adverse impact on agricultural resources: reduced supplies to agricultural users could affect how much farmland remains in production compared to the current baseline level. CEQA requires analysis of this impact even if the project's purpose is to help restore fish populations and water diversions for consumptive uses, including agriculture, are a cause of the fishery decline. Adverse impacts, as defined by CEQA, are the same phenomenon as the project's goal: reducing water supplies to agriculture is the mirror image of increasing instream flow.

This means that in a CEQA analysis, a more limited increment of change (i.e., less of an action to protect the environment) may be seen as causing less of an adverse impact, even though the limited change means that the project makes less progress on its actual goal of benefitting the fishery. It is therefore necessary to consider the Staff Report's CEQA analysis, and the potentially significant impacts that it analyzes, in the context of the project itself, particularly its environmental benefits, and State Water Board's mandate under Porter-Cologne to balance various factors. (Wat. Code, § 13241.) A CEQA document like the Staff Report is presumed legally adequate. (*Santa Clarita Organization for Planning the Environment v. County of Los Angeles* (2007) 157 Cal.App.4th 149, 157-158.) CEQA review need not be perfect or exhaustive. Rather, the sufficiency of environmental review should be determined "in the light of what is reasonably feasible." (Cal. Code Regs., tit. 14, § 15151; *Laurel Heights Improvement Assn. v. Regents of Univ. of California* (1988) 47 Cal.3d 376, 407 [*Laurel Heights I*]. "[A]dequacy, completeness, and a good faith effort at full disclosure" are the hallmarks of a sufficient environmental document. (Cal. Code Regs., tit. 14, § 15151.)

The substantial evidence standard applies to the agency's conclusions, findings and determinations, the scope of the analysis, the amount or type of information contained in the document, the methodology used to assess impacts, and the reliability or accuracy of the data supporting the impact conclusions. (*Chico Advocates for a Responsible Economy v. City of Chico* (2019) 40 Cal.App.5th 839, 850; *Santa Monica Baykeeper v. City of Malibu* (2011) 193 Cal.App.4th 1538, 1546 [impact assessment methodology]; *City of Long Beach v. Los Angeles Unified School Dist.* (2009) 176 Cal.App.4th 889, 898 [reliability and accuracy of data]; *Mount Shasta Bioregional Ecology Center v. County of Siskiyou* (2012) 210 Cal.App.4th 184, 199 [decision to reject suggested alternatives]; *Oakland Heritage Alliance v. City of Oakland* (2011) 195 Cal.App.4th 884, 900, 903 [choice and adequacy of mitigation measures].)

The court must uphold an agency's determination under CEQA if there is any substantial evidence in the record to support such a determination. (*Laurel Heights I, supra*, 47 Cal.3d at pp. 392-393.) "Substantial evidence" means "enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached." (Cal. Code Regs., tit. 14, § 15384, subd. (a).)

Moreover, an environmental document is valid unless any failure to comply with CEQA's requirements is shown to be prejudicial. (Pub. Resources Code, § 21005, subd. (b) ["there is no

presumption that error is prejudicial”]; *Neighbors for Smart Rail v. Exposition Metro Line Construction Auth.* (2013) 57 Cal.4th 439, 463.) Substantive errors are not prejudicial if a properly conducted analysis “would have produced any substantially different information.” (*Neighbors for Smart Rail*, 57 Cal.4th at p. 463.) Instead, an agency’s omission of information must have “deprived the public and decision makers of substantial relevant information about the project’s likely adverse impacts.” (*Id.*)

Identification and Evaluation of Reasonably Foreseeable Methods of Compliance and Response Actions

The State Water Board certified regulatory program regulations (Cal. Code Regs., tit. 23, §§ 3720–3781) provide the State Water Board’s exclusive procedural requirements for the Board’s certified regulatory programs, including the contents of the SED. The Staff Report cites the State CEQA Guidelines where appropriate and relevant to help guide or inform the CEQA analysis consistent with CEQA’s goals and standards. Pursuant to California Code of Regulations, title 23, section 3777, subdivision (b)(4), the SED must identify and include an environmental analysis of the reasonably foreseeable methods of compliance for the project. CEQA Guideline section 15144 provides that conducting an environmental analysis involves some degree of forecasting, and an agency must use its best efforts to find out and disclose all that it reasonably can. Impacts include direct impacts that are caused by the project itself, and indirect effects that could occur at a later time or further removed from the project. (Cal. Code Regs., tit. 14, § 15358.) Accordingly, the Staff Report includes evaluation of both reasonably foreseeable compliance methods and reasonably foreseeable response actions that may occur as a result.

The current update to the Bay-Delta Plan is focused on the Sacramento River and its tributaries, Delta eastside tributaries (including the Calaveras, Cosumnes, and Mokelumne Rivers), Delta outflows, and interior Delta flows in order to reasonably protect fish and wildlife beneficial uses. This area is collectively referred to as the *Sacramento/Delta watershed* or *Sacramento/Delta*. Tributaries in the Sacramento/Delta watershed are shown on Figure 7.1-1a and described in detail in Chapter 2, *Hydrology and Water Supply*. To organize the analyses, the *plan area* includes the Sacramento/Delta and continues west as water flows through the Delta and downstream through Suisun Marsh and adjoining bays, marking the brackish transition from freshwater to saltwater and the Pacific Ocean. The plan area encompasses the areas where the Bay-Delta Plan’s flow and water quality objectives and implementation measures apply, and the ecosystem that the Sacramento/Delta update to the Bay-Delta Plan is intended to protect. Water from the Sacramento/Delta is used within the watershed and is also delivered to and used in other areas of the state. Therefore, a larger *study area*, which includes plan area and the broader area in which effects could occur, is defined to ensure that environmental impacts and economic effects are evaluated in all areas where impacts may occur. A map of the plan area, the study area, and the study area regions is shown in Figure 2.8-1a of the Staff Report.

A wide range of responses and associated environmental effects could occur as a result of the project due to the degree of flexibility included in the proposed Plan amendments and the scope and complexity of Sacramento/Delta water use. To organize the environmental analysis, the evaluation of reasonably foreseeable methods of compliance and response actions that may be taken in response to the project are organized into the following categories: (1) changes in hydrology, (2) changes in water supply, (3) habitat restoration and other ecosystem projects, and (4) new or modified facilities. The evaluation of actions that may be taken in response to changes in water

supply includes other water management actions, which include groundwater use and groundwater storage and recovery/conjunctive management efforts, water transfers, water recycling, and conservation measures that are already being implemented throughout the state. Further, entities may take actions to modify or build new facilities and infrastructure to supplement or conserve surface water supplies.

These reasonably foreseeable methods of compliance and response actions are described in detail in Section 7.1.5.3, *Reasonably Foreseeable Methods of Compliance and Response Action*, and are summarized below followed by a discussion of where they are evaluated in the Staff Report.

Changes in hydrology include an increase in streamflows during some periods and a decrease in others within the Sacramento River watershed and Delta eastside tributaries regions, interior Delta flows, and Delta outflow of sufficient frequency, timing, magnitude, and duration necessary to achieve functions and processes essential to native fishes; changes in reservoir levels to meet instream flow and cold water habitat requirements, with lower reservoir levels occurring at some locations in the Sacramento/Delta; and changes in export reservoir levels and downstream flows in water bodies that receive diversion or exports.

Changes in water supply include reduced Sacramento/Delta supplies for agricultural, municipal, and wildlife refuge use. Reductions in Sacramento/Delta supplies are not expected to be uniform across the various source tributaries, and some water users would be affected more by reduced Sacramento/Delta supplies. In response to reductions in Sacramento/Delta water supplies, individual water users could choose to increase groundwater pumping as a substitute water supply, where available and not locally restricted. Additionally, other entities may implement other water management actions to offset reductions in Sacramento/Delta surface water supply, including groundwater storage and recovery, water transfers, water recycling, and water conservation.

Habitat restoration and ecosystem projects include physical habitat restoration (in-Delta and upstream tributary), fish passage improvements (screens, fishways, water temperature control devices, dam removal), predatory fish control, and aquatic invasive species control. The Plan identifies actions that other entities should take to address other ecosystem stressors, and provides a framework to incorporate both flow and complementary ecosystem projects such as physical habitat restoration into adaptive implementation, local cooperative solutions, and cold water habitat implementation. Habitat restoration and other ecosystem projects are also evaluated for the HRL habitat restoration commitments under the VA pathway.

