From:	Mary Ann
То:	DWR Delta Conveyance Scoping
Subject:	Comments on Delta Conveyance project EIR
Date:	Tuesday, April 14, 2020 2:48:59 PM

The Environmental Impact Report for this project should definitely include a "no tunnels" alternative. I don't believe this alternative has been given reasonable consideration. Those who support construction of 1 or 2 tunnels dismiss water conservation and increased efficiency of water use partly due to misconceptions about the dependability of northern California water supplies and also because it is unpopular to ask consumers to do with less.

Climate change is already causing snow levels to decline; by the time tunnel(s) are completed, those water resources will be even more scarce. Ever larger upstream reservoirs will be needed to reclaim runoff, creating additional expensive and controversial projects. Freshwater that is needed to sustain species in the Delta will decline and become increasingly concentrated with salts, farm chemicals and other pollutants. The Delta environment will also be hugely impacted, beyond recovery in some areas, by construction of even one tunnel. There will be attempts to repair the damage, but remediation can only ever be partial, and even that will be very expensive.

A state investment in large scale water conservation and efficiency improvements will cost far less than construction of tunnel(s). Science and engineering knowledge about conservation and efficiency is extensive, and an investment in research can expand that body of knowledge much beyond what is currently known. There is evidence from recent drought years that consumers can and will participate in conservation through changes in behavior and landscape. Future instability in California's water supply demands that we increase conservation and efficiency with or without any tunnels.

The EIR for this project must weigh the costs and impacts of any tunnel construction against the costs and impacts of alternatives to building any tunnel. I encourage you to include a "no tunnel" alternative in the EIR. We can do as well as or better than tunnel construction by using the best conservation and efficiency science to provide sufficient water to California consumers.

Mary Ann Robinson PO Box 19954 Sacramento CA 95819 Attached is my scoping comments for the EIR on the Delta Conveyance Project.

Amber McDowell 🔳

April 12, 2020

Delta Conveyance Project Scoping Comments Attn: Renee Rodriguez Department of Water Resources PO Box 942836 Sacramento, CA 94236

Dear Renee Rodriguez,

The Delta Conveyance project is the same project with a different name and a few tweaks as the peripheral canal, Delta twin tunnels, and WaterFix. The previous projects failed because this type of project does nothing in providing real water to benefit the state and will completely destroy the Delta. There are numerous alternatives that can provide new water resources, not impact the Delta, and are cost effective that the state continues to overlook. I ask that the state to face the reality that this project is horrible and start looking at all of the local and regional water projects that will make a huge impact in California's water sustainability and security with minor impacts to communities and the environment.

Specific to the Delta Conveyance project, I have several issues that I request to be addressed in the EIR for the Delta Conveyance Project. If mitigations can't be accomplished, or the financial costs are economically irrational compared to the several alternative projects that would actually provide water sustainability along without negatively impacting the Delta, then a No Project option needs to be supported.

• Costs associated with construction zones. These must include road and levee maintenance, greenhouse gas levels, and increase time and costs to residents. Road and levee impacts of the detour routes and not just of the construction zones need to be addressed as well. As construction occurs, traffic will use surrounding roads to avoid the construction zone. Before construction on the project starts, upgrades and additional structural support will be required on all surrounding roads that may be used as detour by residents. Then as the construction progresses, those roads will need to be maintained regularly and when the project is complete, a final replacement of those roads will need to be completed. Failure to address this critical issue will subject the residents and islands to levee failure and potential flooding. We have already seen this type of issue occur with the Cosumnes River/ I-5 interchange impact. Outside commuters are regularly using this and the Hood Franklin exit and traveling through the Delta to bypass downtown Sacramento. The enormous amount of traffic has created a weakening of the South River Road levee north of the Freeport bridge up into West Sacramento. To help prevent worsening of the impact, that road has been closed down during certain periods of time but not repaired. This same issue will occur with this Delta Conveyance Projects but on a much bigger scale affecting numerous islands. In addition, the construction equipment that will also be traveling our roads will be hauling excessively heavy loads. The Delta roads are not capable to handle the hundreds of daily overload vehicles trips that this project projects. The roads will quickly deteriorate and threaten the stability of the levees that protect the islands from flooding.

Consideration must also be given and addressed for residents who will bear huge

additional costs in fuel and wear and tear on their vehicles. While a detour route in the city may only add 1-5 minutes around a single block, in the delta with the rivers and a few bridges, detour routes will cause at minimum, 30 additional driving minutes for most residents. For example, a large increase of rerouting will be from Hood residents whose children attend Bates Elementary in Courtland. As construction occurs for the project intake south of Hood, those residents, who usually have an 8 minutes drive over 4.5 miles one way, will be forced to go around via the Freeport bridge to cross the river, come down the other side to the Painterville Bridge and back up to Courtland for a 33 minute drive and 22.5 miles one way. For some of these parents, they make 2 round trips 5 days a week to drop off and pick up their kids from school. This detour will cause Hood residents to have to drive an extra 8.33 hours and 360 miles every week just to take their children to school. This impact will directly affect residents financially with increased fuel consumption, increased mileage and wear on their vehicles.

per day and have identified that as an issue for greenhouse gas emissions. But I request that the EIR also include calculations and mitigation for all of the additional emissions created by residents having to travel around the construction sites on detour routes.

- Noise pollution and vibrations. The amount of noise pollution that will be continually present throughout the entire construction from pile diving will not just be a nuisance, but a health issue for people and a damaging ecological issue. Animals tend to avoid noisy areas and the Delta is a critical wintering ground essential for Sandhill Cranes and a host of other migratory birds. The vibrations from the pile driving will also cause damage to some residents' houses. Many houses are built with plaster walls that will easily crack from the constant bombardment of vibration. This will directly affect property values and the ability to sell. This is not only a detrimental impact for residents who may need or want to sell, but also for mortgage appraisals and collateral value for banking. Many farmers use their property as collateral for their business in-line credit loans since they have to pay for inputs and services at throughout the growing season, but don't receive payment for their crop until after the growing season. I request the EIR analyze the impact of vibrations on centennial homes including multiple story, plaster walls, and those built on sandy soil and what mitigations the project must follow to protect these historic buildings. Our family's Victorian style, multi-story home on Grand Island was built in 1876. It has beautifully painted plaster walls that cannot be replaced. There are many others throughout the Delta, some located in the construction zone areas and some nearby. I request the EIR also analyze the distances on the degree of impact due the vibrations.
- Personal and Private Property damages. The Delta is a unique area with the rivers, sloughs, and bridges that will require unique planning and additional resources if this project is to move forward. Currently, from my house on Grand Island, it is a 45 minute drive to the nearest hospital. For emergency service, it takes about 30 minutes for them to get out to us since it has to come from Elk Grove before then heading the 45 minutes to the hospital. Our volunteer firefighter medics sometimes can arrive sooner depending on where they are located at the moment, the distance for them to get to the station and then finally out to us. The same for our property. Our firefighters are volunteers with their own jobs. Delays for them to get to the station and then out to the emergency site will be impacted directly from the construction site and indirectly from concentrated

traffic on the surrounding detour routes. When minutes matter, extended time due to construction delays, longer detour routes or limited choices for routes/bridges, can impact the wellbeing of individuals and survival of property. For example, when the ferry services were down to access Ryer Island, these delays on two separate occasions for fire and medic were the result of a total loss of a home from a fire and the death of individual. This issue will be an increased necessity with the increased greenhouse gas emissions, particulate air pollution, potential Valley Fever exposure, increase mental health issues from constant exceedance of noise decibels, water quality issues, and stress due to financial worries. Already, the agricultural industry has had several hard years with crop failures, low commodity prices, and increasing regulatory costs, that mental health had become a great concern and issue. Many farmers have developed depression, attempted suicide, or other health issues due to these stresses. This project will only add to that pressure for our Delta farmers. I request that mitigation of this issue be addressed by establishing in the Delta at two or three Delta fire stations at least 4 full time EMT staff on a rotation schedule and EMT service equipment including ambulance and that all Delta fire stations to be staffed full time with a few firefighters to better respond to emergencies during this decade of construction.

- Agricultural product damage. Crop damage is a huge concern for my family. We grow Bartlett pears on Grand Island and it is our livehood for our multi-generational family. Our harvest is a short 3-4 weeks in July and August. Delays on the road with traffic, construction stops, rough unmaintained detour roads or rough construction zone roads, and longer routes will impact the quality of our pears. Too much damage from bruising, extended sunlight on the top layer, and excessive heat buildup will quickly turn our high quality pears into worthless culls and a loss financially for our farm and family. Many residents in the Delta depend on the harvest of the Delta crops to support their family. Whether a farm owner or farm laborer, the success of the harvest affects their paychecks. Even the increase of greenhouse gases can impact the quality by ripening some of the fruit faster. The EIR needs to address mitigation for harvest time. Major crops include cherries and wheat in May and June, pears in July and August, alfalfa hay from May to October, wine grapes and corn in September and October, and much more. Thousands of agricultural truck trips travel in and out of the Delta throughout the year transporting the base economy for all of our Delta communities.
- Tourism. The small service businesses such as restaurants, wineries, farm stands, grocery stores, bait shops, realtors, and art galleries are a crucial component to the economies of each community. Summertime is an important time for all Delta communities with tourism. This includes our farm stand on Grand Island where we sell fresh fruit and eggs. This stand helps supplement our family income especially when specific crops have bad years. We are part of the Delta Farm & Winery Trail that helps nearby cities and tourists find our fresh produce and local wine. This organization brings together Delta farms that are open to the public to promote agricultural education, provide healthy and locally grown produce and wine, and to help strengthen our Delta economy. Many car and bike clubs take drives through various parts of the Delta, bird watchers and sightseers look for quiet, out of the way areas, wine enthusiasts and foodies visit the various wineries and fresh produce farms. In addition, families come to experience the cultural aspect of our historic towns, fishermen search for new quiet fishing holes, and boaters enjoy the water recreational activities. The Delta contributes over \$35 billion to the state's economy.

Without easy and enjoyable access into and throughout the Delta, people will not visit the Delta. This loss of revenue for our community, especially lasting for over a decade, will kill the Delta towns and our generational family farms, including ours that has been here since the 1940's with the 4th generation now helping on our farm. This project will disrupt and block travel from I-5 and SR-12, which are main gateways for tourists to enter into the Delta to come to our farm. This impact will greatly affect our customer visits at our farm and drastically decrease our business revenue. Just with the ferry services down for Ryer Island most of last year, Snug Harbor reported an approximate loss of \$150,000. I request the EIR include tourism loss impacts on the local economy.

- Delta river pumps. Extensions and/or additional pumps will need to be included in the EIR mitigation along with their greenhouse gas emissions. As similar to the previous versions of this project, the end result will be pulling water out of the river at a northern point which will result in lowering of the river water level. The projected drop in water level was 1-2 feet and with most of the Delta holding riparian rights, issues with the water level below those pump intakes will need to be addressed and mitigated for. When the salinity barrier was being proposed for our Steamboat Slough during the last drought and that water would drop 18", the state realized that they couldn't just place a separate temporary pump line over the levee for a few months as they could on other islands since our road, Grand Island Road, was a public road with numerous vehicles traveling it every day. If that barrier had been put in, they would have had to come in and extend our river side pipe to lower the pump intake so that we could pump to water our pear trees and alfalfa fields. I request that the EIR include the mitigation costs for the pump extensions for all of the Delta water users' thousands of pumps. In addition, the overall river water table will also be lowered and will require more Delta water users to actually have to pump more. Currently, the river water table on our island is about 3 feet which naturally sub irrigates some our crops. This has allowed the area to have lower greenhouse gas emissions from having less pumps and shorter pumping times. But as the river water table will be dropped and out of reach for these crops, Delta farmers will have to start pumping more water out of the river to water their crops, which will cause them to have to use more fuel and therefore increase greenhouse emissions. I request that the EIR include the additional greenhouse gas emissions from the additional required pumps and pumping time that will be needed to water crops due to the river water table drop that will result from this project.
- Water Quality. Flows are required to balance the water quality of the Delta. Salinity is a great concern for the Delta agricultural economy. The Delta has over 500,000 acres of prime agricultural land. The salinity issues already have not been regularly met compliance by DWR on the 1981 North Delta Water Agency contract. In addition, during years of drought, DWR has violated the salinity standards numerous times and not held accountable. Salinity has crept farther up the Delta and once it contaminates the interior land of the island, that land is no longer productive. This is a huge loss, not just economically for the family farm and community, but also a loss for the wildlife. The Delta agricultural fields provide invaluable food and habitat resources for many species including waterfowl, coyotes, birds of prey, owls, frogs, insects, jackrabbits, river otters, and more. I request the EIR to address mitigations for preventing the inflow of salinity farther into the Delta.

- Habitat disruption. Even small changes of the area for just a year can cause detrimental impacts for the Greater Sandhill Cranes. According to the Conservation Assessment For Greater Sandhill Cranes Wintering On The Cosumnes River Floodplain And Delta Regions Of California Report, "Cranes show a high degree of philopatry to traditional wintering sites, and do not readily shift to new areas." They recommend that construction should only occur outside of the wintering period. They also state, "The San Joaquin-Sacramento Delta is one of the two most important winter use-areas for the Central Valley Population of Greater Sandhill Cranes, for over 61% have been recorded on the Delta. The most important islands and tracts include Staten Island, Brack Tract (including Woodbridge ER), the remaining suitable croplands on Terminous Tract (particularly the north and east portions), Canal Ranch, and the New Hope Tract south of Walnut Grove Road. We consider these areas critical to the conservation of Greater Sandhill Cranes, as they support the most consistently used roosting and feeding sites on the Delta; therefore, they should receive the highest priority in conservation plans." The Delta Conveyance Project proposes to go through many of these areas. I request the EIR address ecological impacts on migratory species, especially the Greater Sandhill Cranes.
- Sacramento-San Joaquin Delta Reform Act of 2009. Delta Policy (chapter 2, 85020) outlines the policy for the State of California to achieve the coequal goals for management of the Delta. The state has failed to make progress on many of these policies. These include the lack of investment in flood protection, expansion of statewide water storage, and statewide water conservation and sustainability, and salinity and water quality issues. The biggest policy failure has been the lack of progress to reduce reliance on the Delta in meeting California's future water supply needs (85021). DWR has a poor history of building and maintaining their current infrastructure which is why we do not trust the state that this project is going to be any different in actually being effective. They have wasted time and money on numerous versions of this same project instead of focusing on the many economical and sustainable water solutions that are out there and have been suggested as alternatives. I request that the EIR include several of the alternative proposed projects out there that would reduce water reliance on the Delta and assist with CA's need for water sustainability.
- Water loss and contamination. This project is really only one component of an overall system that is in great need of repair. With this project, no new water will be created, only transferred. Once this water is transferred to the aqueduct, a large portion of it will be lost due to the leakage issue of the aqueduct. I request that the EIR include the cost for canal improvement and if not, how the project will mitigation for the waste of water that should have stayed in the natural Delta ecosystem. In addition, the tunnel is not a securely enclosed tunnel and water leakage is expected. Taking untreated river water and putting it underground near the clean domestic water table will eventually contaminate the underground water basin that most of the Delta residents depend on for their daily domestic water needs including drinking. I request mitigation measures to be included in the EIR for providing a permanent source of clean, domestic drinking water to residents in each affected Delta town.
- Tunnel construction is a specialized job that will require specialized workers. Those workers are not in California, so saying that this project will create Californian jobs in not correct. Already, the state has hired an out-of-state lead engineer to oversee this project. Just like when the State a few years ago spent \$3 million to repaint the 3 bridges along

Highway 160, they took low bid which was a company from Washington State who brought down their own workers from Washington. All that money all went back to Washington State's economy, not California's. I request that the EIR include an economic analysis of the construction and engineering payroll for this project and which economy those workers' dollars will really go and including the lead engineer's, based on the current companies already identified or hired as the possible construction company and engineering firm to be used.

- Gas Fields. Digging a tunnel through the Delta region will be hazardous and has the potential for explosions. Several gas fields have been identified by the state including Hood-Franklin Gas, Snodgrass Slough Gas, Thornton Gas, Thornton W Walnut Grove Gas, River Island Gas, East Island Gas, Rio Vista Gas, McDonald Island Gas, Roberts Island Gas. Also, peat soil can be dangerous if it catches on fire as it can burn underground for a long time. There will be lots of fuel and oil from the construction equipment and tunneling machine that could be ignited. I request the EIR address all hazards and impacts associated with the surrounding gas fields.
- Earthquake impact. Researchers from University of California and the Network for Earthquake Engineering have been testing model levees to understand how the unique peat soil of the Delta, as deep as 80 feet, may respond to an earthquake. Of all the levee failures in the past, none have been associated with an earthquake. The research teams conducted tests on both dry peat soil and saturated peat soil. It showed that the levees can hold, especially when the testing machine broke instead of the levee trying to test for higher magnitude earthquakes. The results showed that pore pressure ratios are not large enough to significantly degrade shear strength. There are techniques for quicker repair of levees from breaches. I request the EIR to show the mitigation costs of a levee breach from an earthquake so that we can compare this alternative to the proposed project that part of the rationale for building is to prevent levee failure from an earthquake. I think the cost and timeframe to fix a levee failure will be quite less than a damaged tunnel from the same earthquake 100-200 feet underground. There are several studies on the impact of earthquakes on tunnels. Locally in California, 2 separate earthquake impacts are documented in "Earthquakes and Seismic Faulting: Effects on Tunnels" by Villi A. Kontogianni & Stathis C. Stiros. The Wright Railway Tunnel in Santa Cruz was impacted by the 1906 San Francisco earthquake with offset of 1.5m and was closed for over one year for collapse. I request the EIR to look into the timeline and costs for mitigating if a mega-earthquake occurs which will damage the tunnel. I request the EIR to address the following recommended general issues for tunnel design identified in ScienceDirect's "Impact of Seismic Design on Tunnels in Rock" as the author noted often tunnels are unlined and limited in ground support to make the design more efficient in materials and time required to install them. Especially with this project not being placed in ideal solid rock, these factors for the success and longevity of the tunnel are extremely important to get right the first time during the design construction of the tunnel. The EIR needs to address that the project is properly designed and built without shortcuts financially, safety, or the necessary materials.
- Tunnel Muck. The muck that will be removed during the tunneling needs to be handled like Hazardous Waste Material. It is known that the earthen material deep in the delta contains Valley Fever spores. Also, the liquidly muck will not be suitable to just dump on the existing levees as a structural enhancement. With the Delta having a strong breeze

almost daily, all of the muck that is brought up needs to be promptly removed from the Delta region. The EIR needs to address the costs to properly remove and dispose of all tunnel muck brought up to the surface.

- Tunnel shafts. The project states it will require a series of launch and retrieval shafts every 4-5 miles with each shaft requiring 400 acres for construction staging and material storage and a permanent footprint of 4 acres that will be 45 feet tall. This height would put each shaft well above the levee height and in sight for miles around in the Delta. These unsightly pillars will ruin the aesthetic natural beauty of the Delta, hinder the agricultural productivity of those farmers located along the tunnel track, and permanently disable their land to farm after construction. I request that the EIR address and mitigate for the financial loss of agricultural production at each of these sites.
- Intermediate Forebay. The size and location of the Intermediate forebay is a concern. The 30 foot high embankments would place this feature well above the levee by potentially 10-20 feet and in sight for miles around the delta. Appurtenant structures and a permanent crane would be an additional 10 feet above the embankments. Again, ruining the natural aesthetic views of the Delta. The placement of this 250 acre intermediate forebay is also concerning. The last proposal had it placed right behind the elementary school in the small town of Courtland. If failure of that forebay should occur, the first to be hit would be the school, wiping out an entire generation for families in Hood, Courtland, and Walnut Grove including my kids. This is poor planning and disregard for our kids' elementary school that over 90% of the students are on free or reduced cost lunch.
- Disadvantaged communities. While the state keeps touting about how it is providing resources to protect disadvantaged communities especially with water quality, air quality, and other health aspects, this project will do just the opposite. Many of the residents in the Delta are farm laborers. Most of the children in our schools receive free or reduced cost lunches. The state has shown no concern for these disadvantaged communities with this project that they know will harm the residents and the Delta region as a whole. The state is willing to sacrifice these communities and permanently destroy a vital and rare ecosystem to benefit only another region that refuses to find better ways to sustain themselves. This is wrong for the state to partake in, especially when there are many other water projects that don't impact the Delta and will have better results in providing all Californians will the quality water and sustainability it needs. The state's role is to ensure all Californians have rights and protections, not to only those who throw money at it. The state knows this project will increase greenhouse gases and particulate pollution in the Delta. The state knows this project will worsen the salinity issue, contaminate the islands, and kill off the agricultural production. The state knows this project will permanently disrupt the feeding and resting grounds for many migratory species including some that are endangered. The state knows this project will put all of the Delta communities and residents at risk for levee failure and flooding. The state knows this project will devastate the Delta economy and market value. The state knows this project will affect the drinking water for these residents by either being cut off or contaminated. In previous proposals, nothing was mentioned about providing clean water for residents whose water well end up compromised or compensation for any damages that any Delta resident will have to occur. The state cannot ignore the Delta residents and the ecosystem

with this project. All of these impacts need to be addressed by the state and have money available to mitigate any impacts from this project to all Delta families.

I strongly encourage the EIR to support a No Project option for the Delta Conveyance Project. This project does not make any sense economically, environmentally, or for water sustainability. It is state law to reduce reliance on the Delta and reduce transfers out of the Delta. The state needs to uphold that law. There are many other water projects that can actually create new water resources, better use our current water resources, and create water sustainability in our growing state. The following are projects that I request that the EIR address.

- Dredging rivers. Over time, sedimentation has built up in many of our rivers and sloughs. Specifically, on Steamboat Slough, mudbars have developed all along the slough. In addition, our irrigation river pump has plugged a few times over the years due to the buildup of siltation and the burying our pump. By dredging the rivers and sloughs in the Sacramento and San Joaquin River systems to their original depth, less riverside water pressure will be placed on our levees. This reduction of pressure will extend the longevity of the levees and reduce breaching during flood periods with more channel space to hold and move storm water. This will help with meeting FEMA standards and qualifying for funding assistance. Dredging will also improve the environmental ecosystem by providing a rocky bottom surface which is help protect fish eggs and young fry from predators.
- Sites Reservoir. The Sites Reservoir objective is to collect storm water during high water events and store that water until room is available in other water storage facilities or needed by water users. The water being stored in this facility is only excess water that can't be captured to store and otherwise would have flowed out to the ocean.
- Desalination. We need to get the large metropolitan cities along the coast to utilize desalination. Desalination plants are a reliable drought proof water source. The Carlsbad Desalination Plant was constructed within a 3 year timeframe and provides more than 50 million gallons of new fresh water everyday to serve 400,000 people in San Diego County. This project covers a smaller footprint of area, reduce that area's dependence to import water, but yet is reliable local water resource to already supply one-third of their county's water needs. The Delta Conveyance Projects will take over a decade to construct, and still not guarantee any water as it doesn't create or store water. It will only transfer water that may be available, which during drought, could be an empty tunnel that tax payers will still be paying money for. At least with a desalination plant, when tax payers are paying for facility, water will be created. In addition, the Carlsbad Desalination Plant uses energy recovery devices that recycles the pressure from the reverse osmosis process to save an estimated 146 million kilowatt-hours of energy every year and reducing carbon emissions by 42,000 metric tons every year. Desalination is a start in securing California's water sustainability, especially for coastal cities. To address environmental concerns of warmer and/or higher salinity return water into the ocean damaging and impacting the continental shelf ecosystem, there is a solution of placing the plant farther out in the ocean to expel the return water out on the edge of the continental shelf or father. In Southern California, many base support structures and transfer pipework to bring the fresh water to the mainland are built. Desalination plants can be built on top of the off-shore oil drilling platforms. In addition, there are more feasible options to mitigate the impacts of a desalination plant on the coastline than compared to this Delta Conveyance Project's mitigation issues if even possible to mitigation. As more

desalination plants become operational, since they are pulling seawater to make fresh water, they can have a small effect on the expected rising sea level with climate change.

- Recharge. California has a great natural water storage already underground. Over the years the natural recharge has decreased as the state continually tries to direct and funnel water into channels along with the technological advances in agriculture to reduce water use through microirrigation. Then many areas are also pumping more water out of the basin than can naturally recharge. There are years and times of the year, when storm water is available to allow to flood over fields and seep slowly into the ground. These opportunities are readily available, low cost, and just need to be supported and promoted. In the long run, this will help our groundwater basins to come into balance, provide the state with a readily available water source during years of drought, and lower dependence on surface water diversions, and is ecologically beneficial.
- Support legislation to allow groundwater storage to be considered a beneficially use. Currently, storing water as groundwater in not considered a beneficial use and with the establishment of SGMA is contradictory. In order for SGMA to achieve balance and sustainability, water must be allowed into the groundwater basin. Yet, legislatively, recharging a groundwater basin limited as it's not deemed a beneficial use. Where natural flooding events and agricultural flood irrigation practices actually supplied time for water to soak in and recharge the groundwater basin, today's practices of micro irrigation to conserve using water and the channeling of natural flood events has all be eliminated the ability for water to seep into the soil and down into the groundwater basin. Our technology while great for conservation and flood safety, has impaired our groundwater basins to recharge and have hurt the surrounding natural environment on riverflows and drier soil surface from lower water table.

By supporting a No Project option for the Delta Conveyance Project and instead find better and more economical alternatives to provide new and sustainable water resources, all four of the project objectives to improve the SWP Delta Conveyance system will be achieved, provide more functionality to support the State's Water Resilience Portfolio, and protect and benefit all Californians properly. It is time to stop wasting tax payers' time and money on this type of project that will create no water for the state. It's time to protect this special and unique Delta region that provides so much agriculturally, ecologically, and economically to the entire state of California. The state needs to stop focusing on this one type of project only located in the Delta as its only water solution for California. Stop trying to destroy the Delta. There are so many better providing and economical solutions for water sustainability for the state to look at. Please start looking and supporting those water projects.

Sincerely,

Amber McDowell Double M Farms 13161 Grand Island Rd Walnut Grove, CA 95690

From:	<u>S. Dean Ruiz</u>
To:	DWR Delta Conveyance Scoping
Cc:	Julie Smith
Subject:	Comment Letter
Date:	Friday, April 17, 2020 3:34:17 PM
Attachments:	CDWA SDWA Sup Cmts Scoping Delta Tunnel4-17-2020.pdf

Please find attached an second SDWA / CDWA letter.

Thank you

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Central Delta Water Agency and South Delta Water Agency Supplemental Comments on Delta Conveyance Project Alternatives Scoping

Introduction

CDWA and SDWA comments are divided into the following sections which include: the Executive Order N-10-19 (EO), Notice of Preparation (NOP), EIR preparation, and identification of potential project alternative components.

Executive Order N-10-19

The EO defines the requirements and principles for the Water Resiliency Portfolio, which the Delta Conveyance Project is (misrepresented as) part. The comments below on the EO identify mandatory components and principles which must be included in all of the Water Resiliency Portfolio components and provides preliminary comments regarding how the Delta Conveyance Proposed Project fails to comply with or embody. The EO is important to analyze as, 1) it does not authorize the initiation of the Delta Conveyance Project or an EIR, 2) it identifies the objectives for any project under the Water Resiliency Portfolio (most of which the Delta Conveyance Project does not include), and, 3) it provides a set of requirements that must be utilized as screening criteria for the evaluation of any project alternative or alternative component that is part of the EO Water Resiliency Portfolio, i.e. must be applied to the Delta Conveyance Project alternatives screening and development. In this section we provide detailed comments on the failures of the Proposed Project to meet each EO Water Resiliency Portfolio mandate.

Notice of Preparation

The NOP is deficient in its omission of material disclosures and proposes violations of CEQA.

The NOP proposes that Delta Conveyance Project operations would not be defined until <u>after</u> the CEQA process is completed (NOP page 3, paragraph 3). This plan to violate CEQA by not analyzing, disclosing or mitigating operations-related impacts in the EIR fundamentally violates the responsibilities of the CEQA Lead Agency to the point of malfeasance. As a result of this gross abuse of process and privilege by DWR as the Lead Agency, it should be removed as the State lead agency on the Delta Conveyance Project.

The NOP is fundamentally deficient by not disclosing the proposed operations of the project. It is not possible for the public to determine the extent of potential project impact to them without relevant proposed operations information being disclosed. Proposed Project operations description and disclosure must be included in a recirculated NOP and round of public scoping meetings.

EIR Preparation

An EIR is a decision support document for agencies with decision making authority relevant to the project. Many permits required by the project will be evaluated and potentially issued based upon information in the EIR. The EIR impact analyses must include a full evaluation of detailed project operations consistent with those proposed to, and potentially approved by, agencies that may issue permits to the project based on the information in and findings of the EIR. DWR's proposal in the NOP to not analyze final project operations guarantees that not all project impacts would be quantified or mitigated. It also guarantees that the basis upon which other agencies relied upon the EIR would be false and misleading. Given DWR's stated intent to violate CEQA, it is equally likely that DWR would choose to analyze a proposed set of operations in the EIR that resulted in significantly less environmental impacts to reduce mitigation costs and increase water supply yield. In its statement, DWR has declared that the operations it evaluates in the EIR will not be the operations they intend to implement with the project if it is approved. DWR's plan for a deficient EIR from the beginning of the EIR process indicates that DWR should not be allowed to be the Certifying Agency of the EIR.

The Delta Conveyance Project extends the operational lifespan of the SWP Facilities by adapting the project to be viable beyond the date in which the current facilities would become unviable under assumed No Project future sea level rise conditions. The No Project Assumption for the Delta Conveyance includes a 10' increase in sea level. This sea level rise would effectively end the viability of the current (No Project) SWP water supply before or around approximately the year 2050. Therefore, the Delta Conveyance Project EIR impact analysis must include as part of their direct, indirect and cumulative impacts, the on-going impacts of continuing to operate the SWP beyond the time period in which it would have been viable without the project (the No Project). The SWP Water Supply Contract Extension Amendment EIR was legally obligated to disclose, analyze and mitigate this impact, but omitted this impact from its impact scope by incorrectly assuming the contract extension as the No Project condition. Regardless of DWR's incorrect presumption of a water supply contract renewal being a No Project assumption, the sea level rise that is assumed under the No Project condition for the Delta Conveyance Project means the SWP will not be viable at a certain date in the No Project condition. Therefore any ongoing and incremental impacts of operations of the project beyond that date of No Project SWP viability are all impacts of the Delta Conveyance Project that must be disclosed, analyzed and mitigated in the EIR. These on-going incremental impacts include, but are not limited to: soil salt accumulation, land use changes, genetic introgression of fisheries biologically distinct units, population growth inducement, etc.

Project Alternatives

Alternative components identified in this submittal are in an effort to identify potentially productive and mutually beneficial project alternatives which accomplish the purpose and objectives of the project and satisfy the mandates of the Executive Order. We believe these alternative components have sufficient merit for further analysis in the project EIR. Although many project alternatives have been evaluated to address other Delta projects that have overlapping and similar project objectives to the Delta Conveyance Project and the Water Resiliency Portfolio in the past, (i.e. CalFed, South Delta Improvement Program, Delta Risk Management Strategy (DRMS), Bay Delta Conservation Plan, California WaterFix, OCAP Biological Opinions, etc.), most of the proposed project alternatives have never been evaluated and certainly never in the synergistic combination proposed in this comment section. Alternative solutions which do not include the very expensive and greatly damaging tunnel or other isolated Delta conveyance facilities should be objectively analyzed.

The project alternatives put forth in these comments do not constitute endorsement of these alternatives as there is the potential for adverse outcomes that are not necessarily foreseeable until a full EIR analyses has been conducted. The alternatives submitted in these comments are intended to be constructive in the search for project alternatives that meet the project objectives, satisfy the mandates of the Water Resiliency Portfolio Executive Order and protect and enhance the Delta. The Delta Reform Act Water Code section 85054 requires protection and enhancement of the unique cultural, recreational, natural resource, and agricultural values of the Delta as an evolving place.

The analysis provided in these comments on the Executive Order and the NOP Project Objectives provide a series of alternatives development screening criteria. A cumulative scoring assessment of the alternatives and the Proposed Project is set forth in **Table 1. Comparison of Proposed Project Alternative to NOP Objectives and EO N-10-19 Water Resiliency Portfolio Mandates**. The Proposed Project only satisfies 2 of the 21 screening criteria. The identified combined set of project alternatives meets 20 of the 21 screening criteria. The identified set of project alternatives fails to "Support Population Growth" so it does not satisfy one of the screening criteria. All but one of the other screening criteria are satisfied by the identified set of project alternatives multiple times (often in different and synergistic

manners). Executive Order N-10-19 – Analysis and Comments Regarding Mandates for the Delta Conveyance Project

Since this Executive Order (EO) is DWR's claimed basis of justification for initiating the Delta Conveyance Project, it is important to examine the objectives of the order to ensure the project fulfills those objectives and is compliant with the mandatory criteria defined in it.

Following are selected quotes from the Executive Order which identify mandatory criteria for Water Resiliency Portfolio projects which the Delta Conveyance Project must utilize as project alternatives screening criteria:

- Page 1, paragraph 2, "we face a range of existing water challenges including <u>unsafe drinking</u> <u>water</u> across the state, <u>major flood risks that threaten public safety</u>, severely <u>depleted</u> <u>groundwater aquifers</u>, <u>agricultural communities coping with uncertain water supplies</u>, and <u>native</u> <u>fish populations threatened with extinction</u>."
- **Page 1, paragraph 5,** "future prosperity of our communities and the <u>health of our environment</u> depend on tackling pressing current water challenges while positioning California to meet broad water needs through the 21st century"
- Page 1, paragraph 7, "...providing clean, dependable water supplies to communities, agriculture, and industry while restoring and maintaining the health of our watersheds is both necessary..."
- Page 1, paragraph 8, "achieving this goal requires a broad portfolio of collaborative strategies"

Emphasis added with underlining to identify EO objectives that must be included in the Delta Conveyance Project objectives in order for it to be consistent and compliant with the EO.

The Delta Conveyance Proposed Project Does Not Accomplish the Required Objectives of the EO. Bold text in the following bullet points are objectives and issues to be addressed by projects in the Water Resiliency Portfolio required by the EO.

