

Addendum

# DELTA WETLANDS PROJECT PLACE OF USE

## Final Environmental Impact Report

Prepared for  
Semitropic Water Storage District

September 2011





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## ADDENDUM TO CHAPTER 3

### Responses to Comments

The Semitropic Water Storage District (Semitropic) circulated the Delta Wetlands Project Place of Use Draft Environmental Impact Report (DEIR) for public and agency review and comment between May 11, 2010 and June 28, 2010. At the end of the comment period, a total of 27 written letters were received addressing the content and analysis in the DEIR. The letters and responses to comments received during the public comment period are included in Chapter 3 of the Final EIR (FEIR). Subsequent to the close of the public comment period (June 28, 2010), a letter was received on August 24, 2011, which was dated June 28, 2010 (Letter 28). Semitropic has no record of having received this letter during the public comment period for the DEIR. Nevertheless, that letter and responses to the comments contained in the letter are attached as an addendum to Chapter 3, Responses to Comments, of the FEIR.

The responses are clarifications or amplification of the information and analysis contained in the DEIR. None of the information included in the responses to Letter 28 requires recirculation of the DEIR per California Environmental Quality Act (CEQA) Guidelines Section 15088.5.

Letter #	Commenter	Company	Page #
28	Dante John Nomellini, Jr.	Central Delta Water Agency	Addendum-12



# CENTRAL DELTA WATER AGENCY

235 East Weber Avenue • P.O. Box 1461 • Stockton, CA 95201  
Phone 209/465-5883 • Fax 209/465-3956

June 28, 2010

**DIRECTORS**

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**COUNSEL**

*Dante John Nomellini  
Dante John Nomellini, Jr.*

**Via Email: DeltaWetlandsComments@icfi.com**

Ms. Megan Smith  
ICF International, Delta Wetland Comments  
630 K Street, Suite 400  
Sacramento, CA 95814

Re: Comments on the Draft Delta Wetlands Place of Use EIR.

Dear Ms. Smith:

Thank you for the opportunity to comment on this matter.

1. **Request for Notification.**

The CDWA hereby formally requests to be placed on the mailing list for any and all mailings associated with this project.

The CDWA also hereby requests to be given advance notice of Semitropic Water Storage District's public meeting or meetings wherein it will decide whether to certify this EIR and/or adopt the project and/or make any other determinations regarding this project.

28-1

Please use the following address for such mailings/notices:

Attn: Dante John Nomellini, Jr.  
Central Delta Water Agency  
P.O. Box 1461  
Stockton, CA 95201-1461

2. **Consultation with Public Agencies.**

Public Resources Code section 21153 provides:

Prior to completing an environmental impact report, every local lead agency shall consult with, and obtain comments from, each responsible agency, trustee agency, any public agency that has jurisdiction by law with respect to the

28-2

project, and any city or county that borders on a city or county within which the project is located unless otherwise designated annually by agreement between the local lead agency and the city or county, and may consult with any person who has special expertise with respect to any environmental impact involved.

(See also Guidelines, § 15086.)

In light of the enormous scope of the project, including the expansive places of use, complying with section 21153 is a tall order. For example, CDWA is informed and believes that the lead agency has failed to so consult with all of the reclamation districts that have “jurisdiction by law” “over resources which may be affected by the project” (Guidelines, § 15366), e.g., jurisdiction over the levees, drainage systems and other reclamation works which may be affected by the project. It is also highly likely that the lead agency failed to consult with many other types of public agencies defined in section 21153 that are affected by either the operation of the project and/or the delivery and ultimate use of the project water, etc.

To the extent the lead agency has failed to consult with all such agencies, the lead agency must do so prior to completion of the EIR. To ensure compliance with section 21153, the lead agency should include a list in the Final EIR of all the agencies with whom it consulted.

3. **Incorporation by Reference.**

In numerous places throughout the DEIR, the DEIR incorporates other documents by reference. However, the DEIR fails to comply with Guidelines section 15150 which requires the following, with emphasis added:

(b) Where part of another document is incorporated by reference, such other document shall be made available to the public for inspection at a public place or public building. The EIR or negative declaration shall state where the incorporated documents will be available for inspection. At a minimum, the incorporated document shall be made available to the public in an office of the lead agency in the county where the project would be carried out or in one or more public buildings such as county offices or public libraries if the lead agency does not have an office in the county.

(c) Where an EIR or negative declaration uses incorporation by reference, the incorporated part of the referenced document shall be briefly summarized where possible or briefly described if the data or information cannot be summarized. The relationship between the incorporated part of the referenced document and the EIR shall be described.