New or modified facilities include new or modified dams/reservoirs and points of diversion; groundwater wells and groundwater storage and recovery projects; and new or modified drinking water treatment plants, including desalination plants and wastewater treatment plants to diversify water supplies and in response to reduced Sacramento/Delta supply. Other infrastructure modifications or new construction also may result in response to changes in hydrology or water supply, including new or modified boat ramps, streamflow or temperature monitoring devices, and water conservation projects such as canal lining.

Chapter 6, *Changes in Hydrology and Water Supply*, describes the changes in hydrology and supply from potential Plan amendments, using Sacramento Water Allocation Model (SacWAM) results under various flow scenarios in increments of ten from 35 percent up to 75 percent of unimpaired flow compared to baseline. These modeled scenarios are later grouped into three flow alternatives, with each alternative encompassing a range of percent unimpaired flow. The three alternatives are then compared to baseline conditions in the environmental analysis (Chapter 7) of the Staff Report.

Detailed model methods and results are presented in Appendix A1, *Sacramento Water Allocation Model Methods and Results*.

Chapter 7, *Environmental Analysis*, presents the bulk of the environmental analysis, impact conclusions, and mitigation measures. Sections 7.3 through 7.20 identify environmental impacts that may result from changes in hydrology and changes in water supply under the proposed Plan amendments (55 percent unimpaired flow, with an adaptive range from 45 to 65), including other water management actions that do not include construction. Sections 7.21, *Habitat Restoration and Other Ecosystem Projects*, and 7.22, *New or Modified Facilities*, describe and evaluate the potential impacts of construction and operation of physical habitat restoration and ecosystem projects and new or modified facilities, respectively. Mitigation measures to reduce or avoid potentially significant impacts are also described. Because the potential combination and location of future actions (e.g., habitat restoration, development of new or modified water facilities) are unknown, these are discussed at a general level with qualitative comparisons to baseline; CEQA would apply to approvals as appropriate and site-specific environmental review would likely be needed for larger construction projects.

Section 7.24, *Alternatives Analysis*, evaluates the potential impacts on changes in hydrology and water supply for additional alternatives for the Bay-Delta Plan update, including stand-alone alternatives of various flow scenarios and the proposed VAs and modular alternatives that could be layered onto the stand-alone alternatives. Many of the environmental effects of the alternatives presented are assessed in detail in the primary analyses in Sections 7.3 through 7.20, and in 7.21, *Physical Habitat Restoration and Other Ecosystem Projects*, and 7.22, *New or Modified Facilities*, for compliance methods and response actions that involve construction. Section 7.24, *Alternatives Analysis*, relies on the existing environmental analysis for efficiency and focuses on identifying any new or changed environmental impacts of each alternative as applicable.

Chapter 9, *Proposed Voluntary Agreements*, Sections 9.7.3 through 9.7.20, discuss and evaluate potential environmental impacts that may result from changes in hydrology and water supply under the proposed VA. Section 9.5, *Changes in Hydrology and Water Supply*, presents the SacWAM results for evaluation with detailed model results in Appendix G3a, *Sacramento Water Allocation Model Methods and Results for the Proposed Voluntary Agreements*. Chapter 9 incorporates by reference the environmental setting and the evaluation of other water management actions presented in Sections 7.3 through 7.20 for the proposed Plan amendments for efficiency and to avoid redundancy in the evaluation of the proposed VAs. Mitigation measures are also identified to address potentially significant impacts of the proposed VAs. Additionally, Chapter 9 incorporates by reference the environmental analyses and mitigation measures for compliance methods and response actions that involve construction presented in Sections 7.21, *Habitat Restoration and Other Ecosystem Projects*, and 7.22, *New or Modified Facilities*.

The analysis in Chapter 13, *Revised Proposed Plan Amendments*, builds upon the analysis of the proposed Plan amendments in Chapter 7, *Environmental Analysis*, the proposed VAs in Chapter 9, *Proposed Voluntary Agreements*, and the alternatives presented in the 2023 draft Staff Report, with revisions. Section 13.7, *Environmental Analysis*, provides a supplemental analysis that compares and explains the potential environmental effects that may occur due to implementation of the revised proposed Plan amendments in the context of the analyses already contained in Chapters 7 and 9 of the 2023 draft Staff Report with any necessary modifications. The supplemental analysis mainly focuses on (1) changes in hydrology, and (2) changes in water supply. Section 13.4, *Changes in Hydrology and Water Supply*, presents the SacWAM results for evaluation changes in hydrology and

changes in water supply under the revised proposed Plan amendments; detailed model results are presented in Appendix H1a2, *Sacramento Water Allocation Model Results for the Revised Proposed Plan Amendments*. Chapter 13 does not repeat the evaluation of certain reasonably foreseeable methods of compliance and response actions categories for which the impact mechanisms and impact conclusions would not be changed by the refinements under the revised proposed Plan amendments. These topics include other water management actions to offset reductions in Sacramento/Delta supply, as well as Sections 7.21, *Habitat Restoration and Other Ecosystem Projects*, and 7.22, *New or Modified Facilities*.

Impacts and mitigation measures for the reasonably foreseeable methods of compliance and response actions are summarized in Staff Report Chapter 1, *Executive Summary*, Tables 1-1, 1-2, and 1-3. Appendix H3, *Mitigation Measures for the Revised Proposed Plan Amendments*, provides detailed descriptions of all identified mitigation measures.

Baseline

CEQA generally requires a description of the physical environmental conditions in the vicinity of the project as they exist at the time the Notice of Preparation (NOP) is published (January 24, 2012 [supplemental NOP for the Sacramento/Delta update to the Bay-Delta Plan]), or if no NOP is published, at the time environmental analysis is commenced. (Cal. Code Regs., tit. 14, § 15125.) This environmental setting will normally constitute the baseline physical conditions by which a lead agency determines whether an impact is significant. Where existing conditions change or fluctuate over time, and where necessary to provide the most accurate picture practically possible of the project's impacts, a lead agency may define existing conditions by referencing historic conditions, or conditions expected when the project becomes operational, or both, that are supported with substantial evidence.

The environmental analyses utilize a quantitative and qualitative approach to compare the potential impacts to baseline conditions. For the quantitative evaluations, the Sacramento Water Allocation Model (SacWAM) is used to simulate changes in hydrology and water supply that could result from the modeled alternatives, including the VAs and proposed Plan amendments. The assumptions used for the model baseline scenario include requirements as they have been implemented in recent years in an attempt to represent the existing conditions as described in Section 6.2.1, *Baseline Assumptions*. The same modeling baseline scenario is used to help evaluate the environmental impacts of all the alternatives. The process for updating the Sacramento/Delta portions of the Bay-Delta Plan has been ongoing since 2012, when a supplemental NOP was issued for the Sacramento/Delta updates to the Bay-Delta Plan. Recent changes to Endangered Species Act (ESA) requirements for the Central Valley Project (CVP) and State Water Project (SWP) affect reservoir operations, streamflows, and Delta operations that are reflected in the various alternative scenarios, not the baseline scenario. As described in Section 9.3.6, *Points of Comparison for VA Flow Assets*, to analyze the benefits of the VAs, their flow and non-flow habitat commitments were compared to several modeled conditions: the baseline, the 2019 BiOps condition used to model the additive VA flow commitments, and the 2008-2009 BiOps condition used as the point of reference in the benefit analyses of the 2017 Scientific Basis Report and the Scientific Basis Report Supplement. In addition, please refer to Common Response 6.2, *Baseline and No Project Alternative*, for more information about the project baseline. In addition to SacWAM, other modeling and technical analyses are utilized to evaluate the environmental impacts and economic effects of the project, including the models and analyses listed in Table 7.1-1. Each of these models has its own set of modeling

assumptions and inputs. Additional discussion of modeling and technical analyses used to evaluate the environmental impacts of the project is presented in relevant chapters and sections of this Staff Report.

For qualitative analyses, baseline conditions are generally defined by the conditions present at the time the NOP was issued, or current conditions. Establishment and analysis of baseline conditions may be constrained in some instances by data availability; in these instances, the most current readily available information is used. Other analyses consider the relevance of changes in information that may have occurred since the issuance of the 2012 NOP, where appropriate.

Qualitative analyses follow an approach parallel to the quantitative analyses: they compare potential impacts to narrative descriptions of resource conditions that may vary over time. For many resources, project-related changes in resource-specific parameters could not be modeled directly, but the magnitude of effect could be inferred from changes in hydrologic conditions. For each resource area, the analyses use the same baseline for all alternatives. The CEQA baseline is described further in Section 7.1.5.2, *Baseline, Evaluation Approach, and Modeling Tools*, and of the Staff Report.