• **Unsafe Drinking Water:** Millions of Californian's get drinking water from the Delta, some through the SWP and others directly or from other non-SWP water sources. The WaterFix EIR/S showed that a tunnel project with North Delta intakes, such as the Delta Conveyance Proposed Project, would degrade the water quality for non-SWP sourced Delta drinking

water. Although the Proposed Project when operated could improve drinking water quality for some selected Californian's that happen to live in SWP Water Contractor districts, it comes at the direct expense of the adverse drinking water quality impacts to many other Californian's water supplies that are also sourced from the Delta.

- Major Flood Risks that Threaten Public Safety: The Proposed Project's stated purpose is to move SWP intakes to the north Delta so that SWP water quality is protected (this assertion by the project is incorrect as water quality is not protected as discussed in later comments in this document). Moving the intakes to protect only export water supplies is a tacit abandonment of the Delta by the State. This abandonment of the Delta by the State to assumed sea level rise leaves all of the residents, businesses, infrastructure (statewide electrical transmission lines, natural gas pipelines and wells, state highways, railroad lines, fiber optic lines, ports of Stockton and Sacramento, etc.) vulnerable to peak flow events from rain on snow and storm surge events. DWR's SWP abandonment of the Delta to future increased sea level rise created by the Delta Conveyance Project promotes and results in direct violation of the California Department of Water Resources responsibility as a Public Trust Resource management agency. The Proposed Project fails to fulfill the EO objective to protect the public from flood risks. Depleted Groundwater Aquifers: Variability in annual SWP contract deliveries is responsible for groundwater depletion within its service areas. The depletion of groundwater resources as a result of variations in water supply quantities delivered in the Central Valley was discussed at length in the Bureau of Reclamation Remand EIS document. SWP Water Contractors and their customers treat average SWP water deliveries as a near certainty in their hardened water supply demand. Any year of less than average SWP water supply contract deliveries is treated by the SWP Water Contractors and their customers as an aberration to be met with a mad scramble for water trades and alternative water supplies. This results in critical groundwater overdrafts occurring within SWP Service Areas at a rate equal to or greater than other similar areas that are not within the SWP service area. The EO defines that hydrologic conditions in the future will make SWP water supply reliability even more variable and lower than today's conditions. The Delta Conveyance project however actually increases SWP Water Contractor reliance upon Delta water supplies which will become even more variable in the future. This increased reliance upon Delta water supplies and increased future water supply variability means the Delta Conveyance Project will predictably result in additional pressure and overdraft of the State's depleted groundwater aquifers. The Delta Conveyance Project is an additional threat to the depletion of groundwater aguifers and is in conflict with the EO requirement to reduce groundwater depletions. The SWP and CVP failed to develop, at water contractor expense or otherwise, the projects which were planned to capture surplus water to support the contractor desires. The delivery of infirm or interim supply with encouragement of water transfers and profiting from sale of project water has resulted in permanent urban and agricultural demand which cannot be met without over drafting groundwater or taking of surface water which is not surplus to the present and future needs of the area from which it is taken.
- Uncertain Agriculture Water Supplies: The EO defines that hydrologic conditions in the future will make SWP water supply reliability even lower than today's conditions. The Delta Conveyance project increases SWP Water Contractor reliance upon Delta water supplies which will become even more variable in the future. This increased reliance upon Delta water supplies and increased future water supply variability means the Delta Conveyance Project predictably results in even greater uncertainty in Agricultural Water Supplies. In addition to water supply variability, the Delta Conveyance Project creates water transfer capacity that will

greatly increase the economic conflict and disparity between municipal and agricultural water users. The water transfer capacity created by the Delta Conveyance Project will drive up the cost of agricultural water supplies as they are forced to compete against municipal water demands over a geographic range never previously experienced by the current excess transfer capacity constrained SWP system. The water transfer capacity created by the Delta Conveyance Project increases the uncertainty of agricultural water supplies and therefore is in direct conflict with this objective of the EO.

- Native Fish Population Threatened with Extinction: The Delta Conveyance Proposed Project does not protect or even reduce take of threatened and endangered native fish populations from SWP operations. The WaterFix EIR/S determined that there were no benefits to Delta Smelt or Longfin Smelt from north delta intakes and anadromous fish (salmon – all runs and sturgeon) were adversely impacted from north delta intakes. The Proposed Project with its North Delta Intakes will almost certainly have the same adverse affects on these native species threatened with extinction – exactly the opposite of the objective and requirement in the EO.
- Health of Our Environment: The Delta Conveyance Project increases reliance upon Delta water supplies and will decrease the amount of water in and passing through the Delta which confer environmental benefits (improved water quality, flows, etc.) to the Delta. The Proposed Project includes no features or functions designed to benefit the environment. With no benefits to the environment and known negative impacts to the environment, the Delta Conveyance Proposed Project is in direct conflict with this requirement of the EO.
- Provide Clean, Dependable Water Supplies to Communities, Agriculture, and Industry While Restoring and Maintaining the Health of Our Watersheds: The EO requires protection and restoration of watershed health. The coequal objective of habitat restoration and water supplies as is still legally required by SB-X7. The Proposed Project includes no components, provisions or features which are designed to accomplish or result in protecting or enhancing the health of the Delta watershed. The Proposed Project fails to fulfill this EO mandate. Broad Portfolio of Collaborative Strategies: The Proposed Project is a standalone project that does not have identified synergisms with other projects to meet this EO mandate nor is it comprehensive in addressing most of the requisite objectives of the EO.

EO Climate Change and Other Assumptions the Delta Conveyance Project and Other Water Resiliency Portfolio Projects Must Address:

- "shorter, more intense wet seasons that worsen flooding"
- "California continues to grow. with our population projected to grow to 50 million"

Delta Conveyance Project Implications from EO Assumptions

• The assumption of shorter peak flow wet season hydrology in the future dictates that any project must anticipate this flow regime and incorporate design, engineering <u>and operations</u> consistent with this future hydrology. The implication is that the SWP must adapt to capture these wet season peak flows and anticipate significantly reduced operations in non-peak flow periods. Previously in other water diversion projects, this hydrology and operation has been referred to as a "Sip vs. Gulp" diversion operation. "Gulp" during peak flows when environmental impacts are reduced and "sip" or abstain from diversion operations during reduced and low flows when environmental impacts are much greater. Sip and Gulp SWP water diversion operation strategy requires downstream of delta water storage to store peak

flow diverted water for use during periods of low or no diversion operations. The Delta Conveyance Proposed Project has no feature which allows or facilitates improved capture or storage of these wet period peak flows and fails to propose any operations to address changed future hydrologic patterns. Contradictory to the EO required assumption, the Delta Conveyance Project assumes increased operations in non-peak flow conditions by moving the SWP intakes to a new upstream location.

 The EO growth assumption (and Delta Conveyance Project Purpose) to "restore and protect the reliability of SWP water deliveries" identifies that the Delta Conveyance Project will support increased and long-term hardened demand water supplies from project facilitated population growth. The project supporting increased future population water supplies is a Growth Inducement impact the Delta conveyance Project EIR must disclose; determine the magnitude, location, timing and nature of growth induced; analyze; and mitigate those Growth Inducement impacts.

The Delta Conveyance Project incorrectly assumes the population growth identified in the EO must occur in SWP water contractor districts and that a Delta Conveyance Project must support it. Assuming population growth in Southern California in SWP Water Contractor districts drives project capacity assumptions and design criteria. This assumption of the project to support population growth within SWP service areas drives a commitment of energy, resources and budget where it is not necessary and is by definition wasteful and in conflict with the EO Water Resiliency Portfolio mandate to increase water supply security. This erroneous Delta Conveyance Project assumption drives the construction of a large, complex and vulnerable water conveyance at great cost and environmental impact. The project must include as an alternative to the Delta Conveyance Project that anticipated future population growth would or should occur in areas at the origin or nearer to the water supply. Assuming people move to or future population growth occurs in areas that require less vulnerable and expensive infrastructure with less environmental impacts is a much more reasonable, less expensive, less vulnerable, and less environmentally damaging project alternative than currently proposed by the Delta Conveyance Project.

EO Water Resilience Portfolio Requirements: "IT IS HEREBY ORDERED THAT:"

- 2. "Agencies shall first inventory and assess." (emphasis added)
 - **f.** "Current planning to modernize conveyance through the Bay Delta with a new single tunnel project."
- *3. "This water resilience portfolio established by these agencies <u>shall</u> embody the following principles: (emphasis added)*
 - a. Prioritize multi-benefit approaches that meet multiple needs at once.
 - b. Utilize natural infrastructure such as forests and floodplains.
 - c. Embrace innovation and new technologies.
 - d. Encourage regional approaches among water users sharing watersheds.
 - e. Incorporate successful approaches from other parts of the world."

Delta Conveyance Project Implications of EO Water Resilience Portfolio Requirements:

 2 and 2f above orders an inventory and assessment of current planning for modernizing conveyance through the Bay Delta with a single tunnel project. This order clearly does not authorize initiation of a project to plan or propose a Delta Conveyance project; it orders an inventory and assessment which is a report, not a CEQA project. 2a-h are orders for inventories and assessments,. None of the other a-h have been interpreted as an authorization for a project. What has been ordered as described in the EO is the equivalent of an Initial Study. The EO requires a study or a report not a project, so the Delta Conveyance Project has no legal basis for initiation. Without the legal basis for project initiation, any funds allocated to or expended by the Delta Conveyance Project are by definition "unauthorized" and illegal. The EO is also clear that the inventory and assessment must be done first which means it must occur before any project that might result from this inventory and assessment can be initiated regardless of other orders, policies or actions. DWR must stop the current Delta Conveyance Project EIR and first conduct the inventory and assessment required by the EO.

- The Delta Conveyance Proposed Project Fails to Embody the Principles Required in 3 a-e. 3 a-e require that any component of the Water Resiliency Portfolio, including modernizing Delta water conveyance, <u>must</u> embody these principles.
 - o The Delta Conveyance Proposed Project Does Not Prioritize Multibenefit Approaches That Meet Multiple Needs at Once. The Proposed Project includes only the benefit of increased export water supply for some selected Californian's that live in SWP Water Contractor districts. This single, limited and selected benefit for some Californian's comes at the expense of water supply reliability and other designated beneficial uses of water for delta residents, businesses and environment (water quality suitability for agriculture, fisheries, water supply). The Proposed Project includes no provisions for other benefits such as protection or enhancement of Delta aquatic habitat or delta water supplies. In fact, the Delta Conveyance Proposed Project does the opposite of the multi-benefit approach by tacitly abandoning the delta to future sea level rise which dooms all of the other benefits and beneficial uses of water in the Delta.
 - The Delta Conveyance Proposed Project Fails to "Utilize Natural Infrastructure..." All of the components of the Delta Conveyance Proposed Project are unnatural construction/engineering solutions and do not utilize or harmonize with any natural delta components, structures, features or functions. Improvement of Delta levee systems and continued use of the through Delta conveyance which has functioned for almost eighty years can continue to adequately serve both export and in-Delta needs.
 - The Delta Conveyance Proposed Project Fails to "Embrace Innovation and New Technologies". There is nothing new or innovative about the Delta Conveyance Proposed Project tunnel for delta water conveyance. Isolated conveyance including peripheral canals has been studied for over 50 years. Delta tunnel water conveyance projects and alternatives have been studied and analyzed over the last 12+ years and in each scenario and

iteration the projects failed to reduce impacts to threatened, endangered and listed aquatic species or to deliver incremental water supply or water supply reliability over the No Action/No Project condition. The Delta Conveyance Proposed Project is one tunnel instead of the two previously proposed and with the river intakes at exactly the same locations as WaterFix and the BDCP before it. The Delta Conveyance Proposed Project functions exactly the same as WaterFix so there is nothing new or innovative about 1 tunnel vs. 2.

• The Delta Conveyance Proposed Project Fails to "Encourage Regional Approaches Among Water Users Sharing Watersheds." The Delta Conveyance Project NOP does the opposite of this EO requirement by artificially and capriciously attempting to limit the geographic scope of project alternatives to the Delta. Increasing the reliability of SWP water supplies can be achieved by projects that address other potential weak points in the reliability of the SWP system. Projects to address SWP water supply reliability that are not in the Delta include, but are not limited to: Removing the giant slip fault in Lake Oroville, repairing the "green spot" leak on the face of Oroville Dam, seismic upgrades to the Banks Pumping Plant and California Aqueduct, repairing California Aqueduct leaks, increasing south of Delta water storage, etc. This NOP artificial geographic constraint on only the Delta thwarts the mandate for regional solutions. If Oroville Dam fails, either due to the slip fault or the green spot leak, it does not matter if delta water conveyance is modernized or not, there would be no water to export. Similarly, if the Banks Pumping Plant or the California Aqueduct fail, it does not matter if the delta water conveyance is modernized, there would be no SWP conveyance for water south of the delta. The "inventory and assessment" required by the EO should evaluate the whole of the SWP to determine which parts are the most urgent and high risk to address for public safety and water supply reliability. Instead, the NOP jumps to the completely unsupported and predecisional conclusion that the greatest risk to SWP water supply reliability is conveyance in the delta. The capture of flood waters with diversions in the upper portions of watersheds with reservoirs and groundwater storage should not be precluded from alternative evaluation.

The predecisional components of the NOP (identified in NOP Comments below) reject the principle of cooperation or collaborative approach among users sharing watersheds. All of the aspects and objectives in the Proposed Project are designed to benefit one group, SWP Water Contractors, over other Delta watershed users, e.g. cities and municipalities, farmers, businesses, Reclamation Districts and other non-SWP Water Agencies. **The Delta Conveyance Proposed Project Fails to "Incorporate Successful Approaches From Other Parts of the World."** There have been many tunnel projects around the US and world. Many tunnel projects in the US and around the world have experienced construction failures (underground obstructions, tunnel flooding, failed boring machines, boring operation-related levee failures, etc), schedule delays (years or even decades) and extreme cost over-runs (i.e. 5x of original \$ budgets). Common technical, construction, and engineering failures; adjacent infrastructure impacts; missed schedules and huge cost overruns are the hallmark definitions of failed projects and are project models to avoid, not follow, as the Proposed Project does.

EO Comment Summary

The EO does not authorize a Delta Conveyance Project; it only authorizes an inventory and assessment report. If the State, in violation of having a project authorization, continues to advance the Delta Conveyance Project, the alternatives development screening criteria must include all of the objectives requirements and principles required and identified by EO N-10-19. The current Delta Conveyance Proposed Project only partially (and poorly) addresses one of the objectives identified in EO and fails to address all of the other requisite objectives and violates most of the principles and strategies required to be embodied by projects under the Water Supply Resiliency Portfolio as defined by the EO.

Notice of Preparation Comments

- DWR's NOP notice (https://water.ca.gov/Programs/State-Water-Project/Delta-Conveyance/Environmental-Planning), "Modernizing Delta conveyance is part of the state's Water Resilience Portfolio, which describes the framework to address California's water challenges and support long-term water resilience and ecosystem health." (Emphasis added). The NOP notice informs the public that the project is about water supply resilience and ecosystem health. The NOP Project Purpose conspicuously and deceptively in conflict with the notice, leaves out any reference to "ecosystem heath". The word "ecosystem" is not included in the NOP even once, but ecosystem health is represented as a coequal goal in the NOP notice. This is glaringly inconsistent and misleading. Health of the environment and watersheds are specified as objectives of the Water Resilience Portfolio. Neither of these objectives are included in the NOP; "ecosystem health", "environmental health" and "watershed health" must be added to the Delta Conveyance Project objectives so that it is consistent with the NOP Notice and the mandates of EO N-10-19.
- Introduction, paragraph 2, "... likely requiring the preparation of an environmental impact statement (EIS)." The project would require 401 and 404 permits from the USACE prior to construction. The project would also require a Biological Assessment and Biological Opinion to potentially support Incidental Take Permits from US Fish and Wildlife and NOAA Fisheries. Both of these sets of permits create a federal nexus that require a NEPA compliant EIS.
- Introduction, paragraph 2, "Federal agencies with roles with respect to the project may include approvals or permits issued by the Bureau of Reclamation (Reclamation)..." Reclamation does not have any decisions or permits to issue for the project and therefore has no standing in the project unless it opts to become a Delta Conveyance Project Proponent (co-owner).
- Introduction, paragraph 2, "DWR will prepare an EIR that includes relevant NEPA information where appropriate." It is at the discretion of the Federal NEPA Lead Agency to determine who will prepare the EIS, not DWR. The NEPA Lead Agency may choose to accept or not accept analysis prepared in coordination with the preparation of a joint EIS/EIR document or it may chose to conduct its own entirely independent EIS, solely at their discretion. DWR claims it will prepare information for the EIS (without agreement from the NEPA Lead Agency), but it has already violated the NEPA requirement for equal level of effort (including information collection and analysis) for all alternatives by initiating an effort to collect additional geologic core samples along its Proposed Project conveyance corridor with no consideration or equal effort applied to alternative conveyance routes or alternative to the tunnel conveyance. If the NEPA Federal Lead Agency agrees to conduct a joint EIS/R document with DWR, after the NEPA Alternatives Scoping and selection process is completed, an equal level of effort in collecting geologic information (and all other information) must be applied to all other alternatives.
- Introduction, paragraph 2, "Once the role of the federal lead agency is established..." The role and authority of the NEPA Lead Agency are statutorily defined so it is already established and the federal nexus requiring anEIS are clear as identified in the first comment in this section. The federal Lead Agency must be one that has is dependent upon information developed in the EIS to support decision making in issuing permits for the project. In the first comment in this section we identify that Reclamation has no decision making or permits in the process and that there are three federal agencies that would have to issue permits to the project in order for it to potentially proceed. USFWS and NOAA Fisheries both would have one permit to issue and USACE would have 2 or more permits to issue. USFWS and NOAA must prepare a Biological Assessment (BA) as part of their Section 7 ESA authority. They may take EIS information (or not) and will conduct their own analyses of listed species impacts in their Biological Assessment (BA) document. This mandatory Section 7 ESA document makes the information requirements of the USFWS and NOAA Fisheries less critically dependent upon the EIS than the USACE requirements which are entirely dependent upon decision making information provided in the EIS. The BA document is independent of the EIS so it falls upon the USACE as the appropriate NEPA Federal Lead Agency to conduct the EIS to make all EIS preparation decisions relevant to developing information to support their permit decision making needs. DWR does not have any authority to

choose who the Federal NEPA Lead Agency will be in this process. The federal agencies must make the NEPA Federal Lead decision for themselves guided by the agency with the most direct dependency upon decision making information provided in the EIS which in this case is the USACE.

- Introduction, paragraph 2, "...federal lead agency will publish a Notice of Intent to formally initiate the NEPA process." The CEQA NOP and NEPA NOI will have different dates for their environmental baselines due to DWR's lack of federal agency coordination of public notifications for the project. This dis-synchronous environmental baseline will unnecessarily complicate the EIS/R analyses and document. DWR should reissue the NOP at the same time as the NOI so the baselines are compatible to avoid unnecessary over-complication of the EIS/R. Having a coordinated NOI and NOP also avoids having different versions presented to the public of the Proposed Project for the mandatory Alternatives Scoping process that both processes require. DWR reissuing the NOP would allow the opportunity to correct the many deficiencies, errors, ambiguities, undefined terms and omissions in the first NOP that are identified in these comments.
- Background information, "Executive Order N-10-19, directing several agencies to (among other things), "inventory and assess... [c]urrent planning to modernize conveyance through the Bay Delta with a new single tunnel project." The Governor's announcement and Executive Order led to DWR's withdrawal of all approvals and environmental compliance documentation associated with California WaterFix. The CEQA process identified in this notice for the proposed Delta Conveyance Project will, as appropriate, utilize relevant information from the past environmental planning process for California WaterFix but the proposed project will undergo a new stand-alone environmental analysis leading to issuance of a new EIR." The EO authorizes a report to "tirst" inventory and assess "current planning" to modernize conveyance, it specifies that first an inventory and assessment on current planning must be conducted. DWR has mistakenly initiated "new planning" by undertaking this Delta Conveyance Project EIR. An EIR is a planning process so a new EIR is new planning, not current planning. See previous comments on the EO regarding the Delta Conveyance Project and funding not being authorized.
- **Purpose and Project Objectives, paragraph 1,** "Under CEQA, "[a] clearly written statement of objectives will help the lead agency develop a reasonable range of alternatives..." Correct, CEQA requires a clearly written statement of objectives. Unfortunately what this NOP provides is a poorly written conflation of "Purpose" and "Objectives" which confounds the CEQA requirement for clarity in defining project objectives to use to develop a reasonable range of alternatives. To support discussion of our following comments regarding how this NOP section fails to meet the requirement for clearly written project objectives, here are the definitions of "Objective" vs. "Purpose". "Objective" definition: "something that one's efforts or actions are intended to attain or accomplish". "Purpose" definition: "the reason for which something exists or is done, made, used, etc." The word "reason" is the key here. Anything that is not a reason does not belong in the Purpose Statement. Anything that is a reason does not belong in the section describing the Project Objective. These are essential to clarify as they are the basis for the project alternatives screening criteria. This section of the NOP must be rewritten to comply with the CEQA legal requirement for clarity which it currently fails to do.
- Purpose and Project Objectives, paragraph 1, "The statement of objectives should include the underlying purpose of the project and may discuss the project benefits" (State CEQA Guidelines Section 15124[b])." Yes, but the objectives and purpose should not be intermixed such that the objectives are not written clearly per CEQA.
- **Purpose and Project Objectives, paragraph 2,** "DWR's underlying, or fundamental, purpose in proposing the project..." Which is it, underlying (laying beneath) or fundamental (basic)? This is not clearly written as CEQA requires.
- Purpose and Project Objectives, paragraph 2, "...purpose in proposing the project is to develop new diversion and conveyance facilities in the Delta necessary to restore and protect the reliability of State Water Project (SWP) water deliveries..." Again, this is poorly written, not clear, and conflates purpose and objective which must remain clearly defined to support development of

alternatives per CEQA requirements. The first part, "develop new diversion and conveyance facilities" is an objective. The second part, "to restore and protect the reliability of SWP water deliveries" is a purpose (reason) for the project. It is important to separate the two concepts distinctly as the objective is how the project proponent conceives achieving a project purpose. Alternatives are other methods to reasonably accomplish the same purposes. The NOP conflation of the difference and importance of objective vs. purpose violates the CEQA requirement for clarity and will confound a clear and consistently evaluated alternatives development and screening process.

- "Restore... SWP water deliveries" (NOP page 2, paragraph 2) as a Project Purpose declares the intent to increase reliance upon delta water supplies, which is in direct violation of the legal requirement of SB-X7. Alternatives and alternative components identified in these comments are compliant with SB-X7. The term "restore" is not defined and therefore is not meaningful as a definition of a project purpose. Restore the water supply to what quantity or what period? Does this mean restore water supplies to unimpaired flows from current hydrology 1921-present (the "hydrologic record"), pre-SWP development, pre-D1641, to D1641 standards, pre-Wanger or post-Wanger rulings, Oroville FERC Relicensing pre- or post-, yesterday? If the term "restore" is kept as part of the project purpose it must be defined or alternative concepts cannot be reasonably evaluated for how well they meet this project purpose. Restoring water supply means quantities of water will change which have environmental impacts which must be evaluated, disclosed and mitigated. How much quantity of water change "restoration" requires is directly proportional to the magnitude of the environmental impacts the project will precipitate. The term "restore" must be quantified and defined in order to complete anything other than a programmatic EIR. Once the restored water supply objective is guantified, it must be disclosed in a revised NOP as it is fundamental to understanding the scope of the project and potential impacts that are important to the public.
- **Purpose and Project Objectives, paragraph 2,** "DWR's...purpose in proposing the project is to develop new diversion and conveyance facilities in the Delta necessary to restore and protect the reliability of... potentially, Central Valley Project (CVP) water deliveries south of the Delta..." The stated purpose now also, potentially, is to restore and protect the water supply of a Federal Agency that has to this date not indicated an interest in participating in the project. It is not a CEQA project purpose (reason) for a state to propose a project for a federal agency. This project objective must be withdrawn from the NOP as it is not a viable objective for the state and must not be utilized as any component of a screening criteria for alternatives development.
- Purpose and Project Objectives, paragraph 2, "...consistent with the State's Water Resilience Portfolio." Yes, if the project is authorized by EO N-10-19 (it isn't – see EO Comments), then it must be consistent with it. The CEQA Project Purpose as stated in this paragraph is not consistent with EO N-10-19. The words "restore and protect the reliability of SWP water deliveries" or even combinations of those words is not anywhere in the EO. DWR's proposed "project purpose" is made up, whole cloth, and is not from or consistent with the EO. An essential part of consistency with the EO's Water Resilience Portfolio is the project must include all of the objectives, requirements and principles required and identified by EO N-10-19. The Delta Conveyance Project as proposed in this NOP does not include or meet the objectives and mandates of the EO – see EO Comments.
- **Purpose and Project Objectives, paragraph 3,** *"The above stated purpose, in turn, gives rise to several project objectives."* DWR has this exactly backwards here. In the statement above DWR refers mostly to the objective (see previous comments), "to develop a new diversion and conveyance in the Delta". "Objective" definition: "something that one's efforts or actions are intended to attain or accomplish". In other words the objective is, "we want to build something that does this, that and the other thing".

"Purpose" definition: "the reason for which something exists or is done, made, used, etc." The word "reason" is the key here. Anything that is not a reason does not belong in the purpose statement. The project objectives drive the purpose, not the other way around. DWR'S NOP would not be so confused if the Project Purpose was clearly written as CEQA requires.

All 4 bullets in the NOP that follow are all "reasons" (purpose) for a project, not objectives. Any alternative that reasonably satisfies accomplishes these reasons for a project must be included in the EIR analysis as viable alternatives.

- **Purpose and Project Objectives, paragraph 3,** *"In proposing to make physical improvements to the SWP Delta conveyance system, the project objectives are:"* This is a good example of how DWR has gotten purpose and objectives backwards. Their objective is to build a project. Their stated reasons (purpose) for the proposed project is to accomplish their following bullet points. Again, this is important to correct as alternatives to the project must not be evaluated against what DWR has proposed as their project, but against the ability of a proposed alternative to satisfy the purpose (reason) for the project. If DWR does not straighten out this fundamental flaw and CEQA requirement failure, the screening criteria for alternatives development with be equally flawed and the evaluation of alternatives incorrect and indefensible.
- Purpose and Project Objectives, paragraph 3, first bullet, "To address anticipated rising sea levels and other reasonably foreseeable consequences of climate change and extreme weather events." This is a potential reason for a project therefore it is a purpose, not an objective as confusingly and incorrectly claimed in the NOP. The NOP misidentifying project purpose as project objectives does not meet the CEQA requirement for clearly written project objectives.

The State has adopted climate change assumption standards that all new projects must adhere to. Although we do not agree with these climate change assumptions or standards, it was imperative for the NOP to disclose the standard that this project purpose sets in order for the public to understand the project proposed as well as potential alternatives to the project. The sea level rise assumption in the Delta Conveyance Project is reportedly 10 feet, but it is not disclosed in the NOP. This is a wildly alarming assumption that has far reaching implications to the communities in the Delta and other non-SWP water supply customers that get their water from the Delta. All water supply diversions in the Delta are vulnerable to a sea level rise of 10 feet, but the Delta Conveyance Project only proposes to protect those Californian's that are served by the SWP. By withholding the sea level rise assumption of 10 feet from the public in the NOP, the public has been denied their opportunity to understand the scope, implications and potential alternatives of and to the project. The NOP must be reissued to include this fundamental assumption and criteria for the purported purpose of the project. The scope and expectations of the project must be revised to address the needs and threats to water supplies of all Californian's, not just SWP customers.

Climate change is a global problem and cited as the primary driver for the need to "restore and protect SWP water supplies". This defines the project as a response to a problem which is global in scope and yet the project attempts to (incorrectly) limit the range of appropriate project alternatives to those implemented only in the "Delta". If climate change is a global problem, the delta consists of only 0.0005% of the surface area of it. Surely the SWP's water supply reliability "and restoration" cannot be solely dependent upon the Delta 0.0005% geographic area as the sole solution. In the face of reality of climate change impacts to water supplies all over the world, why would it be a reasonable proposition for the project to "restore water supplies" to some unspecified earlier unaffected date and time when everyone else in the world is being forced to adapt to new climate and precipitation patterns.

• **Purpose and Project Objectives, paragraph 3, second bullet**, *"To minimize the potential for public health and safety impacts from reduced quantity and quality of SWP water deliveries, and potentially CVP water deliveries, south of the Delta resulting from a major earthquake that causes*

breaching of Delta levees and the inundation of brackish water into the areas in which the existing SWP and CVP pumping plants operate in the southern Delta." By DWR's statement here in the NOP, SWP Water Contractor district Californian's get preferential treatment to other Californian's as this project does nothing to protect Californian's that get their water supply from the Delta that are not part of the SWP. The very first and presumably most important statement in the EO is that "water is a human right". The Delta Conveyance Project not only ignores the human rights for water for non-SWP customers as they do not benefit at all from the project, but the project proposes to improve protections of water supplies for SWP customers. Making one group's water rights and supply security superior to and at the expense of another group's is antithetical to the first precept of the EO. A project and alternatives to a project must comply with this fundamental principle of the EO and the current Delta Conveyance Project Proposed Project does not.

- Purpose and Project Objectives, paragraph 3, third bullet, "To protect the ability of the SWP, and potentially the CVP, to deliver water when hydrologic conditions result in the availability of sufficient amounts, consistent with the requirements of state and federal law, including the California and federal Endangered Species Acts and Delta Reform Act, as well as the terms and conditions of water delivery contracts and other existing applicable agreements." This statement is so poorly worded as to be unsuitable for use as alternatives scoping screening criteria. "Protecting" a Federal Project is not a viable objective for a State Project so that cannot be a screening criteria. "Sufficient amounts" is subjective and undefined and therefore cannot be utilized as an alternatives screening criteria. A project being consistent with state and federal law is a mandatory screening criteria for all projects as a project cannot plan to break the law. It should be noted that current SWP operations fail to comply with water quality standards on a routine basis and therefore violate the law routinely. Given that the SWP current operations violate the law and this fundamental project alternative screening criteria, the project may not assume that continuation of existing operations and standards of the SWP will not result in violations of the law.
- **Purpose and Project Objectives, paragraph 3, fourth bullet,** "*To provide operational flexibility to improve aquatic conditions in the Delta and better manage risks of further regulatory constraints on project operations.*" "Aquatic conditions" is too vague a term to be useful in evaluating if a project alternative meets this objective or not. The project alternative scoping screening criteria for this objective must be changed to "protect delta water quality and habitat values for delta residents, water users and wildlife" so that it is consistent with the EO and SB-X7 legal requirements.
- Page 3, paragraph 3, "DWR would operate the proposed north Delta facilities and the existing south Delta facilities in compliance with all state and federal regulatory requirements and would not reduce DWR's current ability to meet standards in the Delta to protect biological resources and water quality for beneficial uses." SWP operations routinely violate water quality standards in the Delta. DWR is saying here that it is planning to build a facility that is intended to violate the law at the same frequency as the current facility. The new facility and operations must plan to be compliant with the law to protect water quality and wildlife habitat or it cannot be permitted. The Proposed Project has no defined operations so there is nothing to be analyzed in the EIR to determine the frequency, magnitude or geographic extent of water quality violations the project may cause. The new facility objective, if it is built at all, must be to ensure that all water quality criteria are met under all conditions, at all times, and at all locations.
- Page 3, paragraph 3, "Although initial operating criteria of the proposed project would be formulated during the preparation of the upcoming Draft EIR in order to assess <u>potential</u> environmental impacts and mitigation, <u>final project operations would be determined after</u> <u>completion of the CEQA process</u>..." (emphasis added) In this statement, DWR has declared its intent to violate CEQA law. CEQA requires that <u>all</u> environmental impacts of a project be disclosed, analyzed and mitigated and that agencies that rely upon the EIR for decisions based upon the EIR for permit issuance will be inaccurately and misinformed. By DWR either ignoring operations-related impacts or by assuming a set of operations to evaluate in the EIR analysis that

it will not conform to in the event that the project is approved and implemented, it ensures that the true impacts of the project will not be disclosed or mitigated. <u>This statement of intent to violate</u> <u>CEQA is so serious that we request all staff or contractors involved in this proposed decision to violate CEQA law and mislead agencies which rely upon this document be immediately removed from the project and reprimanded in the case of DWR staff or terminated in the case of contractors. This DWR plan to violate CEQA by not analyzing, disclosing or mitigating the true operations-related impacts in the EIR fundamentally violates the responsibilities of the CEQA Lead Agency to the point of malfeasance. As a result of this gross abuse of process and privilege by DWR as the Lead Agency, it should be removed as the State lead agency on the Delta Conveyance Project.</u>

If, after the CEQA process is completed, proposed operations of the Delta Conveyance are modified in any way from those analyzed, disclosed and mitigated in the EIR, a supplemental EIR must be conducted prior to any consideration of issuance of construction- or operations-related permits by any agency. This supplemental EIR must have its own NOP, Public Scoping, Public Draft EIR, mitigations, etc, prior to any agency issuing permits for the project. DWR must not certify an EIR in which operations and operations-related impacts and mitigations are known to be subject to subsequent change.

The NOP is fundamentally deficient by not disclosing the proposed operations of the project. It is not possible for the public to determine the extent of potential project impact to them without relevant proposed operations information being disclosed. By omitting the operations information from the NOP, DWR has denied the public their right to information to evaluate the relevance of a project and its potential impacts to them. This public information disclosure is the fundamental requirement and purpose of an NOP and this NOP is deficient due to these and other (e.g. sea level rise future condition assumption) material omissions. Proposed Project operations description and disclosure must be included in a recirculated NOP and round of public scoping meetings.