Examples of such incorporations which apparently have not been so “made available to the public” nor “briefly summarized [or described]” include the following:



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Page 4.9-1: "There are no major unanalyzed impacts on these resources at the places of use; although any minor changes in the affected environmental and regulatory setting since the 2001 FEIR and 2001 FEIS do not alter the prior document's conclusions, such changes are addressed by the urban water management plan EIR of each affected place of use."

Page 4.13-1: "Indirect effects on air quality at the places of use may result from increased energy used as a result of removing a barrier to growth in the places of use. Such effects are fully analyzed by the urban water management plan EIR of each affected place of use, the analysis of which has been incorporated herein, where necessary."

Page 2-5: "Additional information about Western's service area, operations, use, deliveries, and planning objectives can be found in Metropolitan's Regional Urban Water Management Plan, dated November 2005."

28-3  
Cont'd

4. **Growth Inducing Impacts.**

While the DEIR has identified some enormous places of use, and acknowledges that "the additional water supply provided by the Project may remove an obstacle to a portion of the planned growth in the identified places of use, which may result in secondary environmental impacts . . . ," the DEIR fails to provide any meaningful analysis of such impacts and, instead, states:

the environmental documentation prepared by local, state, and federal agencies that approve and provide permits for residential, commercial, and industrial projects in the places of use would identify site- and resource-specific impacts of this growth. Mitigation measures implemented by agencies with jurisdiction over urban development projects would address many of the secondary impacts of this growth.

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(DEIR, p. 6-9.)

The DEIR should make it clear which places of use have already addressed such "site- and resource-specific impacts" and which have not. For the places of use that have, the DEIR should reference the particular environmental document, indicated where the document is available for public review within the affected counties, summarize the referenced parts, etc. in compliance with Guidelines section 15150, which the DEIR has thus far failed to do.

For the places of use that have not already addressed such impacts, it is clear that water cannot be delivered to those areas until such impacts are first addressed. The DEIR should make this clear and make it an express condition of the project that water cannot be delivered to such areas until such impacts have been thoroughly addressed in compliance with CEQA.

5. **Other Areas Affected by Delivery of Project Water.**

While the DEIR has seemingly identified areas where the project water will be delivered, it appears the DEIR has failed to properly identify *all* areas potentially affected by the project and, accordingly, failed to properly evaluate the potential environmental impacts in such areas. For example, the use of project water for Delta outflow may have the result of freeing up water that would otherwise have been used for Delta outflow in the absence of the project. Such freed up water could thereafter be put to use for some other purpose in some other place. Accordingly, it is easy to see that merely identifying the places of use for receipt of the actual molecules of water stored in the project’s reservoirs does not sufficiently identify all of the areas potentially affected by the project.

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The same is true if, for example, the delivery of the actual molecules of the project’s water to a particular identified place of use means that water that would have otherwise been delivered to that place of use in the absence of the project water can, as a result, be delivered and used elsewhere (including areas outside the identified places of use).

28-6

All of these types of areas potentially affected by the project must be identified and the potential environmental impacts in those areas must be properly evaluated. The DEIR should thoroughly explain the nature of such “redirected uses” and the extent to which they are foreseeably expected to occur.<sup>1</sup>

Among the particular concerns of the CDWA is whether the project’s delivery of water to any particular identified user or to outflow will result in “freeing up” water that could be used on lands in areas which directly drain surface and/or subsurface waters, and, hence, the various pollutants contained in such waters, into the San Joaquin River or delivered to upslope areas which generate hydraulic pressure which thereby increases the drainage of waters from the downslope lands into the San Joaquin River. The potential for such impacts from water use in such areas is widely recognized and well-established.<sup>2</sup>

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<sup>1</sup> All of these types of areas must also be identified at the outset in the Notice of Preparation “either by street address and cross street . . . or by attaching a specific map . . .” (Guidelines, 15082, subd. (a)(1)). Accordingly, to correct this deficiency, the Notice of Preparation must be re-noticed and the Draft EIR must be recirculated.

<sup>2</sup> See e.g., SWRCB’s Decision 1641 at page 83 wherein the SWRCB states with regard to salinity: “[T]he SWRCB finds that the actions of the CVP are the principal cause of the salinity concentrations exceeding the objectives at Vernalis. The salinity problem at Vernalis is the result of saline discharges to the river, principally from irrigated agriculture, combined with low flows in the river due to upstream water development. The source of much of the saline discharge to the San Joaquin River is from lands on the west side of the San Joaquin Valley which are irrigated with water provided from the Delta by the CVP, primarily through the Delta-Mendota Canal and the San Luis Unit. The capacity of the lower San Joaquin River to

Any such deliveries to such areas facilitated or otherwise resulting from the project must be thoroughly discussed and examined in the DEIR and any degradation to the San Joaquin River resulting therefrom must be discussed, analyzed and avoided or mitigated to the extent feasible.