Recirculation

CEQA Guidelines section 15088.5 requires recirculation of an EIR when significant new information such as changes in the project or environmental setting is added to the EIR after public notice prior to certification of the document. Significant new information includes, for example a disclosure showing that: 1) a new significant environmental impact would result from the project or from a new mitigation measure proposed to be implemented; 2) a substantial increase in the severity of an environmental impact would result unless mitigation measures are adopted that reduce the impact to a level of insignificance; 3) a feasible project alternative or mitigation measure considerably different from others previously analyzed would clearly lessen the environmental impacts of the project, but the project's proponents decline to adopt it; or 4) the draft EIR was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded. Recirculation is not required where the new information added to the EIR merely clarifies or amplifies or makes insignificant modifications in an adequate EIR. If the revision is limited to a few chapters or portions of the EIR, the lead agency need only recirculate the chapters or portions that have been modified. (Cal. Code Regs., tit. 14, § 15088.5.)

Multiple comments on the 2023 Staff Report alleged that the Staff Report required recirculation because the project was not described in sufficient detail due to the lack of the specific regulatory text for the proposed updates to the Bay-Delta Plan. As described further in Common Response 1.3, *Revised Proposed Plan Amendments*, the project and its alternatives were described in adequate detail for the purposes of the analysis in the 2023 draft Staff Report.

Nevertheless, in December 2025, the State Water Board released Chapter 13, *Revised Proposed Plan Amendments*, as a limited recirculation of the 2023 draft Staff Report (2025 partially recirculated draft Staff Report) together with the December 2025 revised draft Plan for public review and comment. Chapter 13, along with the accompanying December 2025 revised draft Plan, reflect the updated proposed project, which brings together in the Bay-Delta Plan program of implementation a VA pathway that incorporates HRL commitments and would apply to HRL water rights and a regulatory pathway that would apply to other water rights and to HRL water rights in the event the VA pathway is discontinued. Chapter 13 provides a comparative analysis of the revised proposed

Plan amendments based on the 2023 draft Staff Report with any necessary modifications to ensure that the public has the opportunity for additional meaningful public review and comment. The environmental analysis presented in Chapter 13 evaluates the potential impacts on resources that may result under the revised proposed Plan amendments, including the regulatory pathway and the VA pathway, which are evaluated as separate implementation pathways and together as co-occurring pathways. Chapter 13 also contained a new programmatic analysis of the types of activities associated with the designation of Tribal Tradition and Culture (CUL) beneficial use. Chapter 13 contained several revised impact conclusions and removed two mitigation measures that incorporated certain elements of the proposed updates to the Bay-Delta Plan in response to comments.

The final Staff Report contains the chapters and appendices that were included in the draft Staff Report, with updates where appropriate, and also contains new information and documentation in several locations, such as a new Volume 3 that responds to comments on the draft Staff Report. The final Staff Report contains updates consistent with the recirculated content provided in Chapter 13, *Revised Proposed Plan Amendments*, as well as other minor editorial changes, corrections, and clarifying edits where appropriate.

Several commenters suggested changes to the Staff Report and argued that the State Water Board was required to recirculate the Staff Report after completing the suggested changes. Although some portions of the Staff Report were revised in response to comments, none of these revisions changed any impact conclusions or otherwise necessitated any recirculation in addition to that which was completed in December 2025.

Other comments proposed a variety of changes or corrections to the Staff Report and/or the Plan amendments and suggested that upon making these changes, recirculation would be required. Other than the revisions that were the subject of the limited recirculation in which Staff Report Chapter 13, *Revised Proposed Plan Amendments*, describing those revisions and analyzing their environmental and economic effects, was circulated for public review and comment, the project and Staff Report have undergone no changes that identify a new significant environmental impact, substantially increase the severity of an environmental impact, or otherwise warrant recirculation.

Additional information has been added to Chapter 13, *Revised Proposed Plan Amendments*, in the final Staff Report, including supplemental modeling that evaluates the 2025 (Record of Decision / Incidental Take Permit (ROD/ITP, respectively) to demonstrate the need for the Long-Term Operations (LTO) baseflow balancing provision and possible outcomes should the provision not be effective. The Staff Report recognizes that changes to operational components of the LTO could occur for interior Delta flow and fall outflow components of the LTO and associated ESA and California Endangered Species Act (CESA) requirements, as described in Sections 5.4.4, *Delta Outflows*, and 5.4.6, *Interior Delta Flows*. Several sections have been updated with new modeling results and analyses that demonstrate the possible changes that could occur under the revised proposed Plan amendments in combination with the 2025 ROD/ITP, including Section 13.7.1, *Environmental Analysis Approach*; Section 13.4, *Changes in Hydrology and Water Supply*; Section 13.5, *Beneficial Environmental Effects*; and Section 13.7, *Environmental Analysis*. In addition, descriptions of possible outcomes that could occur as a result of the 2025 ROD/ITP have been added as appropriate in Section 13.7.21, *Cumulative Impact Analysis, Growth-Inducing Impacts, and Significant Irreversible Environmental Changes*. These additional analyses of the 2025 ROD/ITP did not result in changes to any new or significantly more severe environmental impacts and

recirculation is not needed. See the discussion on the 2025 ROD and 2025 ITP and other regulatory changes in Common Response 1.3, *Revised Proposed Plan Amendments*.

Adequacy of the Project Description

Several comments described concerns about the adequacy of the Staff Report's project description. Many of these comments suggested that the description of the project components are inadequate, vague, unclear, uncertain, incomplete, unstable, and/or inconsistent. Other comments asserted that the project description is unstable by including the VAs and alternatives with several additional modular, or "à la carte" options that could be adopted along with the project or another alternative. The discussion below demonstrates that the Staff Report provides a stable and adequate project description as required by CEQA. For additional details on the project description, please refer to Common Response 1.3, *Revised Proposed Plan Amendments*, and Chapter 13, *Revised Proposed Plan Amendments*.

CEQA's requirements for a project description are presented in CEQA Guidelines section 15124. An EIR or SED must provide a project description in sufficient detail to allow for a meaningful analysis of the project's impacts. The description of the project is required to include a precise location and boundaries on topographic and regional maps; a statement of objectives; a general description of technical, economic, and environmental characteristics; and a statement describing the intended use of the environmental document. (Cal. Code Regs., tit. 14, § 15124, subds. (a)-(d).)

Chapter 1, *Executive Summary*, provides a detailed timeline of the evolution of the project and its environmental review. The 2023 draft Staff Report analyzed the potential environmental impacts of the "proposed Plan amendments," a set of objectives and implementation measures for the protection of fish and wildlife, as well as the proposed VAs. The VAs, also known as "Healthy Rivers and Landscapes, or "HRL," proposals, were denominated Alternative 6 and were described and analyzed in Chapter 9, *Proposed Voluntary Agreements*, of the 2023 draft Staff Report.

Several comments focused on the facts that at the time of its initial release, the 2023 draft Staff Report did not include the specific regulatory text of the Bay-Delta Plan, and did not include a definite decision to include the proposed VAs in the proposed Plan amendments. The 2023 draft Staff Report identified and analyzed an alternative titled *proposed Plan amendments*, but the State Water Board had not yet made a decision on how to move forward with the Sacramento/Delta update to the Bay-Delta Plan. The proposed VAs were at that time still being evaluated and not certain to be included. The State Water Board made clear that all alternatives described in the 2023 draft Staff Report would be available for consideration and adoption during the public planning process.

As explained in more detail below, the 2023 draft Staff Report contained sufficient detail on the proposed Plan amendments to allow for meaningful public review and comment. In addition, a draft of the specific regulatory text for potential updates to the Bay-Delta Plan was subsequently released in October 2024 (2024 draft Plan) that incorporated alternatives identified in the 2023 draft Staff Report with revisions based on public comments. Following a public comment period on the 2024 draft Plan, a revised draft of Plan updates was released in July 2025 (July 2025 revised draft Plan). The State Water Board delayed public comment on the July 2025 revised draft Plan in order to make further revisions and provide for limited recirculation of the new Chapter 13, *Revised Proposed Plan Amendments*, of the Staff Report.

The draft updates to the Bay-Delta Plan were revised in December 2025 to include refinements and one additional HRL proposal from Yolo County Flood Control and Water Conservation District that was received by the State Water Board in November 2025. The “revised proposed Plan amendments” described in the December 2025 revised draft Plan and evaluated in Chapter 13, *Revised Proposed Plan Amendments*, reflect the updated proposed project. The December 2025 revised draft Plan included a regulatory pathway based on the “proposed Plan amendments” with modifications, and a VA pathway that would provide a pathway for implementation of the HRL commitments. Both pathways incorporate aspects of the other alternatives that were evaluated in the 2023 draft Staff Report. The draft Bay-Delta Plan was further revised in response to public comments and coordination with HRL participants. In August 2026, the State Water Board released a final draft of the Bay-Delta Plan for public review and comment.