- Page 3, paragraph 3,"Construction and commissioning of the overall conveyance project, if approved, would take approximately 13 years, but the duration of construction at most locations would vary..." The NOP fails to identify specific areas of construction disruption and disruption duration. This vague description is inadequate to inform the public if the project may have an impact upon their quality of life, property or ability to earn their livelihoods. The NOP must be revised and republished along with new Public Scoping Meetings to disclose this essential information to the public.
- Page 3, paragraph 4," Reclamation is considering the potential option to involve the CVP in the Delta Conveyance Project. Because of this possibility, the connection to the existing Jones Pumping Plant in the south Delta is included in the proposed facility descriptions below. The proposed project may include a portion of the overall capacity dedicated for CVP use, or it may accommodate CVP use of available capacity (when not used by SWP participants). If Reclamation determines that there could be a role for the CVP in the Delta Conveyance Project, this role would be identified in a separate NEPA Notice of Intent issued by Reclamation." Since a CVP component is not part of the current Delta Conveyance project and is entirely speculative in its language at this time, if BOR elects to participate in the Project at some future date, it will require either a separate EIS or a reissuance of the NOP (and NOI) for a joint document as there would be material design or operations (not defined at this time anyway) changes to the project not disclosed to the public in the original scoping of the Delta Conveyance EIR. The NOP

proposed accommodations of the CVP under the Delta Conveyance Project would have profound water operations, water supply, and water quality impacts that must be analyzed, disclosed and mitigated in the EIR. If BOR does join the project, the NOP is materially deficient and misleading in terms of its project description and operations (missing anyway).

- Page 4, map The map depicts Intakes and North Tunnels in Stone Lakes National Wildlife Refuge and partially east of I-5. If that is not an accurate portrayal of the Proposed Project then this map is materially misleading and inaccurate and must be republished in a revised NOP. The scale of the map, approximately 400,000:1 is completely inadequate for meaningful or useful disclosure to the public for them to determine the location of the project relative to their location and livelihoods. The BDCP and WaterFix published Map Books with appropriate scale maps (1:24,000) and background detail for the public to understand the location of the proposed project. The scale of this NOP map (17x smaller than the BDP/WaterFix maps) and lack of orienting detail included in it are materially deficient and a new NOP and round of Public Scoping Meetings must be conducted to correct this material deficiency.
- Page 5, paragraph 1, "The proposed intake facilities would be located along the Sacramento River between Freeport and the confluence with Sutter Slough, as shown in Figure 1. "This description and the map are inconsistent so one of them is misleading to the public regarding the nature and location of the project. Sutter Slough/Sacramento River confluence is downstream of Courtland. The intake highlighted area on the map stops 3 miles upstream of the Sutter Slough confluence. The highlighted intake area on the map stops where Randall Island Slough and Snodgrass Slough confluence would be with the Sacramento River. The north end of the intake area is also in conflict between the map and description. The map and description must be published in a revised NOP. With the current and inaccurately represented locations, the EIR, at best, would be at a programmatic level which cannot be the basis for issuance of construction-related permits.
- Page 5, paragraph 1, "The size of each intake location could range from 75 to 150 acres, depending upon fish screen selection, along the Sacramento River and include a state-of-the-art fish screen, sedimentation basins, tunnel shaft, and ancillary facilities. An additional 40 to 60 acres at each intake location would be temporarily disturbed for staging of construction facilities, materials storage, and a concrete batch plant, if needed." The map figure does not show proposed locations of the intakes. The map shades a large and poorly defined reach of the river as the potential intake locations. With the proposed intake locations ambiguous and the size of the facilities varying as much as 100% it is not possible for the public to determine if they will be potentially affected by the project or not and supports only a programmatic level of impact analysis not sufficient to support construction-related permitting. A revised NOP must be issued that determines the type and design (e.g. over or through levee construction) of fish screen. Proposed, specific intake locations and project footprints that do not have an order of magnitude vary in specificity.
- Page 5, paragraph 3, "The proposed single main tunnel and connecting tunnel reaches would be constructed underground with the bottom of the tunnel at approximately 190 feet below the ground surface." The BDCP and WaterFix projects designed their tunnel for 80 feet below the ground surface. 190 feet deep is more expensive and generates more tunnel muck which creates additional increments of environmental impacts which must be analyzed. Page 5, paragraph 3, "Construction for the tunnel would require a series of launch shafts and retrieval shafts. Each launch and retrieval shaft site would require a permanent area of about four acres. Launch sites would involve temporary use of up to about 400 acres for construction staging and material storage." The map figure and description fail to disclose the proposed locations for these actions. These areas will require land seizures that displace property rights and use, people and

livelihoods, as well as special status species populations; but are not disclosed in the NOP. As a result of this material information withheld from the NOP, the affected public remain ignorant and uniformed. A revised NOP must be issued that discloses this material information relevant to the location of these land seizures as well as specificity that allows the analysis of impacts to special species status populations.

- Page 5, paragraph 3, "...this reusable tunnel material could be reused for embankments or other purposes in the Delta or stored near the launch shaft locations." The reusability or suitability of tunnel muck has not been determined. The time and area required for drying must be disclosed and analyzed. It is extremely unlikely that this material will have suitable characteristics to be useful for "embankments" intended to hold back water. The difference in environmental, land use and traffic impacts between reuse of tunnel muck on site or transportation to a disposal site is significant. The proposed project must specifically identify the location and describe and define where and how tunnel muck will be dried, used or disposed of in a revised NOP or the EIR may only be conducted at a programmatic level which will require subsequent environmental analysis, documentation and public participation prior to any project action.
- Page 5, paragraph 4, "Intermediate Forebay would provide potential operational benefits and would be located along the tunnel corridor between the intakes and the pumping plant." The location of this proposed large and environmentally disrupting facility is not disclosed in the description or map figure. The Intermediate Forebay will have a big impact that results in land seizures which have not been disclosed in this deficient NOP that fails to adequately inform the public and that must be revised and republished.
- Page 5, paragraph 4, "The embankments would be approximately 30 feet above the existing ground surface." The Intermediate and Southern Forebays are functionally flow reregulating reservoirs. As such, the Forebay impoundments will always hold back water which is the definition of a "Dam" according to USACE regulations. The NOP use of the term embankment is misleading and grossly technically inaccurate. A "dam" is something that holds back water most of the time, a "levee" holds back water only some of the time and an "embankment" is a meaningless term in this context that is not appropriate or relevant to the description of Forebay facilities. The Intermediate and Southern Forebays are dams and the engineering and construction specifications must be consistent with those requirements and evaluated in the EIR impact analysis. The construction materials type, methods, labor, equipment, materials volumes and schedules for constructing a dam are radically different in environmental impact that just piling up some dirt in an "embankment" as implied by the inaccurate and misleading NOP description.
- Page 6, Contract Amendment for Delta Conveyance, "...the Delta Conveyance Project EIR will assess, as part of the proposed project, potential environmental impacts associated with reasonably foreseeable potential contract modifications." This means that the impacts of all water transfers resulting from new excess capacity created by the Delta Conveyance Project must be completely evaluated in the Delta Conveyance Project EIR as they are proposed to not be included in the impact analysis of the SWP Water Supply Contract Amendment for the Delta Conveyance EIR. How, when, where and how much water transfer volume must be defined to a project level specificity in order to meet this project level impact analysis to cover this other project impact analysis.
- Page 6, Project Area, "Upstream of the Delta Region" "Upstream" must include SWP facilities that operations are changed in any way due to Delta Conveyance Project operations. This includes all SWP reservoir operations timing and magnitude of water releases and tributaries flow and temperatures downstream from those facilities. These analyses to downstream tributaries

below SWP reservoirs are required to assess impacts to fish habitat temperature suitability, spawning habitat suitability (depth, flow velocity and temperatures) and to assess anadromous fish straying and introgression impacts from altered tributary attraction flows and temperatures. Streams upstream of SWP reservoirs are affected by exposure of sediment wedges in the reservoir which affect seasonal fish movement and spawning in the upstream tributaries up to the next impassible fish barrier. All of these areas upstream of the Delta affected by operations of the Delta Conveyance Project must be included in the geographic and impacts scope of the project. This, among many reasons, is why the project must define, disclose evaluate and mitigate the true operations impacts of the project. If the EIR does not analyze the real and fully developed and detailed project operations, the EIR will be a programmatic document that cannot be the basis for construction-related permits.

- Page 6, Project Area, "Statutory Delta (California Water Code Section 12220)" Proposed Project flow impacts alter the timing, magnitude and water quality of delta outflows such that the San Francisco Bay complex, Suisun Marsh, Napa River and Pacific Ocean resources are affected. The BDCP and WaterFix impact areas, with exactly the same types of general locations of proposed facilities as the Delta Conveyance Project, were required to also include the Napa River, Suisun Marsh, San Francisco Bay and the Pacific Ocean in their project impact analysis area. DWR was the Lead Agency for those previous documents. If DWR is to depart from the analytical standards and methods of these previous documents, it must present a strong, defensible and compelling logic for the departure from these previous plans, policies, procedures and precedents.
- Page 6, Project Area, "South-of-Delta SWP Service Areas and, potentially, South-of-Delta CVP Service Areas)" The project impact assessment area must also include drainages that are downstream of the SWP and CVP service areas as water deliveries from the project affect the timing, quality and magnitude of flows and resources in these tributaries and drainages. SWP service areas drain all the way back to the Delta, Salton Sea or Pacific Ocean depending on which service area and or if the CVP is included in the project.
- Page 9, Alternatives, "An EIR need not consider every conceivable alternative to a project. Rather it must consider a reasonable range of potentially feasible alternatives that will foster informed decision making and public participation. An EIR is not required to consider alternatives which are infeasible." CEQA alternatives must include those which reasonably meet the project purpose and objectives so the language in the NOP is incorrect and misleading. The NOP excludes many of the project objectives and purposes as defined by EO N10-19. These criteria and mandates as identified in our comments on the EO must be included in the project alternative screening criteria. Based on the EO requirements, the Proposed Project does not perform very well and sets a low bar for evaluating other alternatives which do meet these EO criteria as well or better than the Proposed Project. Screening criteria must be rational, defensible and consistently applied in the evaluation of alternatives and alternatives components. The Alternatives Scoping Document, to be released for public review and comment, must demonstrate the criteria and rational for proposed alternatives either being included or excluded from full analysis in the EIR.
- Page 9, Alternatives, paragraph 2, "The scoping process will inform preliminary locations, corridors, capacities and operations of new conveyance facilities to be evaluated in the EIR." The NOP and Public Scoping Meeting materials and presentations were non-specific regarding the location of facilities and devoid of any water operations description other than theoretical range of flow capacity of the tunnel. The scoping process failed to inform the public on any intake operation tributary flow bypass standards, intake diversion operations daily intertidal variations in screen intake sweeping and approach velocities, reservoir operations changes to facilitate the project operations, the type of fish screens proposed, water supply delivery quantities that constitute the stated NOP objective to "restore water supply deliveries", excess transfer capacity created by the Project and many other material omissions to inform the public and decision makers for the alternatives scoping process. In every possible aspect of project description (location, size, type, function, design, artistic renderings, site design plans, operations), DWR

either omitted critical information or was so non-specific as to be non-functional as a project-level disclosure in the NOP and public scoping meetings. The NOP and Public Scoping Meetings did not meet the CEQA requirements as stated in this quote from the NOP. The NOP and Public Scoping Meetings were deficient in their omission of project-level description and must be revised and redone in a subsequent NOP and public scoping process.

- Page 9, Alternatives, paragraph 2, "DWR will make its final choice of potentially feasible alternatives to include in the Draft EIR after receipt of scoping comments." DWR must consider and evaluate the alternatives identified in the scoping comments, not just make a final decision after receiving them. This DWR statement is a declaration of the intent to ignore the input from the alternatives scoping process. A Scoping Report that discloses the alternatives assessment methods and rationale and the final selection process must be issued for public disclosure and comment. This precedent has been set by numerous DWR EIR projects including the BDCP. Only after public disclosure and comment on the alternatives development process in the Scoping Report Document can DWR make choices regarding feasible alternatives to include in the EIR. DWR's BDCP project, among other DWR EIR processes, has established the precedent and DWR standard of procedure in EIRs to release and receive comments on the Scoping Report. If DWR is to deviate from these established agency plans, procedures and precedents, it must provide strong, compelling and defensible rationale for this departure from DWR standard agency practices and precedents.
- **Page 9, Potential Environmental Effects**, "*DWR as the lead agency will describe and analyze the significant environmental effects of the proposed project.*" CEQA requires that DWR must describe, disclose and analyze <u>all</u> environmental effects (not just the "significant ones") of the project and <u>then</u> determine which are significant.
- Page 9, Potential Environmental Effects, "Water Supply: changes in water deliveries." These assessments must include impacts to non-SWP and CVP water users including, but not limited to: changes in water surface elevation for diversion access, water diversion facility fouling from changes in aquatic weeds from alteration of water circulation patterns and duration of nutrient accumulation before flushing flows, changes in the rate and location of toxic algae and methylation of mercury, water supply suitability for designated beneficial uses, growth inducing impacts, etc.
- Page 9, Potential Environmental Effects, "Surface Water: changes in river flows in the Delta." There will be upstream and downstream of delta flow changes from the project that must be assessed. Construction dewatering discharge flow impacts must also be quantified, specified in location and timing and evaluated in the EIR.
- Page 9, Potential Environmental Effects, "Groundwater: potential effects to groundwater levels during operation." There are groundwater impacts from construction dewatering and from ongoing variability in SWP water supply deliveries which must be quantified and assessed in the EIR.
- Page 9, Potential Environmental Effects, "Water Quality: changes to water quality constituents and/or concentrations from operation of facilities." The BDCP and WaterFix EIR/S failed to conduct scientifically defensible best available science analysis of impacts to water quality including dissolved oxygen and salinity. Construction dewatering discharge water quality affects must also be evaluated, especially with respect to point discharge water quality requirements.
- Page 9, Potential Environmental Effects, "Geology and Seismicity: changes in risk of settlement during construction." The EIR must include impacts to collapse of aquifer structure from construction dewatering; risk to levee integrity from construction vibration, settlement and fracturing; risk to levee integrity from tunnel or intake structural failures, risk to levee integrity from failure of Forebay impoundment dams, etc.
- Page 9, Potential Environmental Effects, "Soils: changes in topsoil associated with construction of the water conveyance facilities." The EIR must also assess impacts of ongoing and incremental salt accumulation in soils on productivity and land use suitability from continued operation and increased water deliveries from the SWP, impacts from the storage, drying and transport of tunnel material – please see previous related comments.

- Page 9, Potential Environmental Effects "Air Quality and Greenhouse Gas..." Air quality impact assessments require construction location, timing, duration, equipment used, etc. Greenhouse gas impacts require analysis of changes in reservoir operations and SWP systemwide water quality as they affect and contribute to CO₂ greenhouse gas emissions. This later impact contribution requires detailed project water operations information which the NOP has declared the project will not provide until after the completion of the EIR process.
- Page 9, Potential Environmental Effects All of the impacts types described in this section of the NOP by the DWR EIR Team demonstrate limited understanding of the SWP system and operations, the complexity and functions of the Delta, and previous and closely related SWP/CVP EIR/S analyses or those analyses conducted under the almost identical projects of the BDCP or California WaterFix EIR/S. The NOP (flawed) copying of the CEQA checklist with little professional knowledge or judgment relevant to the California water system or the Delta Conveyance Project does not convey an expectation of a competently executed draft EIR to come. There are huge amounts of materials available to the Delta Conveyance Project EIR team on other EIRs conducted on similar projects, but it is clear they have not utilized them or are not mindful or respectful of the previous agency legal precedents and standards set by them. Due to the extreme similarity of the Delta Conveyance Project and the BDCP and California WaterFix projects, previously submitted scoping, draft EIR/S, and final EIR/S comments by CDWA and SDWA on those projects are hereby incorporated as scoping comments herein for DWR's required consideration. CDWA and SDWA as agencies have invested enormous amounts of limited resources in contributing comments to the EIR process in these previous and so closely related projects. DWR, in the preparation of alternatives scoping and the draft EIR of the Delta Conveyance Project, must look closely to these previously submitted comments and address the multitude of inadequacies and deficiencies in these previous EIR documents as well as the alternatives identified within those comments.
- Page 12, paragraph 2, "...each responsible and trustee agency is required to provide the lead agency with specific detail about the scope, significant environmental issues, reasonable alternatives, and mitigation measures related to the responsible or trustee agency's area of statutory responsibility that will need to be explored in the EIR. In the response, responsible and trustee agencies should indicate their respective level of responsibility for the project." It is requested that DWR post the lead and responsible agency responses on the project website as part of the public record and include them in the Scoping Report when it is made available to the public so that the public can be informed and comment upon identified agency needs and requirements from the Delta Conveyance Project.

NOP Comment Summary

The NOP is deficient as it omits material information regarding Proposed Project operations required by CEQA for a project-level EIR. The NOP is in violation of CEQA as it proposes to complete the EIR process prior to determination or analysis of final project operations or analysis or mitigation of those final operations impacts.

The NOP Project Purpose and Objectives incorrectly only selectively include 2 the 15 mandates of Executive Order N10-19 and specifically exclude the required "special status species", "ecosystem health" and "watershed health" from the EO. The DWR Proposed Project meets NONE of the Project Objectives identified in the NOP, see **Table 1** and this preceding NOP comment and analysis section.

The NOP Project Purpose and Objectives are not legally compliant with SB-X7 (Delta Reform Act) as they do not include the coequal goals of water supply reliability and habitat conservation or reduced reliance upon Delta water supplies.

The NOP geographic scope for Alternatives is arbitrarily and capriciously limited to the Delta which does not address the SWP water supply delivery reliability as a whole and is in direct conflict with the mandate from Executive Order N-10-19 for regional solutions.

The NOP proposed impact analysis geographic scope is incorrect as it must include drainages downstream of SWP service areas and areas upstream of SWP reservoirs which will or may have altered operations as a result of the project operations (as yet deficiently unspecified).

The NOP Proposed Project intakes are located in intertidal zones under current conditions (much more so under assumed future project conditions) and are not compatible with the 10' Sea Level Rise assumption and the water supply reliability Project Objective. The Proposed Project presumes the State is abandoning the Delta, its population, and wildlife in response to projected Sea Level Rise which is in direct violation of DWR's mission statement and responsibilities as a Public Trust Resource Agency for all of California, not just the SWP resource agency as this project is oriented.

The Delta Conveyance Project proposes to "Restore Water Supply" but fails to functionally or quantitatively define this objective.

The NOP incorrectly presumes the current SWP operations result in Water Quality Standard Compliance.

NEPA Compliance is required to secure Federal Permits required by the Project, including those from the USACE for 401, 404 and 408 permits. As the federal agency issuing permits for the project, the USACE, not USBR, must logically be the NEPA Lead.

EIR Preparation Comments

Introduction

The BDCP and WaterFix projects are extremely closely related to the proposed Delta Conveyance Project. From the level of detail disclosed (lack thereof) in the NOP and Public Scoping Meetings, the Delta Conveyance Project has no discernible differences from these two DWR predecessor projects other than one tunnel or two. As such, these projects set DWR Agency standards, practices and protocols for these types of analyses which the Delta Conveyance Project must utilize as the minimum standard bar of performance. Given the close similarities of the proposed Delta Conveyance and the BDCP and WaterFix projects the EIR team may draw heavily against those previous works. That said, the BDCP and WaterFix EIRs included a long-list of deficiencies, internal inconsistencies, factual and analytical errors, flaws in logic and execution, data mishandling, conclusions that directly conflicted with presented supporting analysis and blatant omissions of mandatory information which the Delta Conveyance Project EIR must not repeat.

CDWA and SDWA invested significant time and limited resources in developing thoughtful, constructive and thorough comments on the BDCP and WaterFix EIR/S documents. The Delta Conveyance Project would serve themselves well to review and analyze these comments to develop the best available science methodologies and tools, appropriate data treatment (aggregation/disaggregation), direct and indirect effects analytical processes, rationale and methodical impact synthesis, consistent and defensible significance criteria, impact calls that are consistent with the supporting analysis, a full suite of reasonable and practicable mitigation measures and a thorough cumulative impacts analysis. To convey a sense of the level of deficiencies in the BDCP and WaterFix projects, in total, CDWA and SDWA submitted over 1,000 pages of detailed and substantive comments. Because of their direct relevance to the Alternatives scoping and EIR preparation of the Delta Conveyance EIR, CDWA and SDWA's previously submitted comments to DWR on the BDCP and WaterFix Public Scoping Comments and draft and final EIR/S are herein incorporated by reference as part of our scoping comments for the Delta Conveyance project Scoping Comments.

Following are some specific areas of concern for the Delta Conveyance Project EIR preparation.

1) Use of Best Available Science in EIR Analysis

CEQA requires use of best available science. The BDCP and WaterFix EIRs eschewed use of some commonly used and accepted modeling and analytical tools to avoid disclosure and quantification of a number of key environmental impacts of those projects. The Delta Conveyance Project EIR must not repeat these same deficiencies in the use of best available science. These models and analyses which must be used to the CEQA best available science standard include:

- a) CalSim 3 This latest generation tool for analyzing for SWP system-wide mass balance flows has higher temporal resolution and accuracy than the previous outdated CalSim versions. This best available science model data is critical to the accuracy and completeness of all hydrologic and water quality impact analysis as CalSim feeds critical information to drive SWP operations models which are also required for impact analysis of the project. The BDCP and WaterFix EIRs declined to use this best available science tool which must not be repeated by the Delta Conveyance Project EIR.
- b) Operations Models for the Delta Conveyance Project. These operations models respond to CalSim input with their own respective operations that fulfill demands as defined in the CalSim 3. The respective SWP operations models define a set of operations which fulfill the CalSim water

supply demands while the operations models comply with water flow and guality requirements. The CALSIM and operations models are run iteratively until a water operations solution is achieved which optimizes meeting water supply demand while complying with water quality and quantity operational and environmental legal requirements. All SWP facility components have operations models including Oroville Reservoir, Thermalito Afterbay, Banks Pumping Plant, the California Aqueduct, San Luis Reservoir and all other SWP pumping plants and reservoirs. The BDCP and WaterFix projects never defined operations for their facilities for operation of water intakes, reregulating reservoirs, pumps, etc. so impact assessments of those operations were never conducted in those EIRs. Without those facilities operations impact analyses in the EIR, the project cannot be permitted as impacts from them have not been disclosed, evaluated or mitigated. Most critical and missing from the BDCP and WaterFix facilities operations models was the intertidal operations of the north delta intakes to comply with fisheries requirements for maximum approach velocity, minimum sweeping velocity and maximum duration of exposure of listed fish species to the proposed intake fish screens. Accurate modeling of 3D velocities at the fish screens requires high resolution bathymetry at the intake selected site and design characteristics of the intakes. These are all required for a project-level analysis of impacts which would be required to secure construction-related permits. The Delta Conveyance Project does not define exactly where water diversion structures would be placed so the required analysis of fish screen fish criteria compliance is not possible for this EIR making it deficient for potential consideration of Incidental Take Permits (ITPs).

c) Delta Salinity Water Quality Models - DSM2 has a Salinity analysis module that the BDCP and WaterFix EIR analysis did not utilize to the level of best available science. The out of date and not utilized available bathymetry data utilized in the BDCP and WaterFix DSM2 modeling caused those analyses and impact evaluations to mischaracterize and under-estimate project impacts. The magnitude of the gap in the old bathymetry characterization vs. current reality and available data results in such a disparity that the self-cancelling error of the model utilized in a comparative analysis manner no longer functions usefully or defensibly. CEQA's best available science requires that available updated data be integrated into the data set to be used for analysis in the Delta Conveyance Project EIR.

The DSM2 salinity module has been used on other Delta water projects that included updated bathymetry data collection. Significant portions of the delta have updated bathymetry data collected and available from these recent projects. This data must be integrated with the rest of the available bathymetry data for the EIR. SDWA can provide information regarding sources for these more recent data sets. Current and accurate bathymetry data is essential to conducting the most accurate and representative salinity modeling for impacts analysis and development of proposed operations to avoid and minimize salinity impacts as well as identify and evaluate potential mitigations as CEQA best available science requires.

The Delta Conveyance Project has already set the precedent that it will collect new field data to further the design and analysis for the project with its current and on-going program to collect additional geologic core samples along the proposed tunnel conveyance route. With DWR's precedent for new field data collection established for this project, the Delta Conveyance Project should put equal emphasis, investment and time in collecting important supplemental information to support accurate environmental impacts analysis. Supplemental selected area bathymetry data must be collected as needed to compliment other available data to represent current Delta channel conditions to ensure that a useful and meaningful modeling analysis of salinity impacts is conducted by the Delta Conveyance Project EIR.

- d) Dissolved Oxygen Water Quality Models DSM2 has a Dissolved Oxygen (DO) analysis module that the BDCP and WaterFix did not utilize. Many other existing, generally accepted and suitable DO models are applicable to the DO impact analysis for the Delta Conveyance Project. The BDCP and WaterFix shamefully used no quantitative analysis on this critical project impact. Instead the BDCP and WaterFix EIR/S relied upon an unsupported, subjective, rationally inconsistent, qualitative assessment, professional judgment call for the only content addressing this pivotal impact. All of the relevant information regarding reduced flows and water turnover as well as nutrient load increase combined with increased water temperatures was ignored in favor of finding of no significant impact from DO that was supported by no collaborating documentation or analysis. The Delta Conveyance Project does not have to use DSM2 for the DO analysis, but it cannot fail to do no quantitative analysis as its DWR predecessor EIR projects have done.
- e) Inappropriate Temporal Aggregation of Data for Analysis and Impact Calls The BDCP and WaterFix project EIRs aggregated data to obscure peak events which were relevant to disclosing, analyzing and mitigating project impacts. Temporal aggregation of data sets hides the range of conditions and extremes of conditions and impact as relevant information is lost due to it being averaged into other dissimilar data. Rolling two week averaged data used for an impact analysis or evaluation of project compliance with water quality requirements hides peak events and impacts. As an example, data can have low values most of the time but have extreme outliers (i.e. 4 plus standard deviation events) that are completely masked in the temporal averaging data treatment. In the case a rolling two week data averaging, if water temperatures are suitable for a fish to survive for 13 out of the 14 days but very unsuitable on one day; on average the water temperature is fine and no impact is determined, but in reality all of the fish are still dead from that one day. The same goes for salt load in irrigation water. On a 2 week average the amount of salt may be below that a crop can theoretically tolerate, but the one salty irrigation during that period killed the crop and poisoned the soil which is not disclosed by inappropriate data averaging and temporal aggregation. The Delta Conveyance Project EIR must not utilize temporally aggregated data sets for impact analysis or utilize significance criteria which rely upon temporally aggregated data sets.
- 2) The Delta Conveyance Project Extends the Operational Lifespan of the SWP The No Project Assumption of the Delta Conveyance Project EIR includes a 10' increase in sea level. This sea level rise would effectively end the viability of the SWP water supply approximately by or around the year 2050. Therefore, the Delta Conveyance Project must include as part of their direct, indirect and cumulative impacts assessments in the EIR, the on-going impacts and incremental impacts of continued operations of the SWP beyond the time period in which it would have been viable without the project (the No Project). The SWP Water Supply Contract Extension Amendment EIR was legally obligated to disclose, analyze and mitigate this impact, but omitted this impact from its impact scope by incorrectly assuming the contract extension as the No Project condition. With the Sea Level rise assumption of the Delta Conveyance EIR, the EIR may not avoid including assessment of these ongoing and incremental impacts of continued operations of the SWP.
- 3) Delta Conveyance Project Water Transfer Impact Analysis The SWP Water Supply Contract Delta Conveyance Amendment deferred its impact analysis of water transfers to the impact analysis to be conducted under the Delta Conveyance Project EIR. The impact analysis of water transfers requires a detailed analysis of available water transfer capacity opportunity created by the Delta Conveyance Project. In order to conduct this water transfer capacity analysis at a project-level of impact (and construction-related permitting), a detailed hourly set of operations of the water intake structures must be defined. This is a set of operations that the BDCP and WaterFix never defined, disclosed or analyzed. The hourly operations of these intakes are required to determine what flows can be diverted based of flow velocity variations that occur within the intertidal conditions at the intake
specific intake locations (as yet to be) proposed. This analysis of potential intake diversion operations that comply with intake local conditions for fish criteria compliant operations against baseline SWP project operations demands determines what the potential excess capacity is for water transfers. The NOP does not define proposed operations or specific project-level locations for the intakes so this required level of analysis is not possible in this EIR.

Long-term water transfers result in hardening of base water supply demand and is growth inducing so use of the facilities excess water transfer capacity must be parsed into short-term vs. long-term transfer impact analyses. The specificity in the NOP is also deficient in the level of detail of project description and operations required to assess, disclose and mitigate for these project-level impacts.

- 4) Agricultural Resources The BDCP and WaterFix EIR/S agricultural resource analysis ignored impacts of saltwater intrusion into the delta on agricultural water supply quality and shallow groundwater recharge salinity impacts to delta island, tract and district soils. These analyses similarly ignore salt accumulation impacts from the project in SWP service areas. With the viable lifespan extension, the Delta Conveyance Project provides the SWP system with extension of viability beyond those currently feasible with Sea Level Rise, all subsequent soil salt accumulation in the SWP Service Areas are impacts of the Delta Conveyance Project. The Delta Conveyance Project EIR should use (at a minimum) the methodology and impact analysis approach from the USBR Remand EIS to assess the project impacts on these agricultural resources.
- 5) **Growth Inducing Impacts** The growth assumption (and stated project objective to "restore water supplies" and "support population growth") indicates an objective of the project to provide increased long-term water supplies creating hardened demand from project induced population growth. Therefore the project must disclose the magnitude, location and nature of growth induced; and analyze and mitigate those Growth Inducement impacts. The BDCP and WaterFix projects claimed the project would "create no new water" (which was false), so they did not conduct growth induce growth so all impacts related to this objective must be analyzed, disclosed and mitigated in the EIR.

EIR Preparation Comment Summary

The BDCP and WaterFix EIR documents prepared by DWR included many deficiencies, errors, omissions, false science and contrived conclusions to avoid disclosing or mitigating significant impacts which must not be repeated in the Delta Conveyance Project EIR. CDWA and SDWA submitted over a thousand pages of detailed comments on these documents chronicling the failures of these documents and their deficiencies. The BDCP and WaterFix EIRs process was conducted from beginning to end with a predecisional process and procedural flaws The Alternatives Scoping process was conducted with arbitrary, capricious, inconsistently applied screening criteria and unsupported evaluation rational designed to foreclose potential project alternatives that otherwise in an unbiased process may have lead to more favorable, lower impact project alternatives. The EIR screened out alternatives that were rationally viable based on criteria that were inconsistently applied. The EIR analysis included many fundamental deficiencies, errors in fact and analysis, false information synthesis, irrational and unsupported conclusions and impact calls, omitted impact analyses and impact mitigations, utilized professional opinions instead of use of available and accepted analytical tools, relied upon impact synthesis that was in direct contradiction to the supporting analysis; impact calls that were inconsistent, arbitrary and unsupported by the analysis or facts; and many significant impacts of the project which were not mitigated which were practical and feasible to mitigate. Again, the flawed predecisional process, analytical and disclosure deficiencies, lack of use of best available science and omitted science, unsupportable impact calls, and unmitigated impacts must not be repeated in the Delta Conveyance

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Project EIR.

Project Alternatives and Alternative Components

Introduction

In the spirit of open minded exploration and identification of project alternatives that reasonably meet the Project Objectives of the Delta Conveyance (and more importantly satisfy the mandates in EO N-10-19), the alternatives and alternative components set forth below merit objective consideration and evaluation in the EIR. The submittal does not reflect endorsement of all submitted alternatives as the result of objective evaluation should help guide such decision. Of the concepts listed below, only one aspect has been evaluated previously in any significant manner, the Through Delta Armored Levee Conveyance. The agencies strongly support the improvement of the Delta levee systems and the continuation of the through Delta conveyance of water for export which maintains the "Delta common pool" for both export and in Delta use and the common interest in maintenance of Delta water supply and quality as required by Water Code Sections 12200-12205.

The following alternatives are much greater in scope and effectiveness in meeting the Water Resiliency Portfolio mandates than the Delta Conveyance Proposed Project. The greater geographic scope of these alternatives is supported by Executive Order N-10-19 for regional solutions. The only aspect of water supply resiliency the Proposed Project addresses is the unquantifiable risk of levee failure in the Delta. A more comprehensive assessment of risks to SWP water supply reliability must address risks throughout the SWP system. If any link in the chain of SWP facilities is broken, from water origin to water destination, the whole system fails. Therefore the whole of the system must be included in the scope of the project to address water supply reliability. A number of SWP system risks present a higher risk of failure than the current through Delta SWP water conveyance. Consideration of a multilayered strategy to dramatically reduce through Delta SWP water conveyance risks that works with the natural Delta features and creates and enhances habitat values and water quality should be included within the project scoping. Another distinct difference of these project alternatives to the Proposed Project is that they significantly reduce flood risks in the Delta and do not abandon the Delta to future sea level rise. The Proposed Project does not reduce flood risks and does nothing to protect the Delta from sea level rise. The project must evaluate alternatives in which the Delta is not abandoned by the State to an assumed future sea level rise.

NOP Project Purpose and Objectives for Comparison to Proposed Alternatives

To put the alternative consideration into perspective it is essential to examine the NOP Project Objectives as they are part of the basis for screening and evaluating alternatives. Here is an excerpt from the NOP regarding Project Purpose and Objectives.

"Here, as the CEQA lead agency, DWR's underlying, or fundamental, purpose in proposing the project is to develop new diversion and conveyance facilities in the Delta necessary to restore and protect the reliability of State Water Project (SWP) water deliveries and, potentially, Central Valley Project (CVP) water deliveries south of the Delta, consistent with the State's Water Resilience Portfolio. The above stated purpose, in turn, gives rise to several project objectives. In proposing to make physical improvements to the SWP Delta conveyance system, the project objectives are:

• To address anticipated rising sea levels and other reasonably foreseeable consequences of climate change and extreme weather events.

• To minimize the potential for public health and safety impacts from reduced quantity and quality of SWP water deliveries, and potentially CVP water deliveries, south of the Delta resulting from a major earthquake that causes breaching of Delta levees and the inundation of brackish water into the areas in which the existing SWP and CVP pumping plants operate in the southern Delta.