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Moreover, it is also not clear whether persons or entities within the identified places of use can transfer project water to areas outside the identified places of use. While such transfers would be prohibited under CEQA since the DEIR does not examine the impacts of such transfers, an express condition should nevertheless be imposed to prohibit any such transfers. (Note: since temporary [one year or less] water transfers are exempt from CEQA, in the absence of an express prohibition against such transfers and a meaningful mechanism to monitor and enforce such a prohibition, the environmental impacts of all such transfers must be addressed in the instant EIR.)

28-8

**6. Improper Deferral of Mitigation Measures.**

For numerous potentially significant impacts the DEIR includes the future “development” of a particular plan as a mitigation measure. Such deferral to a future yet-to-be-developed plan constitutes the improper deferral of the formulation of mitigation measures. Moreover, even if deferral could theoretically be tolerated, the DEIR lacks meaningful performance standards which are a prerequisite to any such deferral.

28-9

**7. NEPA.**

The DEIR must better explain why this particular project does not have to comply with NEPA while the prior Delta Wetlands Project did have to comply with NEPA. Since it is the same underlying project as before, it would appear NEPA compliance is indeed required.

28-10

**8. Alternatives.**

The DEIR states at page 1-7:

The overall purpose of the Project is to increase the availability of high-quality water in the Delta for export or outflow by storing water on two Reservoir Islands (Webb Tract and Bacon Island) and by doing so, increase the reliability of water supplies for Semitropic and other places of use including Golden State, Metropolitan, Western, and Valley District.

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assimilate the agricultural drainage has been significantly reduced through the diversion of high quality flows from the upper San Joaquin River by the CVP at Friant. The USBR, through its activities associated with operating the CVP in the San Joaquin River Basin, is responsible for significant deterioration of water quality in the southern Delta.” (See <http://www.waterrights.ca.gov/hearings/decisions/WRD1641.pdf> at “pdf” p. 95.)

The foregoing may be the “preferred project,” however, it is far too narrow to constitute the “basic objectives of the project.” The basic objectives must be considerably broader, e.g., “to improve the reliability of water for Semitropic et al.” As a result of the unduly narrow project objectives, the DEIR lacks a meaningful range of alternatives to the project. Assuming one of the basic objectives is to improve the reliability of water for Semitropic et al., then the range of alternatives should include one or more alternatives that do not involve the export of water from the Delta but, instead, provide increased reliability through conservation, recycling, or other non-Delta export means.

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Also, the DEIR’s range of alternatives should include alternative places of use including, in particular, a 100% in-Delta use alternative where 100% of the project water is used for in-Delta needs (outflow, water quality and other in-Delta beneficial uses).

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Overall, the project suffers from a basic failure to provide a meaningful and sufficiently broad statement of the project’s objectives. Once the objectives are properly described, the public can more meaningfully comment on the range of alternatives which should be discussed in the EIR to meet those objectives.

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9. **Direct Conversion of Farmland.**

The DEIR concludes that the project will result in the direct conversion of agricultural land and that such conversion is “[s]ignificant and unavoidable.” (See e.g., DEIR, p. ES-26.) While there may or may not be feasible mitigation measures which can altogether “avoid” or reduce that conversion to a “less-than-significant level,” the DEIR has, thus far, failed to demonstrate that all feasible measures to so avoid or reduce such impacts have been identified/proposed.

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Guidelines section 15370 sets forth five categories of mitigation measures which, among others, are available to public agencies. Examples of potentially feasible mitigation measures that should be discussed in DEIR include measures that fall under category “(b)” which consists of measures that “Minimiz[e] impacts by limiting the degree or magnitude of the action and its implementation.” (Guidelines § 15370(b)). Such measures would include measures along the lines of the following: (1) limiting the project to only one reservoir island and maintaining the other proposed reservoir island in agricultural production; and/or (2) maintaining more land in agricultural production on the two habitat islands, etc.

Other examples of potentially feasible mitigation measures which should similarly be discussed include those falling under category “(e)” which consists of measures that “Compensat[e] for the impact by replacing or providing substitute resources or environments.” (Guidelines § 15370(e)). The most obvious example would involve requiring the project proponent to purchase sufficient agricultural easements elsewhere throughout the affected counties and thereby compensate for the loss of agricultural land by ensuring that sufficient amounts of other lands in those counties would be maintained in agricultural production.

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Similarly, other land throughout the affected counties could be ought right purchased and brought into agricultural production thereby minimizing or offsetting the losses from the project.