Description of the Proposed Plan Amendments and Proposed VAs

The 2023 draft Staff Report provided a project description that was sufficiently clear, accurate, and finite to allow adequate analysis and disclosure of environmental impacts under CEQA. Chapter 5, *Proposed Changes to the Bay-Delta Plan for the Sacramento/Delta*, contains a detailed description and discussion of the proposed Plan amendments, including water quality objectives and a description of program of implementation provisions designed to meet the objectives. Section 7.1, *Introduction, Project Description, and Approach to Environmental Analysis*, describes the project purposes and goals, the plan area and study area, the approach to the environmental analyses, and an overview of the technical, economic, and environmental characteristics of the proposed project.

In general, the project would establish water quality objectives, a program of implementation, and monitoring and special study measures for the reasonable protection of fish and wildlife beneficial uses in the Sacramento/Delta. Overall, the project would be expected to provide for the frequency, timing, magnitude, and duration of flows that supports functions and processes for the protection of native fishes. The project would also provide for voluntary implementation pathways (now called local cooperative solutions) that can provide for better outcomes with lower water supply costs and for monitoring and special studies measures to inform decision-making.

As described in Section 7.1, *Introduction, Project Description, and Approach to Environmental Analysis*, and discussed in further detail in Chapter 5, *Proposed Changes to the Bay-Delta Plan for the Sacramento/Delta*, the proposed Plan amendments include the following objectives and implementation measures for the protection of fish and wildlife.

1. Inflows from the Sacramento River, its tributaries, and Delta eastside tributaries (the Calaveras, Cosumnes, and Mokelumne Rivers) that would require 55 percent unimpaired flow, with an adaptive range from 45 percent to 65 percent unimpaired flow.
2. Inflow-based Delta outflows that would require inflows required as part of the Bay-Delta Plan, including from the Sacramento/Delta tributaries and San Joaquin River and tributaries, to be provided as outflows.
3. Cold water habitat provisions that would require reservoirs to be operated in a manner that provides needed cold water habitat for salmonids or other measures to provide cold water habitat.
4. Interior Delta flows to reasonably protect native fish populations migrating through and rearing in the Delta, including expanding the existing Bay-Delta Plan exports constraints based on San Joaquin River inflows to include all of April and May and variable exports based on hydrologic

conditions; incorporation of Old and Middle River (OMR) flow constraints; and addition of October to the possible period when the Delta Cross Channel (DCC) gate is required to be closed.

5. Monitoring, reporting, and evaluation measures and other provisions.

Similarly, Section 9.3, *Description of the Proposed Voluntary Agreements*, provided a description of the proposed VAs that was sufficiently clear, accurate, and finite to allow adequate analysis and disclosure of environmental impacts under CEQA. The proposed VAs include a combination of flow and habitat commitments (Table 9.3-1) over eight years (with the possibility of extension), including varying amounts of increased flows on certain tributaries, depending on water year type, and non-flow habitat restoration actions targeted at improving spawning and rearing capacity for juvenile salmonids and other native fishes.

Chapter 13, *Revised Proposed Plan Amendments*, then includes a clear and detailed description of the revised proposed Plan amendments. It explains that the revised proposed Plan amendments include two pathways: the regulatory pathway, which is based on the proposed Plan amendments with certain identified modifications, and the VA pathway, which is based on the VAs, analyzed in Chapter 9, *Proposed Voluntary Agreements*, of the 2023 draft Staff Report (as “Alternative 6”). As Chapter 13 describes, the regulatory pathway covers water rights that are not included in any VA or that were included in a VA that is discontinued.

Scope and Character of Project Described and Analyzed

The revised proposed Plan amendments would cause changes in Sacramento/Delta hydrology and water supply, including reductions to agricultural and municipal uses. As explained in Section 7.1.5, *Environmental Analysis*, users would have “[a] wide range of responses” to those changes in water supply. The Staff Report analyzed the environmental effects of such potential actions, “which include groundwater use and groundwater storage and recovery/conjunctive management efforts, water transfers, water recycling, and conservation measures that are already being implemented throughout the state.” (Staff Report, Section 7.1.5.3, *Reasonably Foreseeable Methods of Compliance and Response Actions*.)

Some comments suggested that because the Staff Report does not describe such response actions in detail, it has “piecemealed” or otherwise failed to accurately describe the project under review. These response actions, however, are not a part of the project that the State Water Board will consider for adoption. As described under *Level and Scope of the Analysis*, these actions, along with their environmental impacts, are reasonably foreseeable response actions of the revised proposed Plan amendments, which is why they are considered in the environmental analysis as CEQA requires. Moreover, private entities and other public agencies will undertake and/or approve these actions; the State Water Board does not direct or control them. The Staff Report describes these actions sufficiently to analyze their environmental impacts without unsupported speculation.

Other commenters suggested that the analysis should include potential future State Water Board actions, such as regulation and verification of water rights or adoption of objectives for the Upper San Joaquin River, or past State Water Board actions, such as the prior updates to the Bay-Delta Plan concerning the Lower San Joaquin River. Such future Board actions would be separate actions, not a part of, or a reasonably foreseeable consequence of, the proposed Plan amendments and are in any event speculative. Regarding the relationship between the proposed Plan amendments and the 2018 Plan update concerning the Lower San Joaquin River, please see Common Response 1.2, *Water Quality Control Planning Process*.

Several commenters raised concerns that the Staff Report’s approach to alternatives, including the VAs, rendered its description of the project unstable or otherwise insufficient. Any update to the Bay/Delta Plan is a quasi-legislative action by the State Water Board. Within its statutory and constitutional authority and constraints, the State Water Board has broad discretion to adopt objectives and program of implementation. The objectives themselves may be numerical or narrative; numerical objectives may be specific values or may cover a wide range through adaptive management. The State Water Board is not making a simple binary choice whether to approve a project or not. It is, rather, crafting a comprehensive regulatory approach to a complex set of ecological, social, and economic problems covering a huge part of California.

To inform this decision-making, the Staff Report has included a wide range of alternatives, including modular alternatives, and has described and analyzed an evolving approach to the Plan amendments. As described further in Common Response 7.24, *Alternatives Analysis*, this range of alternatives provides analytical support for the State Water Board’s careful, calibrated exercise of its discretion. The alternatives represent different gradations of flow requirements and, in the case of the VAs and modular alternatives, different regulatory approaches. They are, however, all aimed at solving the same set of problems and are not so widely disparate to prevent public engagement. Quite the opposite: the inclusion of the VAs in Chapter 9, *Proposed Voluntary Agreements*, and the modified VA and regulatory pathways in the revised proposed Plan amendments in Chapter 13, *Revised Proposed Plan Amendments*, represent CEQA’s public processes at work. As the State Water Board received feedback on the proposed Plan amendments, additional avenues were explored and presented.

The requirement of a stable project description is not a mandate that public agencies freeze in place on the day a draft document is published. Throughout the process of project modifications, the Staff Report has been clear about the project under review—first, the proposed Plan amendments presented in the 2023 draft Staff Report, and then the revised proposed Plan amendments in the 2025 partially recirculated draft Staff Report (Chapter 13)—and has described that project with the required clarity and detail to support public understanding and inform the Staff Report’s environmental analysis. Chapter 13 describes how the project changed from that described in the 2023 draft Staff Report. The inclusion of additional alternatives does not detract from that project description.

Scope and Level of Detail of the Analyses

Some commenters indicated that the scope of the analysis in the Staff Report is too broad to support meaningful evaluation of environmental impacts, should include more detailed and site-specific impact analyses for specific environmental resources, or that impact analyses on individual water rights or water users should be conducted. Other commenters asserted that the Staff Report failed to sufficiently evaluate and disclose the nature and magnitude of significant impacts. The following discussion addresses these concerns.

As described in the 2023 draft Staff Report, Section 7.1.5, *Environmental Analysis*, the impact analyses are necessarily broad to cover the wide range of foreseeable compliance measures and responses that may result throughout the Plan amendment’s broad geographic scope and the wide range of water users that will need to adapt their practices. A wide range of responses and associated environmental effects could occur due to the degree of flexibility included in the Plan amendments and the scope and complexity of Sacramento/Delta water use. The environmental

analyses utilize both quantitative and qualitative approaches to compare the potential impacts to baseline conditions.