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• To protect the ability of the SWP, and potentially the CVP, to deliver water when hydrologic conditions result in the availability of sufficient amounts, consistent with the requirements of state and federal law, including the California and federal Endangered Species Acts and Delta Reform Act, as well as the terms and conditions of water delivery contracts and other existing applicable agreements.

• To provide operational flexibility to improve aquatic conditions in the Delta and better manage risks of further regulatory constraints on project operations"

EO N-10-19 Water Resiliency Portfolio Mandates for Comparison to Proposed Alternatives To evaluate the suitability of project alternatives, it is essential to examine the mandates from EO N-10-19 as they are part of the basis for screening and evaluating alternatives. We have previously analyzed and discussed these in our comments on pages 4-10. Rather than repeat them here, please review those pages as reference in the evaluation of the ability of these project alternatives to reasonably meet these

In the description and discussion of project alternatives to the Delta Conveyance Proposed Project below, the alternatives proposed in these comments appear to meet most or all of the Delta Conveyance Project Purpose and Objectives and the EO mandates and fulfills them more reliably and reasonably than the Proposed Project.

Overview and Synthesis of Proposed Alternative and Proposed Project Evaluation and Screening

alternatives screening and development criteria.

Screening and evaluation criteria were identified through analysis of the Delta Conveyance NOP Project Purpose and Objectives and by mandates required for Water Resiliency Portfolio projects from EO N-1-19. In the table below, the components of the project alternative proposed in these comments are on each row colored in light green. The last row of light green is the total of the combined project alternative components. The next row below that in an olive color is the Proposed Project. The vertical columns are alternatives screening criteria taken from the NOP Project Purpose and Objectives (olive color) and EO N-10-19 for the mandates of projects under the Water Resiliency Portfolio (light blue color). Detailed discussion of these identified alternatives screening and evaluation criteria can be found in our comment pages 12 (last paragraph) through15 (third paragraph) and pages 4-10 respectively.

Each Alternative component is evaluated based on its ability to reasonably meet each alternative evaluation and screening criteria. If an alternative component (or alternative in the case of the Proposed Project) likely will satisfy the criteria, it is scored a +1 and is color coded green. If the alternative or component is uncertain or indeterminant from available information, the score is 0 and is color coded grey. If an alternative or component does not address or reasonably satisfy a screening and evaluation criteria it is scored a -1 and color coded red.

You will see in the table that many of the alternatives components satisfy many (but not all – represented by white spaces) of the screening criteria. With this presentation it is easy to see which alternative components complement each other to meet the project objectives and EO mandates. If for any reason one of the alternatives components was determined to be infeasible, the proposed alternative would still be viable and more fully meet the project purpose and EO mandates than the Proposed Project.

There are many benefits to combining these project alternative components into a single project alternative. First, in their combination, all but one criteria are met. Second, each of the alternative components satisfies each criteria in a different manner such that there is complimentary synergism in the effectiveness and reliability of the alternative as a whole in satisfying the criteria. Third, it allows the benefits of the alternative to be considered as a whole whereas the individual component may not be viable. A good example of increased overall project viability through the combination of alternatives components is the San Luis Grande south of the Delta water storage reservoir project alterative component. This south of Delta SWP water supply storage would do so much to add resiliency to the SWP in allowing greater water diversions during high flow periods and greater water supply reserves in the event of some SWP operations problem in or above that location within the SWP system. Considered as a standalone project, San Luis Grande failed its environmental review and permitting process due to impacts from the loss of wetland habitat. By combining this alternative component with the other alternative components into a single project alternative, the impacts would be considered as a whole. The wetland habitat loss from San Luis Grande would still occur with the reservoir footprint, but it would be more than offset by the increased wetland habitat quantity and quality created by the combined alternative component that reconnects the Delta Distributary Channels. The alternative components can be mixed and matched as needed to make the most viable project, but in general they are better together than they are individually.

The total score for the Project Alternative is summed in the last row with the corresponding score for each evaluation and screening criteria. The row below that is the scoring for the Proposed Project. The total score for the Project Alternative is 233 and is -11 for the Proposed Project. The Proposed Project performs poorly because the project proposed only obliquely addresses even the NOPs Project Objectives and largely ignored the mandates included in the Water Resiliency Portfolio Executive Order N-10-19.

	Derta Conveyance NUP Objectives					EU N-10-19 Water Resiliency Portfolio Mandates																							
Proposed Alternative Components	"Restore" SWP Water	Supply & Protect Reliability	Gonsistent with State's Water Resilience Portfolio	Address Sea Level Rise	Address extreme weather	Reduce risk from seismic Failure	andre Antheliter to	Operational nexibility to mprove aquatic conditions	Drinking Water Safety	Public Safety from Major	Flood Risks	Depleted Groundwater	Addresses Uncertain	Agriculture Water Supplies	Native Fish Populations	Health of Our Environment	Water Supplies to	communities, Agriculture,	Restoring and Maintaining the Health of Watersheds	Broad Portfolio of	Collaborative Strategies	Addresses Hydrologic	Pattern Change for Shorter More Intense Wet Season	Supports Population	Growth	Prioritize Multi-benefit	Use Natural Infrastructure	Embrace innovation	Approaches from Other Parts of the World
Reconnect Delta Distributary																					Ű								4 4
Channels					me																								
Through Delta Conveyance																													
South and West Delta Distributed Intakes																													
Delta Water Intake Interties																													
Clifton Court Fish Screens												- 7										1					1		
Carquinez Strait Structure					1																								
SDWSC in-Delta Storage	San P																												
San Luis II or SL Grande	1																												
Increased Fast Response Levee											100																		
Breach Resources								-			34																		
Siphon Failure Mitigation				12													1205			1		100	T.A.						
<3% SWP Conveyance Loss																	1.74		199										
Banks Plant Seismic Upgrade								in the second		L				1							-					100			
CA Aqueduct Seismic Upgrade																													
Lake Oroville Slip Fault Fix																													
Oroville Dam Leak Fix						le an																							
SWP POD Desalinization									1						_														
Combined Alternative to																													
Proposed Project																													
Delta Conveyance Proposed	1				-	5												10											
Project		D	-1	0	-1	0		0	1								0						-1		1	-1		-1	0
Color Key	Re	lativ 1	ve Sco	re											1					T	ot	al	Sco	ore	2				
May or May Not Achieve		0													Cor	mbi	ned Al	lter	native	to F	Prop	ose	d Proj	ect				38	233
Does not West Manilats		-1													Del	lta C	onve	yan	ce Pro	pos	ed P	roje	ct	81			22		-11.5

Table 1. Comparison of Proposed Project and Project Alternative to NOP Objectives and EO N-10-19 Water Resiliency Portfolio Mandates

Table 1 Summary Comments: Every one of these project alternative components more fully meets the NOP project objectives and EO Water Resilience Portfolio Mandates more completely than the Proposed Project. Together or in any combination, these project alternative components may potentially make a better and more reliable (and probably cheaper) project than the Proposed Project. These project alternative components must be evaluated in the EIR. Once a preliminary analysis is completed on each alternative component, the combination of those components that best meet the project needs can be analyzed as a full alternative in the EIR. Several different alternatives can be developed by mixing and matching different combinations of these alternatives components.

Project Alternatives and Alternative Components Description and Discussion

Reconnect Delta Distributary Channels

This is an important project alternative component that has significant synergisms with other project alternative components. This alternative has never been evaluated in modeling or in an environmental analysis. It has merits and functions never considered before as a method to address Delta flow, habitat, water quality issues and SWP water supply reliability and resiliency.

First we will describe what a "Distributary" channel is and why they are important to restore. Tributaries are when flows come together, distributaries are when flows branch apart. The Delta was formed by

sediment laden water slowing in velocity and dropping its sediment load. Channels become clogged with the dropped sediment and water flows branch off from the main stem channel to find new routes. These branching off flow channels are distributaries and they are the geomorphic function that form and define the Delta.

When the Delta formed, Distributary channels (sloughs) were actively connected to the Sacramento River. Fish habitat and fish behavior were based on the flows that naturally occurred from these distributory channels. Over the years, almost all of the Distributary channels have had their flows cut off at their head end connection with the Sacramento River. Sutter, Steamboat and Georgiana sloughs are the only Distributary channels left connected to the Sacramento River at their head end. By reconnecting these other historical Distributary channels we restore more natural flows to the delta which in turn creates more habitat value and water supply efficiency than the current through delta conveyance configuration.

Reconnecting northern delta distributary channels will allow better water quality from the Sacramento River to push and be drawn across the West, Central and East parts of the delta to the south and much more efficiently freshen water quality than the current and unnatural choked delta channel flow configuration. This means that likely less carriage water would be required to maintain water quality in large parts of the delta. The flows in these distributaries would function for habitat, water quality, carriage water and as water supply deliveries for the south delta SWP pumps.

The reconnected head ends of these tributaries would need to be fish screened and have operable gates (like the Delta Cross Channel). These are projects with lower cost and much smaller footprint than the Proposed Project intake screens. Operable gates would be required to avoid redirected flood flows which the USACE would not allow in 404 permitting. The benefit of the operable gates of course is reduced flood risk as compared to the existing condition or the Proposed Project so that is a clear win for the Delta and a satisfaction of this criteria from the Water Resiliency Portfolio mandate. The fish screen would keep the Sacramento system fish in the main channel for reduced straying and increased juvenile emigration survival. The flows are small so approach, sweeping velocity and duration of fish exposure criteria for fish screen compliance would easily be met.

These reconnected tributary flows contribute to SWP water supply reliability in that in the event of a levee failure, the salt water intrusion into the delta could be purged from the Delta more quickly and efficiently by controlling where and how much cross flow occurs to flush the saline water out.

The flows through these currently dead end sloughs create substantial new and productive fish habitat and fish food generation. The habitat improvement benefits of these reconnections and activated habitat could provide justification for issuance of the ITPs the project would need and provide a basis for credit to offset other potential project impacts from the small, but required construction footprints. The habitat improvement and fish food generation make this project alternative component a clear win for Delta fish, habitat and water quality. It performs this function at the same time as increasing water supply reliability by providing a dynamic mechanism to control flows across sections of the delta that currently have little to no flows during large parts of the year.

Following are descriptions of the Distributary channel reconnection opportunities. Not all of these need to be selected in order for this alternative component to valuably contribute to the function of the project alternative.

- Fremont Weir to Tule Ditch in the Yolo Bypass This flow would turn this Slough into functioning habitat for fish food production. Flows (100-200cfs) would come from the operation of the fish ladder that is already planned to be installed at Fremont Weir. The west bank of the Tule Ditch slough could be laid back to create shallow water habitat. The spoils from laying back the levee can be used to increase channel complexity creating habitat quality variations in water velocities and depths to create habitat values at a wide range of low and high flows. This channel is prime Sacramento splittail habitat (listed species) and would function for salmonid rearing and emigration habitat at low bypass flows. About 20 miles of shallow water and riparian habitat could be created at low cost, low footprint and low disruption. Water quality at the Lisbon Weir diversion would be significantly improved. The positive flow (as opposed to the current negative flow) will push good water quality down into the Cache Slough and Barker Slough complex which will improve water quality at Solano County diversion at Barker Slough. A very small amount of water would freshen a large section of the intertidal wedge that occurs in the Cache Slough complex. This has significant fish and water quality benefits.
- Sacramento Deep Water Channel (SDWSC) locks at the port Re-engineer the locks to regulate flow and install fish screens between the port and the Sacramento River. The flows (100-200cfs) from the Sacramento River will improve water quality for the Sacramento Deep Water Ship Channel, Liberty Island, and lower Cache Slough complex. This will improve water quality at the RD999 diversion and help with water quality at Barker Slough for Solano County's diversion there. The SDWSC and Liberty Island are considered prime delta smelt habitat so the water quality improvement in this geographic area is important to protecting this species. The positive flows (as opposed to the current negative flows) from the Fremont Weir and SDWSC will push out the large tidal wedge in the SDWSC, Liberty Island and Cache Slough complex that currently just sloshes back and forth resulting in water quality getting worse and worse in between infrequent flushing that occurs from Yolo Bypass operation. Improving water quality here is not only significantly beneficial to fish but should have far reaching water quality benefits into the Central and West Delta.
- Railroad Cut Rather than reconnecting this tributary to the river directly, this might be pumped into from the Sacramento River by reversing the Morrison Creek discharge below Freeport and Morrison Creek being redirected into this canal. Flows would probably be limited to 100-200cfs. This would activate fish habitat and fish food production for a 10+ mile stretch and improve water quality at Stone Lakes National Wildlife Refuge. This flow would improve water quality, habitat and food production in the Meadows by Locke and contribute flows to the North and South Forks of the Mokelumne. More flows and better water quality in the branches of the Mokelumne improve water guality in the east and central delta. Similar to the refreshing flows to the dead tidal wedge in the Cache Slough complex, this would improve water quality in an area much larger than just this canal and the Meadows. This and the Snodgrass Slough reconnection should reduce or eliminate the Dissolve Oxygen (DO) crashes and toxic algal blooms that have been occurring in the Central Delta. The area of improved water quality and fish habitat condition is located in ESA designated critical fish habitat for several listed species (delta smelt, longfin smelt, steelhead, winter- and spring-run Chinook salmon and sturgeon). DO crashes are a significant problem in the delta for fish and water quality. This alternative component is VERY important to solving critical problems in the Delta and deserves a full modeling evaluation to see how much of this problem this alternative component can solve.
- Snodgrass Slough This would have a similar function and affect as the Railroad Cut reconnection. This would be directly connected to the Sacramento River and have a head control structure and fish screens. This reconnected channel could have a capacity of 200-500 cfs.
- *Elk Slough* Reconnection here would activate a dozen miles of high quality fish habitat and food production for the delta and improve water quality at the RD999 diversion. If a gate is installed at the tail end of the slough at the confluence with Sutter Slough, flood risk for Merritt Island would be reduced (by approximately 60%) and RD999 (by around 20%). Reducing flood risk increases SWP water supply reliability.
- Delta Cross Channel (DCC) The gates could have boat passable fish screen added to allow extended seasonal operation of DCC which is a prime location for flows to keep the Central Delta

water quality up. The screens would keep emigrating salmonids in the main Sacramento channel which has much higher survival rates.

 Georgiana Slough - Boat passable fish screens can be installed to keep Sacramento River emigrating juvenile salmonids out of the Central Delta where survival rates are very low. Flow rates through the channel could be manipulated to more quickly clear saltwater intrusion from the delta in the event of a levee breach thus increasing SWP water supply reliability and system resiliency.

Through Delta Armored Levee Conveyance

This alternative component has been studied by CalFed and others so we will not go into great detail here other than to identify several learnings since the last time this project was evaluated and discuss the synergisms of this alternative component with other alternative components.

There have been several innovations of this alternative component since the last time this project was evaluated. These include:

- Levee construction of toe berms on the land side of the levees protect against potential levee liquefaction in the event of an earthquake that occurs when river stage elevations are high and levees are saturated with water.
- Operable cutoff gates at confluences with other tributaries that protect from saltwater intrusion in the event of a levee failure.

The combination of this alternative component with reconnection of Delta distributaries and with East and Central Delta Intakes makes the function of the Through Delta Armored Levee Conveyance alternative component much more robust and function differently and more resiliently than any previous analysis of this alternative component. Combination of this alternative component with improvement of existing delta levee systems to minimum adequate engineering standards and higher standards along the conveyance corridors, increased modernized levee monitoring and maintenance and fast response resources for levee breaches also improve the character, performance and reliability of this alternative component to levels never previously evaluated. Given these improvements and synergisms with other project alternative components, this alternative component deserves a serious and detailed evaluation.

South and West Delta Distributed Intakes

The current SWP through delta configuration pulls all of the water for the SWP from Clifton Court Forebay which is from Old River. This creates reverse flows on Old River which pull fish into the unscreened intake to Clifton Court. This alternative component proposes to add intakes in the south and west delta so that SWP intake flows can reduce the impact on fish and add capacity and flexibility for diversion during high flow periods.

These connections could be fish screened or not. The supplemental flow source configuration would allow flexible SWP operation to avoid ESA fish populations when present at different locations and avoid water quality violations while still maintaining some intake flows. Intakes at multiple locations make the SWP less vulnerable to water quality issues in the event of a delta levee breach.

An intake at the south end of Victoria Canal could provide screened flow into Clifton Court while allowing Old River flow to move downstream past a closed Clifton Court gate. Contra Costa Water District has a screened intake on Victoria Canal, a screened intake on Old River downstream of Clifton Court, an intake on Rock Slough, East contra Costa Water District Has an intake off of Indian Slough and there is an intake at Mallard Slough. Interconnection of these intakes with the Contra Costa Canal and pipelines and

a connection to Clifton Court and or the enlarged Los Vaqueros Reservoir could address the export need without the expenditure of 10s of billions of dollars.

. A number of locations and combinations are feasible and should be evaluated. The capacity of these distributed intakes could be limited in size in the range of a few hundred cfs and easily screened.

The distributed intakes could improve water quality in areas of the delta with chronic water quality problems that currently impair designated critical fish habitat for several listed species. The distributed intakes also increase water supply reliability for the SWP in the event of an island flooding event. It also provides operational flexibility to avoid water quality violations and impacts to endangered fish from SWP operations

Delta Water Diversion Intake Interties

Throughout the SWP, interties with other water systems have been considered a good strategy to reduce failure risks and mutually improve water supply reliability. This project alternative component as described above proposes to connect a number of south and west Delta municipal water intakes together with the SWP. This intake intertie creates more water supply reliability for the SWP and for the non-SWP water users from the Delta.

Carquinez Straight Tidal Flow and Storm Surge Management

This alternative component was originally proposed in the 1920s and examined again in a 1977 UC Davis California Water Resource Center paper, "The Sacramento-San Joaquin Delta The Evolution and Implementation of Water Policy", by W Turrentine Jackson and Alan M Patterson. Their assessment of a Carquinez Straight Flow Control structure was very positive and can be found starting at page 63 in such document. This paper is incorporated by reference into our comments. If the Delta Conveyance Project has any problem finding this paper, please ask and we will send you a copy.

Without describing the facility in detail, think of this alternative component as an operable flow constrictor at the Carquinez Straight. Ships and fish pass without impediment, but peak tide or storm surge events are moderated in their ability to push salt water and water volume into the delta. As they say, "you can't hold back the ocean forever", but in this case, the objective of this alternative component is only to temporarily reduce peak tides and storm surges. Peak tides and storm surges compound the affects of sea level rise on flood risks, water quality problems and water supply reliability in the Delta. By this proposed facility taking the peaks off of storm and tidal surges it effectively reduces the combined effect of sea level rise that would otherwise occur and that the Proposed Project completely fails to address.

There are many potential design options for this facility – that is a set of engineering questions to resolve in preliminary (less than 5%) design that can be completed if this alternative concept is determined to have merit for development into a full alternative component. This alternative component is very important to evaluate as it is the only option identified so far which directly addresses and partially mitigates the impacts of sea level rise on the delta and on SWP water supply reliability.

The location of the Proposed Project north delta intakes will not protect the SWP water supply water quality or reliability from the magnitude of sea level rise the project has assumed. We know this because the old salinity water monitoring station on Randall Island is less than a mile from one of the Proposed Project intake locations. The salinity monitoring station was there because under historical flows, salt water quality problems could manifest themselves this far upstream in the Sacramento River in this intertidal zone. Modeling results of the north delta intakes under future sea level rise conditions will

validate the failure of the proposed north delta intake locations to protect against sea level rise impacts on SWP water supply reliability and system resiliency. Given this reality, the Proposed Project fails to address or satisfy the screening criteria for improved water supply reliability under increased future sea levels.

A Carquinez Straight Flow Control Structure would reduce salt water intrusion into the delta which improves Delta water quality which in turn protects SWP water supplies and increases SWP resiliency. Reduced saltwater intrusion into the delta will likely result in reduced carriage water requirements to maintain water quality so water supply efficiency may also be enhanced in this alternative component.

Water Storage Project Alternative Components

Increased water storage allows increase in flexibility and response of the SWP to water quality problems and increased carriage water efficiency.

Sacramento Deep Water Ship Channel as in-Delta Water Storage

If locks are installed at the bottom end of SDWSC north of the levee breach at Liberty Island, the channel can be adapted to also function as in-Delta water storage. The channel is 23 miles long and would have a storage freeboard of at least 5 feet with no impacts to the port (other than ships having to traverse the locks sometimes) or other infrastructure or habitat. The purpose of the in-Delta storage is to provide a volume of water in the delta to quickly respond to water quality violations from SWP south delta operations. Depending on tidal conditions, water released from the bottom end of the SDWSC near Cache Slough would have beneficial flushing flow effects in just a few hours. The volume of water stored could be in the range of 3,000 Acre Feet. When operated it would freshen water quality for the Cache Slough complex and the Sacramento River from there to the San Joaquin confluence and downstream to the salinity interface. This volume of water would push salts back from the confluence of the Sacramento and San Joaquin Rivers which is where many SWP water quality violations originate.

The current SWP/CVP short term water quality problem response tool is to release water from Folsom Reservoir which takes about 24 hours to reach the delta. This water quality response mechanism is slow and inefficient in delivering water where it is needed as some Folsom released flows are dissipated into other channels that do not result in a focused flow of water to the problem area. This storage significantly increases SWP/CVP water quality management capability, responsiveness and effectiveness. Not treating Folsom like a on/off fire hose in response to delta water quality problems as the SWP/CVP operations currently do, improves SWP/CVP water supply efficiency and improves lower American River fish habitat quality.

The potential, but readily overcomable, downsides of this project alternative component are that the Port of Sacramento will not like the locks, the congressional authorization of the SDWSC does not include "water storage", and some perceived (although poorly validated) potential delta smelt habitat would be intermittently cut off from free fish movement. All of these potential issues are overcomable if the benefits of improved water quality and water supply efficiency from in-delta water storage are sufficient.

• San Luis II or San Luis Grande

When the San Luis Reservoir site was selected, an adjacent canyon was deemed to be an equally favorable construction site. Constructing a second San Luis Reservoir or joining it with the current reservoir (San Luis Grande) would allow greater SWP diversions and storage during the winter high flows when the diversions do the least environmental harm. The increased water diversions during wet periods reduces Delta diversion demands in summer which is when most SWP water quality violations and SWP environmental impacts occur.

This project alternative component is to expand or construct new water storage downstream of the Delta to facilitate diversion of water from the Delta during periods of high flows which would significantly reduce SWP Delta water diversion impacts as compared to the Existing and No Project conditions. This project component was previously attempted as a standalone project, but was not approved as the No Project alternative was determined to be the Least Environmentally Damaging Project Alternative (LEDPA) by the USACE due to wetlands-related plant species impacts. If this project component is combined with the project alternative component "Reconnect Historical North Delta Distributary Channels", the project would result in a net increase in the quantity and quality of wetland and aquatic habitat which would overcome the previous LEDPA failure of the San Luis Grande project.

Increased Levee Monitoring and Fast Response Resources for Levee Breaches This alternative component is aimed at reducing flood risk and increasing SWP water supply reliability by reducing the risk of or severity of a levee breach. The first objective of this alterative component is to prevent levee failures through better monitoring and maintenance. There are at least 4 monitoring and assessment tools which are underutilized and not methodically implemented which can provide information to substantially reduce the risk of levee failure.

LIDAR and thermal remote sensing surveys of the delta levees should be conducted annually. LIDAR maps land surface elevations to an accuracy of just a centimeter at every square foot of surface so any changes in levee height due to subsidence or levee shape deformation from slumping or toe failure would be detected and remediated long before these early warning signs developed into levee failure events. Thermal imaging detects surface temperatures. Detectable changes in temperature are caused by water saturation and moving water, even below the soil surface. This technology provides detection of seeps and boils at early stages so these risks to levee integrity can also be proactively addressed prior to levee failure. Side scan sonar surveys of the underwater parts of the levee can be used to detect and map levee toe failures and channel scour holes that could lead to levee failure if unaddressed. These levee integrity threats detected by the side scan sonar can again be proactively addressed long before an actual levee failure occurs. Ground penetrating radar can be used to inventory and assess levee construction integrity. Voids, saturations and flaws in materials used in original levee construction can be detected and mapped with this technology. Identified sections of weak or poorly constructed levees identified with ground penetrating radar can be replaced (i.e. set back levees) or repaired (i.e. slurry walls) prior to failure. Methodical use of these technologies to early detect potential problems with levees that could lead to levee failure and proactive use of that information to address these vulnerabilities will greatly reduce the risks of levee failures to flood impacts and SWP water supply reliability. The Delta Conveyance Project should not fall to claim these monitoring programs are already occurring, because they are not at the scale and frequency proposed here. The one or two LIDAR surveys of the Delta that have been conducted are useful as baselines to start comparisons to detect problems but this tool is not being utilized to its full potential with regular and regimented monitoring. Similarly, ground penetrating radar has been used in some levee assessments, but it has not been applied to all delta levees nor have

the current surveys been comprehensive, methodical or repeated as a monitoring tool. The same can be said of the level of use of thermal imaging and side scan sonar survey technologies.

The second objective of this alternative component is to change how levee breaches are addressed. Currently, once a levee is breached the island or tract is allowed to completely flood, come to equilibrium with the tributary and later the levee breach is repaired and the inundated land pumped out. In the current "sit back and watch until it stops" response to levee failures, all of the damage from the levee breach is done before repair or management actions are implemented. This results in the maximum salt water intrusion as all of the flow into the beached island or tract happens very quickly. All of the infrastructure and assets on the island or tract are flooded. Potentially lives are lost.

This alternative component is intended to provide resources and level of response preparation that allow a levee breach to be more immediately addressed to slow or stop the rate of water inundation. This alternative component is not expensive to implement compared to the cost of a levee failure that results in complete inundation. This alternative component includes: larger and more strategically placed rock stockpiles in helicopter and crane ready packages, dedicated heavy lift helicopters on standby with National Guard or contractor, crane barges on standby and strategically distributed in the delta for rapid response, and sinkable barges strategically distributed in the delta for rapid response. Scenarios and analysis should be conducted to determine the number and locations of these resources to be effective to respond to any hypothetical levee breach in 30 minutes or less. The objective is to stage these resources to seal or at least significantly slow levee breaches while more permanent fixes are constructed, etc. This alternative component results in increased water supply reliability for SWP by reducing frequency and severity of island flooding events and the reducing the frequency and magnitude of potential salt water intrusion events.

SWP Conveyance South of Delta Achieves Less than 3% System-Wide Leakage Loss

The California Aqueduct leaks perhaps as much or more than 15% of the water supply that flows through it. We are not aware of any published audited water loss analysis of the SWP or California Aqueduct. Water diverted into the SWP lost to conveyance leakage is water that causes environmental impacts to the delta that could be avoided and minimized by reducing SWP conveyance leakage losses. DWR promotes water conservation across the state in many programs, but has not (to our knowledge) disclosed what water savings they in turn have achieved from SWP leakage loss mitigation.

DWR's Leak Loss Detection Guidebook, "The California Department of Water Resources estimates that about 250,000 acre-feet of water leaks from municipal systems in California each year. DWR's experience in working with 60 local water agencies, whose water audits reveal leak detection projects to be cost effective, indicates that leaking water can be controlled at a cost averaging less than \$50 per acre-foot, a cost usually less than what a water agency pays for the water." (https://water.ca.gov/LegacyFiles/wateruseefficiency/publications/doc/%201992%20DWR%20Leak%20D etection%20Guidebook.pdf) There are leak loss reports on SWP Contractor conveyance systems at http://wuedata.water.ca.gov/.

Finding and quantifying the conveyance losses in each reach of the California Aqueduct is technically feasible using well proven and affordable technology. Acoustic Doppler current profilers (<u>https://en.wikipedia.org/wiki/Acoustic_Doppler_current_profiler</u>) can be calibrated and periodically measure flows in the aqueduct at stations upstream and downstream of each diversion. Evaporative losses for each reach can easily be calculated using existing models. Reaches that exceed the target

leakage loss tolerance can be prioritized for more intensive investigation to identify the leak locations and efforts initiated to recapture those conveyance water losses.

An example of the California Aqueduct leakage is demonstrated by a thermal image of a section of the aqueduct at mile point 9.9 south of the South Delta pumps (image available upon request although DWR should have a copy of the report and this image in its project archives). The only section of the canal in the image that is not leaking is the section at the lower left. The canal (in blue – cool temperatures) in most areas in the image transitions to larger areas of oranges and reds which identify the location, size and orientation of the leaks. The image is from a project for DWR in 1990. DWR believed the surveyed area to have 3 leaks. The survey identified those three large leaks as well as over 200 smaller ones. The current available technology to detect, locate and characterize aqueduct leaks is now vastly superior to this example.

Long-term leaks of the aqueduct carry soil away with the leak flow. These create voids under the aqueduct which are prone to catastrophic failure. Reduced leakage loss of the SWP aqueduct not only improves water supply efficiency and reduces environmental impacts of water supplies diverted in the Delta, but repair of leaks likely prevents potential catastrophic aqueduct structural failures which threaten SWP operational reliability. This alternative component reduces SWP water diversion environmental impacts on the delta and reduces risks to water supply reliability failures.

Seismic Risk Mitigation in SWP Storage and Conveyance

There are many parts of the SWP system potentially vulnerable to seismic failure, not just the Delta component of SWP conveyance as the Proposed Project targets. This project alternative component is much more comprehensive in its scope to address SWP water supply reliability and resilience from potential seismic or structural failure events.

Seismic Upgrade of Banks Pumping Plant and California Aqueduct

This project alternative component addresses seismic risks to SWP conveyance and storage downstream of the Delta for water supply reliability and resiliency. The SWP was designed prior to and constructed in 1960 to the standards of the day. Since 1960 our understanding of earthquake infrastructure design risks and resulting construction codes have greatly evolved and become much more stringent. Additionally, the sophistication of earthquake fault detection and seismic event modeling has also greatly increased in sophistication since 1960. Many of the fault lines in California have been discovered since 1960 and the earthquake magnitude risk of these faults is constantly being revised, mostly up, in terms of potential severity. As an example of California's adaptation to seismic risk, all of the highway bridges in California have been or are in the process of being upgraded to address our increased understanding of seismic risk and engineering standard requirements. Conspicuously absent from this infrastructure seismic upgrade, modernization and risk management are the SWP pumping plants and California Aqueduct conveyance.

The risk to SWP infrastructure reliability and resiliency from seismic events is not evenly distributed. There are several forms of energy released by an earthquake and geologic settings and proximity to faults play an important part in assessing infrastructure risk. The principle energy forms most discussed in seismic events are P and S waves. P waves travel through all materials, but are less destructive to infrastructure. S waves lose their energy over distance and do not transmit well through unconsolidated material or liquids such as occur in the delta. S waves are shear waves that typically cause most of the damage to infrastructure and which most severely occur on consolidated materials and bedrock such as the materials the California Aqueduct are constructed upon south of Tracy all the way down to the Tehachapi's. As an example of the difference in S and P waves in different geologic settings, the Loma Prieta earthquake affects in the Delta were slow rolling P waves, not the jolting shear of S waves. In the

Bay Area this same earthquake very badly damaged infrastructure based on consolidated materials and bedrock, mostly by the S seismic waves.

Delta levees are based on unconsolidated alluvium and liquids. In the event of an earthquake in the Coast Range Mountains which represent the closest potentially active faults to the Delta, the P waves would have less potential to affect levee stability. S wave seismic energy is dissipated by soft materials and distance so Delta levees would be less affected by this type of earthquake energy release. In contrast, the California Aqueduct is built upon hard consolidated and bedrock materials and is close in proximity to these faults so it is much more vulnerable to S wave seismic failure than the Delta levees. The California Aqueduct is even more vulnerable to seismic failure due to the construction that alternates from cuts across hills of solid bedrock to transition across soft fill construction between hills. The aqueduct construction alternating from hard to soft base material is where shear forces of S waves will be most manifested to cause lining and containment failures as these materials and base will move at different frequency and magnitude. Up to date and best available science modeling of seismic risk of the Aqueduct will confirm these assertions. Up to date and best available science modeling of earthquake vulnerabilities of the California Aqueduct are part of this proposed project alternative component. Once evaluated, the most vulnerable sections can be earthquake retrofitted just like almost all other existing infrastructure has already done in the State.

The Proposed Project incorrectly focuses on the relatively lower potential risks to the Delta SWP components of conveyance for potential seismic failure. This Proposed Project constrained scope fails to address the larger SWP water supply seismic vulnerabilities in the rest of the SWP. This proposed project alternative component has a much broader and risk factor appropriate scope to address water supply reliability vulnerabilities of the California Aqueduct and the south Delta pumping plant. If the Aqueduct fails in an earthquake, it would not really matter to SWP reliability if the Delta levees did or did not fail at the same time, the result would still be a catastrophic SWP water supply failure. It is likely however that it would be the Aqueduct and or pumping plant that would fail rather than delta levees.

Aspects of this alternative component can be determined after an inventory, risk assessment and preliminary engineering design fixes.

It does not make sense in the context of protecting SWP water supply reliability to ignore this SWP water supply reliability risk yet the Proposed Project focuses on earthquake risks from through Delta conveyance and ignores other SWP infrastructure that is arguably at greater risk of failure from earthquakes.

• Oroville Reservoir Slip Fault

The largest volume documented slip fault in California (as of about 12 years ago or so) is located inside Oroville Reservoir. In a pers. comm. from a DWR Hydrogeologist, "If we had known about the slip fault before Oroville was constructed, it would never have been built". The Hydrogeologist said that if the slip fault let go and slid into Lake Oroville (picture in your mind half of a mountain sliding into the reservoir) the modeling they had done predicted a 60' tsunami that could potentially take out the Oroville dam. The modeling the Hydrogeologist referred to has not been publicly released, but was part of the Oroville relicensing submittal to FERC and presumably (although perhaps not given the inaction to address this problem) the Division of Safety of Dams. DWR is well aware of this potential failure point of the SWP, but to date as failed to take action to protect SWP water supply reliability or public safety from this risk. Not to diverge from this topic, but DWR was also aware at the time of Oroville FERC Relicensing of the risks of failure of the dam from use of the emergency spillway, but also failed to address those risks to SWP water supply reliability and public safety from the resulting flood risk. Our project alternative component addresses and is designed to mitigate this not insignificant risk water supply reliability risk. If Oroville Dam fails, so does the entire SWP.