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The DEIR should thoroughly describe and discuss such measures, and CEQA requires the lead agency to ultimately adopt all feasible measures to the extent they can help reduce the significance of the so-called “significant and unavoidable” loss of agricultural land.

10. **Fishery Impacts.**

As with the direct conversion of agricultural land, the DEIR similarly concludes that the project’s impacts on Juvenile Chinook Salmon, Juvenile Steelhead, Delta smelt, Longfin smelt and Green Sturgeon are “[s]ignificant and unavoidable.” (See e.g., DEIR, p. ES-19 & 20.) It is once again by no means clear that such impacts have been mitigated to the maximum extent feasible. Thus far, the DEIR fails to provide any meaningful discussion or explanation of why the project cannot be feasibly scaled back in size, amount or timing of diversions, etc. to provide increased mitigation of such impacts. The DEIR must be revised to provide such a discussion and explanation and *all* feasible mitigation measures must be adopted to the extent they help reduce such impacts.<sup>3</sup>

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11. **Inconsistency with General Plans and the Delta Protection Commission’s Land Use Plan.**

The DEIR states at page 4.8-44 that the project’s “[i]nconsistency with Contra Costa County General Plan Policy for Agricultural Lands and Delta Protection Commission Land Use Plan Principles for Agriculture and Recreation” is “significant and unavoidable” and that “[n]o mitigation is available to reduce this impact to a less-than-significant level.” Once again, the DEIR fails to provide any meaningful discussion or explanation of why the project cannot be feasibly altered to provide increased mitigation of such impacts, even if that mitigation does not reduce this impact to a “less-than-significant level.” Accordingly, the DEIR must be revised to provide such a discussion and explanation and *all* feasible mitigation measures must be adopted to the extent they help reduce such impacts.

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12. **Consistency with the Watershed Protection Act and Delta Protection Act of 1959.**

While the DEIR briefly discusses the project’s consistency with the Delta Protection Act of 1992, the DEIR apparently fails to discuss the project’s consistency with the Delta Protection Act of 1959 (Wat. Code, § 12200 et seq.) as well as with the Watershed Protection Act (Wat. Code, § 11460 et seq.). As explained in CDWA’s comments on the NOP for this EIR (a copy of which are enclosed herewith):

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<sup>3</sup> The same is true for all other impacts the DEIR has likewise identified as “[s]ignificant and unavoidable” or “[c]umulatively considerable and unavoidable.”

The [D]EIR should analyze and explain why the proposed export of water to the newly identified places of use south of the Delta is not water to which the users within [the] Delta are entitled” and/or “necessary to meet the requirements of [Water Code] Sections 12202 and 12203 . . . .”

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To the extent state or federal export facilities are utilized to export water from the Delta pursuant to the proposed project (which indeed appears to be the intent), the EIR should analyze and explain why such water is not “reasonably required to adequately supply the beneficial needs [human or otherwise] of the watershed, area, or any of the inhabitants or property owners therein.”

13. **Levee Stability and Seepage Concerns.**

a. **Lack of Final Levee Design and Seepage Control System.**

The DEIR states in numerous places that “[f]inal levee designs are subject to engineering review before construction.” (See e.g., DEIR 4.3-2 & 4.3-3.) It also appears that the final design of the seepage control system is not yet available for review. The project cannot be approved in advance of such designs. Instead, such designs must be fully described and analyzed in the DEIR and the public, accordingly, must have the opportunity to comment on those designs. Moreover, since the final designs of the levees and seepage control system are essential mitigation measures for the project, the deferral of the final designs constitutes the unwarranted deferral of the formulation of mitigation measures.

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b. **Downgrade in Levee Standards.**

The DEIR fails to adequately explain why the Habitat Island levees are no longer being designed to the higher Bulletin 192-82 standards. (See e.g., 4.3-4.) The DEIR should fully explain the initial basis for adopting the higher standards for such levees and the basis for downgrading the standards.

28-19

c. **Sea Level Rise.**

The DEIR states at page 4.3-5, “Future sea level predictions are not included in water surface calculations used in development of the proposed levee design.” The DEIR should fully explain why such predictions, or a range of such predictions, are not so used. It seems obvious that they should be used in such development as well as thoroughly discussed in the DEIR.

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d. **Underseepage.**

The DEIR fails to acknowledge or discuss the heightened concerns over so-called “under-seepage” since the prior EIR. Enclosed herewith is a copy of the U.S. Army Corps of Engineers’ “ETL 1110-2-569” entitled, “Design Guidance for Levee Underseepage” which evidences such

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heightened concerns. In light of the well-recognized, heightened concern and understanding of underseepage, the DEIR should fully discuss and analyze the implications of such concern and understanding. As it stands the DEIR's discussion and analysis of underseepage is woefully inadequate and virtually non-existent.