The Staff Report has been prepared pursuant to the State Water Board's certified regulatory program. When adopting "a rule or regulation requiring the installation of pollution control equipment, or a performance standard or treatment requirement," section 21159 of CEQA requires the analysis of the reasonably foreseeable methods of compliance. (Pub. Resources Code, § 21159.) That section states that "the agency may utilize numerical ranges or averages where specific data is not available; however, the agency shall not be required to engage in speculation or conjecture." (*Id.* at subds. (a), (d).) (Pub. Resources Code, § 21159; Cal. Code Regs., tit. 23, § 3777, subd. (c).)

Analysis of a wide-reaching regulatory action like the Plan amendments is necessarily broader and less detailed than analysis of a discrete project, because the details that are needed to conduct a site-specific analysis are not yet known. The degree of specificity in an environmental document corresponds to the degree of specificity involved in the activity under review. (Cal. Code Regs., tit. 14, § 15146.) As explained by the State CEQA Guidelines, an environmental document disclosing the impacts of a construction project will necessarily be more detailed than those evaluating a plan because the effects of the construction can be predicted with much greater accuracy. (*Id.* at subd. (a).) The adequacy of an environmental document is determined in terms of what is reasonable and feasible, in light of factors such as the magnitude of the project at issue, the severity of its likely environmental impacts, and the geographic scope of the project. (Cal. Code Regs., tit. 14, § 15024, subd. (a)).

The Plan amendments establish the broad policy and the water quality objectives that will apply to future water right and water quality proceedings. The Bay-Delta Plan does not in itself approve any water right or any particular project-specific construction activity. The Plan amendments will cause direct and indirect effects (as set out in Cal. Code Regs., tit. 14, § 15358) through two broad mechanisms that will cause such effects: subsequent State Water Board activities in the program of implementation, such as discretionary actions to implement the Plan amendments, and individual agency actions taken in response to the Plan's requirements and subsequent changes in water supply. State Water Board actions will be examined in light of the Staff Report to determine whether additional environmental analyses must be prepared. Other actions taken in response to the Plan amendments may also be subject to future project-specific CEQA review by the appropriate lead agencies.

The Staff Report's analysis of environmental impacts is appropriately broad to cover the broad flexibilities provided in the Plan itself. For example, the program of implementation provides an adaptive range of a percent unimpaired flow and allows for two or more tributaries to work together to meet the numeric flow requirements downstream. Some commenters argued that the analysis lacked sufficient detail related to implementation of the inflow and cold water habitat objectives. As discussed in more detail in Common Response 7.6.2, *Aquatic Biological Resources and Cold Water Habitat*, the cold water habitat objective is narrative by design in order to provide sufficient flexibility for successful implementation. Adaptive implementation is provided in part to mitigate water supply impacts if tailored solutions are available that are equally or more protective for fish. CEQA impact determinations are conservative but, in many instances, can be reduced or avoided with tailored operations. While it is expected that many parties would take advantage of that flexibility to optimize operations and avoid environmental impacts, the analysis considers and incorporates the most conservative assumptions—i.e., that parties will not tailor operations to provide such protection—in order to ensure comprehensive

impact conclusions. The environmental analyses evaluate a complete range of impacts in the event that water users do not utilize adaptive implementation, as well as the potential impacts from implementation of adaptive implementation. A full range of flow scenarios with cold water storage targets are analyzed in Sections 7.3 through 7.20 as well as physical habitat restoration and other ecosystem projects that may be pursued in Section 7.21, *Habitat Restoration and Other Ecosystem Projects*.

The Staff Report's CEQA impact determinations are conservative, and in many instances can be reduced or avoided through flexibility included in the Plan and through implementation of mitigation measures discussed in the Staff Report. The environmental analyses often consider a range of potential outcomes, including the most conservative for evaluating potentially significant effects on the physical environment. In many cases, there may be no impact or effect; however, for each resource area, the analysis looks to the full potential impacts for the significance determination. Some impacts and effects are inversely proportional to each other: when one impact increases, the is reduced, and vice-versa. Thus there is no "worst-case scenario" that could encompass every environmental resource area. Importantly, this is not a case of simply declaring a "worst-case scenario" in place of fully describing and analyzing the project, the approach rejected in *Stopthemillenniumhollywood.com v. City of Los Angeles* (2019) 39 Cal.App.5th 1. Rather, the Staff Report fully describes the State Water Board project under analysis—the revised proposed Plan amendments- and then describes other agencies' potential responses and the environmental consequences of those actions to the best of its ability. This approach informs the public, takes account of the complexity of the system, and respects the authority of the affected agencies.

Due to the scope and complexity of Sacramento/Delta water use, and the independent authority of water users, the Staff Report's environmental analyses are necessarily broad. Specific and detailed discussion for every water district or water diverter would not be feasible, nor is it required. Discussing the implications of the impacts at the level of detail that addresses each water user is beyond the scope of the analytical granularity provided in the Staff Report and would not change the overall impact conclusions.

Instead, the Staff Report considers the effects of reasonably foreseeable compliance methods and response actions at the broad level commensurate with the scope of the project. Precise analysis of such impacts requires information about the precise future actions taken in response to the Plan amendments. Predicting such actions on a specific agency-by-agency level is impossible today and beyond the scope of the Staff Report; analyzing the impacts of such actions would require inappropriate speculation. Accordingly, the Staff Report uses reasonable assumptions regarding the implementation of the Plan amendments and evaluates environmental impacts on a broad level. This approach provides sufficient information for decisionmakers and the public and allows commenters to engage with and provide feedback on the analyses.

The Staff Report includes sufficient disclosure and analysis to inform the decision-makers and the public about the environmental consequences of the decision in light of what is reasonably feasible considering the magnitude of the Plan amendments, as well as their geographic scope.

General Methods and Modeling Approach

Several comments addressed the level of detail of the modeling and analysis presented in the draft Staff Report. Many comments generally asserted that the modeled water supply impacts are not sufficiently detailed to support meaningful evaluation, including concerns that results are overly

aggregated and difficult to interpret at a local or user-specific level. Commenters also expressed concern that the modeling assumptions and outputs are not fully transparent, making it difficult to understand how results were derived or how different watersheds and water users are represented. Commenters also commonly raised concerns that inconsistencies in modeling assumptions across scenarios limit the ability to make valid comparisons among alternatives. Other commenters made specific criticisms of modeling assumptions.

For a discussion of SacWAM modeling, including the scope, scale and application of the model, the reasonableness of SacWAM assumptions and the use of best available information to develop model logic, and reservoir operations constraints and carryover storage guidelines in SacWAM, see Common Response 6.1, *Sacramento Water Allocation Model and Changes in Hydrology and Water Supply*.

The State Water Board has done its best to make the Staff Report as fair, objective, and complete as possible. As described in the Staff Report Chapter 12, *Public Participation*, scoping was conducted in 2012 to gather public, stakeholder, and agency input on the environmental issues that should be addressed in the draft Staff Report. In addition, the State Water Board provided several opportunities for interested parties to provide input related to the development of SacWAM.

State Water Board staff appreciates the valuable input received, which has informed SacWAM refinement. In fall 2016, the State Water Board released an early version of SacWAM for public review and for review by an independent science review (ISR) panel convened by the Delta Stewardship Council's Delta Science Program to ensure transparency and confirm the adequacy of SacWAM to simulate flows to inform the Sacramento/Delta Update to the Bay-Delta Plan. State Water Board staff held a public workshop, "Public Introduction to SacWAM," that provided a general and technical overview of SacWAM (version 0.20) and hands-on instruction on how to navigate the model and the model documentation. A public meeting was then held in which the ISR panel presented initial findings, asked additional questions, and engaged in a dialogue with the model development team and State Water Board staff and interested persons. The ISR panel provided a review report to the State Water Board in December 2016, which contained detailed recommendations for model improvements and suggestions for meeting with other agencies to obtain information to improve SacWAM's representation of the system as intended.

The various models used to inform the Staff Report were additionally vetted by calibration and validation with measured data, either during use for other projects or through peer review. Please see Common Response 6.1, *Sacramento Water Allocation Model and Changes in Hydrology and Water Supply*, which addresses comments regarding the models, methods, and data used to evaluate changes in streamflow, reservoir storage, and water supply. Also see Common Response 7.4, *Agricultural Resources*, regarding the Statewide Agricultural Production Model (SWAP) model analysis.