Slip faults can be activated in at least three ways relevant to the Oroville Reservoir catastrophic failure risk. Precipitation can saturate the boundary layers of the slip fault and reduce coefficient of friction causing failure and catastrophic landslide into the reservoir. Slip faults can be activated to failure by saturated soils from reservoir levels that are drawn down too quickly to let the saturated soils drain. The risk here is that the heavy reservoir water saturated soils at the bottom of the slip fault pull the rest of the slip fault down with it. Slip faults can also be activated by seismic events. If an earthquake occurs when either of the first two failure scenarios are in play then this is a combinative effect and risk of failure, e.g. the slip fault is saturated from heavy rains and an earthquake occurs. Under this easily foreseeable and not unlikely scenario there would be no warning, just catastrophic failure. Given the magnitude of this risk to human life (150,000+), catastrophic flooding (the Sutter Buttes look like the Hawaiian Islands in the inundation map in the event of an Oroville Dam failure) and complete shutdown of the SWP water supply system to 23 million Californians and millions of acres of irrigated agricultural land; THIS RISK TO THE SWP MUST BE ADDRESSED. The Proposed Project fails to address any of these aspects of risk to SWP water supply reliability or flood risk to Californian's as the Water Resiliency Portfolio EO mandates.

Oroville Reservoir operations must be evaluated for their potential to contribute to the risk of triggering the slip fault. If any portion of the slip fault can potentially be saturated by any possible stage elevation of Oroville reservoir, then reservoir drawdown speed limits must be established and implemented in operations rules until the slip fault risk is mitigated. This prudent mitigation to SWP precipitated risk will have negative consequences on SWP water supply availability until this SWP flaw and risk are addressed.

There other portions of the SWP system which already have drawdown speed limits, e.g. San Luis Reservoir, to avoid or minimize dam structural failure to slumping so this SWP risk mitigation is not without well established precedent. There are also SWP/CVP operating rules regarding how fast tributary flows can be drawn down to avoid damage to levees from slumping from drawing down flows too quickly. A risk analysis of the Oroville Slip Fault to failure from drawing down the reservoir too quickly has not, to our knowledge, been conducted. The Proposed Project has not disclosed its operations and has indicated its intent to (in conflict with CEQA law) not to do so in the EIR. The operations of the Proposed Project that are implied by the project configuration and assumed changes in future hydrologic patterns would result in faster reservoir draw downs in the future which means the proposed Project would exacerbate the current SWP operations caused catastrophic failure risks to Oroville Dam and SWP water supply reliability.

If the Delta Conveyance Project wants the SWP water supply to be more resilient to climate change and earthquakes, the Project must fix or remove the slip fault in Lake Oroville.

• Oroville Dam "Green spot" Leak

The leak in the face of Oroville Dam is readily visible in the summer and is symptomatic of uneven settling of the earthen dam from the incorrectly designed asymmetrical dam abutments. Earthen dams are designed to settle. If the dam abutments are symmetrical then the settling is even and no horizontal stress is generated on the earthen dam fragile structure. In the case of Oroville Dam, the asymmetrical abutments cause a horizontal shear force that fractures the dam as it settles. The green spot is an indicator of a leak that could lead to catastrophic failure, which would be much worse for the reliability of SWP water supplies south of the delta than a levee failure in the delta. Flushing of salt water intrusion from the Delta from a levee failure (reduced risk of failure and reduced time to flush salt water intrusion is a benefit of the proposed project alternative) might take weeks or months whereas rebuilding and refilling Lake Oroville would take a decade if it was even technically feasible at all given the damage to the critical dam abutments and downstream infrastructure, i.e. the Feather River Fish Barrier Dam, Oroville Power Plant, Thermalito Afterbay, Afterbay Power Plant and Afterbay outlet structure which would all be obliterated in the event of an Oroville Dam failure.

Clifton Court Criteria Compliant Fish Screens

The Proposed Project does not address ESA fish take from south delta pumps or offer any feature or function which benefits fish species or habitat as mandated by the Water Resiliency Portfolio Executive Order. The Proposed Project fails to address necessary environmental and ESA impacts created by operations of the SWP. It is these impacts which are one of the greatest threats to SWP water supply reliability and the Proposed Project missed it entirely in its scope and proposal. Recall in the BDCP WaterFix EIR/Ss that the north delta intakes were determined not to be beneficial to protection of fish even as compared to the existing unscreened (louvers are not screens) south delta intakes.

It is technically feasible and reasonable to include fish criteria compliant intake screens at Clifton Court Forebay. Fish criteria compliance intake screens in this alternative component would potentially support justification for Incidental Take Permits that would be required for the Delta Conveyance Project.

Here are the basic elements to this Clifton Court criteria compliant fish screen project alternative component: widen the Clifton Court operable gates, install trash racks outside the operable gates, install a course large fish exclusion screen between the trash racks and operable gates, construct a conveyance channel in Clifton Court Forebay from the operable gates to the western side of Clifton Court Forebay, install criteria compliant fish screens in the conveyance channel, reengineer the current fish salvage facilities, and (potentially) plumb the CVP intake into the fish free north side of Clifton Court via a short tunnel. Following is a more detailed description of each of these elements.

Widen the Clifton Court Forebay operable gates to the north from their existing location. The width of the new operable gates needs to be sufficient to create a channel cross section of about 15,000 square feet. Dredge and reinforce channels as most economical and reliable from an engineering standpoint. As an example, dredge the approach and channel at the operable gates to a tidal working channel depth of 30' for a total operable gate width of 500'. The new gates should be set back into Clifton Court sufficiently to allow installation of trash racks and course large fish exclusion screens in front of them without reducing the existing channel cross section outside of Clifton Court. The Clifton Court Forebay Gates and tidal operations/storage can continue to function as they do under the existing conditions and No Action/Project so there are no operational impacts from this alternative component on tidal operations of Clifton Court Forebay.

Install trash racks outside Clifton Court Forebay outside of the widened Clifton Court operable gate. The trash racks will intercept debris coming in with the diversion water and serve as a behavioral deterrent to the fish to stay in the main channel as much as possible.

Behind the trash racks and just in front of the operable gates would be a course fish screen designed to keep out only larger "predator" size fish that have much higher swimming performance capability from entering Clifton Court Forebay. With the new 15,000 square foot cross section of the operable gates and surface area of the course fish screens, at full capacity CVP/SWP diversions the approach velocity at the course fish screens would be one foot per second. Predator sized fish would easily out swim this approach velocity, but smelt and juvenile salmonid would be pulled through and past the course large fish exclusion screen. There would be some predation at the trash racks and course fish screens but this can be managed and reduced with predator removal actions and fish traps. The level of predation at the trash racks and course fish screens would be the same as the predation rates that occur at the current SWP trash racks and fish louvers under the No Action. This course fish screen outside of Clifton Court Forebay is designed to pass smelt and juvenile salmonids without risk of impingement, e.g. 15 - 25mm wide screen inlets. This screen would significantly reduce the exposure of juvenile salmonids and delta smelt

to predation as larger predators would be excluded from within Clifton Court Forebay where a large amount of current predation is documented to occur.

A conveyance channel would be created in Clifton Court Forebay by segmenting the northern and southern parts of the Forebay with a new sheet pile partition that would draw water from the Clifton Court Forebay operable gates channel directly toward the existing SWP intakes on the southwestern side of the Forebay. The conveyance channel would start at the east side of the Forebay at the north and south ends of the widened operable gates channel. The partition would then guickly (but maintaining orderly water flow vectors) narrow from 500' wide to a width of approximately 250' wide and deepen from the initial 30' channel depth at the operable gates to a conveyance channel depth of 60 feet deep. The rest of the length of the conveyance channel would be dredged to a 60 feet deep with the channel partitions reinforced as necessary for stability. The channel depth is to accommodate the large surface area of fish screens and to increase the channel cross section to reduce water velocities. The channel would speed the transit of the fish across the Forebay (as compared to the No Action) and keep them from straying out into the Forebay so that they would have a significantly reduced duration of exposure to predation. Fish predation studies of the current Forebay operations have shown that a large portion of the juvenile salmonid and delta smelt population that enter the Forebay do not make it to the salvage facilities due to predation. By excluding predator size fish from entering Clifton Court, not allowing the smelt and juvenile salmonid fish to stray into the larger part of the Forebay and by shortening the duration and distance of their transit across the Forebay prior to capture and salvage; predation rates on juvenile salmonids and delta smelt would be significantly reduced with the Clifton Court criteria compliant fish screen alternative as compared to the existing condition, No Action/No Project or in comparison to any of the other alternative which retain dual operations without south delta intake screens that are criteria compliant.

Install criteria compliant fish screens in the conveyance channel in Clifton Court Forebay. Orient the screens in the conveyance channel in a "deep V" (10 to 15 degree angle) across the Clifton Court Conveyance Channel with the bottom of the V in the middle of the new conveyance channel approximately 1/4 mile from the west side of Clifton Court Forebay. The fish screens would be oriented vertically on the sides of the V. The top of the V is on the east side of Clifton Court Forebay and is attached to the sides of the conveyance channel partitions where the channel comes to approximately 250 feet wide. Each side of the V fish screen would be approximately 6850 feet long with a depth of 60 feet for a total working surface area in their vertical orientation of 822,000 square feet. If greater surface area is desired, alternatives designs where the screens are sloped in towards the middle of the conveyance channel at the bottom can be evaluated for cost, operational flexibility and fish protection performance. The deep V shape of the screen orientation in the conveyance channel creates a shallow angle of approach of water to the screens and creates a sufficient surface area to reduce approach velocities and to have the draw of the export pumps create sweeping velocity across the screens.

As an example, water approaching a screen at a 15 degree oblique angle has an approach velocity that is 3.5% of the sweeping velocity. With the conveyance channel at 250 foot wide and 60 feet deep, at maximum CVP/SWP diversion volumes of 15,000cfs the water column velocity in the conveyance channel would be one foot per second. With a water column velocity of 1 foot per second, a 15 degree angled V screen would result in a sweeping velocity of 0.965 feet per second and an approach velocity of 0.035 feet per second. These velocities more than satisfy fish screen operating criteria for smelt and salmonids.

The total surface area of vertically oriented deep V fish screen configuration is 822,000 square feet with the above assumptions. (As previously mentioned, sloped screen designs could have even larger

surface areas if desired.) At the maximum combined CVP/SWP volume of 15,000 cfs the approach velocity to screens with this large surface area is just over 0.018 feet per second. 0.2 foot per second screen approach velocity is the compliance criteria for delta smelt so the fish screens as described would be only be 10% of the maximum approach velocity for smelt at the maximum CVP/SWP intake volume operations. If this screen configuration is considered over-designed with the 10% of the allowed approach velocity criteria and is excessively protective, and a more relaxed (but still compliant) approach velocity is deemed by the fisheries agencies to be adequately protective, the channel depth could be reduced along with the fish screen height and a narrower channel with a shorter length fish screen could be applied and still easily meet the fish screen criteria requirements. As an example a fish screen only 30 feet deep and half as long would still result in approach velocities that were half as fast as are delta smelt criteria compliant.

Let's compare this criteria compliant fish screen configuration at Clifton Court to the characteristics of the Proposed Project north delta intakes. Assuming the same compliance of maximum approach velocities of the two different screens and constant maximum diversion operations, the fish exposure duration while passing the screens would be about the same. One of the problems with the north delta intakes is that they are located in an intertidal zone so some fish would be exposed to the same intake more than one time due to reverse flows that occur in these north delta diversion reaches. Because the north delta fish screen intakes cannot be continuously operated due to the twice daily slack tides and lack of compliant sweeping velocities, the other portion of the time the north delta intakes would have to be operated at a higher diversion rate to make up for lost time. In order to do higher volumes some of the time and still maintain the maximum approach velocity, the north delta intakes would have to have a larger total surface area than the south delta intake screens that can run at a constant fish criteria compliant rate. As a result, the total fish exposure to fish screens on the north delta intakes would be longer duration than the proposed Clifton Court criteria compliant fish screens. All of the northern central valley salmonid runs (e.g. Sacramento, American and Feather Rivers) have to pass the north delta intakes whereas only a small fraction of that population are exposed to south delta fish screens. Population exposure of vulnerable species life stages to the screens is dramatically different on at least a factor of 10 or more for the north delta intake screens as compared to the Clifton Court criteria compliant fish screens.

As stated above, another advantage of the Clifton Court criteria compliant fish screens over the north delta intake fish screens is that the north delta fish screens cannot be operated at or near the slack tide periods as they would no longer have any sweeping velocity. This is another reason why the Delta Conveyance Project decision to not define or analyze final water operations in the EIR is an egregious violation of CEQA as this type of intake fisheries impact assessment cannot be conducted without operations information. The north delta intake reliance on tributary flow velocities to create sweeping velocity criteria. The Clifton Court criteria compliant fish screens are not vulnerable to tidal conditions as the export pumps themselves make the flow draw across the angled fish screens to create its own sweeping velocity and therefore they can be continuously operated.

The fish capture/salvage facility for the Clifton Court criteria compliant fish screen starts at the very bottom end of the fish screen deep V (western side). There is a separation of the "water intake" portion of the screens on the sides of the V for a "fish intake" opening (slot) at the very bottom end of the V that is 4" to 6" wide. A shade structure should be built from the bottom of the V out to at least 50 feet to the east up the V so the intake slot is in deep shade so that fish do not attempt to evade the fish intake. The fish salvage pumps draw water into the fish intake slot at an approach velocity of 3 feet per second. The higher approach velocity of the fish intake slot is so the fish are quickly drawn in and do not swim away.

The top 25 feet and the bottom 5 feet of the conveyance channel at the end of the water intake screen would have this fish intake slot. The top and bottom fish intake slots are to reflect the fish distribution in the water column. The juvenile salmonids and smelt will generally be concentrated in this top 25 feet of water column and the juvenile sturgeon at or near the bottom of the water column. With a 30 foot long total intake slot height, 6 inch width and 3 foot per second approach velocity, the fish salvage pumps would need to intake a maximum of 45 cubic feet per second to bring the fish into the fish collection facility. The current collection facility will need to be redesigned and enlarged to support fish/water separation of fish into transport tanks with this larger than current fish capture water flow. The same principles of the current fish salvage facility still apply, but will have improved handling of fish directly into holding tanks with reduced holding times prior to transport and active predator removal with nets (for the few that get through the large fish exclusion course fish screens). Other fish salvage facilities, handling, storage, transportation and release protocols can be developed and integrated with this Clifton Court criteria compliant fish screen project alternative component.

This uniformity of flow vectors in the conveyance channel along the entire length of the Clifton Court criteria compliant fish screen is another advantage of this fish screen configuration over the Proposed Project north delta intake screens. The north delta intake screens are on hydraulically complex and dynamic conditions on or near bends in the river with changing flows, eddies, shifting thalwag, back currents/reverse flows, swirls, etc. This flow vector variability causes areas of the fish screens to perform poorly and they create predator refuges that increase the resulting take associated with the north delta intakes. Even worse, this elevated rate of predation from the north delta intakes predator refuges occur if the intakes are being operated or not. The Project Alternative components of Clifton Court criteria compliant fish screens suffer none of these shortcomings.

None of the project features described in this Isolated Clifton Court Criteria Fish Screen alternative require new technology and all features described have built out project examples to rely upon for their engineering design, construction methods and for expectations regarding as-built real world performance characteristics. There is nothing speculative regarding the engineering design feasibility of this proposed project alternative component.

Clifton Court criteria compliant fish screen described above would take place almost entirely on lands currently owned by the state so private lands confiscation would be minimal. This alternative component with criteria fish screens in Clifton Court operations is complimented by combination with downstream storage, e.g. San Luis Reservoir II/San Luis Grande. The addition of downstream storage would allow additional SWP operational flexibility to divert water at times of the year in which the listed fish species would be least affected by SWP water operations.

DWR has in the past utilized a "Fisheries Facilities Technical Team" to review, refine and more fully develop fisheries-related engineering structure concepts into a fully formed and project-level project description that is suitable for full analysis in an EIR. This group is well qualified to adapt the preceding description as needed to optimize its function, performance and cost effectiveness. They can adapt the dimensions of the channels and cross sections to manipulate channel velocities under different tidal and operational scenarios. They can adapt screen size, depth, length, angles and configurations to optimize fish protection, costs, maintenance, etc. As the preceding description and analysis proves, building a criteria compliant fish screen in Clifton Court is technically feasible.

This criteria compliant Clifton Court Fish Screen is a win-win alternative. Fish are protected, water supply delivery capacity is restored, and delta water quality is protected - all above the No Action/No Project

levels and all better than in the Proposed Project alternative. In addition to more fully and reasonably meeting the purpose and need and objectives of the project, the Clifton Court criteria compliant fish screens have a number of significant advantages over the proposed project.

The cost of the Clifton Court fish screens would be approximately the same construction costs as one of the proposed north delta intake screens. The Clifton Court fish screens do not require the conveyance tunnels so this major cost of the Proposed Project do not occur in the Clifton Court Fish Screen project alternative component. The Clifton Court fish screen construction and staging can all be done on land that is already owned by DWR so there is little or no land condemnation required like the Proposed Project. The footprint of the Clifton Court fish screens is much smaller and is all sub tidal habitat so the compensatory mitigation of converted habitat is minimal for this alternative compared to the Proposed Project.

From the USACE's mandatory 404 process guidelines, this alternative component would inevitably become their LEDPA as compared to the Proposed Project due to less wetland and aquatic habitat disturbance and conversion. Continued pulling of water across the delta to the south delta intakes protects central and south delta water quality to exactly the same level as the No Action. This protection of water quality from future degradation as compared to the No Action means that this alternative does not adversely modify designated critical habitat for listed fish species like the Proposed Project. The Clifton Court criteria compliant fish screen is therefore compliant with the ESA and is 404 permittable by the USACE and EPA.

The Clifton Court criteria compliant fish screen does not require land condemnation which saves several years for the schedule to complete the project as compared to the Proposed Project which will require condemnation of 300 plus parcels which will take years of time. All of the Clifton Court fish screen construction is done in one area, so construction logistics are much simpler and cheaper, e.g. one cement batch plant instead of a half dozen for the Proposed Project.

If the Clifton Court criteria compliant fish screen alternative component restoration of water supply delivery quantities is not considered adequate to reasonably meet the intent of the purpose and need and project objective of increased water supply reliability, it can be combined with other project components that would, by any judgment, make it reasonably meet this alternative screening and selection criteria. The Clifton Court fish screen alternative component could also be combined with additional downstream storage as a different strategy on achieving additional water supply reliability. It could also be combined with additional levee armoring to reduce in-delta earthquake risks to conveyance reliability or include earthquake upgrades to the existing south of delta facilities and conveyance canals to improve water supply reliability.

Desalination at SWP Contractor Point of Delivery

As a part of SWP operations resiliency and water quality suitability for designated beneficial uses, a component of alternatives to be considered should include water treatment at the point of delivery to SWP contractors. This option allows users to balance their own water quality to beneficial uses and costs of water treatment for SWP water supplies. The on-site water treatment means they can improve not only SWP water supply quality, but also alternative and supplemental water supplies they are legally mandated to develop to reduce their reliance upon delta water supplies. This option also allows for water quality degradation that occurs due to evaporation during conveyance and downstream of delta storage to be rectified at the point of receipt by the water contractors. These could be either as part of a combined project alternative or as separate projects under the Water Resiliency Portfolio.

Alternatives Assessment Conclusions

These comments and assessments of the Proposed Project and alternatives are thoughtfully and earnestly submitted. These comments thoroughly document the deficiencies of the Proposed Project to meet the NOP Project Purpose and Objectives as well as failure to satisfy mandates specified in the Water Resiliency Portfolio Executive Order N-10-19. Individual conclusions and assertions of the analysis of the proposed Project Alternatives and components are legitimately debatable and should be in the Delta Conveyance Alternatives Scoping Report to be released to the public for review and comment. However the details are potentially revised (a few points moved from the plus or minus columns to the other column), viewed in its totality, the superiority of the proposed project alternative is overwhelmingly positive especially as compared to the lack of satisfaction of screening criteria represented in the Proposed Project.

In conclusion, when considered together, these alternatives components result in:

- Restoration of more natural historical flow patterns in the delta;
- Activation and enhancement of over a thousand acres of aquatic habitat and fish food production;
- Restoration and protection of fish habitat quality in designated critical habitat for each of the listed species in the Delta;
- Increased rate of freshening flows across a large part of the delta which:
 - Improve municipal water supply water quality, ag water supply quality and fish habitat water quality,
 - Reduced frequency, severity and geographic extent of dissolved oxygen crashes and toxic algal blooms.
- Increased SWP operational reliability from climate change precipitation pattern, sea level rise, seismic events and levee failures; and,
- Increased SWP operational flexibility to avoid water quality violations and maintain water supply.

From:William MartinTo:DWR Delta Conveyance ScopingSubject:Comment submitted on Delta Conveyance Scoping NOPDate:Thursday, April 16, 2020 12:53:05 PMAttachments:Comment on DWR Tunnel Scoping NOP 4-16-20.pdf

Please find my comments attached.

Please let me know if you have any questions.

Also, please add me to any email lists which pertain to this project or the process.

Thank you.

William L. Martin Wlmartin361@gmail.com April 16, 2020

William L. Martin San Francisco CA <u>Wlmartin361@gmail.com</u>

Department of Water Resources DeltaConveyanceScoping@water.ca.gov

Re: Comments on Notice of Preparation of Environmental Impact Report for the Delta Conveyance Project and the Scoping Process

Dear Department of Water Resources,

First, I'd like to voice my strong opinion that I should not be writing this comment at this time! This entire scoping process should be suspended until the pandemic is under control and the Governor has removed his state of emergency. I am both shocked and saddened at your unconscionable decision to move forward at this time.

Now on to the Notice of Preparation (NOP).

Summary of comments:

The NOP as drafted excludes numerous areas of concern. These missing sections are required by either statute or judicial decisions. Therefore, the NOP itself is wholly inadequate to begin the drafting of the Draft Environmental Impact Report ("Draft EIR").

Specifically:

1. Alternatives Reducing Reliance on the Delta are Required by the Delta Reform Act

The Sacramento-San Joaquin Delta Reform Act of 2009 (Delta Reform Act) establishes the policy of the State of California "to reduce reliance on the Delta in meeting California's future water supply needs through a statewide strategy of investing in improved regional supplies, conservation, and water use efficiency." (Water Code § 85021.) The NOP does not address how the Delta conveyance would comply with this law. The Draft EIR must clearly state an alternative to the proposed tunnel which would in fact fully comply with the Delta Reform Act. Please include such an alternative in the Draft EIR.

2. Public Trust Doctrine Analysis Will be of Critical Importance in Doing the Quantification Work Required by the Delta Reform Act and the Alternatives Analysis Required by CEQA

DWR must consider the public trust doctrine during all stages of the proposed project, especially when assessing the quantity of water that will be allocated to flow through the Project. But the NOP fails to mention the public trust doctrine altogether, even though the doctrine is crucial in understanding the state's water supply availability. The Draft EIR must include an analysis of the 26 rivers of the Delta watershed that conforms with the public trust doctrine and allows decision makers to make informed, rational decisions about whether the Project is a reasonable or even a feasible alternative

3. The Draft EIR Must Include the CEQA-Required Range of Reasonable Alternatives

"Evaluation of project alternatives and mitigation measures is 'the core of an EIR."" (*Banning Ranch Conservancy v. City of Newport Beach* (2017) 2 Cal.5th 918, 937.) An EIR must "describe a range of reasonable alternatives to the project . . . which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives." CEQA Guidelines § 15126.6(a).

The NOP as drafted fails to consider any alternatives except the proposed tunnel project.

There are no mentions of alternatives that would increase freshwater flows through the Delta and protect California's rivers by reducing exports. And the NOP does not state an intention to give a "hard look" at trade-offs between maintaining or increasing exports by way of the Tunnel Project as opposed to reducing exports to protect the Delta and California's rivers.

4. The Draft EIR Must Make CEQA-Required Full Environmental Disclosure Related Processes

The Draft EIR must accomplish full environmental disclosure pursuant to CEQA, meaning the Delta Reform Act mandate to reduce, not increase, reliance on the Delta in meeting California's water supply needs must be set forth front and center when preparing responsive alternatives. The danger to public health posed by worsening harmful algal blooms in the Delta and other adverse water quality impacts exacerbated by the proposed project must be disclosed and assessed. To fully comply with CEQA, the Delta Reform Act, and the Governor's Executive Order N-10-19 (the Draft Water Resilience Portfolio), the Draft EIR must disclose and analyze all significant upstream and downstream impacts as well as all cumulative impacts and growth inducing impacts of the Project.

5. DWR Must Analyze the Impacts of Providing Water to the Entire Project

Pursuant to CEQA, an EIR "must assume that all phases of the project will eventually be built and will need water, and must analyze, to the extent reasonably possible, the impacts of providing water to the entire proposed project." (*Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 431.) Moreover, "[t]he future water supplies identified and analyzed must bear a likelihood of actually proving available; speculative sources and unrealistic allocations ("paper water") are insufficient bases for decision-making under CEQA." (*Vineyard Area Citizens,* 40 Cal.4th at 432.)

Thus, the inventory and assessment in the water resilience portfolio required by the Governor's Executive Order N-10-19 are also the types of information required by CEQA to be in an EIR. The Draft EIR must provide this information regarding water needs and the impacts of taking the water. Speculative sources and unrealistic allocations ("paper water") are insufficient bases for decision-making under CEQA.

6. DWR Must Disclose and Assess the future Reduction in Claimed Needs for the Tunnel Project as a result of New Technologies and Curtailed Exports

Paragraph 3 of Executive Order N-10-19 requires any water resilience portfolio adopted by state agencies to embody the following principles, inter alia:

- "Utilize natural infrastructure such as forests and floodplains" (¶ 3(b);
- "Embrace innovation and new technologies" (¶ 3(c); and
- "Incorporate successful approaches from other parts of the world." (¶ 3) (e.)"

This type of information should be assessed and evaluated prior to developing the Project as it would be invaluable in understanding, and likely lessening, the claimed need for the proposed project.

7. An Accurate Statewide Benefit-Cost Analysis Must be Prepared and Disclosed in the Draft EIR

To proceed in the manner required by CEQA, DWR must provide an accurate benefit-cost analysis to allow informed comparison by the public of alternatives to the proposed project that must be available throughout the period for public and decision-maker review of the Draft EIR.

The NOP states, "Cost analyses will come later in the process, after a preferred alternative has been selected." This statement makes no economic sense. In my personal experience in project management, all alternatives discussed were required to include cost analyses. Otherwise, how could my supervisor or committee evaluate the projects? Because cost is an integral part of any analysis of a project, DWR must include cost analyses of all alternatives.

The Draft EIR, at a minimum, must examine a "no tunnel" alternative. This examination must include a cost/benefit analysis of the "no tunnel" alternative. It may well be that a "no tunnel" alternative could provide the needed benefits at much lower cost, while helping to implement the Water Resilience Portfolio as described in Executive Order N-10-19.

Please include all of the above changes, at a minimum, in the Draft EIR or any subsequent NOP.

Thank you.

William L. Martin Wlmartin361@gmail.com

From:	Jim Blickenstaff
То:	DWR Delta Conveyance Scoping
Cc:	Foresman, Erin@Waterboards; "Barbara Barrigan-Parrilla, Restore the Delta"; "Jim Blickenstaff"
Subject:	COMMENTS : Delta Conveyance Scoping Session
Date:	Thursday, April 16, 2020 1:12:58 PM

California Department of Water Resources4/16/20 (2/17/20)Delta Conveyance Scoping SessionDeltaConveyanceScoping@water.ca.govAtt: Renee Rodriguez

Updated Re-Submittal: Comment Letter on CEQA Process and Delta Conveyance Plan.

To Avoid, Once More, Instigating A Protracted Legal Battle, A Few Approaches To This Environmental Evaluation Will Be Absolutely Essential. Even in these early stages of the environmental review however, California has already failed in one key category: Not extending the time frame for public participation in the process, for a plan that IS NOT TIME CRITICAL, while the Country is in the midst of obvious pandemic crisis constraints on public participation. Sadly, this is also an early indicator that this process will, once again, be degraded by a ubiquitous, decades old, bias toward largely southern based water exporters.

1] Preparing impeccably documented, scientifically based, research that will then logically and rationally, support and justify, findings and conclusions, as to best option(s) for proceeding on the goal of enhanced water supply AND Minimized detrimental environmental impacts. Anything less will invite more water battles. Failing Examples:

> Trump "Science." Or, Reverse Science, where a predetermined outcome causes the scientific effort to be compromised, and otherwise undermined, (incl., the firing of scientists who's findings were not sufficiently contorted toward the desired outcome), all in order to arrive at the desired outcome. Part of this flawed approach would be mitigations that don't mitigate, such as "habitat restoration" as a misplaced counter to aquatic degradation from reducing fresh water flows. > A narrowly focused scientific analysis that does not encompass all available and pertinent information bearing on finding the best (minimized short and long term environmental damage balanced with cost efficiency) outcome.

21 *Current and projected future environmental base lines -- independent of* any project -- need to be thoroughly developed in the context of evidence of accelerated Global Warming, in as much as that base line directly effects and exacerbates most if not all, negative impacts of the project. The best science available will be critical on this, since just within the last few years the temperature and related impact parameter predictions on climate change have significantly increased. This notably includes, of course, an accelerating rise in sea level. Some projections are now showing a 6' rise by 2100. And, a global temperature rise, from 2018 estimates of around 5 degrees, to new model estimates of up to a 10 degrees increased Acceleration -- in this case, a profound indicator that certain tipping points may have already been passed. Scientists have been relatively conservative about climate change projections, not wanting to be seen as being alarmists. The result has been that past climate modeling predictions have invariably underestimated the probable increase in the range of global warming temperatures. A consequence of caution portends a dynamic that future modeling will also trend toward further increases in global temperature projections. Analysis for this project will need to encompass the very real possibility of the additional negative impacts from this phenomenon. There are -right now- numerous indicators of severe environmental stress on the Delta : From more algae blooms, several aquatic species in historic decline -- some either now extinct, or on the precipice of extinction -- warmer water, more brackish water, and more polluted water. *Note: CVRWB just approved a 25 yr. permit for more polluted farm runoff into* the Delta – more pollutants in, more fresh water out – "What could possibly go wrong!?"

Then, on top of this current vulnerability, add the specific and cumulative effects of three more deleterious challenges to Delta ecosystem's survivability:
a> The problems, disruption, damage, and pollution to the Delta -- especially, its aquatic connectivity and viability, inclusive of the dependent species -- from years of the various negative

impacts along with their long term residual effects, caused by the construction and prep phase of the project.

b> Projections of all the real and growing, future climate change/sea level rise negative impacts – up to the year 2100.
c> Finally --and most importantly for this document-- add an evaluation of all the negative impacts from plans for a huge tunnel that will further facilitate, the historic southern bias for more, always more, Delta fresh water -- also, up to the year 2100.

31 This gets us to Alternatives. Assuming an accurate CEQA accounting of all the negative consequences for the Delta ecosystem and the surrounding dependent economic/environmental systems, the full array of all viable alternatives will need to be evaluated and compared with the negative impacts – environmental and economic – borne by the Delta Region from all phases of this tunnel plan. Typically Alternatives have, to one degree or another, been superficially looked at, and 'spun,' to give an apparent advantage to the Lead Plan. That would be a serious mistake in this most serious process -- especially in the context of a Lead Plan demonstrating a stunning lack of vision, and decades out of touch with today, and future water and climate realities. *Here are two Viable Alternatives that require detailed study:* One: State of the art desalination plants in Southern California. (Some scenarios could even involve utilization of the Salton Sea) Good news: In the coming decades, as Northern California fresh water becomes more scarce, more unpredictable, and generally problematic, sea water will become ever more plentiful – and diluted. One question that will need to be answered is: For an initial expenditure comparable to the \$14billion to \$20billion cost for a Delta tunnel conveyance, what do you get short term, but especially long term, in desalination derived fresh water? *Two:* In conjunction with implementing non-depletion alternatives, a "conveyance system" including natural drainage augmentations specifically designed to bring MORE fresh water into the Delta. This is contingent, of course, on California Leadership's depth of commitment to actually "....saving the Delta."* Sadly, recent actions by our Governor indicate such a commitment remote, at best.

CONCLUSION: Once all the above is done with the thorough, and necessary, scientific rigor --inclusive of a process and presentation unfettered by outcome bias-- the alternatives will become more apparent and meaningful as solutions to a lead plan that can, and will, only contribute to the pending environmental collapse of the S.F. Bay Delta. (* Re: NRA Deputy Director Jerry Meral, April 15,2013: "...the BDCP is not about, and has never been about saving the Delta. The Delta cannot be saved...")

In retrospect, I can see where, for some, protracted litigation over a flawed environmental review may appear, once again, to be the "preferred alternative," when faced with a CEQA compliant frank articulation of all the profoundly harsh realities associated with the Lead Plan. Good Luck.

Jim Blickenstaff Former San Ramon City Council Member, Chair, Mt. Diablo Sierra Club, 30 year Environmental Activist.

cc: Interested Parties.

From:	Eric mourelatos
To:	DWR Delta Conveyance Scoping
Cc:	<u>Jan McCleery; Mann, Karen</u>
Subject:	Comment on tunnel plan
Date:	Friday, April 17, 2020 8:26:48 AM

I am a concerned California citizen who wishes to shout from the roof top STOP THIS INSANITY! The very first election I voted in my young life was to vote NO on the peripheral canal. This tunnel plan is no different. You can't continually change the packaging to try to hide the truth. This was voted against and now you just want to try too fool us into a conveyance plan for wealthy farmers in the valley ie-Resnick! This will destroy the largest estuary in the western US. Salt water intrusion will permanently alter the environment killing native vegetation, fish and wildlife! Not to mention it will not add one drop of water to the states supply. I demand that you stop this intrusion into the environment and the delta.