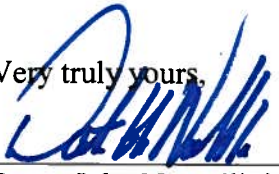
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14. **Incorporation of prior comments.**

The CDWA hereby incorporates the documents listed in the "enclosure" section below and continues to maintain that the environmental and other issues/deficiencies raised therein have not yet been adequately addressed in either the prior EIR nor in the instant DEIR. Said issues/deficiencies render the instant DEIR and prior EIR legally deficient as a matter of law, and the information set forth therein constitutes substantial evidence that the lead agency has, thus far, failed to properly discuss, identify, analyze and mitigate or avoid to extent feasible the project's potentially significant impacts. Moreover, the lead agency's findings in the instant DEIR and prior EIR pertaining to such issues/deficiencies, and to the issues/deficiencies set forth in the instant comments, are not supported by substantial evidence and suffer from the omission of relevant information that is essential to informed decision making which is one of the hallmarks of CEQA.

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The CDWA respectfully requests and urges the lead agency to thoroughly address and correct all such issues/deficiencies.

Very truly yours,  
  
\_\_\_\_\_  
Dante John Nomellini, Jr.

DJR/djr  
Enclosures (provided via attachments to the above email)

- a. Corps ETL1110-2-569 Design Guidance for Levee Underseepage (May 1, 2005).
- b. CDWA's Comments on the NOP for the Delta Wetlands Place of Use EIR.
- c. CDWA's Comments on the Supplement to the NOP for the Delta Wetlands Place of Use EIR.
- d. CDWA's Comments on the 1995 Draft EIR for the Delta Wetlands Project.
- e. CDWA's Comments on the 2000 Draft EIR for the Delta Wetlands Project.
- f. CDWA et al.'s 2009, 1993 & 1988 SWRCB Protests to the Delta Wetlands Project.
- g. CDWA et al's Closing Brief in the SWRCB's Admin Proceedings for the Delta Wetlands Project.
- h. CDWA et al's Reply Brief in the SWRCB's Admin Proceedings for the Delta Wetlands Project.
- i. Volume No. 27 from the administrative record of the SWRCB's Admin Proceedings for the Delta Wetlands Project.



## Letter 28: Dante John Nomellini, Jr., Central Delta Water Agency

- 28-1 Comment noted. Semitropic will place CDWA on the mailing list and will provide notice of meetings to CDWA pertaining to this project.
- 28-2 Semitropic has complied with CEQA for consultation with responsible agencies, trustee agencies and federal agencies through the publication of a notice of preparation and supplemental notice of preparation and provision of three public scoping meetings, notices of which were published in newspapers of general circulation in the region. The mailing lists for notices of preparation are available at <http://www.deltawetlandsproject.com/>.
- 28-3 Incorporation by reference is a tool to include all or part of another document as part of the text of the EIR without the need to repeat the entirety of the incorporated text (Guidelines Section 15150). The EIR expressly incorporates by reference only a handful of documents, including the 2001 FEIR and 2001 FEIS that have been made available for public review at Semitropic and <http://www.deltawetlandsproject.com/>. An EIR need not incorporate into an EIR all documents that are relied upon. Guidelines Section 15148 provides that generally, “These documents should be cited but not included in the EIR”:

Preparation of EIRs is dependent upon information from many sources, including engineering project reports and many scientific documents relating to environmental features. These documents should be cited but not included in the EIR. The EIR shall cite all documents used in its preparation including, where possible, the page and section number of any technical reports which were used as the basis for any statements in the EIR.

The three cited excerpts on pages 4.9-1, 4.13-1, and 2-5 from the Draft EIR are examples of documents cited but not incorporated by reference into the EIR.

- 28-4 Page 6-7 of the DEIR discloses the specific locations and types of growth that may occur within the places of use. It also describes that these areas have their own plans that “address the specific amount and location of growth, as well as possible environmental impacts associated with this growth.” Section 15150 of the Guidelines does not apply as the analysis is not incorporating these documents by reference.

As discussed on page 6-9 of the DEIR, additional water supply provided by the Project could remove an obstacle to a portion of the planned growth in the identified places of use, which could result in secondary environmental effects; however, the responsibility to approve such growth and mitigate potential significant impacts is not in the jurisdiction of the Lead Agency or the project applicant. Individual jurisdictions within the places of use have the authority to

approve, condition, or deny individual development projects and make growth decisions. Accordingly, no further growth-related impact analyses are necessary to provide Project water to the places of use.