Modeling relies on assumptions about the way water delivery systems work and how they will work in the future. These functions are the product of many individual decisions by disparate organizations, businesses, and public agencies. Thus, each assumption is a generalization built from existing data and a hypothesis about future behaviors. A range of values are supportable for many of the assumptions in the models used for the Staff Report and multiple data sources are available. The State Water Board recognizes that there are differing opinions as to the correct assumptions and which data sets should be used. A model is not inadequate because a commenter would prefer to use a different assumption or data source. A disagreement among experts does not make an EIR

inadequate. (*Town of Atherton v. California High-Speed Rail Authority* (2014) 228 Cal.App.4th 314, 323). The “relevant issue is only whether the studies are sufficiently credible to be considered as part of the total evidence that supports the agency’s decision,” not whether the studies “are irrefutable.” (*State Water Resources Control Board Cases* (2006) 136 Cal.App.4th 674, 795.) The State Water Board strived to use the best available science throughout the Staff Report. The modeling is based on reasonable assumptions and allows comparative analyses between baseline conditions and conditions under the revised proposed Plan amendments and alternatives.

SacWAM, a comparative model that does not account for every water diverter at every water right priority, is necessarily limited in the representation of implementation-specific operations details. Location-specific details for implementation need to be determined using the technical and practical expertise of local water managers.

For additional information regarding how data and results are presented in the Staff Report, refer to Common Response 2.1, *Presentation of Data and Results in the Staff Report and Responses to Comments*. For information regarding the adequacy of modeling to support the analyses of benefits and impacts on fish, refer to Common Response 3.1, *Fish Protection*. For information related to modeling of the cold water habitat objective, refer to Common Response 7.6.2, *Aquatic Biological Resources and Cold Water Habitat*.

Impact Analysis

As noted in the *Level and Scope of the Analysis* (above), the Staff Report was prepared pursuant to the State Water Board’s certified regulatory program and evaluates the Plan amendments at a broad level. Analysis of the impacts of Voluntary Agreements, both in their original form in Chapter 9, *Proposed Voluntary Agreements*, and as part of the revised proposed Plan amendments in Chapter 13, *Revised Proposed Plan Amendments* used the same approach as review of the proposed Plan amendments discussed above.

Because the State Water Board received the proposed VAs after much of the 2023 draft Staff Report had been prepared, the proposed VAs are described and analyzed separately from the previously established structure of the document, in Chapter 9, *Proposed Voluntary Agreements*. The analysis in Chapter 7, *Environmental Analysis*, covers a broad range of impacts. To capture the value of the modeling and analyses already performed, the completed work was utilized to build an impact analysis for the VAs. The Chapter 9 analysis built upon the broad range of discussions and presented qualitative analyses and, where appropriate and applicable, quantitative analyses sufficient to demonstrate the potential impacts of the VAs.

The analysis of the revised proposed Plan amendments presented in Chapter 13, *Revised Proposed Plan Amendments*, builds upon the analysis of the proposed Plan amendments (Chapter 7, *Environmental Analysis*), the proposed VAs (Chapter 9, *Proposed Voluntary Agreements*), and the alternatives presented in the 2023 draft Staff Report (Section 7.24, *Alternatives Analysis*), with revisions. Chapter 13 provides the planning process background, a description of the revised proposed Plan amendments, and the analyses of the expected changes in hydrology and water supply, economic effects, beneficial environmental effects, and an analysis of potential environmental impacts. A discussion of the impacts for both the regulatory pathway and the VA pathway is presented together to enable ease of evaluation and comparison.

Within the resource sections of Chapter 7, *Environmental Analysis*, several tables outlining the different modeling outcomes were presented for the reader to compare between alternatives. For example, Section 7.12.1, *Surface Water*, presented tables comparing outcomes of water temperature scenarios, flow and storage changes, and electrical conductivity values. Section 7.4, *Agriculture and Forest Resources* included tables and figures that presented changes in water supply for agricultural use by different year types, as well as changes in crop acreage for 10 different crop types, as a result of water supply changes. The Chapter 9, *Proposed Voluntary Agreements*, and Chapter 13, *Revised Proposed Plan Amendments*, analyses built upon the broad range of discussions and presented qualitative analyses and, where appropriate and applicable, quantitative analyses sufficient for comparison.

Many comments critiquing the Staff Report's analysis relied extensively on the information presented in the Staff Report to make detailed and meaningful comments about the project, suggesting that the document was useful in informing the discussion and the planning process. Comments additionally conflated CEQA with comments that relate to considerations under Porter-Cologne, and policy concerns about the Plan amendments and water policy in general. The revised proposed Plan amendments were developed to improve flow and water quality conditions over a large geographic area, and particularly for fish and wildlife beneficial uses in the Sacramento/Delta. The State Water Board recognizes that providing instream flows for the environment necessarily results in less water available for other uses. Providing balanced protection of all beneficial uses of water is incredibly important and requires careful consideration, and the State Water Board is sensitive to supply impacts. Please see Common Response 1.2, *Water Quality Control Planning Process*, regarding the State Water Board authorities related to the water quality control planning process, water rights, and the consideration of other beneficial uses. See also Common Response 6.3, *Water Supply and Other Water Management Actions*, for more discussion on water supply considerations.

The Staff Report fully satisfies the basic purposes of CEQA, which are to: 1) inform governmental decision makers and the public about the potential significant environmental effects of proposed activities; (2) identify ways that environmental damage can be avoided or significantly reduced; (3) prevent significant, avoidable damage to the environment by requiring changes in projects through the use of alternatives or mitigation measures when the governmental agency finds the changes to be feasible; and (4) disclose to the public why a governmental agency approved the project in the manner the agency chose if significant environmental effects are involved. (Cal. Code Regs., tit. 14, § 15002, subd. (a).) To fulfill these functions, an evaluation of the environmental effects need not be exhaustive, but the sufficiency of an environmental analysis is to be reviewed in light of what is reasonably feasible and CEQA documents need not be perfect. CEQA documents should be adequate, complete, and represent a good faith effort at full disclosure. (*Id.* at § 15151.)

While changes in hydrology and supply could result in some environmental impacts at certain times and locations that must be analyzed under CEQA, these potential environmental impacts must be viewed in light of the overall purpose and goals of the Sacramento/Delta update to the Bay-Delta Plan, which is a restoration project. The revised proposed Plan amendments are broad and contain needed flexibility to adaptively implement the flow and related requirements, which will allow the Plan to adjust in the future without having to start over with another lengthy update process. In addition, a wide range of responses and associated environmental effects could occur as a result of the project due to the size and complexity of Sacramento/Delta water supply and use throughout a study area that represents a large portion of the state. Accordingly, the environmental analyses are necessarily broad, and impact determinations are conservative to cover this wide range of

foreseeable compliance measures and responses that may result from implementation of the revised proposed Plan amendments. The Staff Report identifies that in many cases impacts would not occur or could be mitigated to less than significant. As discussed below under Mitigation Measures, the State Water Board cannot guarantee that measures will always be adopted or applied fully to mitigate potentially significant impacts. Therefore, unless and until the mitigation is fully implemented, some impacts remain potentially significant.

Enforceability of VA and Regulatory Pathway Habitat Restoration Measures

Some comments noted that the VAs provide defined and enforceable habitat restoration measures while the proposed Plan amendments—now the regulatory pathway of the revised proposed Plan amendments—do not. Conversely, a number of comments stated that the VAs are not enforceable because they are voluntary.

In the 2023 draft Staff Report, the proposed program of implementation identified actions that other entities should take to address ecosystem stressors and provided a framework to incorporate both flow and complementary ecosystem projects, such as physical habitat restoration, into voluntary implementation plans (now referred to as local cooperative solutions). In addition, some complementary ecosystem projects may also serve as an implementation mechanism for the proposed cold water habitat objective. These actions include physical habitat restoration (e.g., in-Delta and upstream tributary), fish passage improvements (e.g., screens, fishways, water temperature control devices, dam removal), predatory fish control, and aquatic invasive species control.

The Bay-Delta Plan includes provisions for the continuation, modification, and termination of the VAs and for the application of the regulatory pathway in the absence of VAs. The program of implementation in the Bay-Delta Plan requires the VAs to participate in the periodic and triennial review processes, including assessments and reports that will inform the Board of the progress of the VAs. However, the Board can make the determination to switch to the regulatory pathway prior to the end of the 8-year term, if the Board determines that the VA pathway is not reasonably protecting beneficial uses, or that VA participants are not complying with the Bay-Delta Plan requirements. For more information on the enforceability of habitat restoration measures, see the discussion on enforceability found in Common Response 1.3, *Revised Proposed Plan Amendments*.