Angrily, Eric Mourelatos 1853 Seal Way Discovery Bay Ca 94505

Becky Donnelly
DWR Delta Conveyance Scoping
Comments
Thursday, April 16, 2020 6:49:48 PM

We are in a lock down and not changing the time period to comment is unbelievable this is a disastor for this state environmentally and economically stop this disaster wake up delay this disaster or be prepared to own it

From:	Dante Nomellini, Jr.
To:	DWR Delta Conveyance Scoping
Cc:	Dante Nomellini, Jr.
Subject:	CDWA Comments on the NOP for the Delta Conveyance Project_April 17 2020 Part 1 of 2
Date:	Friday, April 17, 2020 4:52:25 PM
Attachments:	CDWA Comments on the NOP for the Delta Conveyance Project April 17 2020.pdf
	Enclosure No 1 CDWA (dan jr) Comments on Feb 13, 2009 NOI & NOP for BDCP May 14, 2009.pdf
	Enclosure No 2 CDWA (dan SR) Comments on Feb 13, 2009 NOI & NOP for BDCP May 14, 2009.pdf
	Enclosure No 3 CDWA & SDWA Suppl Written Comments re Appeal of DWR's WaterFix Consistency
	Determination Oct 15 2018.pdf

Please see attached comments and Enclosures 1 thru 3.

Enclosure 4 will be submitted via a separate email.

Please acknowledge receipt of this email and those attachments.

Thank you, Dan Jr. Attorney for the CDWA

Dante J. Nomellini, Jr. ("Dan Jr.") Attorney at Law Nomellini, Grilli & McDaniel Professional Law Corporations 235 East Weber Avenue Stockton, CA 95202 *Mailing address:* P.O. Box 1461 Stockton, CA 95201-1461 Telephone: (209) 465-5883 Facsimile: (209) 465-3956 Email: <u>dantejr@pacbell.net</u>

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CENTRAL DELTA WATER AGENCY

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DIRECTORS George Biagi, Jr. Rudy Mussi Edward Zuckerman **COUNSEL** Dante John Nomellini Dante John Nomellini, Jr.

April 17, 2020

Via Email Only to DeltaConveyanceScoping@water.ca.gov

Re: CDWA's Comments on the "Notice of Preparation of Environmental Impact Report for the Delta Conveyance Project."

1. Incorporation of Prior Scoping Comments and Joinder in South Delta Water Agency Comments.

The CDWA joins in the comments submitted by the South Delta Water Agency on the instant NOP and on DWR and USBR's NOPs for prior iterations of the instant project, which for the most part are still directly applicable to the instant NOP.

The CDWA also hereby incorporates by reference the following comments the CDWA submitted on those prior NOPs:

- CDWA's May 14, 2009 comments entitled, "Comments on the Department of Interior's Notice of Intent to Prepare (Dated February 13, 2009), and the CA Department of Water Resources' Notice of Preparation of (Dated February 13, 2009), an EIS/EIR for the Bay Delta Conservation Plan."
- CDWA's May 19, 2009 comments entitled, "Scoping BDCP NOI 74FR7257 (Feb. 13, 2009) and NOP State Clearinghouse No. 2008032062 (Feb. 13, 2009)."

(Copies of those comments are attached hereto as Enclosures No. 1 and 2, respectively.)

The CDWA hereby supplements those prior comments with the following additional comments.

///

2. The Omission of Operations and Other Details of the Project Renders the Notice of Preparation Legally Inadequate.

Guidelines section 15082, subdivision (a)(1) provides:

The notice of preparation shall provide . . . sufficient information describing the project and the potential environmental effects to enable the responsible agencies to make a meaningful response. At a minimum, the information shall include: (A) Description of the project, (B) Location of the project . . . , and (C) Probable environmental effects of the project.

The NOP is inadequate since it does not provide "sufficient information describing the project and the potential environmental effects to enable the responsible agencies to make a meaningful response."

In addition to numerous other omissions, the most glaring omission is the lack of any information on how DWR and the USBR plan to operate the project. Instead, the NOP begins and ends its "description of the project" with a very general (and inadequate) description of the physical components of the project. While the construction of the physical components of the project will indeed have substantial and devastating impacts on the Delta and other environmental resources, what will ultimately permanently destroy the Delta as we know it, and all of its environmental and other resources, is the operation of the project. The NOP is entirely devoid of any description of that operation thereby thwarting agencies and the public's ability to meaningfully comment on the potential environmental impacts from those operations and any potentially feasible alternatives and mitigation measures to avoid or minimize those impacts.

There is simply no excuse for the complete lack of any information, much less a sufficient amount of detailed information, on how the project will be operated to meet any of its project's primary objectives in the NOP. At this point, DWR contains mountains of information on proposed operations of the project that could have easily been, and should have been, compiled and incorporated into the NOP. The gross absence of this information renders the NOP legally inadequate. Requiring agencies and the public to speculate how DWR might operate the project to meet the project's basic objectives undermines the entire purpose of a NOP. The NOP must, accordingly, be set aside and reissued with that information.

3. DWR's Failure to Disclose its Intent to Use the Project to Abandon the Maintenance of Adequate Delta Water Quality *in the Wake of Sea Level Rise* Renders the NOP Legally Inadequate and that Intent Confirms the Illegality of the Project.

No where is the prejudice from the lack of any operational information more pronounced than with respect to the lack of any operational information whatsoever regarding how DWR intends to use the project to address sea level rise. Addressing "anticipated rising sea levels" is, of course, not merely an incidental component of the project; it is in fact one of the four primary
objectives of the project:

In proposing to make physical improvements to the SWP Delta conveyance system, <u>the project objectives are</u>: <u>To address anticipated rising sea levels</u> and other reasonably foreseeable consequences of climate change and extreme weather events.

(NOP, p. 2, emphasis added.)

In hindsight, it is quite remarkable that DWR has touted the benefits of a tunnel to "address sea level rise" for well over a decade, yet nowhere, to CDWA's knowledge, has DWR ever disclosed to the public in any of the prior environmental documents in support of a tunnel precisely how DWR intends to use a tunnel to address sea level rise. Needless to say, as one of the four primary objectives of the project, the omission of such critical information needs to stop here and now, and the NOP must, accordingly, be set aside and reissued with that information.

While entirely outside of the CEQA process and after over a decade of silence, in September of 2018, DWR finally revealed how it intends to operate the project to address sea level rise in its "Economic Analysis of the California WaterFix," dated September 20, 2018, and prepared for DWR by David L. Sunding, Ph. D.

The CDWA discussed this shocking disclosure at length in its October 15, 2018 comments to the Delta Stewardship Council entitled, "Central and South Delta Water Agencies' Supplemental Written Comments in Support of Their Appeal of DWR's WaterFix Certification of Consistency (WaterFix C20185)." (Those comments are attached hereto as Enclosure No. 3 and include a complete copy of the above-referenced economic analysis.)

As revealed in that economic analysis, the fears of those who even remotely care about the well-being of the Delta, and the fears of those who are genuinely concerned that DWR will operate the tunnel in a manner that permanently and substantially impairs the Delta, were 100% validated by that analysis. In that analysis, DWR <u>not only confirms its intent to use a tunnel to abandon maintaining adequate Delta water quality below the new north Delta intakes in the wake of sea level rise, but, even more egregiously, DWR asserts that the ability to abandon such maintenance is "one of the strongest arguments in favor of investing in the California WaterFix [i.e., in a tunnel]" and "alone is worth several billions of dollars." (Sunding, Economic Analysis, pp. 31 & 38.)</u>

In a nutshell, without a tunnel, DWR cannot abandon maintaining adequate Delta water quality in the Delta in the wake of sea level rise, or otherwise, even if it wants to, because DWR (and the USBR) export water from their intakes located in the southern part of the Delta and, hence, they need to at all times maintain adequate water quality at those intakes. Again, they need to maintain it, not because they care at all about the well-being of in-Delta users or the in-Delta environment, but because of the self-interest of their export contractors.

The construction of a tunnel dramatically changes all of that. It removes DWR and USBR's export contractors' reliance on adequate water quality in the Delta and allows DWR and USBR to export high quality water from the northernmost portion of the Delta before it enters the heart of the Delta. For anyone that even remotely cares about the well-being of the Delta, such removal of such reliance on adequate water quality in the Delta by these two monstrous Delta-exporters is clearly the beginning of the end of maintaining adequate water quality in the Delta. Construction of a tunnel is simply bar none, the worst possible facility that could ever be constructed with respect to the short and long term preservation of the Delta and all of its expansive and extensive human and environmental resources that depend on the maintenance of adequate water quality.

Sure enough, the master, and entirely undisclosed, plan in the NOP, is to address the degradation of water quality in the Delta as a result of the anticipated sea level rise by simply allowing Delta water quality to degrade and exporting water that is necessary to offset that degradation through the tunnel to DWR and USBR's export contractors. Having effectively severed DWR and USBR's reliance on adequate water quality at their southern Delta intakes, the tunnel enables DWR and USBR (or rather their respective export contractors) the convenience of no longer having to care about maintaining that water quality.

It is truly a wonderful plan if one lived in a vacuum and could not care less about the short or long term protection or enhancement of the Delta or its environment. However, fortunately for the Delta and its environment, there are numerous laws and policies that have been implemented over the past several decades to ensure that the Delta, and all of its resources, are protected and enhanced in both the short and long term, and that mandate that DWR and USBR care about maintaining adequate Delta water quality, whether their export contractors want them to or not. Some of the laws and policies that would be squarely violated if DWR and USBR were to carry out their plan to use the tunnel to abandon maintaining adequate Delta water quality in the wake of sea level rise and export water through the tunnel that is needed to maintain that quality include the following:

- The Delta Protection Act of 1959.
- The Delta Protection Act of 1992.
- The Watershed Protection Act (11460 et seq.).
- The Delta Reform Act of 2009.
- The SWRCB's No-Injury Rule for Changes to Points of Diversion.
- The SWRCB's D-1641 Delta Water Quality Standards.
- The State and Federal Anti-degradation Policies.
- The State and Federal Endangered Species Acts.

Because of the unavoidable and unmitigable clash which these laws and policies, the proposed use of a tunnel to abandon maintaining adequate Delta water quality in the wake of sea level rise must be set aside it in its entirety. In its place, a project should be developed that is designed to at all times maintain adequate water quality in the Delta, even in the wake of sea

level rise, and, hence, a project that fully complies with these laws and policies.

While DWR's intent to use the project to abandon maintaining adequate Delta water in the wake of sea level rise is extremely egregious in its own right, at this NOP stage, DWR's failure to disclose that intent renders the NOP legally deficient. The NOP must accordingly be reissued with such a disclosure. Once agencies and the public are aware of that intent, they can meaningfully comment on the potential environmental impacts from the intended operations and potentially feasible alternatives and mitigation measures to avoid or minimize those impacts.

Suffice it to say, that in the absence of DWR's express disclosure of how it intends to operate the project to address sea level rise, any EIR on those operations must include information such as the following:

- Assuming *aurguendo* that it is DWR's plan to operate the project in a manner that at all times maintains adequate Delta water quality in the wake of sea level rise:
 - (a) First and foremost, the EIR must thoroughly explain why a tunnel is necessary to address sea level rise if DWR will at all times maintain adequate Delta water quality in the wake of that rise (including adequate water quality at its southern Delta intakes).
 - (b) The EIR must thoroughly discuss and analyze how such maintenance will effect the amount of water available for export in the tunnel under all reasonably foreseeable sea level rise (and climate change) scenarios.
 - (c) There should also be an economic analysis of whether the project is economically feasible in light of the anticipated need for more freshwater to flow through the Delta to maintain adequate water quality under each of those sea level rise scenarios and, as a consequence, a decreased amount of water available to export through the tunnel.
 - (d) The EIR must also explain how DWR will in fact ensure that it will at all times maintain adequate Delta water quality in the wake of sea level rise, especially in critically dry years, and during foreseeable drought scenarios.
 - (e) In particular, assuming maintaining adequate Delta water quality in the wake of sea level rise will at times reduce the amount of water available for export to zero, the EIR must explain how DWR will meet health and safety needs of its export contractors via non-Delta water supplies during such times.
 - (f) Also, in situations where DWR and USBR use up all of their available storage water to maintain adequate Delta water quality, the EIR must

explain how DWR will nevertheless continue to maintain that quality through water purchases or other water sources and/or through measures such as salinity berms, salinity barriers, salinity gates, etc.

- (g) Moreover, the EIR must explain what will prevent DWR from changing it's mind and deciding to cease maintaining adequate Delta water quality and start exporting water needed to maintain that quality through the tunnel. Even if DWR starts out with good intentions, is there any conceivable method to physically prevent DWR from so changing its mind once a tunnel is built? If such a change is "reasonably foreseeable," then such a change must be thoroughly analyzed in the EIR.
- Assuming, on the other hand, that it is DWR's plan to use the project to abandon the maintenance of adequate Delta water quality in the wake of sea level rise:
 - (a) In this situation, the EIR must first and foremost thoroughly discuss all of the laws and policies DWR will be violating to the extent DWR intends to export water through the tunnel that is needed to maintain adequate Delta water quality.
 - (b) The EIR must thoroughly explain precisely how it plans to implement this abandonment of the maintenance of adequate Delta water quality. For example:
 - At what level of sea level rise will DWR decide to stop maintaining that water quality and start using the tunnel to export water needed to maintain that water quality?
 - Will DWR implement any mitigation measures to try to reduce the deterioration in Delta water quality as a result of exporting water needed to improve that water quality through the tunnel?
 - If so, precisely what measures will it be implementing? Salinity berms, salinity barriers, salinity gates, etc.?
 - What water quality will DWR try to maintain in the immediate vicinity of its north Delta intakes under all reasonably foreseeable sea level rise scenarios?
 - To what extent will DWR honor its water quality commitments in its "Contract Between the State of California Department of Water Resources and the North Delta Water Agency for the Assurance of a Dependable Water Supply of Suitable Quality," dated January 28,

1981?

- (c) The EIR must conduct a thorough and detailed analysis of the water quality that will result throughout the Delta under all reasonably foreseeable sea level rise scenarios after DWR abandons the maintenance of adequate Delta water quality, and conduct a thorough and detailed analysis of the entire range of potentially significant adverse impacts to all aspects of the environment, public health, other water users (including the CVP export contractors if they do not participate in the use of the tunnel), etc. from that abandonment.
- (d) Because such abandonment will have devastating impacts on economic activities in the Delta, a thorough and detailed economic analysis must be prepared to assess the economic impacts as well as the secondary environmental impacts that may foreseeably result from such impacts.
- (e) All in all, the EIR must provide a thorough and detailed analysis of the entire and expansive range of direct and indirect impacts that may foreseeably result from the abandonment of maintaining adequate Delta water quality at every stage of that abandonment, from its inception through all reasonably foreseeable sea level rise scenarios, and a thorough and detailed analysis of potentially feasible alternatives and mitigation measures to avoid or minimize such impacts for all of those scenarios.
- (f) Importantly, the potential environmental impacts from this planned abandonment of maintaining adequate Delta water quality must also be thoroughly compared and contrasted with alternatives, including the no project alternative, that comply with all applicable laws and policies and, accordingly, do not involve DWR's abandonment of such maintenance.

4. DWR's Failure to Disclose its Intent to Use the Project to Abandon the Maintenance of Adequate Delta Water Quality *in the Wake of Levee Failures* Renders the NOP Legally Inadequate and that Intent Confirms the Illegality of the Project.

DWR commits another fatal error by failing to in any manner explain in the NOP how DWR intents to operate the project to address levee failures. As with sea level rise, addressing levee failures is not merely an incidental component of the project. Instead it is one of the four primary objectives of the project:

In proposing to make physical improvements to the SWP Delta conveyance system, the project objectives are: . . . To minimize the potential for public health and safety impacts from reduced quantity and quality of SWP water deliveries, and potentially CVP water deliveries, south of the Delta resulting from a major earthquake that causes breaching of Delta levees and the inundation of brackish water into the areas in which the existing SWP and CVP pumping plants operate in the southern Delta.

(NOP, p. 2, emphasis added.)

As with the manner in which DWR will operate the project to address sea level rise, there is nothing in the NOP that remotely describes how DWR intends to operate the project to address sea level rise. Instead, DWR apparently believes, in direct contravention of CEQA's mandates, that it is preferable to conceal this intent.

Fortunately, the CDWA has been able figure it out itself, and has determined that DWR's unmistakable intent is to once again use the tunnel to abandon the maintenance of adequate water quality in the Delta in the event of levee failures (just like it intends to do to address sea level rise), and export water through the tunnel that is needed to maintain that quality.

That sinister intent is revealed when one considers that DWR is trying to address the situation where one or more levee failures cause the salinity at its southern Delta export intakes to become too salty for it to export from those intakes. Rather than allow Sacramento River fresh water to flow into and through the Delta to offset and any degradation of water quality due to levee failures, and restore that quality to adequate levels it deems worthy of exporting, DWR's plan under the project is to construct a tunnel and divert that freshwater directly into the tunnel thereby depriving the Delta of that much needed freshwater flow. The result is that DWR's plan is to not only stop maintaining adequate water quality in the Delta during levee failures, but even more egregiously, it plans to take available freshwater away from the Delta that could be used to restore that water quality and export it from the Delta through the tunnel.

As with the case with sea level rise, the export of water through the tunnel that is needed to maintain adequate Delta Water quality is directly contrary to the numerous laws and policies, including the following:

- The Delta Protection Act of 1959.
- The Delta Protection Act of 1992.
- The Watershed Protection Act (11460 et seq.).
- The Delta Reform Act of 2009.
- The SWRCB's No-Injury Rule for Changes to Export Intake Locations.
- The SWRCB's D-1641 Delta Water Quality Standards.
- The State and Federal Anti-degradation Policies.
- The State and Federal Endangered Species Acts.

While CEQA requires DWR to set aside its NOP and reissued it with a clear and meaningful disclosure of how it intends to operate the project in the wake of levee failures, in the absence of such a disclosure, suffice it to say that any EIR on those operations must include

information such as the following:

- The EIR must first and foremost thoroughly discuss all of the laws and policies DWR will be violating when it decides to abandon the maintenance of adequate Delta water quality in the wake of levee failures and export water through the tunnel that is needed to maintain that quality.
- The EIR must thoroughly explain precisely how it plans to implement this abandonment of the maintenance of adequate Delta water quality. For example:
 - i. How many levees must simultaneously or otherwise fail before DWR will decide to abandon maintaining that water quality and start using the tunnel to export water needed to maintain that water quality? A single levee failure surrounding the tiniest of Delta islands? A single levee failure surrounding a "large" Delta island? Five such failures? Fifteen?
 - ii. If the determination of what triggers DWR's abandonment of maintaining adequate Delta water quality is not based on the number of levee failures or the size of the Delta islands that are flooded, but instead, is based on the degree of salinity intrusion that results from such failures, then how degraded must the salinity get within the Delta, and where in the Delta will that degradation be measured, before DWR decides to abandon maintaining that water quality and start using the tunnel to export water needed to maintain that water quality?
 - iii. How much water does DWR plan to export from the Delta through the tunnel while the Delta is suffering from degraded water quality as a result of levee failures? As much as DWR can physically export through the tunnel? A bare minimum "health and safety" amount? If the latter, how much does that entail and how will that amount be determined?
 - iv. What mitigation measures, if any, will DWR implement to mitigate the exacerbation of degraded water quality in the Delta from its export of freshwater in the tunnel that is needed to restore that quality? Levee breach repairs, salinity berms, salinity barriers, salinity gates, etc.?
 - v. What water quality will DWR try to maintain in the immediate vicinity of its north Delta intakes under all reasonably foreseeable levee failure scenarios?
 - vi. To what extent will DWR honor its water quality commitments in its "Contract Between the State of California Department of Water Resources and the North Delta Water Agency for the Assurance of a Dependable

Water Supply of Suitable Quality," dated January 28, 1981, in all reasonably foreseeable levee failure scenarios?

- vii. The EIR must also thoroughly explain when DWR will decide to resume maintaining adequate Delta water quality after it abandons that maintenance in the wake of one or more levee failures. What criteria will DWR use to make that determination? And how aggressively and quickly will it try to restore that water quality? How much of its available storage water will it be willing to use to restore that water quality versus exporting that water through the tunnel? What criteria will DWR use to make that determination?
- viii. The EIR must conduct a thorough and detailed analysis of the water quality that will result throughout the Delta under all reasonably foreseeable levee failure scenarios after DWR abandons the maintenance of adequate Delta water quality, and conduct a thorough and detailed analysis of the entire range of potentially significant adverse impacts to all aspects of the environment, public health, other water users (including the CVP export contractors if they do not participate in the use of the tunnel), etc. from that abandonment.
- ix. Because such abandonment will have devastating and widespread impacts on economic activities in the Delta, a thorough and detailed economic analysis must be prepared to assess the economic impacts as well as the secondary environmental impacts that may foreseeably result from such impacts.
- x. All in all, the EIR must provide a thorough and detailed analysis of the entire and expansive range of direct and indirect impacts that may foreseeably result from the abandonment of maintaining Delta water quality at every stage of that abandonment, from its inception through all reasonably foreseeable levee failure scenarios, and a thorough and detailed analysis of potentially feasible alternatives and mitigation measures to avoid or minimize such impacts for all of those scenarios.
- xi. Importantly, the potential environmental impacts from this planned abandonment of maintaining adequate Delta water quality must also be thoroughly compared and contrasted with alternatives, including the no project and other no-tunnel alternatives, that comply with all applicable laws and policies and, accordingly, do not involve DWR's abandonment of such maintenance.

DWR's historical practice in its prior EIRs, <u>and NOPs</u>, for its proposed tunnels of completely ignoring the disclosure of how it intends to operate a tunnel in the wake of levee failures and sea level rise, and its complete lack of any CEQA analysis regarding such operations in its EIRs, must stop. As disgraceful as its intentions are, it is even worse that DWR chooses to conceal them. Such concealment fundamentally undermines the entire CEQA process and the correction of this abysmal track record begins with the issuance of a new NOP that meaningfully provides such disclosure.

5. The EIR Must Thoroughly Discuss and Analyze the Environmental and Economic Impacts Resulting from DWR's Efforts to Offset the Project's Impacts on the SWRCB's D-1641 Standards, Including Term 91 Impacts.

Even though it is clear that DWR, at a minimum, does not intend to comply with the SWRCB's D-1641 Delta Water Quality Standards in the wake of sea level rise and levee failures, the upcoming EIR will undoubtedly nevertheless make the unwarranted assumption that DWR will comply with those standards when it operates the project, and that compliance with those standards will reduce the project's individual and cumulative negative impacts on Delta water quality and flow. The act of complying with those standards, however, can foreseeably result in its own expansive set of substantial adverse impacts.

On of the reasons that is the case is on account of the SWRCB's imposition of so-called "Term 91" on over one hundred post-1914 appropriative permits and licenses throughout the Delta watershed. In essence, whenever DWR and USBR release storage water to maintain the D-1641 standards the SWRCB curtails all post-1914 appropriative permits or licenses within the Delta watershed that are subject to Term 91. (Information on Term 91 is readily available on the State Water Board's website at:

https://www.waterboards.ca.gov/water_issues/programs/delta_watermaster/term91.html)

Thus, to the extent the project, individually or cumulatively, triggers the need for DWR and USBR to release storage water to maintain one or more of D-1641's salinity or other standards, a vast number of diverters within the Delta watershed, including the Delta itself, must cease diverting under their post-1914 permits or licenses. Such cessation of diversions has the potential to cause substantial and widespread impacts on numerous environmental resources including terrestrial species, air quality, groundwater recharge, etc., as well as substantial adverse economic impacts and the secondary environmental impacts resulting therefrom.

Accordingly, to the extent the EIR will rely on DWR's (theoretical) compliance with the various D-1641 standards to mitigate the impacts from the project's individual or cumulative impacts Delta water quality or flow, the EIR must first thoroughly analyze the extent, and under what hydrological and other conditions, the project will foreseeably cause DWR and USBR to the release storage water to bring those standards into compliance and, hence, trigger Term 91 curtailments. The EIR must then thoroughly analyze the entire host of potential direct and indirect environmental impacts resulting from those curtailments.

Furthermore, because any DWR or USBR storage releases to offset the impacts of the project on the D-1641's standards will result in a redirection of that storage water from where that storage water would have otherwise been used in the absence of the project, the EIR must also thoroughly analyze the full range of potential direct and indirect environmental impacts from such redirection. For example, such impacts could foreseeably include impacts to cold water pool storage, carryover storage, river flows, water quality, water availability for senior water right holders, etc.

6. The EIR Must Thoroughly Discuss and Analyze the Environmental and Economic Impacts Resulting from DWR's Use of the Tunnel During Governor Declared Droughts or Other Emergencies.

Speaking of compliance with D-1641 water quality standards, the EIR must thoroughly discuss and analyze how DWR intends to operate the project during a Governor declared drought or other emergency where DWR's duty to comply with one or more of D-1641 or other water quality or flow standards is relaxed in some fashion. Without the project, DWR must allow Sacramento River freshwater to flow through the Delta and thereby freshen the water quality in the Delta before DWR can export it through its southern Delta intakes. With a tunnel, DWR can simply divert that freshwater directly into the tunnel and thereby deprive the Delta of the benefits of that water.

If DWR uses the tunnel during such emergencies, then Delta water quality and flow will be directly degraded as a result of the redirection of available freshwater flows into the tunnel rather than allowing that water to flow through the Delta to improve Delta water quality and flow. The EIR must therefore thoroughly discuss and analyze, and compare and contrast, how Delta water quality and flow, and all of its natural values and resources that depend on that quality and flow, will fare during reasonably foreseeable Governor declared droughts or other emergencies with and without the project. The EIR must also thoroughly discuss and ultimately adopt feasible mitigation measures to avoid or reduce any such degradation of Delta water quality and flow as a result of the project. A reasonable range of alternatives to using the tunnel in these emergency conditions must also be discussed and analyzed.

7. The EIR Must Thoroughly Discuss and Analyze all Environmental and Geological Investigations Necessary to Design and Construct the Project and all Environmental Impacts Resulting Therefrom.

Extensive environmental and geological investigations have taken place over the last decade in furtherance of a tunnel project. While DWR has unlawfully piecemealed the CEQA review of those investigations, the upcoming EIR must include a thorough discussion and analysis of the full nature and extent of all of the reasonably foreseeable environmental and geological investigations (borings, CPT tests, etc.) that DWR will likely pursue in order to design and construct the project's numerous and expansive facilities. A disclosure and analysis of the

locations where such investigations will take place, a detailed description of the nature and extent of such investigations, and a thorough analysis of the potential environmental impacts from all aspects of such investigations must be included in the EIR. The EIR must also include a thorough discussion and analysis of mitigation measures and alternatives to avoid or reduce those impacts.

8. Additional Miscellaneous Scoping Comments:

- a. <u>Additional Impacts to Discuss and Analyze:</u> In addition to countless other impacted resources and facilities, including those set forth in the CDWA's prior and other scoping comments, the EIR must thoroughly discuss and analyze the project's impacts to the following resources and facilities from all aspects of the project, from the environmental and geological investigations to the construction and operation of the project, and thoroughly discuss and analyze mitigation measures and alternatives that could avoid or reduce such impacts:
 - i. Levee systems.
 - ii. Drainage systems.
 - iii. Other Reclamation District facilities, including roadways, bridges, levee access ramps, etc.
 - iv. Irrigation systems.
 - v. Groundwater wells.
 - vi. Agricultural land.
 - vii. Habitat land.
 - viii. Waterfowl and other wildlife propagation.
 - ix. Recreation, including hunting, boating, fishing, swimming, water skiing, windsurfing, etc.
 - x. Air quality.
 - xi. Surface water quality.
 - xii. Ground water quality, including salinity intrusion into groundwater basins.
- b. <u>Earthquake Impacts to the Project's Facilities:</u> In prior EIRs for the tunnels there was a gross lack of verification that any, much less all, of the project's expansive features (tunnels, embankments, forebays, shafts, etc.) will be adequately protected against earthquakes. DWR makes a giant issue about the earthquake risk in the Delta, yet all of the project's expansive facilities are proposed to be constructed within the heart of the Delta. The EIR must provide detailed information and analysis confirming that these facilities will somehow be immune to those risks.
- c. <u>State and Federal Anti-degradation Laws:</u> This project could rightfully be renamed to "the Delta Water Quality <u>Degradation</u> Project." At the end of the day,

even setting aside DWR's sinister intents discussed above, any Sacrament River freshwater that is diverted into the tunnel in lieu of allowing it to flow into and through the Delta, as it must do in the absence of a tunnel, necessarily causes degradation of Delta water quality. In essence, a tunnel such as this, with its intakes in the northermost portion of the Delta, is the absolute worst project that could ever be conceived if the avoidance of degradation to Delta water quality was something DWR was even remotely interested in achieving. In any event, the EIR must thoroughly explain how the operation of this "Degradation Project" will somehow not violate the state and federal anti-degradation laws.

d. **Physical Capacity of the Tunnel:** The NOP states at page 3: "Under the proposed project, the new north Delta facilities would be sized to convey up to 6,000 cfs of water from the Sacramento River to the SWP facilities in the south Delta" The EIR must thoroughly explain how easy or difficult it would be for DWR to subsequently increase that capacity to 9,000 cfs or even 15,000 cfs or beyond, in the event DWR obtains initial approval of a 6,000 cfs facility and just happens to decide at a future time that it would like to increase that flow rate.

In this regard, the EIR must thoroughly explain the maximum theoretical physical capacity of the main tunnel itself. In other words, assuming additional intakes were brought on line in subsequent years and assuming additional pumping facilities were brought on line at the southern end of the main tunnel, what is the maximum cfs of flow that could theoretically be moved through the proposed tunnel? For example, if DWR for some strange reason wanted to increase the capacity to 15,000 cfs down the road, what specifically would need to be constructed to accommodate that and would the proposed tunnel be sized to handle that?

On that note, the EIR should explain whether it is feasible to size or otherwise construct the main tunnel such that it could not physically transfer any more than 6,000 cfs; instead, a brand new tunnel would be need to be constructed to transfer more than 6,000 cfs. If there is no way to build a tunnel such that it could not feasibly transfer more than 6,000 cfs, then every time the EIR states that the tunnel will be "sized to convey up to 6,000 cfs" it should note that the main tunnel will actually be sized to handle 15,000 or more cfs but that DWR, at this time, is only requesting to move up to 6,000 cfs; however, DWR might very well change its mind in that regard down the road.

e. <u>**Piecemealing:**</u> Over the last decade, DWR's pursuit of a tunnel has been fraught with piecemealed CEQA analysis in many respects. While CEQA requires DWR to evaluate the "whole of the action" that constitutes the project, DWR has separated components of that action and analyzed them in isolation of the rest of the components. This was true with regard to the expansive environmental and geological investigations in furtherance of the project, and DWR's contract amendments with its SWP contractors. The "whole of the action" that constitutes the instant project also includes DWR's Coordinated Operations Agreement with USBR which will be directly and substantially affected by DWR's operations under this project. Those coordinated operations, and all other components of the "whole of the action" that comprise this project, must be thoroughly set forth in the EIR as components of this project and thoroughly discussed and analyzed therein.

- f. <u>Water Transfers:</u> Because DWR intends to use the project for water transfers, the EIR must thoroughly discuss and analyze the full range of potential environmental impacts from such transfers. Such a discussion and analysis must include an examination of where and how the transferred water would have been used in the absence of the project and a comparison of where and how it will be used with the transfer. The breadth of potentially significant impacts is substantial. Impacts on all essentially all aspects of the environment are potentially affected. Impacts to groundwater and groundwater basins are a particularly sensitive topic. Legal restrictions on the direct or indirect export of groundwater via a water transfer must also be discussed and analyzed, including but not limited to Water Code section 1220.
- g. **Drought Operations:** Rather than comply with D-1641 standards in drought conditions, DWR's historical pattern and practice is to seek near immediate relief from the SWRCB from compliance with those standards at essentially the outset of such conditions. Rather than reduce exports to preserve water to meet those standards to the maximum extent possible during drought conditions, DWR historically opts to seek waivers of those standards. As discussed above with DWR's proposed use of the tunnel in those conditions, adverse impacts to Delta water quality and flow will substantially increase. The EIR must thoroughly discuss and analyze this historical pattern and practice and explain how, with the proposed project, DWR is going to change its ways and set forth the detailed plan, including especially carryover storage requirements, that will ensure DWR cuts back exports as much as necessary to at all times maintain adequate Delta water quality and other flow requirements during all foreseeable drought scenarios.
- h. <u>Alternatives:</u> Needless to say the proposed project is a complete disaster in the making for the Delta and the worst possible alternative to address the paramount co-equal goals of "providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem." (Wat. Code, § 85054.) The proposed project simply could not fall any further short of the mandate that "[t]he coequal goals shall be achieved in a manner that protects and enhances the unique cultural, recreational, natural resource, and agricultural values of the Delta

as an evolving place." (<u>Ibid</u>.) Among other things, it also makes a complete mockery of the state policy "to reduce reliance on the Delta in meeting California's future water supply needs through a statewide strategy of investing in improved regional supplies, conservation, and water use efficiency." (Wat. Code, § 85021.) Where is there any semblance of any such investment in "the whole of the action" that comprises this project? There plainly is none. And it is difficult to conceive of a project that could be any more designed to <u>increase</u> reliance on the Delta than this project.

The EIR, accordingly, must include a reasonable range of <u>non-tunnel</u> alternatives that actual meet the co-equal goals in a manner that truly protects and enhances the Delta's values and truly reduces reliance on the Delta.

The CDWA has suggested various non-tunnel alternatives in its other scoping comments incorporated and referenced herein.

Suffice it to say at this juncture that with respect to one of DWR's central concerns, i.e., levee failures, DWR's fear of such failures is dramatically overstated and is belied by its instant desire to build the instant project and all of its expansive structures squarely within the heart of the Delta.

In any event, there are countless measures that could be taken in lieu of a tunnel to substantially reduce the risk of water quality degradation as a result of levee failures, including the following:

- substantially strengthen the levees throughout the Delta;
- prepare in advance for the prompt repair of any levee breaches;
- prepare in advance to temporarily blend saltier Delta water with other water sources south of the Delta to temporarily dilute that saltier water to useable levels;
- construct one or more south of the Delta treatment plants to dilute a portion of the saltier Delta water to usable levels;
- maintain additional water supply reserves south of the Delta on standby, including groundwater reserves, to address temporary Delta water quality degradation while levees are being repaired and Delta water quality is being restored; etc.