- 28-5 The DEIR assumes that there will be no change in the operation of the CVP and SWP as a result of Project releases for water quality or outflow enhancement (DEIR pages 3-12 and 4.1-6). Because the Project would be operated independently of the CVP and SWP, there were assumed to be no changes in upstream reservoir operations, no changes in Delta inflows, and no changes in CVP and SWP exports caused by Project releases. The possibility that Project releases for outflow could replace SWP/CVP upstream releases and free up water for use elsewhere is considered very unlikely. Under the Project, releases generally occur during wetter years when there is little or no unused export capacity at the Banks or Tracy pumping plants. During late fall periods of wetter years, the SWP/CVP have little or no ability to reduce upstream reservoir releases to capture this water for later use. If upstream requirements are controlling (e.g., instream flow, flood pool), there is no flexibility to alter reservoir releases. If Delta E/I requirements are controlling, there is no flexibility to alter reservoir releases. Due to the relatively small quantity, variable availability, and unpredictable nature of Project releases, it is unlikely that CVP/SWP operations would change from current conditions as a result of the Project.
- 28-6 All Project water will be delivered and used in the designated places of use. Each place of use has an established need for water, and Project water will be used to improve the reliability of existing supplies that have been reduced. Furthermore, because the Project water will satisfy only a portion of the demand created by reductions in CVP, SWP, and Colorado River water supply, this reliability water is not expected to free up other sources of supply for transfer.
- 28-7 The places of use identified in the Draft Place of Use EIR do not include lands that drain to the San Joaquin River. Accordingly, no Project water is proposed to be delivered to lands that drain the San Joaquin River. In addition, as discussed above, it is not anticipated that CVP or SWP operations would change as a result of the Project releases. Accordingly, the Project would not contribute to salinity and pollutant load in the San Joaquin River.
- 28-8 The Project does not propose any water transfers beyond the deliveries analyzed in the DEIR. Any subsequent transfers of Project water would be speculative at this time, and the Lead Agency for any such subsequent transfer would be required to comply with CEQA.
- 28-9 All mitigation measures proposed within the DEIR include performance standards to ensure that once implemented, potential impacts are avoided, minimized, or mitigated. For example, the Water Quality Management Plan includes performance criteria such as “once every three years the Project would submit an accounting of the net increase or decrease in TOC, TDS, bromide and chloride loading in the

water diverted from the Delta for urban use due to Project operations (including habitat island operations).”

28-10 As the Lead Agency, Semitropic intends the Place of Use EIR comply with CEQA. Federal agencies that may have authority over Project activities would be responsible for compliance with NEPA.

28-11 As discussed in the 2001 Final EIS, several alternatives were considered but rejected for further evaluation. These included an alternative that involved reoperation of the CVP and SWP, a water conservation alternative, a water transfer alternative, a non-delta water storage or conjunctive use alternative and an alternative involving water storage on other Delta islands. All of these alternatives were deemed infeasible, impracticable, or unable to fully meet the stated needs.

In *Central Delta Water Agency v. State Water Resources Control Bd.* (2002) Sacramento County Superior Court Case No. 01CS00345, the trial court upheld the range of alternatives considered for this Project and held that out-of-Delta reservoir alternatives were not required to be considered. (*Id.* on page. 9, lns. 21-24 [“In light of the unique operational flexibility offered by this project due to its location, respondent did not abuse its discretion in failing to further consider out-of-Delta alternatives.”].) The trial court’s conclusion was not overturned on appeal in *Central Delta Water Agency v. State Water Resources Control Bd.* (2004) 124 Cal.App. 4th 245.

28-12 The DEIR does not consider a 100% in-Delta use alternative as that alternative would fail to meet the stated purpose and needs and project objectives, which includes “increase the reliability of water supplies for Semitropic and other places of use including Golden State, Metropolitan, Western, and Valley District.”

28-13 Project objectives are stated on page 1-7 of the DEIR, and include increasing the reliability of water supplies for Semitropic and other entities within the defined places of use, reducing groundwater overdraft, and providing additional dry year water supply reliability for Project users.

28-14 The DEIR evaluated a range of alternatives that would have varying effects on land conversion while still meeting the basic project objectives. As originally conceived, the Project included four reservoir islands and year-round operations. In consultation with federal, state, and local agencies, the water operations been reduced to: two reservoir islands (with Bouldin and Holland reserved for agriculture and habitat); a reduction in the maximum allowable elevation of stored water; and, constrained diversion and discharge windows. Taken together, such changes have reduced the yield of the Project by approximately 70%. Any further reduction in the size of the Project would not allow it to substantially meet its objectives. Further, the sustainability of agriculture in the Delta as it has been practiced historically is very much in doubt due to ongoing subsidence, regulatory constraints related to both federal and state endangered species acts and the Clean

Water Act, and the uncertainty in continued public funding for levee maintenance. Nonetheless, conservation easements will be placed on Bouldin and Holland, and agricultural conservation work will be completed within the boundaries of Semitropic. Agriculture will continue on the Habitat Islands to extent allowed by the Habitat Management Plan.