Mitigation Measures

Multiple commenters asserted that the State Water Board must mitigate or compensate for reductions in water supply. Under CEQA, mitigation is focused on avoiding or reducing significant effects on the environment. (See Cal. Code Regs., tit. 14, §§ 15126.2, 15126.4, 15382.)

CEQA requires that public agencies not approve proposed projects that would cause significant environmental impacts without first adopting any *feasible* mitigation measures and considering any feasible alternatives that would substantially lessen such significant effects. (Pub. Resources Code, §§ 21002, 21081; Cal. Code Regs., tit. 14, §§ 15002, subd. (a)(3); 15021, subd. (a)(2).) In formulating mitigation measures, the lead agency must be cognizant of any limitations on their own regulatory powers or those of other agencies with potential mitigation responsibilities. CEQA does not grant an agency new powers independent of the powers granted to the agency by other laws. (Cal. Code

Regs., tit. 14, § 15040, subd. (b).) If the lead agency does not have the authority to take a certain action that would mitigate a project's significant environmental impact, it may identify that action as a mitigation measure and find that it is "within the responsibility and jurisdiction of another public agency and.... can and should be adopted by such other agency." (Cal. Code Regs., tit. 14, §§ 15091, subd. (a)(2).)

To meet its obligations under CEQA, the State Water Board identified mitigation measures throughout the environmental analysis. These measures are collected in Table 1-1, *Impact and Mitigation Measure Summary*, and Appendix H3, *Mitigation Measures for the Revised Proposed Plan Amendments*. Individual public agencies and private water users will make a variety of decisions regarding how to meet the Plan's requirements. The draft Staff Report does not attempt to predict how any individual agency or user will do so; instead, it makes broad estimates, often articulating a range of potential impacts at a high level, depending on how flexibilities in the Plan are utilized or how individual agencies and water right holders respond.

Above, this common response describes how the nature and structure of the Plan amendments shapes the analysis of impacts. It necessarily affects the mitigation approach as well. Mitigation measures are broad for two interrelated reasons. First, most mitigation measures are outside the State Water Board's regulatory authority: the State Water Board cannot mandate the construction of new or modified infrastructure to increase water recycling or irrigation distribution systems. Second, because the draft Staff Report cannot predict the particular response actions agencies and individuals will take, it cannot respond with the precise mitigation measures needed to reduce or avoid the environmental impacts of those actions. Instead of precise prescriptions, mitigation measures are designed to provide agencies flexibility in application—flexibility that is necessary for the measures to be effective. This type of mitigation is required by the draft Staff Report's broad analytical approach. The Staff Report does, however, recognize that it leaves uncertainty: uncertainty in whether agencies will actually accept their responsibility to implement the identified mitigation, and uncertainty as to whether it will ultimately be effective. For this reason, the draft Staff Report often concludes that impacts will remain significant and unavoidable despite the identification of feasible mitigation.

Adequacy, Deferral, and/or Feasibility

Commenters asserted that the mitigation measures identified in the draft Staff Report were insufficient for a variety of reasons. Some of these commenters specified the impacts in question (e.g., groundwater impacts) and some commenters did not specify the impact in question that needed mitigation. Many commenters argued that the draft Staff Report inappropriately deferred the formulation of specific mitigation or identified overly vague or general measure, while others argued that the mitigation measures are too prescriptive. Some commenters expressed concern that the State Water Board is taking control over local agency authorities (such as reservoir operations or irrigation water distribution), while others said that the State Water Board should give firmer direction to other agencies. Many commenters suggested that the State Water Board should have included mitigation for economic impacts.

Many commenters express concern that the Staff Report's proposed mitigation measures would not reduce or avoid impacts related to reduced water supplies for agriculture and other uses, including impacts related to the conversion of agricultural lands, impacts on special-status species that rely on agricultural lands, and impacts related to municipal supplies. Commenters assert that specific

agencies will not be able to find or develop additional water sources to continue their service levels if the Board adopts Plan amendments requiring flows greater than baseline.

Section 7.12.1, *Surface Water*, and Chapters 9, *Proposed Voluntary Agreements*, and 13, *Revised Proposed Plan Amendments*, of the 2023 draft Staff Report disclose the potential reduction in surface water availability that may result from various flow scenarios. The reduction of surface water supply to a public agency or other user is not in itself a significant effect on the physical environment as defined by CEQA (Cal. Code Regs., tit. 14, § 15382). As such, the fact that the Plan amendments may lead to a potential reduction in surface water supplies to, for example, an irrigation district does not by itself require mitigation.

Many commenters similarly expressed concern that the draft Staff Report does not provide mitigation for economic effects of the revised proposed Plan amendments. Economic effects, such as reduced profits or the need for greater outlays to adapt to flow requirements, are not themselves impacts on the environment requiring mitigation under CEQA. To the extent that such economic effects may reasonably foreseeably lead to physical impacts—such as the conversion of farmland to other uses—the Staff Report analyzes, discloses, and identifies mitigation for such effects.

Changes in water supply may, however, lead to adverse physical impacts on the environment through a variety of mechanisms. In some cases, the reduced water supply could directly cause impacts, such as reducing habitat for species that depend on irrigation water (as discussed in Section 7.6, *Biological Resources*, and the corresponding sections of Chapters 9, *Proposed Voluntary Agreements*, and 13, *Revised Proposed Plan Amendments*) or leading to the conversion of agricultural land to non-agricultural use (as discussed in Section 7.4, *Agriculture and Forest Resources*, and the corresponding sections of Chapters 9 and 13). In other cases, the reduced water supply could lead to response actions by water suppliers, and those actions could have impacts, as discussed in Section 7.20, *Utilities and Service Systems*, and the corresponding sections of Chapters 9 and 13, which consider the impacts of reduced water supplies on municipal suppliers, specifically whether those suppliers would need to obtain additional supplies or construct facilities that could have adverse environmental impacts. As discussed in Section 8.3, *Costs Associated with Other Water Management Actions*, there is a suite of reasonably foreseeable actions that affected entities may undertake to address possible surface water supply reductions. Water transfers and groundwater pumping were considered in the Staff Report analysis because urban water management plans indicated that such transfers had been or were being considered as part of the overall water supply planning.

Following each such analysis, the draft Staff Report identifies mitigation measures that could, if implemented, reduce or avoid these impacts. Many of the identified measures are beyond the State Water Board's authority. The fact that many agencies, in many different circumstances, will implement these measures requires that they are described at a broad level, while providing sufficient detail to provide for individualized implementation and for the Staff Report's analysis.

For example, Mitigation Measure MM-AG-a,e(2) (ii)¹ provides that:

Local Jurisdiction: Local water suppliers, regional groundwater management agencies, and irrigation districts can and should reduce potential conversion of agricultural land due to reduced surface water availability by requiring existing agricultural practices to be modified to increase irrigation efficiency in conformance with state law (see 3.i). Increasing irrigation efficiency could be accomplished with the following methods.

¹ The measure was numbered MM-AG-a,e(3)((ii) in the 2023 draft Staff Report.

- Increase the use of irrigation management services, including audits of efficiency and soil surveys, to better determine how much water is needed by a crop in the present soil type and when to apply it.
- Convert less efficient irrigation systems (e.g., surface irrigation) to more efficient ones (e.g., drip or micro-irrigation) or combine the use of different systems at different plant lifecycle stages. Manage systems appropriately to realize efficiency gains.
- Increase the capability of irrigation water suppliers to provide delivery flexibility, such as the use of irrigation district regulating reservoirs, to allow flexible delivery durations, scheduling, and flow rates to better match each individual farm's needs.

This gives clear guidance on one way suppliers can and should reduce or avoid farmland conversion, while avoiding over-prescription and giving suppliers flexibility to devise measures best suited to their geography, supplies, and economic conditions. Importantly, these are not “deferred” measures that the State Water Board will develop after project approval pursuant to CEQA Guidelines section 15126.4, subdivision (a)(1)(B). They are complete measures to be implemented by other agencies according to their specific needs and circumstances.