The bottom line for alternatives is to simply ask DWR what it would do to address all of its concerns, including levee failures, if a tunnel was 100% not an option.

There are so many positive actions that could be feasibly taken to adequate protect the entire Delta and all who depend on the Delta if a tunnel was completely taken off the table which it absolutely should be.

To the extent Governor Newsom or other powers that be are willing to take a fresh look at this matter, and for the sake of the short and long term protection of the Delta, which our state and federal governments are mandated to protect, please set aside any predeterminations that a tunnel is the only option and truly take a hard and good faith look at non-tunnel alternatives. This EIR process provides an renewed opportunity to do so.

Thank you for considering these comments and concerns.

Very truly yours,

Dante J. Nomellini, Jr. Attorney for the CDWA

Enclosures:

Enclosure No. 1:	CDWA's May 14, 2009 comments entitled, "Comments on the Department of Interior's Notice of Intent to Prepare (Dated February 13, 2009), and the CA Department of Water Resources' Notice of Preparation of (Dated February 13, 2009), an EIS/EIR for the Bay Delta Conservation Plan."
Enclosure No. 2:	CDWA's May 19, 2009 comments entitled, "Scoping BDCP NOI 74FR7257 (Feb. 13, 2009) and NOP State Clearinghouse No. 2008032062 (Feb. 13, 2009)."
Enclosure No. 3:	CDWA's October 15, 2018 comments entitled, "Central and South Delta Water Agencies' Supplemental Written Comments in Support of Their Appeal of DWR's WaterFix Certification of Consistency (WaterFix C20185)."
Enclosure No. 4:	CDWA's February 7, 2020 comments entitled, "Draft Water Resilience Portfolio."

From:	Michelle Bracha
To:	DWR Delta Conveyance Scoping
Cc:	Kelley Taber; Mel Lytle; Office of the Secretary CNRA; Cathleen Galgiani; Susan Talamantes Eggman; Lilliana
	Roberts; Harry Black; John Luebberke; John Abrew
Subject:	City of Stockton Comments on Notice of Preparation for Environmental Impact Report
Date:	Friday, April 17, 2020 9:20:42 AM
Attachments:	04172020 Stockton Comments on NOP for Delta Conveyance w Exh A (00082417xD2C75).pdf

Good morning,

The attached correspondence is submitted on behalf of Kelley Taber for the City of Stockton

Thank you.

Michelle Bracha

Legal Secretary

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April 17, 2020

VIA ELECTRONIC MAIL (DELTACONVEYANCESCOPING@WATER.CA.GOV) Delta Conveyance Scoping Comments Attn. Renee Rodriguez, Department of Water Resources P.O. Box 942836 Sacramento, CA 94236

Re: City of Stockton Comments on Notice of Preparation for Environmental Impact Report – Delta Conveyance Project

Dear Ms. Rodriguez:

These comments in response to the Department of Water Resources' (DWR) notice of preparation (NOP) for an environmental impact report (EIR) for the Delta Conveyance Project (Project) are submitted on behalf of the City of Stockton ("Stockton" or "City").

I. <u>BACKGROUND</u>

With 315,000 residents, Stockton is the largest municipality wholly within the Sacramento-San Joaquin River Delta. It has a large environmental justice community and higher than statewide average percentage of residents who live below the poverty line. Stockton derives a substantial percentage of its water supply from Delta surface waters. The well-being of the City, its residents, and economy is thus inextricably linked to the Delta, the quantity and quality of Delta water supplies, and the Delta ecosystem

Stockton relies on a portfolio of water supply sources and supporting infrastructure to meet existing and future demands. The City's Municipal Utilities Department provides potable drinking water to a service population of more than 180,000, which is approximately 55 percent of the municipal and industrial potable water demand of the Stockton Metropolitan Area. Stockton's water supply includes surface water rights to divert water up to 30 million gallons per day from the San Joaquin River, contracted surface water supplies, and groundwater. Stockton's most significant source of water is its Delta Water Supply Project (DWSP), which derives its source water via diversion works from the Sacramento/ San Joaquin River Delta at the southwest tip of Empire Tract. The Delta Water Treatment Plant (DWTP) treats water diverted under the City's San Joaquin River water right, as well as purchased Mokelumne River water. Stockton's acquisition of its own surface water rights

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and construction of its associated water treatment plant was key in reducing the City's reliance on groundwater through an active conjunctive use program.

In addition to providing potable drinking water, Stockton owns, operates and maintains wastewater collection and treatment facilities that serve the entire Stockton Metropolitan Area. The City discharges treated wastewater to the San Joaquin River from its Regional Wastewater Control Facility (RWCF) under a National Pollutant Discharge Elimination System permit issued by the Central Valley Regional Water Quality Control Board. Wastewater discharge to the San Joaquin River following tertiary treatment is an essential service to Stockton's residential, commercial, and industrial sectors.

The location and operation of the Project intakes presents the potential for significant adverse impacts to Stockton's water supply and operation of its RWCF treated wastewater discharge, through water quality degradation, as well as public health impacts. Construction of the tunnels and other facilities, including truck and rail trips, could have significant adverse impacts from criteria pollutant and toxic emissions, including impacts to environmental justice communities.

II. ISSUES TO ADDRESS IN DRAFT EIR

A. Project Description

1. Project Objectives

The Project objectives (NOP, p. 2.) are too narrowly drawn, focusing only on benefits to State Water Project (SWP) operations and south of Delta water deliveries. The objectives reference providing "operational flexibility to improve aquatic conditions in the Delta," but the Project does not commit to improving aquatic conditions, nor does it include any objectives that would protect water quality in the Delta from degradation or protect water supplies for in-delta municipal water users. Framing Project objectives so narrowly could discourage consideration of alternatives to the Project that would protect and restore the Delta environment. The proposed objectives thus are inconsistent with the California Environmental Quality Act (CEQA) as well as with the Delta Reform Act's *coequal* goals of improving water supply reliability *and* protecting, restoring, and enhancing the Delta ecosystem, as well as the Legislature's directive that "coequal goals shall be achieved in a manner that protects and enhances the unique cultural, recreational, natural resource, and agricultural values of the Delta as an evolving place." The Project objectives should be expanded to include prevention of water quality degradation in the Delta and avoidance of adverse impacts to Delta water supplies, consistent with these authorities.

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The Project objectives also should reflect the need for continued use of the existing South Delta pumps, and the critical importance of maintaining existing through-Delta conveyance. "Modernizing conveyance," therefore, must not be limited to a new tunnel, but also prioritize rehabilitation of existing Delta levees. The seismic threat cited by tunnel proponents as justifying a new North Delta conveyance presents an even more significant threat to the water supply, health, and safety of Delta residents, as well as proposed tunnel infrastructure located throughout the Delta. Yet, the Project description does not include any objectives or actions related to Delta levee investment and improvement. It should.

Climate change models for the 2017 Central Valley Flood Protection Plan Update project a 35 percent to 50 percent increase in 200-year flood flows in the San Joaquin River tributaries by 2041-2070. The greatest risk to people and property in the San Joaquin River basin is in the Stockton Metropolitan Area. The U.S. Army Corps of Engineers has estimated that there are 235,000 people and \$28.7 billion of damageable property in the 500-year floodplain in the Stockton area, which will largely become the 200-year flood plain with climate change. Estimates are that the Stockton area levees need \$1.3 billion in upgrades simply to have adequate protection against current 200-year flood levels.

So far, the State has proposed only minimal investment in levee upgrades through the current draft budget, while proposing to commit many billions of dollars to the Project. Delta levee investment and rehabilitation in the Project description would serve Project objectives as well as the Delta Reform Act's mandate to improve water supply reliability for the state (not just Delta exporters). Including Delta levee rehabilitation as part of the Project also would demonstrate that assertions by the Newsom Administration and Delta Conveyance Design and Construction Authority that Project proponents seek to include multi-benefit projects as part of the Project are not mere lip service to Delta interests. If the Project description is not revised to include significant rehabilitation of Delta levees, the EIR must evaluate and disclose the potential for the Project to lead to reduced investment in Delta levee maintenance (though redirection of funds that would otherwise have been spent in support of SWP and Central Valley Project (CVP) through-Delta conveyance), and the likely environmental consequences of this reasonably foreseeable Project effect in terms of increased risk to human health and property in the Delta as well.

2. Project Operations

The NOP provides no information on proposed Project operations, which are of critical importance and interest to the City, but does state that diversions could range from 3,000 cubic feet per second (cfs) up to 7,500 cfs. The Project description must provide sufficient and complete information about the ways in which DWR may operate the Project to enable an accurate and meaningful evaluation of Project impacts. The full range of potential

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operations must be identified, and the impacts of those operations assessed. The EIR must specify the quantity and timing of water to be diverted at the north Delta diversion, and how the SWP and CVP will be operated with the Project in place, given the coordinated operations of those projects. Each of these operational aspects are essential to understand and draw meaningful conclusions about the Project's effects on the Delta environment and the City's Delta water supply.

B. Scope and Methodology of Impact Analyses

1. Baseline for Impact Analysis

Impact analyses that depend on Sacramento-San Joaquin River and Delta hydrologic conditions (including impacts to water quality, water supply, and public facilities that divert water from or discharge into the Sacramento-San Joaquin River Delta) must utilize a baseline that accurately reflects conditions at the time the Project is expected to begin operating as well as reasonably foreseeable future conditions. Operational impacts to surface water resources and Delta water quality will occur immediately upon commencement of Project diversions and near-term impacts may be substantially different from those occurring farther in the future, when background hydrologic conditions will be substantially different due to the effects of climate change.

2. Impacts to City of Stockton Delta Water Supply

Prior Delta conveyance planning efforts for the Bay-Delta Conservation Plan and California WaterFix prioritized water supply quality and reliability for south of Delta exporters over Delta communities, including Stockton. As a result, the State and south of Delta project proponents ignored evidence of the significant impacts to the City's water supply that would have resulted from the twin tunnels, which would have increased public health risks to Stockton's citizens from toxic harmful algal blooms (HABs) and rendered the City's surface water supply unusable for up to two months a year. Diverting a significant amount of Sacramento River water from the north Delta will make the City's surface water supply more saline, exacerbating climate-related effects. It also has the potential to modify Delta hydrodynamics, making Delta waters warmer and more stagnant, increasing the risk of HABs. Depending on the timing and volume of a north Delta diversion, the Project may lead to need for increased surface water treatment, and compromise Stockton's ability to recycle water or recharge groundwater.

The EIR must adequately identify, analyze, and avoid or mitigate the Project's potential impact on the City's San Joaquin River water supply diverted at the DWSP. In evaluating impacts to Stockton, the EIR must employ the appropriate methodology and

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account for the unique circumstances of the City's diversion location and treatment plant capabilities. In developing the modeling and EIR analysis of these issues, DWR should carefully consider the expert evidence submitted by Stockton in the WaterFix water rights change petition hearing before the State Water Resources Control Board (SWRCB). Specifically, Stockton refers DWR to the work by Dr. Susan Paulsen, which will inform DWR of the type of information, assumptions, and methodology necessary to properly evaluate these impacts. All of this information is available to DWR through June 30, 2020 on SWRCB website at

https://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/california_wat erfix/exhibits/stockton.html; DWR should contact me if it is unable to locate or access Dr. Paulsen's testimony and expert reports.

As detailed in Dr. Paulsen's testimony and expert reports, in order to provide meaningful information about the Project's potential water quality impacts, DWR must evaluate water quality changes using data from a new monitoring station located nearer to the DWSP diversion works or other location more representative of the conditions at Stockton's intake, and present information about water quality changes on daily, weekly, and monthly timescales relevant to drinking water operators in the Delta. In Stockton's case, this means the EIR must calculate and present data about changes on a daily basis, which is the relevant timescale for the City's real time operation of the DWTP (not the long-term monthly average data and cumulative probability diagrams used in the WaterFix EIR). It also must properly evaluate and account for changes in residence time, including the tidal nature of flows in the Delta and at Stockton's intake along the Deepwater Ship Channel.

With longer residence times, flushing of the Delta decreases. Certain water quality constituents, including chloride, electrical conductivity, bromide, and organic carbon, are present in high concentrations in sources within the Delta and can accumulate within the Delta over time. Thus, longer residence times correlate with higher concentrations of these constituents and result in higher potential for HABs and microcystis growth. Toxic algal blooms and cyanotoxins, such as microcystis, are a growing public health threat to Stockton residents that will be exacerbated by climate change and any new Delta conveyance that diverts water from the Sacramento River in the northern Delta. The operations plan for the Project must recognize this threat, and consider, account for, and avoid adverse impacts to Delta hydrodynamics, including residence time, velocity, and water temperature effects, so as not to increase the frequency or duration of cyanotoxins or HABs.

Chloride impacts must be assessed in light of the number of days the Project would cause water quality at the DWSP intake to exceed the City's operational threshold of 110 milligrams per liter (mg/L) chloride. DWR must not rely solely on existing water quality objectives to assess impact significance; as was demonstrated in the Stockton's WaterFix

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testimony, significant impacts to the City's water supply will occur if the Project causes chloride levels at the DWSP intake to exceed the City's operational threshold of 110 mg/L. Avoidance or full mitigation of impacts to Stockton's water supply must occur even if the Project would not cause exceedance of current water quality objectives.

In planning and evaluating a new Delta conveyance, DWR must not assume that simply meeting existing regulatory requirements is sufficient to avoid harm to in-Delta municipal water users, including Stockton. In the WaterFix water rights change petition proceeding, DWR took the position that compliance with SWRCB Water Rights Decision 1641 (D-1641) would avoid adverse effects to Delta water users. Stockton presented expert testimony and evidence that demonstrated that D-1641 compliance was insufficient to avoid significant impacts to Stockton's water supply, due to substantial water quality degradation from increased chlorides, electrical conductivity, bromide, and cyanotoxins. The Project EIR must consider the potential for significant impacts from water quality degradation, even if it does not exceed D-1641 or other adopted thresholds.

3. Public Health Impacts, Including Impacts to Environmental Justice Communities

The EIR must evaluate the air quality and health impacts to Stockton residents, including the City's substantial environmental justice communities, of Project-related construction, including road and rail trips, and health risks to the City's water supply and residents resulting from increased frequency, magnitude and duration of HABs. The analysis must be adequate for the City and its residents to understand whether the health impacts of exposure to increased criteria pollutants and toxic air contaminant emissions will be more severe for low-income or minority communities that already suffer from disproportionate health burdens from existing levels of localized air pollution. The harm from air pollutants is not necessarily distributed equally throughout the region and may be more concentrated in communities immediately adjacent to large-scale industrial and commercial development and major transportation corridors and may more particularly affect certain segments of the population. The proposal to locate a tunnel corridor closer to Stockton and rely on Interstate 5 and locations within the City for construction-related activity raises significant questions as to whether the Project will disproportionately impact vulnerable subpopulations. CEQA and California courts recognize that in assessing impacts, the significance of an activity depends upon the setting. The EIR must fully and adequately analyze the impacts of projected increases in pollution on communities that are sensitive or already overburdened with pollution, and impact determinations must account for the characteristics of the affected population.

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4. Consistency with the Delta Plan and Co-Equal Goals

The Delta Plan contains policies, recommendations, and performance measures designed to protect the Delta environment and existing Delta land uses from the impacts of major new projects, including the proposed Project. The Delta Reform Act requires that projects within the boundaries of the Delta that will significantly impact the achievement of the statutorily-established coequal goals for protection of the Delta and provision of a reliable water supply demonstrate consistency with the coequal goals and each of the regulatory polices contained in the Delta Plan before the project may be implemented. (Wat. Code, §§ 85054, 85057.5, 85225; Cal. Code Regs., tit. 23, § 5002, subd. (b)(1).) The Delta Plan also contains priority recommendations that identify actions "essential to achieving the coequal goals" (Delta Plan, p. ES-17) and performance measures related to meeting the Delta Plan goals and policies. (Delta Plan, Appendix E: Performance Measures for the Delta Plan, as amended Apr. 26, 2018.) The EIR must evaluate the Project's consistency with all relevant Delta Plan policies, recommendations, and performance measures.

Project impacts to the City's water supply will be inconsistent with specific Delta Plan policies and the coequal goals themselves. Any impacts to the availability or reliability of Stockton's water supply must be acknowledged and avoided or fully mitigated.

C. The EIR Must Evaluate Alternative Intake Locations and Limitations on the Timing and Volume of Diversions

CEQA requires that DWR consider alternatives to the Project capable of avoiding or substantially lessening its significant impacts. Given the potential for significant impacts to the quality and reliability of water supply for Delta water users, and significant health impacts to Stockton's citizens (as well as Delta Reform Act mandates), the EIR should fully evaluate an alternative that does not include a north-Delta diversion or tunnel. Such an alternative, or alternatives, should include water reclamation, localized desalination and increased capture, storage, and conjunctive use of localized rainfall in lieu of continued or increased Delta exports. The EIR also should evaluate an alternative that would include Delta levee rehabilitation and place the intakes in the western Delta (see, e.g., Exhibit A and https://www.sacbee.com/opinion/op-ed/soapbox/article21015513.html.) Finally, the EIR should evaluate an alternative that avoids Delta water quality degradation by limiting any Sacramento River diversions to periods of extreme high flows.

II. CONCLUSION

Stockton remains disappointed that as with the previous Administration, DWR is proceeding with a Delta tunnel in lieu of more environmentally sensitive, cost-effective

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alternatives for improving regional water supply reliability. The Project is an imprudent multi-billion-dollar enterprise that may eventually benefit Delta exporters, but at great expense and risk of failure, injury, death, and financial irresponsibility. This Project fails to prioritize and protect the water supply, health, and safety of Delta residents. The lack of consideration for a less impactful more regionally based alternatives will further jeopardize the life and economy of our communities and sensitive Delta habitats.

Based on the information available to date, the Project is likely to have significant adverse impacts to Stockton's water supply, and the health of its residents. The City strongly encourages DWR to reconsider the Project. If DWR proceeds with the Project, it should coordinate and consult with Stockton as it develops the draft EIR to ensure that all impacts, including those identified in these comments, are accurately and adequately evaluated and fully avoided or mitigated. City staff are available to answer questions about these comments and provide any additional information that will help ensure that the Project EIR accurately evaluates and discloses, and thoroughly mitigates, impacts to Stockton. Please contact Dr. Mel Lytle at (209) 612-3147 or mel.lytle@stocktonca.gov.

Sincerely,

Kelly M Jaka

Kelley M. Taber Attorney for City of Stockton

Enclosure

KMT:mb

Cc: The Honorable Wade Crowfoot, Secretary, California Natural Resources Agency (Via Electronic Mail Only: secretary@resources.ca.gov)

The Honorable Cathleen Galgiani, Senator (Via Electronic Mail Only: Senator.Galgiani@senate.ca.gov)

The Honorable Susan Talamantes Eggman, Assemblymember (Via Electronic Mail Only: Assemblymember.Eggman@assembly.ca.gov; lilliana.udang@asm.ca.gov)

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The Honorable Michael Tubbs, Mayor, and City Council (*Via Electronic Mail Only: Mayor@stocktonca.gov*)

Susan Tatayan, Chair, Delta Stewardship Council (Via Electronic Mail Only: susan.tatayon@deltacouncil.ca.gov)

Thomas Gibson, Undersecretary for Natural Resources (Via Electronic Mail Only: Thomas.gibson@resources.ca.gov)

Karla Nemeth, Director, Department of Water Resources (Via Electronic Mail Only: Karla.nemeth@water.ca.gov)

Michael Roberts, Special Assistant for Delta Restoration (Via Electronic Mail Only: michael.roberts@resources.ca.gov)

Harry Black, City Manager (Via Electronic Mail Only: Harry.Black@stocktonca.gov)

John Luebberke, City Attorney (Via Electronic Mail Only: John.Luebberke@stocktonca.gov)

John Abrew, Director of Municipal Utilities (Via Electronic Mail Only: John.Abrew@stocktonca.gov)

C. Mel Lytle, Ph.D., Assistant Director of Municipal Utilities (Via Electronic Mail Only: Mel.Lytle@stocktonca.gov)

From:	Jack Pelley
То:	DWR Delta Conveyance Scoping
Subject:	Clean water
Date:	Tuesday, April 14, 2020 2:52:52 PM

To whom it may concern as a resident of Stockton my whole life I am 56 I have been aware of water diversion since 1982 when I would go to fishing seminars and local guides would talk about water being removed from our system and thou I was concerned about what I was hearing I never thought it would get as dire as it as got at this time. As a hunter and fisherman I have spent thousands of hours on our water ways in the delta for as long as I can remember probably 50 years . I grew up on smith canal in the heart of Stockton storm drains dumped into the canal seasonally and even as a child I could tell the pollution from this yearly acurrance .The system was set up so there would be a flush from the seasonal water flow that no longer happens due to water diversion that has plagued our delta and crippled Stockton that really ramped up in the mid 90s. If the major water being diverted out of our waterways in the Central Valley continue at the rate it is know my city will die. If you continue to take even more not only will my city of Stockton die the whole ecosystem will be destroyed.Now more than ever in the mid of a global pandemic we should see how important clean water is natural water flows tides that actually flow not restricted from excessive pumping being done at will being allowed to destroy the delta and my city. I hope all that may it concern to ramp down the pumping to a level that we can all live and thrive with. Please do more research before attempting to build a pipeline that will do further damage to our delta and cripple my city. I urge you to do more for dying city's and towns effective by greed . Thank you Jack Pelley

Sent from my iPad

From:	<u>R Solomon</u>
То:	DWR Delta Conveyance Scoping
Subject:	Central Corridor
Date:	Wednesday, April 15, 2020 5:03:50 AM

I am writing today to express my opposition to the proposed Central Corridor. My reasons for this are as follows.

First, it will result in huge economic losses, if not bankruptcy, to boating communities, marinas, and boating-based mom & pop businesses due to noise and construction through the middle of the favorite boating waterways and anchorages.

Second, the gridlock that will occur on Highway 4 along with the damage due to construction traffic will cause major, ongoing disruptions to the lives of the residents living in the Delta.

Third, Delta farmers will also have their livelihoods negatively affected.

Finally, the long term effects of removing water north of the Delta instead of allowing it to flow through the Delta will be hugely problematic to the environment and wildlife.

Please do not move forward with this plan.

Richard Solomon 2376 Thackeray Dr. Oakland, Ca. 94611

From:	judclins@aol.com
То:	DWR Delta Conveyance Scoping
Subject:	Canal
Date:	Friday, April 17, 2020 11:18:20 AM
Attachments:	Scan 0026.pdf
	Scan 0027.pdf

You wanted comments from anyone who would be impacted by the Tunnel Project. I have attached a copy of an original paper from 1981 which addresses the original peripheral canal which was voted down at that time. The portion of this original paper explains a dozen facts why this would be impacting the Delta in a negative way. Since we have lived here in Discover Bay and have used the Delta since the late 1950s we have seen a big difference in the waterways and hope that this little bit of information from the past can be helpful.

Arnold Plonczak Judi Collins

From:	Melinda Terry
To:	DWR Delta Conveyance Scoping
Cc:	"Cindy Tiffany"; "Melinda Terry"; rrodriguez@water.ca.gov
Subject:	CCVFCA Scoping Comment Letter - Delta Conveyance Project
Date:	Friday, April 17, 2020 4:16:57 PM
Attachments:	CCVFCA scoping comment ltr, DCP NOP, final, 04-17-20.pdf

Dear Ms. Rodriguez – The scoping comment letter from CCVFCA on the Delta Conveyance Project Notice of Preparation is attached.

Melinda Terry, Executive Director California Central Valley Flood Control Association 3050 Beacon Blvd., #203 West Sacramento, CA 95691 (916) 446-0197 <u>melinda@floodassociation.net</u>

DCS771



Executive DirectorMELINDA TERRYPresidentMIKE HARDESTYVice PresidentLEWIS BAIRTreasurerPETE GHELFI

April 17, 2020

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

SUBJECT: CCVFCA Scoping Comments on Delta Conveyance Project Notice of Preparation

The CA Central Valley Flood Control Agency (CCVFCA/Association) submits these scoping comments on the Notice of Preparation for the Delta Conveyance Plan (DCP) to identify potential flood risks associated with the design, operation, and construction of the DCP that should be analyzed in the EIR. In existence since 1926, the Association was established to promote the common interests of its membership in maintaining effective flood control systems in the Central Valley and Delta for the protection of life, property, and the environment. Association members include reclamation and levee districts, plus cities and counties with flood management responsibilities along the Sacramento and San Joaquin Federal Flood Control Projects and non-project levee systems within the Sacramento-San Joaquin Delta. The Association's specific interest is assuring that the construction, mitigation, and operation activities proposed in the DCP will not in any way impede, diminish, or impair the flood flow capacity, functionality of the State and Delta's levee systems, or the performance of flood safety duties by Reclamation Districts.

DELTA FLOOD PROTECTION BACKGROUND

In 1850 Congress approved the Arkansas Act granting several states title to all of the Swamp and Overflowed Lands, including approximately 2 million acres in California. ¹ The State considered the reclamation of these swampy lands essential because of their extraordinary fertility when drained (reclaimed) and also because they posed a significant public health risk due to outbreaks of malaria from the mosquito breeding. The State and Federal government therefore proceeded to actively encourage the reclamation of these lands for purposes of productive farming.

¹ Arkansas Swamp Lands Act, Act of September 28, 1850, codified at California Public Resources Code Section 7552, 7552.5.

More than 40 percent of Northern California's runoff flows to the Delta via the Sacramento, Feather, San Joaquin, and Mokelumne Rivers, with peak winter flows resulting in substantial flooding in the valley floor about every ten years. In its natural condition, about one-quarter of the Central Valley extending along more than 14 counties was subject to annual or periodic overflow, so the first flood-control projects were the low levees the farmers built to protect their lands from inundation. Flood damage in the Sacramento Valley and Delta occurs almost entirely from precipitation. Currently, most snow-melt run-off is stored or diverted for beneficial uses or passes harmlessly to the ocean, but prolonged high-water stages can cause seepage through levees if they are not vigilantly maintained and improved to withstand the occasional flood event with excessive run-off draining through the Central Valley and Delta.

SRFCP PURPOSE AND HISTORY

Authorized by Congress in 1917, the Sacramento River Flood Control Project (SRFCP) and San Joaquin River Flood Control Project (SJRFCP) is a system of "Project levees" and flood bypasses designed and built by the U.S. Army Corps of Engineers (USACE/Corps) for three purposes:

- 1) Flood control;
- 2) Reclamation of marshy lands for farming and other productive uses;
- 3) Improvement of navigation.

By 1949, over 90 percent of the SRFCP and SJRFCP project works had been completed and in operation. Today, there are more than 1,600 miles of State-federal project levees in the Central Valley, 385 miles of which are located in the Delta. This leaves about 700 miles of additional Delta levees classified as "non-project." The key component of the SRFCP system, the Yolo Bypass, carries 80 percent of the water at the latitude of Sacramento during extreme floods. All of these project and non-project levees and flood bypasses serve to protect \$70 billion in infrastructure in the Central Valley, including the State's water conveyance infrastructure in the Delta.

RISKS TO FLOOD CONTROL PURPOSE, FUNCTION, EFFECTIVENESS

In 1953, the SPFC works were transferred to the Central Valley Flood Protection Board (CVFPB) with a memorandum of understanding (MOU) confirming the State's obligation to operate and maintain all completed works/facilities and to hold the federal government harmless.² In addition, the State has signed assurance agreements with the U.S. Army Corps of Engineers to maintain the San Joaquin River Flood Control Project in accordance with the 1955 MOU. Collectively, the facilities, lands, programs, conditions, and mode of O&M for the State-federal flood protection system in the Central Valley and Delta are referred to as the State Plan

² 1953 Memorandum of Understanding (USACE and The Reclamation Board, 1953) and Supplements. Available at ftp://ftp.water.ca.gov/mailout/CVFPB%20Outgoing/Orientation%20Materials/Item%203C%20-%20LM%20Assurance%20Agreements/Example%201%20-%20srfcp_mou_1953%20--%20jsp%20copy.pdf.

of Flood Control (SPFC).³ Annual inspections of the SPFC levee system are conducted twice annually by DWR.⁴ This comprehensive interconnected system of levees is absolutely critical to public health and safety, including the protection of the region's transportation, agriculture, business, homes, and even water conveyance.⁵ Levees in the Delta provide this protection at all times, during two daily high tides and seasonal high-flow events.

Under California law, no modification to the SPFC system (encroachment or project) may be constructed on or near the Sacramento and San Joaquin Rivers or their tributaries until plans have been reviewed and the projects have been approved or a permit issued by the CVFPB.⁶ The Board authorizes use of the SPFC facilities by issuing encroachment permits only *if the project is compatible with the flood system and will not hamper the State's O&M responsibilities*.

The EIR should include a Flood Chapter that identifies the design, operation, and construction components that propose altering the SPFC or could potentially increase flood risks in the Delta. Following are elements that should be analyzed in a Flood Chapter:

A. Substantial Alteration of the Location, Configuration, and Purpose of SPFC

Specific examples of anticipated DCP construction activities that may impact existing flood protection facilities and system design flow capacities:

- Construct 2 intakes on Sacramento River eastside levee within 4-mile stretch;
- Install multiple in-water cofferdams in Sacramento River and several Delta channels for intakes and barge loading facilities;
- Construct cutoff walls down middle of levees to prevent seepage;
- Increase sediment loading and removal at intake locations;
- At each of the intakes, install multiple large gravity collector box conduits penetrating through the levee prism to convey flow to the sedimentation system on the landside;
- Construct multiple barge landings on levees;
- Modify approximately several miles of levees, on either a temporary or permanent basis;
- Blocking, re-aligning, re-routing, and removal of state highways, county and private roads with levees underneath pavement;

³ Public Resources Code (PRC) Section 5096.805 (j). A complete description of these assets and resources has been compiled by DWR into the *State Plan of Flood Control Descriptive Document*, available at

http://www.water.ca.gov/cvfmp/docs/DRAFT_SPFC_Descriptive_Doc_20100115.pdf

⁴ 2013 Inspection and Local Maintaining Agency Report of the Central Valley State-Federal Flood Projection System (providing that "DWR, under the authority of Water Code § 8360, § 8370, and § 8371, performs a verification inspection of the maintenance of the SRFCP levees performed by the local responsible agencies, and reports to the USACE periodically regarding the status of levee maintenance accomplished under the provisions of Title 33, Code of Federal Regulations (CFR), Section 208.10. While there are no specific water code provisions directing DWR to inspect and report on Maintenance of the San Joaquin River Flood Control System, DWR has performed inspections and provided reports for many years as a matter of practice that is consistent with Title 33, CFR.") Available at <u>http://cdec.water.ca.gov/current_reports.html</u>.

⁵ DWR A Framework for Department of Water Resources Integrated Flood Management Investments in the Delta and Suisun Marsh (September 24, 2013)

⁶ Central Valley Flood Protection Board , A Century of Progress: Central Valley Flood Protection Board 1911-2011 (2011). Available at http://www.cvfpb.ca.gov/Publications/DWR100Years_05.pdf

- Removal and local storage/disposal of millions of cubic yards of tunnel muck;
- Removal and local storage/disposal of millions of cubic yards of dredged material; and
- Installation of power lines over existing levees.

Potential impacts related to DCP construction activities that specifically require more analysis, disclosure, and mitigation in the EIR:

- Damage to levee integrity and stability from tunnel muck haulage and other construction activities (that go way beyond the design and intended use of these rural facilities), seepage and erosion scour, intensive pile driving, and increased subsidence and sink holes from dewatering;
- Deflection and obstruction of flood flows in selected Delta channels due to cofferdam construction for three intakes and five barges, levee reconfigurations, sediment loading, and other construction activities that may redirect flows and alter flood risks throughout the ten-year construction timeframe;
- Impairment of ditches, pumps and other interior drainage facilities vital to the maintenance of low-lying Delta lands through the discharge from dewatering activities, disconnecting interconnected drainage systems, and seepage waters exceeding existing local capacity;
- Obstruction of levee maintenance, flood fighting and emergency response activities through the clogging of Delta levee roadways and channels with construction traffic and equipment, and through the monopolization of barges and repair materials;
- Interference with long-standing levee maintenance and repair programs in the Delta through usurpation of habitat mitigation opportunities on which these programs depend;
- Cumulative effects on the flood control system, particularly SPFC facilities and operations.
- Regulatory constraints on implementing mitigation (e.g., USACE's no vegetation on project levees policy, obtaining anticipated dredging permits);
- Impacts reducing the current level of flood protection achieved with recent Prop. 13, 1E, and 84 investments;
- FEMA building requirements and NFIP flood insurance eligibility;
- Evacuation plans for communities (residents, businesses, schools, tourists, etc) in the Plan Area.
- Financial impacts to RDs in the Plan Area (e.g., reduced assessment revenues during the 10-year construction, increased maintenance costs to deal with seepage/erosion damage, increased drainage pumping costs);
- Increase in FEMA flood insurance rates and building restrictions, or PL 84-99 eligibility problems as a result alteration of the Delta levee system.

B. Long-Term Disruption of Levee Inspections, Maintenance, And Improvements

Local Reclamation Districts (RDs) are responsible for daily inspection of levee conditions for issues such as cracks, slippage, encroachments, seepage, burrowing animals, etc., as well as for performing routine maintenance activities on and around the levees in order to meet USACE and FEMA standards required to be eligible for federal levee repair funding. DWR conducts levee inspections twice a year and the USACE conducts more extensive Periodic Inspections every 5

years of the SPFC project levees. There is significant concern that DCP construction will interfere with the ability of numerous RDs to conduct levee inspections, maintenance, improvements or floodfighting.

C. Interference with Local Drainage

Local RDs are also responsible for operation and maintenance of drainage facilities on Delta islands in order to keep the land reclaimed for farming. The existing drainage facilities on Delta islands are intricate networks of canals, ditches, pipes, and pumps which means they have been carefully designed to function as a system and located to work with gravity and the natural land contours and drainage patterns that exist on the Delta islands. Therefore, any disconnection or obstruction caused by DCP construction potentially renders the whole system inoperable, resulting in localized inundation.