The FEIR adopted the following mitigation measure LU-MM-1 to lessen the Project impacts associated with agricultural land conversion:

**Mitigation Measure LU-MM-1: Provide Funding to Semitropic to Further District Goals of Sustaining Agriculture.**

During each of the first 10 years of the Project operations, Delta Wetlands will provide to the Semitropic Water Storage District \$500,000, for a total of \$5,000,000. The funding is intended to further the Semitropic's goals of sustaining agriculture through the provision of agricultural surface water to farmers within its boundaries at least cost and provide long term reliability. It would be used for the following purposes:

- Purchase of voluntary conservation easements over prime farmland in Semitropic.
- Purchase of imported water by the Semitropic.
- Development and operation of infrastructure needed to deliver water to and within Semitropic.
- Other purposes consistent with the Semitropic's mission.

This mitigation measure is consistent with Semitropic's authority and does not obligate it to undertake extraterritorial condemnation measures.

28-15 In consultation with DFG, FWS and NMFS, the Project water storage capacity and water diversion criteria have been modified where feasible to reduce impacts to fishery resources. These criteria, coupled with the FOC and measures outlined in the Project BOs, would minimize potential effects to fisheries resources, including potential entrainment impacts. As described in response to Comment 28-14, above, environmental constraints have reduced the yield of the Project by approximately 70%; any further reduction in the size of the Project would not allow it to substantially meet its objectives.

28-16 Any conversion of prime and unique farmland and farmland of statewide and local importance is inconsistent with County General Plans and the DPC Land Use Plan; therefore, reducing the extent to which the Project changes agricultural use would not alter the significance of the impact. As discussed on page 4.8-23 of the DEIR, the Project will record conservation easements over Bouldin Island and Holland Tract lands controlled by DW Properties. The easements will be developed to be consistent with the HMP and will be recorded in San Joaquin County and Contra Costa County, respectively. In addition, the FEIR includes LU-MM-1 to reduce the Project's impacts on land use and agriculture. However, even with these measures,

the Project would still be inconsistent with plans listed above, and therefore this impact remains significant and unavoidable.

28-17 The Delta Protection Act of 1959 (Water Code section 12200, *et seq.*) and Watershed Protection Act (Water Code section 11460, *et seq.*) are summarized below.

The Delta Protection Act contains various findings and policies regarding in-Delta water supply, salinity control, and export of water from the Delta. Section 12200 contains findings by the Legislature regarding the salinity problem in the Delta and the role of the Delta in providing a supply of fresh water for water-deficient areas to the south and west, and a declaration of the need for a special law “for the protection, conservation, development, control and use of the waters in the Delta for the public good.” Section 12201 contains findings by the Legislature of the need to maintain “an adequate water supply in the Delta sufficient to maintain and expand agriculture, industry, urban, and recreational development in the Delta . . . and to provide a common source of fresh water for export to areas of water deficiency.” Section 12202 provides: “Among the functions to be provided by the State Water Resources Development System, [i.e., the facilities of the CVP and SWP] in coordination with the activities of the United States in providing salinity control for the Delta through operation of the Federal Central Valley Project, shall be the provision of salinity control and an adequate water supply for the users of water in the Sacramento-San Joaquin Delta” or provision of an alternative supply in lieu of the water to be provided for salinity control. Section 12203 provides: “It is hereby declared to be the policy of the State that no person, corporation or public or private agency or the State or the United States should divert water from the channels of the Sacramento-San Joaquin Delta to which the users within said Delta are entitled.” Section 12204 provides: “In determining the availability of water for export from the Sacramento-San Joaquin Delta no water shall be exported which is necessary to meet the requirements of Sections 12202 and 12203 of this chapter.”

The Delta Protection Act was analyzed in the recent Third District Court of Appeal decision, *State Water Resources Control Bd. Cases* (2006) 136 Cal.App.4th 674. *State Water Resources Control Bd. Cases* states that the Act “seeks to serve the dual goals: (1) maintaining and expanding agriculture, industry, urban, and recreational development in the Delta; and (2) providing fresh water for export to areas of water deficiency.” *Id.* at 771. *State Water Resources Control Bd. Cases* clarifies that the Act requires the State Water Resources Control Board to “balance ‘in-Delta needs and export needs’ and to determine whether in-Delta needs receive an adequate supply of water” when it establishes water quality and flow standards in the Bay-Delta Water Quality Control Plan. *Id.* The decision further states that “it is for the Board to decide, in the exercise of its judgment, what level of salinity control should be provided and what is an adequate supply of water for users in the Delta.” *Id.* at 772. Bay-Delta water quality and flow standards applicable to the Project are discussed in Section 4.2 of the DEIR. The Project does not involve a

change to any Bay-Delta water quality and flow standards.