After identifying measures to reduce or avoid specific impacts, the draft Staff Report then considers the measures' effectiveness. It concludes that to be effective, such measures must be implemented by other public agencies over whom the State Water Board lacks direct control. Because the affected water suppliers and resources vary widely across the study area, the draft Staff Report further acknowledges that not all mitigation measures are appropriate or effective as to every entity or situation. This variation is a necessary aspect of the revised proposed Plan amendments, particularly the regulatory pathway: they set water quality standards but do not prescribe methods for achieving them. Individual water users (or groups that are participants in VAs) will be responsible for taking actions, and/or adapting current practices, to meet those standards. The State Water Board does not control, and, absent inappropriate speculation, cannot predict what particular actions will be taken by particular agencies. Accordingly, the State Water Board cannot predict the precise combination of mitigation measures that will reduce or avoid the environmental impacts of those actions. Instead, the draft Staff Report identifies a variety of measures for other agencies to implement, and on this basis concludes that such impacts would remain potentially significant because the State Water Board, as the CEQA lead agency, cannot be certain that (1) other parties will undertake the action that the draft Staff Report identifies, and (2) the identified mitigation as implemented would in fact reduce potentially significant environmental effects. The impact conclusions made in the Staff Report thus do not rely on the implementation of any particular water management actions. The Staff Report recognizes that the availability of replacement supplies may be limited in some cases, and that specific replacement actions—or any replacement action—may not be feasible for particular suppliers and users. The range of measures identified in the Staff Report thus include many that will not be feasible or effective for a given specific agency or user. CEQA does not prohibit the identification of feasible mitigation just because it may not be feasible in all cases.

Citing *Lotus v. Department of Transportation* (2014) 223 Cal.App.4th 645, 657-658, several commenters noted that Mitigation Measures MM-AQUA-a,d as described in the 2023 draft Staff Report was actually a component of the Plan amendments' cold water objective and cannot be a mitigation measure. Similarly, voluntary implementation plans (now referred to as local cooperative solutions) are a Plan component and were included as a mitigation measure. In response, Chapter 13, *Revised Proposed Plan Amendments*, eliminated these measures and affirmed that the actions they describe are a part of the revised proposed Plan amendments. The potential adverse

environmental impacts of these actions are analyzed and disclosed throughout the Staff Report. See Common Response 7.6, *Aquatic Biological Resources and Cold Water Habitat*, for more discussion on implementation of the cold water habitat objective.

Other commenters proposed as a specific mitigation measure altering the Plan amendments' flow requirements for given tributaries. Such a change to the basic function of the Plan is better considered as an alternative to the project than as a mitigation measure. As discussed in Section 7.24, *Alternatives Analysis*, and Common Response 7.24, *Alternatives Analysis*, the draft Staff Report considered a reasonable range of alternatives to the revised proposed Plan amendments, including alternatives with flow requirements more relaxed than those proposed for approval.

Impacts of Mitigation

Other commenters argued that the draft Staff Report should have considered the impacts that could result from the implementation of mitigation measures. For example, increased conservation pursuant to Mitigation Measure MM-AG-a,e 2(ii) [Diversify Water Portfolios, Water Conservation] could decrease incidental groundwater recharge—recharge from excess applied irrigation water. That decreased recharge, commenters argue, could lead to impacts associated generally with reduced groundwater recharge. Section 7.12.2, *Groundwater*, in fact, includes reduced incidental groundwater recharge throughout its analysis, considering how such recharge could vary depending on how irrigators respond to the flow requirements of the Plan amendments. The corresponding sections of Chapters 9, *Proposed Voluntary Agreements*, and 13, *Revised Proposed Plan Amendments*, reflect this analysis.

Implementation of the flow requirements would reduce Sacramento/Delta water supplies at certain times and locations. In response to reduced Sacramento/Delta surface water supplies, water users may choose to modify their water supply portfolios by increasing the use of other sources of water and maximizing the use of existing water supplies. These other water management actions include groundwater storage and recovery, water transfers, water recycling, and water conservation. Other water management actions affect the overall analysis in two ways. First, environmental impacts and economic effects from reduced Sacramento/Delta surface water supplies likely would be less given these efforts. Second, other water management actions may result in their own environmental impacts that must be disclosed and analyzed. The approach to the environmental analyses of other water management actions assumes the use of existing infrastructure (i.e., existing groundwater wells, existing water delivery systems, existing storage systems), as well as existing conservation measures. The impacts of changes in hydrology and changes in water supply resulting from other water management actions are described in Sections 7.3 to 7.20 for each environmental resource area. In addition, Section 7.22, *New and Modified Facilities*, addresses actions that entities may take that would involve construction to modify or build new facilities and infrastructure to supplement or conserve surface water supplies and other construction projects that may result from the Sacramento/Delta update to the Bay-Delta Plan. Projects include new or modified dams/reservoirs and points of diversion; groundwater wells and groundwater storage and recovery projects; and new or modified drinking water treatment plants, including desalination plants and wastewater treatment plants.

Funding for Mitigation Measures and Replacement Supplies

Citing *City of Marina v. Board of Trustees of California State University* (2006) 39 Cal.4th 341, some commenters suggested that the Board has failed to adopt all feasible mitigation unless it funds

specific water supply projects and programs in their area that would provide substitute water supplies. In *City of Marina*, the California State University (CSU) system Trustees (Trustees) sought to expand CSU Monterey Bay (CSUMB) from a small campus into a major educational institution that would enroll 25,000 students on the site of the former Fort Ord military base with students and faculty living both on and off campus. The Trustees' EIR for the CSUMB development found that the expansion would cause potentially significant impacts to the physical environment in the areas of drainage, water supply, traffic, wastewater management and fire protection in the region and that these effects would be fully mitigated by the Fort Ord Reuse Authority (FORA) through its planned infrastructure improvements. FORA's business plan, in turn, relied on payments from the Trustees to make the improvements. When the Trustees advised FORA that they would not be paying for some of the needed drainage, water supply, and wastewater management costs or any of the road improvements and fire protection, FORA sued, claiming the EIR's mitigation was insufficient. The California Supreme Court agreed with FORA, finding that the FORA Act contemplated that the costs of improvements would be borne by those who benefited from them and that even if FORA couldn't compel the Trustees to pay, the Trustees should further evaluate whether they could make voluntary payments to FORA so that it could effectuate the improvements they were relying upon in their findings to mitigate their impacts to less than significant.

For several reasons, the *City of Marina* case does not support the commenters' argument that CEQA compels the State Water Board to fund replacing actions following the changes in water supply under the revised proposed Plan amendments. First, commenters conflate water supply availability and impacts. A reduction in water supply available to users is not in and of itself an adverse change to the physical environment. As noted above, the Staff Report identifies that reduced water supply could lead to response actions by water suppliers, and those actions could have impacts (e.g., as discussed in Section 7.20, *Utilities and Service Systems*, Section 7.22, *New or Modified Facilities*, and the corresponding sections of Chapters 9, *Proposed Voluntary Agreements*, and 13, *Revised Proposed Plan Amendments*, whether those suppliers would need to obtain additional supplies or construct facilities). In other words, funding such response actions would not mitigate impacts to the environment, it would facilitate them, which would require its own environmental review.

Moreover, even as to the few impacts that could be reduced by the provision of new supplies, it would be infeasible and legally inappropriate for the Board to earmark funding for projects as mitigation and *City of Marina* does not support that proposition. In *City of Marina*, the Court discerned in the FORA Act "no evidence of a legislative intent to bar the Trustees from voluntarily contributing, as a way of meeting their CEQA obligations, their fair share of the cost of improvements to roads and fire protection necessitated by CSUMB's expansion." (*City of Marina, supra*, 39 Cal.4th at p. 362.) Here, not only would such voluntary contributions not go towards meeting the Board's CEQA obligations for this project (unlike *City of Marina's* campus expansion construction project, this project is a restoration project to benefit the Bay-Delta watershed ecosystem over time, and the reduction in water supply, as explained above, is not an environmental impact of the project under CEQA), but also the Board may not feasibly voluntarily contribute funding to support the commenters' contemplated response actions. The Board is not required to use public funding to provide "mitigation" to water agencies and others for the reduced availability of water that is the property of the people of the state (Wat. Code, § 102) and that is being preserved instream in order to provide reasonable protection for fish and wildlife that are held in trust for the people of the state (Fish & G. Code, § 711.7). Additionally, while the Board has historically provided significant funding for water projects and programs, including to economically disadvantaged communities lacking access to safe and affordable drinking water (see Chapter 10, *Economically*

Disadvantaged Communities, Section 10.5.1, *Financial Assistance*), the Board administers public funds in accordance with the strict guidelines and legal requirements of the funding source, which requires a project-by-project eligibility determination. In addition, unless funding is continuously appropriated to an agency, funding must be included in the Governor's budget and appropriated to the agency to disburse based on specific criteria (LAO 2011). Even general obligation bonds that are approved by voter initiative must still be appropriated by the Legislature to the agency and then are generally awarded on a competitive basis based on multiple factors.

References Cited

Legislative Analyst's Office (LAO). 2011. *A Ten-Year Perspective: California Infrastructure Spending*. August. Sacramento, CA.