Water Code section 11460, *et seq.*, Article 3 of Chapter 3 of Part 3 of the Water Code, commonly referred to as the “Watershed Protection Act”, was originally enacted as part of the Central Valley Project Act of 1933. (29 Ops.Cal.Atty.Gen. 136, 137 (1957).) Section 11460 provides: “In the construction and operation by the department of any project under the provisions of this part a watershed or area wherein water originates, or an area immediately adjacent thereto which can conveniently be supplied with water therefrom, shall not be deprived by the department directly or indirectly of the prior right to all of the water reasonably required to adequately supply the beneficial needs of the watershed, area, or any of the inhabitants or property owners therein.” Section 11461 provides: “In no other way than by purchase or otherwise as provided in this part shall water rights of a watershed, area, or the inhabitants be impaired or curtailed by the department, but the provisions of this article shall be strictly limited to the acts and proceedings of the department, as such, and shall not apply to any persons or state agencies.”

The Watershed Protection Act applies only to DWR and other state and federal agencies operating units of the Central Valley Project. (Water Code §§ 11460, 11128.) Accordingly, the Watershed Protection Act does not apply directly to the Project or Semitropic. The Project will be operated in accordance with applicable Bay-Delta water quality and flow standards (DEIR Section 4.2). As stated in Response to Comment 28-5, the Project is unlikely to change the operation of the CVP and SWP. Because the operation of the CVP and SWP is not expected to change as a result of the Project, the Project will not affect DWR or Reclamation’s compliance with the Watershed Project Act.

28-18 Final levee design is not necessary to complete CEQA. Guidelines section 15124 state:

“The description of the project ... should not supply extensive detail beyond that needed for evaluation and review of the environmental impact.”

The conceptual design provided in the DEIR is sufficient to evaluate project impacts.

28-19 The levee standards for the Habitat Islands have not been downgraded. The Habitat Island levees will be constructed to meet the Corps’ Delta Specific PL 84-99 standards, which is functionally equivalent to the Bulletin 192-82 standard. The Delta Specific PL 84-99 standards have been formally adopted by DWR for “non-project” Delta levees; the DWR Bulletin 192-82 draft report was never finalized nor adopted.

28-20 Sea level rise was considered in sections 4.3 and 4.14 of the DEIR. For clarification, the sentence referred to in the comment was intended to describe that the elevation of the levees as initially constructed would not accommodate

predicted sea level rise. The proposed levee design would, however, accommodate potential rises in sea level, as stated on page 2-19:

“The proposed Reservoir Island levee design now includes a more stable and flat reservoir-side slope, with a wider top width and a vertical cutoff trench to reduce seepage. The wider top width will allow future maintenance activities to place additional fill as needed to make up for any post-construction settling or sea-level rise while still providing minimum top widths and acceptable slopes after fill placement.”

The above design update includes a 45-foot crest width for the Reservoir Island levees to accommodate anticipated sea level rise. As stated on page 4.3-4 of the DEIR, routine maintenance activities were identified to add material to the levee crown in response to actual sea level rise over time.

28-21 All forms of seepage, including underseepage, were analyzed in the DEIR, including pages 2-19 through 2-20 and throughout section 4.3. The addition of the core trench to the levee design will reduce through-seepage and underseepage as well as increase the seismic stability of the reservoir island levees. The Project includes a comprehensive Seepage Monitoring and Control System, as summarized on pages 2-19 and 2-20 of the DEIR and described in detail in the Protest Dismissal Agreement between Delta Wetlands Properties and the East Bay Municipal Utility District, included as an appendix to the 2001 FEIR. The Seepage Monitoring and Control System will monitor and protect neighboring islands from any potential underseepage impacts of the Reservoir Islands. The Project also includes an interceptor well system to capture and control underseepage to avoid impacts to adjacent islands. These analyses and measures are consistent with the Corps ETL 1110-2-569 requirements.

28-22 The referenced enclosures are comments on past project environmental documents and do not contain comments that are specifically directed at the DEIR impact analysis. Without additional clarification of how information within each document is relevant to the impact analysis conducted within the DEIR, a detailed response to all documents referenced is not required (*Citizens for Responsible Equitable Environmental Development v. City of San Diego* (2011) 196 Cal.App.4th 515).