DCP construction would involve extensive excavation, grading, stockpiling, soil compaction, and dewatering, resulting in temporary and long-term alteration and disruption of drainage patterns, paths, and facilities. Dewatering would also result in significant volumes of discharge into local irrigation/drainage ditches, but there is no extra capacity in these local facilities and therefore cannot be used during DCP construction. Increased water volumes from 24/7 dewatering discharged into the rivers and waterways would increase surface water elevations locally, and erosion and scour on adjacent levees may create adverse impact depending on the velocities and volumes of water being discharged.

CCVFCA recommends the EIR:

- Examine existing conditions in terms of interconnected drainage systems and whether DCP construction will disconnect or disrupt the existing drainage facilities' ability to function/drain effectively;
- Identify specific discharge locations, how many locations, the capacity of the discharge location or what its capacity availability is based on local usage/needs (winter drainage or summer irrigation)
- Quantify the daily discharge rates and volumes from construction dewatering;
- Identify how long dewatering and subsequent discharges will occur at each location;
- Analyze changes in water quality that would occur at each discharge location.

D. Increased Land Subsidence

Primarily limited to interior portions of the Central Delta, land subsidence has slowed in recent years in the Delta, which has allowed landowners and reclamation districts to manage it over time. However, DCP construction could potentially increase land subsidence and sinkholes as a result of the widespread and intensive 2/47 dewatering and pile driving that will occur during the 14-year construction period.

With dewatering pumps placed every 50 to 75 feet around the entire perimeter of all the DCP facilities under construction, each pumping between 240 to 10,500 gallons per minute, groundwater will be lowered several feet on a large radius around each pump. This amount of

intensive, long-term dewatering has the potential to destabilize the soils, including levees, resulting in sink holes and subsidence in a large area in the North Delta where the intakes and forebay with connecting pipelines will be built as well as the length of the 34-mile-long tunnel. Damage to the existing interconnected drainage and irrigation systems due to sinking land will increase localized inundation of crops, fruit packing sheds, and homes. These individual and cumulative impacts need to be analyzed, disclosed, and mitigated. The EIR should also include a map depicting the levees and drainage facilities (ditches/pipes/canals/pumping stations) that may be exposed to subsidence or liquefaction due to dewatering activities.

E. Risks to Levee Stability

Concerns over levee stability and their performance during a seismic event is one of the purposes identified in the Notice of Preparation. However, DCP construction activities will involve intensive and sustained ground-shaking from hundreds of construction trucks on levee roads 24/7, numerous dewatering pumps, and millions of pile-driving strikes occurring in multiple construction sites that will adversely affect the stability of nearby levees. The sustained intensive localized vibration for such a long duration could cause stress fractures and possibly levee failures.

The EIR should include technical analyses, data, and scientific research evaluating how the excessive pile driving during DCP construction will affect the integrity and stability of nearby levees and effects on the overall performance of the SPFC in a high water flood event. The cumulative effects of pile driving and dewatering on reducing levee stability and increasing land subsidence/sink holes in the DCP construction area should be acknowledged and mitigated in the EIR. A map should be included in the EIR depicting the locations of all pile driving for DCP facilities (including but not limited to intakes, forebays, pipelines, tunnels, shafts, sedimentation basins, barge loading facilities, etc.) and the radius of influence for any related land subsidence.

F. Increased Traffic will Damage Levees

Most of the roads and highways in the Delta are in fact pavement on top of a levee. The thousands of construction trucks on Delta roads 24/7 for 10-14 years of DCP construction will create daily wear and tear on levees that will need to be repaired on an annual basis. The potential for impacts to the levees includes the possibility of deformation and crest depression due to non-uniform settlement and damage to levee slopes due to use of levee hinge points for vehicle turn-outs. The EIR should disclose the number of construction vehicles that will be on the road each day with the number of daily trips each vehicle will make and identify locations where there will be road blockage, re-routing or access issues that will interfere with the ability of RDs to inspect, operate, maintain, repair and floodfight levees.

G. Emergency Response and Flood Recovery Conflicts

Risk from levee failures can be reduced, but not eliminated, so being prepared for a flood emergency is the best defense. This requires having an effective strategy for preventing failures with ongoing levee improvements and maintenance, protocols for responding with emergency flood fighting activities, a plan for evacuation, and local recovery after the flood event.

Based on the flood history in the Delta, the DCP is guaranteed to experience at least one major flood event during the 14-year construction period. In addition to modification of the SPFC levee system, DCP construction will require extensive alteration of the existing Delta road configuration, including re-routing and blocking local roads and highway segments. These changes in transportation routes will impede floodfighting response and the safe evacuation of local residents.

The inability to quickly floodfight and repair a damaged levee will result in loss of life and property, and could have the domino effect of causing neighboring levee failures if DCP construction activities/equipment prevent access to the levee break or impede movement of key floodfighting personnel and supplies. These impacts and emergency response measures need to be disclosed and mitigated in the EIR.

CONCLUSION

The DCP proposes the largest alteration of the SRFCP since it was originally constructed and will therefore have significant impacts to the Delta's flood protection system that need to be analyzed and mitigated in an EIR. The Association requests the EIR include a Flood Chapter that discloses impacts to levees and performance of flood protection duties described above and to conduct hydraulic modeling that analyzes impacts to flood flow capacity, levee scouring, and water surface elevations.

Sincerely,

Melinh any

Melinda Terry, Executive Director
From:	Joseph Rizzi@sbcglobal.net
To:	DWR Delta Conveyance Scoping
Subject:	CA Water Solutions? Water for next 100 years?
Date:	Friday, April 17, 2020 4:37:37 PM
Attachments:	image001.jpg Delta Salt Water Diet.pdf
	Fish Death Trap.pdf
Importance:	High

Is CA really interested in securing water for the next 100 years? For the Environment, Fish and people too?

NO – No Answer -- Ignore – Shut down with already considered. \leftarrow Typical responses that I have encountered with Solutions presented.

I have attached 2 documents the highlight CA's Water problem with the solutions. (Each are only 2 pages)

- SALT Water intrusion into Delta area is best restricted in San Pablo Bay and at Benicia Bridges. (See Delta Salt Water Diet. PDF)
- Clifton Court Forebay (CCF) needs a 1.5 mile fish screen to keep all fish in Delta and out of Forebay.
 - New 1.5 mile Fish screen with variable (inflatable Gate/barrier) allows for normal flow during day and Fill CCF at night.

More FRESH water will help Delta environment, fish and people too. According to a current article 44.8% of Fresh Water outflow from the Delta is Surplus.

https://californiawaterblog.com/2019/07/14/ties-between-the-delta-and-groundwater-sustainability-in-california/



Are you willing to talk about solutions? Lets make CA water secure for the next 100 years!!!!

Joseph Rizzi -- Cel: 707-208-4508 -- Email: Joseph_Rizzi@sbcglobal.net More about me More about

From:	Deanna Sereno
То:	DWR Delta Conveyance Scoping
Cc:	Wendy Chriss; Doug Coty
Subject:	CCWD Comments on Delta Conveyance NOP
Date:	Friday, April 17, 2020 3:11:48 PM
Attachments:	CCWDcomments DeltaConveyanceNOP signed.pdf

Hello –

CCWD's comments on the Delta Conveyance NOP are attached. Please confirm receipt of this email.

Thank you, ~ Deanna

Deanna Sereno

Senior Policy Advisor

C 925-525-5445P 925-688-8079

W <u>ccwater.com</u>

CONTRA COSTA WATER DISTRICT 1331 Concord Avenue, Concord, CA 94520

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DCS773



April 17, 2020

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Renee Rodriguez Department of Water Resources P.O. Box 942836 Sacramento, CA 94236 Via email: DeltaConveyanceScoping@water.ca.gov

Subject: Contra Costa Water District Comments on Delta Conveyance Notice of Preparation

Thank you for the opportunity to provide comments on the Notice of Preparation (NOP) of an Environmental Impact Report (EIR) for the Delta Conveyance Project. Contra Costa Water District (CCWD) serves water from its intakes in the Sacramento-San Joaquin Delta for residential, commercial, and industrial uses in eastern and central Contra Costa County. CCWD relies on the Delta for 100% of its water supply, including Central Valley Project contract deliveries, diversions under CCWD's own water rights, and diversions under East Contra Costa Irrigation District's pre-1914 water right. As such, CCWD has a vital interest in the environmental effects of the Delta Conveyance Project.

In March 2016, the California Department of Water Resources (DWR) and CCWD reached a mutually beneficial agreement to address impacts of any new Delta conveyance facility on CCWD's facilities, water quality, and water supply. The settlement agreement was made possible by both parties' commitment to focus on solutions within California's divided but interconnected water community.

In recognition that DWR had not decided whether or on what conditions to approve DWR's previously proposed Bay Delta Conservation Plan/California WaterFix Project (BDCP/CWF), the March 2016 settlement agreement contemplated that its provisions would remain in effect for any "amendment, modification, supplement or replacement" of the BDCP/CWF. The agreement identifies the components and parameters of the BDCP/CWF that would constitute a "Conforming Action Alternative," which includes a facility to convey water from one or more new water diversion intakes located along the Sacramento River to the State and/or Federal pumping facilities in the south Delta ("Conveyance Facility"). The facilities proposed in the Delta Conveyance Project are consistent with the Conforming Action Alternative in the settlement agreement.

As illustrated in Figure 1 of the NOP, the Delta Conveyance Project will be constructed in the vicinity of CCWD's Delta water supply intakes and potentially cross under a key CCWD pipeline. The March 2016 settlement agreement will ensure that CCWD's facilities will be protected during construction.

The agreement also provides for mitigation that is responsive to actual Delta Conveyance Project operations, not tied to a specific project capacity. Operation of the Conveyance Project would cause water quality impacts at CCWD's Delta intakes and affect CCWD's ability to fill Los Vaqueros Reservoir. To compensate for these impacts, the agreement requires that a portion of CCWD's water supply will be conveyed to CCWD's system from a higher quality source. The water to be conveyed will be a portion of CCWD's existing water supply; CCWD will not receive any new water. The amount of water to be conveyed to CCWD will be determined by the operation of the Delta Conveyance Project in any given year.

Pursuant to the March 2016 settlement agreement, DWR identified construction and operation of Interconnection Facilities – facilities to convey water from the BDCP/CWF conveyance system to CCWD's water supply system – as mitigation measures in the Final EIR/EIS for the BDCP/CWF and included an evaluation of the environmental effects of such mitigation in the Final EIR/EIS. As the Delta Conveyance Project is the replacement of the BDCP/CWF, CCWD anticipates that DWR again will identify construction and operation of the Interconnection Facilities as mitigation measures in the Delta Conveyance Project Draft EIR and will include an evaluation of the environmental effects of such mitigation in the EIR. CCWD staff are available to assist in this assessment.

CCWD appreciates the State's efforts to mitigate impacts of future construction and operation on our water supply, as well as the State's successful collaboration in developing an appropriate and flexible mitigation plan as described in the March 2016 settlement agreement.

CCWD looks forward to working cooperatively with DWR to include the March 2016 settlement agreement in the Draft EIR. If you have any questions, please do not hesitate to get in touch with me at (925) 688-8079 or dsereno@ccwater.com.

Sincerely,

Deanna Sereno Senior Policy Advisor

DS:wec

From:Don HankinsTo:DWR Delta Conveyance ScopingSubject:California Indian Water Commission CommentsDate:Friday, April 17, 2020 4:54:15 PMAttachments:CIWC - DWR Conveyance Scoping.docx

Please see attached

17 April 2020

To Whom It May Concern:

This transmits comments in regards to the scoping preparation of an Environmental Impact Report (EIR) for the Delta Conveyance Project in the Sacramento-San Joaquin Delta. The California Indian Water Commission had sought to engage in this process via government to government engagement with the Department of Water Resources, but out communications with the Native American Liaison did not receive a reply. Apparently, DWR has opted to consult with AB 52 tribes and tribal organizations despite other policies which are more inclusive of consultation pursuant to HR 93-638, B-10-11, and other federal or state policies recognizing tribal self-determination and sovereignty. The limited approach to AB 52 consultation is problematic given the limitations of knowledge and input such narrow consultation may provide. Our organization and members are traditional cultural practitioners who have worked with or provided comments on prior environmental reviews related to the Delta and elsewhere, and should be utilized to develop a project and analysis that avoids and minimizes impacts to cultural and ecological systems directly, indirectly, and cumulatively with any proposed project.

This endeavor follows multiple efforts of this sort over multiple decades, which have all failed for a variety of reasons. Prior analyses have all failed to adequately address the ecocultural impacts of such projects, thus this effort should strive to address these deficiencies. First and foremost for any of these projects, the analysis should not be focused on water delivery, rather how can delivery be done in a way that is ecoculturally resilient and sustainable. California's water is highly variable given long-term knowledge and data regarding climate conditions. To understand the ecocultural context of the planning area, DWR should become familiarized with points of analysis noted in Hankins (2018), which discusses many problems related to water management impacts from a tribal perspective. It is recommended that this should be the starting point of this analysis. It is also recommended that the analysis consider testimony provided to the State Water Resource Control Board regarding the point of diversion for the Water Fix as key points for analytical understanding.

Tribal planning is inclusive of past, present, and future generations. This planning is retrospective to prior generations impacts and into the future. Thus, the project analysis should look at this Delta landscape prior to European invasion to 200 years from present. Specific analysis (inclusive of past projects prior to existence of consultation policies and environmental impacts) should focus on the following areas:

 Impacts to sacred sites, traditional cultural properties, and traditional cultural landscapes (all of which occur within the footprint of the project, and in order to understand would require government to government consultation with us). Not all of these features may be on file with the Native American Heritage Commission.

- Diversions impacts to Indigenous water rights and self-determination (e.g., Winters Doctrine and prior appropriations).
- Implications to self-determination and sovereignty pursuant to policies including HR 93-638, B-10-11 and N-15-19.
- Analysis of solastalgia and intergenerational trauma to Tribal individuals/communities
- Long-term survival and recovery to abundance of ecocultural species.
- Water sustainability and resilience given climatic variability.
- Traditional Indigenous lifeways and economy.
- The impacts to species needs to be comprehensive of the food web from source to sink (i.e., mountains to sea), as all of these species are likely to be impacted.

We suggest DWR work in cooperation with our organization to complete analysis of the ecocultural impacts through use of the Mauriometer, which is a heuristic model for assessing project impacts on ecocultural properties.

The project should seek to comprehensively recover species and ecosystems prior to any diversion. There is sufficient data to demonstrate the flow requirements necessary for fisheries survival and recovery, but that is not necessarily sufficient to achieve ecosystem function. A functioning ecosystem is critical to the quality of water, economy, and other attributes of the region.

Project alternatives should include opportunities beyond conveyance. These opportunities include reducing demand on water by all users. Key opportunities exist for land retirement, restoration of historic wetlands and reservoirs for natural storage, infiltration, and ecological benefits, which all work to reduce water demands unsustainable water uses and achieve species recovery. Other opportunities include modifications to the antiquated aqueduct system, which utilizes open canals for conveyance, but could be placed into pipes to reduce loss and vulnerability. Further, these pipes could be turned into a source of energy via inline power generation and other similar technologies. Alternatives should also look beyond the existing state and federal water projects for sources of water.

A purpose of the California Environmental Quality Act is to provide a mechanism for public input on projects funded, authorized, or carried out by state and local agencies. Thus, to provide for meaningful input from the public, it is recommended the environmental document length be manageable for the general public to engage with. This was specifically and issue with the Water Fix project documents. One cannot be expected to read 30,000-100,000 pages of material to comprehend a project.

We appreciate the opportunity to provide comments on this scoping, and hope thoughtful analysis inclusive of these points will be included in forthcoming documents. Furthermore, we strongly encourage further engagement as discussed to clarify points of uncertainty and to provide a more inclusive process for analysis. Please be in communication if you have further questions regarding this letter.

Sincerely,

Don Hankins, Ph.D.

President

Hankins, D.L. 2018. Ecocultural Equality in the Miwko? Waali?. *San Francisco Estuary and Watershed Science*. 16(3): 1-11

From:	Aichele, Cody@BCDC
To:	DWR Delta Conveyance Scoping
Cc:	Scourtis, Linda@BCDC; Goldbeck, Steve@BCDC; Goldzband, Larry@BCDC; Gomez, Grace@BCDC
Subject:	BCDC Comments on the Delta Conveyance NOP
Date:	Friday, April 17, 2020 12:45:02 PM
Attachments:	BCDC DeltaConveyance comment letter.pdf

Dear Ms. Rodriguez,

Please find attached the BCDC comment letter for the new Delta Conveyance NOP.

We look forward to working with you more in the coming months.

Have a great day! Sincerely, Cody Aichele-Rothman

Coastal Planner

San Francisco Bay Conservation and Development Commission 375 Beale St., Suite 510 San Francisco, CA 94105

DCS776 San Francisco Bay Conservation and Development Commission

375 Beale Street, Suite 510, San Francisco, California 94105 tel 415 352 3600 fax 888 348 5190 State of California | Gavin Newsom – Governor | info@bcdc.ca.gov | www.bcdc.ca.gov

April 17, 2020

Via email: DeltaConveyanceScoping@water.ca.gov

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

SUBJECT: BCDC Comments for the proposed Delta Conveyance project, Notice of Preparation for the Environmental Impact Report

Dear Ms. Rodriguez:

Thank you for the opportunity to comment on the Notice of Preparation (NOP) for the proposed Draft Environmental Impact Report (DEIR) for the newly reconfigured Delta Conveyance project, to be constructed as part of the State Water Project (SWP). These San Francisco Bay Conservation and Development Commission (BCDC, or the Commission) staff comments are based on the Commission's laws, the McAteer-Petris Act and the Suisun Marsh Preservation Act, and the Commission's policies, the *San Francisco Bay Plan* (Bay Plan) and the *Suisun Marsh Protection Plan* (Marsh Plan).

BCDC Jurisdiction

BCDC's jurisdiction includes San Francisco Bay, San Pablo Bay, and Suisun Bay, covering all tidal areas and a shoreline band reaching 100 feet inland, as well as other areas. In the Suisun Marsh, BCDC jurisdiction extends across a "primary management area" that covers tidal areas and 10 feet in elevation, as well as appellate authority in the secondary management area. In exercising its permitting authority, BCDC is responsible for granting or denying permits for any proposed fill; extraction of materials; or change in use of any water, land, or structure within the Commission's jurisdiction. The Commission uses the policies of the McAteer-Petris Act, the *San Francisco Bay Plan* (Bay Plan), the Suisun Marsh Preservation Act, and the *Suisun Marsh Protection Plan* to evaluate projects.

While the project facilities proposed in the new project as elements of the SWP lie outside BCDC's jurisdiction, the construction and operation of the new facilities may have impacts farther down the Bay-Delta system on the water quality and natural resources of the San Francisco Bay and Suisun Marsh. These impacts may include changes to water quality, water quantity, salinity, and sediment transfer. Though not mentioned in the NOP, elements of the SWP that may be located within BCDC's Suisun Marsh jurisdiction could be expected to include physical facilities operated by DWR and regional partners under the authority of BCDC permits. Changes to the operations of these facilities may require updates to those permits.



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Proposed Tunnel Operations

Given that the location of the proposed project is outside of BCDC's jurisdiction, BCDC is focused on the potential impacts of the proposed operations of the proposed Delta Conveyance project on the Bay and Marsh. The NOP states, "although initial operating criteria of the proposed project would be formulated during the preparation of the upcoming Draft EIR in order to assess potential environmental impacts and mitigation, final project operations would be determined after completion of the CEQA process, obtaining appropriate water right approvals through the State Water Resources Control Board's change in point of diversion process, and completing the consultation and review requirements of the federal Endangered Species Act and California Endangered Species Act."

It is unclear whether the review in the DEIR would assess the potential range of operational impacts from the proposed project. BCDC requests that the DEIR include a detailed assessment of the impacts of the operating criteria to avoid segmentation of the environmental review between the localized project impacts and operational impacts of the project, which are more far-reaching. These operations and related impacts should be addressed in tandem in the DEIR as a complete project with all related impacts, including a suite of options and alternatives. For regulatory agencies to make a well-informed decision on the preferred alternative, the project should be addressed as a whole.

Flow Standards and Species Protection

San Francisco Bay is considered essential fish habitat and critical habitat for certain fish species, such as Chinook salmon and Delta smelt, by the National Marine Fisheries Service and the United States Fish and Wildlife Service, because the Bay plays an essential role in their life cycles. The objectives of the Bay Plan directly address the ongoing and continued need for fish and habitat to be available now and for future generations. There are currently six different species that are listed as critical or endangered in the Bay-Delta system, including smelt and salmon species.

The approved water flow standards for the Bay-Delta were last updated in 1995, despite a State Water Board requirement that they be updated every three years. These standards are now outdated. We request that, at a minimum, the DEIR should evaluate a range of possible flow standards, and an analysis of any cumulative impacts that may occur due to proposed changes to the system on San Francisco Bay and the Suisun Marsh. San Francisco Bay and Suisun Marsh have been experiencing a decline in important Bay species populations¹. Declines observed under current water allocations could be worsened by potentially removing more freshwater from the system before proposed mitigation measures could become effective. We request that the DEIR identify underlying flow standards for the new Conveyance project, and if they are to be changed from current standards, how they may impact already critical species and related habitats. Diversions located further up the system may change water flows or have other impacts further down the system. The DEIR should address a range of operational standards for the entire system.

¹ <u>http://www.dfg.ca.gov/delta/data/fmwt/indices.asp</u>

The DEIR should address any possible impacts to listed and critical species ecosystem health, and address maintaining fish population levels to support recreational fishing industries in the Marsh and Bay. These may include water quality impacts, such as decreased water quality of Delta waters flowing to the Bay.

Habitat Restoration

As described in the NOP, the project would promote new habitat restoration projects as mitigation for removing more freshwater from the estuary. However, the new allocations may reduce flows to the Bay and Suisun Marsh before the new habitat is established and mitigating the impacts of reduced flows. To remove the water first, before the new habitat is established, would require current species to survive on less than the current allocations, which already have reduced some population numbers to nearly undetectable levels. If restoration projects cannot be established prior to the project becoming operational, then the agreements and standards should have contingency plans should the habitats not serve to promote species welfare as designed. The DIER should reference peer-reviewed scientific analysis in developing alternatives should the proposed restoration and mitigation habitat not fulfill the desired outcomes.

Toxic Algal Blooms

As recorded in the Delta over the past year, changing conditions in the Delta may result in toxic algae blooms which are harmful to ecosystem, and possibly human, health. The DEIR should address questions related to the potential of the project's operation to affect toxicity of algae blooms. While many of these impacts are localized, BCDC is concerned about their potential impacts to San Francisco Bay and Suisun Marsh. The DEIR should address how long toxins remain viable and their potential to reach San Francisco Bay. What are the concentrations of concern and do they degrade over time? Could removing more freshwater from the system exacerbate the quantity, size and toxicity of blooms? Will there be any alternatives or mitigation measures available to prevent migration of toxicity from blooms or extension of blooms into the Commission's jurisdiction?

Sediment Concerns

We request that the DEIR include an analysis of the project impacts on the Delta and San Francisco Bay sediment system. USGS research shows that sediment flows into San Francisco Bay have been significantly reduced due, in part, to water control structures, flood protection, and hardening of rivers in the Delta (USGS, Schoellhamer et. al., 2013). Removing additional water from the system potentially reduces sediment transport in and through the system, which could affect turbidity, sensitive habitats, and water quality in the Bay and Suisun Marsh. Reduction in sediment transport into San Francisco Bay impacts existing habitats, including tidal wetlands, intertidal flats, subtidal shoals, and shorelines. Reducing sediment supply also impacts habitat restoration projects that rely on sediment travelling into the Bay, decreasing the ability of the projects to reach marsh plain elevations necessary to adapt to rising seas. Reduction in sediment supply also has the potential to increase the erosion of existing habitats and shorelines, resulting in loss of property and flood protection benefits they provide.

Page 4 April 17, 2020

Due to the potential for the project to reduce sediment supply further, we request that the NOP include an analysis of potential impacts on sediment sources and sinks from project construction and maintenance activities and potential impacts to the Bay and Marsh. We further request that the DEIR address cumulative impacts from storage and tunnel projects, as well as existing habitat and proposed restoration and mitigation projects across the system.

Thank you again for the opportunity to comment on the newly proposed Delta Conveyance project of the State Water Project. We look forward to continued cooperation and beneficial relations between our agencies.

Sincerely,

LAWRENCE J. GOLDZBAND Executive Director

San Francisco Bay Conservation and Development Commission 375 Beale Street, Suite 510 San Francisco, California 94105 Tel: 415-352-3600 Fax: 888 348 5190 Email: info@bcdc.ca.gov Website: www.bcdc.ca.gov

LG/gg

From:	Sarah Wiltfong
To:	DWR Delta Conveyance Scoping
Subject:	BizFed Comments re: Notice of Preparation of Environmental Impact Report for the Delta Conveyance Project
Date:	Friday, April 17, 2020 4:39:49 PM
Attachments:	BizFed Delta Conveyance Scoping Process Letter FINAL.pdf

Good afternoon,

Please find BizFeds comments on the Notice of Preparation of Environmental Impact Report for the Delta Conveyance Project.

If you have any questions, please let me know.

Thank you!





April 17, 2020

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

RE: Notice of Preparation of Environmental Impact Report for the Delta Conveyance Project

Dear Ms. Rodriguez:

We are contacting you on behalf of BizFed, the Los Angeles County Business Federation, an alliance of over 190 business organizations who represent 400,000 employers with 3.5 million employees in Los Angeles County. We are pleased to submit our comments for the for the scoping process of the single-tunnel Delta conveyance project being reviewed by the Department of Water Resources.

As one of the largest business advocacy organizations in Southern California, BizFed represents a wide range of industries including entertainment, transportation, labor, hospitals, education, restaurants, sports facilities, food processors, manufacturers, building industries, refineries, hospitality, and more. Our trillion-plus-dollar economy is dependent on these industries and all of them are dependent on a clean, steady and cost-effective flow of water.

BizFed supports an "all-the-above" approach to our water needs and has been highly supportive of the Delta Conveyance since the beginning, and we will continue to be supportive for the following reasons.

Reliability and Local Supplies

Our region is highly reliant on on an outdated water distribution system that was built mid-20th Century to deliver water supplies to millions of residents and thousands of businesses. While we strongly promote stormwater capture and reuse, ocean desalination and conservation measures, it is not enough. Without the insurance of imported water, particularly during dry years, we cannot provide the stability and reliability that our \$1.6 trillion economy requires. We strongly support building a tunnel that will provide a reliable flow of water to our area, which will in turn allow us to continue to build local and reliable supplies.

Cost-Effective

Throughout the Delta Conveyance/California WaterFix's inception, we have heard from a variety of organizations cost concerns. Building a tunnel is the most cost-effective solution to meet our water needs. If we tried to develop new local supplies to replace the imported water supply, which would be exceptionally difficult, it would cost significantly more per household than the Delta Conveyance. This would disenfranchise our most vulnerable communities who are already faced with Los Angeles County's considerably high costs of living. We need to utilize all options to build a resilient and affordable water portfolio.

Environmentally Sustainable

It is no secret the current state of the Delta is in critical condition. Should an earthquake or other natural disaster occur at or near the Delta, it would be devastating not only to the farmlands dependent on this system, but also the rest of the state's population who depend on it. The only way to save the Delta's ecosystem and ensure the supply of its water to some 27 million people is to produce a project that will respond to the ever changing and

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less predictable supply of snowpack through climate extremes. A modern system can keep the flows manageable and still provide water for export while preserving and restoring the Delta.

Modernizing and upgrading our state's aging infrastructure with a single tunnel, specifically one that allows for 6,000 cubic-feet-per-second of water supply, will allow us to more efficiently move water, restore the Delta ecosystem and manage our water supply through climate change.

We strongly support the Delta Conveyance project and look forward to working with the Department of Water Resources to see this system to completion. If you have any questions regarding this letter, please contact Sarah Wiltfong at <u>sarah.wiltong@bizfed.org</u> or 310-213-8742.

Sincerely,

Sandy Sanchag

Sandy Sanchez BizFed Chair FivePoint

Sauid W Flenny

David Fleming BizFed Founding Chair

Tracy Hernandez BizFed Founding CEO IMPOWER, Inc.

Los Angeles County Business Federation

Voice of Business Since 2008

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Young Professionals in Energy - LA Chapt

DCS777

From:	Jacklyn Shaw
To:	DWR Delta Conveyance Scoping: Wid Anders Christenson.mngr; belliot@sjgov.org; cwinn@sjgov.org; mayor.garcetti@lacity.org; Delta the
	Restore; Amber McDowell
Cc:	Representative Jerry McNerney; Senator McConnell Mitch
Subject:	BILL OF RIGHTS on DAMAGING DELTA CONVEYANCE, Environmental Liabilities, detailed
Date:	Friday, April 17, 2020 4:24:40 PM

on 4. 17.2020 from Jacklyn.el.shaw@icloud.com

RE: Bill of Rights on Damaging Delta Coneyance

Dear Contacts, DWR, and Concerned others on Bill of Rights, Environmental health hazards, etc.

We don't understand the Delta Map Plans, and true Delta Heritage Act. The Delta "Conveyance" plan includes near Terminous with recreational marinas and agri-tourism. Near Terminous is no options but a threat to the environment, and liabilities. If any "funnel" 60 foot wide for 300-500 miles away for Delta water exports, a better option is Delta West Side. Delta East Side has Delta breeze, 20-90 mph, stressing the environmental concerns and liberties. Why ignore the elected Supervisors Coalition of Five Delta Counties who say that any tunnel would be damaging to the Delta, with 2/3 of San Joaquin County and 100 varieties of fresh food crops. Here are the Bill of Rights in relation to liabilities of such a wasteful plan:

Here are the amendments in simple language (ACLU, Del):

1ST AMENDMENT: Delta Water Exports by "conveyance" is patently unGodly and not convenient. Does it favor non-local regions and ignore locally elected Supervisors Coalition of Five Delta Counties who stated in 2019 that any tunnel (or "funnel") would be "DEVASTATING" to the Delta in Northern California (NorCal? Most faiths and tribal groups adhere to Holy Word where even heaven has a river. Certainly this intimidates news media in real estate scare and concerns for healthy environment and laws. Are some on pay scale, from other regions or in construction work, displacing agribusiness and tourism jobs of generational, productive families for fresh food crops to the nation and world? How do the agricultural economic losses impact the environment?

2ND AMENDMENT: Congress can't stop people from having and carrying weapons. The invasive Nutria (huge rodents) on Delta levees are free game with almost 70 count, and the Duck Hunters have rights (with the Preamble as well).

3RD AMENDMENT: With agricultural losses, does that leave the environment exposed to heroin and indistinguishable narcotic crops, to illegal terrorist crops, and other conditions that warrant hospitality and liberties to be encroached for protection. (Some dopers just walk into homes and use the refrigerator or pick from fruit and nut trees Which is better dopers or sheriff deputies needed on watch in their autos on private properties?) 4TH AMENDMENT: Nobody can search your body, or your house, or your papers and things, unless they can prove to a judge that they have a good reason for the search. The bureaucracy of Los Angeles County and Southern California Water District — have harassed or threatened generational property owners into selling. (How many acres?) Is it environmental concerns if they are not residents in the Delta? Is it fraud by nefarious means or to disenfranchise the local citizens? Their exports to SoCal do not enhance the local environment of NorCal or the Delta communities and livelihoods, as stewards of the land.

5th AMENDMENT: WE ARE IN THE MIDST OF FEDERAL DEFENSE AGAINST THE PENDEMIC, Covid-19. Yet some, over 300 miles away, were recently granted a permit for a direct pipeline (to Westlands, near Hanford, CA). It best be null and void ASAP. Where is timely, affordable relief from such encroachments?Except during times of war or if you are in the military, You can't be tried for any serious crime without a Grand Jury meeting first to decide whether there's enough evidence against you for a trial.

- We don't have to say anything at a trial at all;
- With increased threat of environmental health concerns of Delta breeze with dusty, itchy "peat" dirt, we can't be killed, or put in jail, or fined, unless we were convicted of a crime by a jury and all of the proper legal steps, as property owners and stewards of the land.
- The government can't take your house or your farm or anything that is yours, unless the government pays for it at a fair price. What is a fair price for loss of heritage and contributions to family business, agri-tourism jobs to prosperity in Delta counties? What is the cost of environmental losses and liberties to stakeholders or tax-paying property owners?

AMENDMENT 6. We know the lack of regional responsibilities in SoCal. That is particularly valid, since Desalination was invented at UCB, 1977. They think water is cheap, both in SoCal and NorCal. Desalination costs less than construction. It is used in over 100 nations. So when will DOI/Defense appropriate funds for Desalination on the California Coast (with over 9000 miles of Pacific Ocean)?

- We have the right to know what you are accused of doing wrong and to see and hear and cross-examine the people who are witnesses against you;
- We have the right to a lawyer to help you. If you cannot afford to pay the lawyer, the government will.

Amendment 7. Who thinks there won't be civil cases of interlopers? Who pays for affordability of years spent in trial with attorneys? We also have the right to a jury when it is a civil case (a law case between two people rather than between you and the government).

AMENDMENT 8. The government can't make you pay more than is reasonable in bail or in fines, and the government can't inflict cruel or unusual punishments (like torture) even if you are convicted of a crime. Who is clueless or disingenuous to think that the losses to Delta Counties would not already be damaging in more ways than one?

AMENDMENT 9 Just because these rights are listed in the Constitution doesn't mean that you don't have other rights too.

AMENDMENT 10. Anything that the Constitution doesn't say that Congress can do, is left up to the states and to the people. Which people? The locals. To do what? destroy the Delta counties with unending plans for water exports, when there are increasing drought recycles? Temporary jobs in 10 year construction plus maintenance best not displace the generational hospitality of fresh food crops in agri-tourism, with the more encompassing Delta Heritage Act. (That includes Lodi, 15 miles from a planned tunnel on East Side with Delta Breeze). At least, a "conveyance" on West side of the Delta River — would mean compliance for drainage only in wet years, with state laws. Privacy of individual liberties is infringed by ignoring local elected Supervisors Coalition of Five Delta Counties who have stated that any form of "tunnel" would be devastating to the Delta environmental economy, communities in livelihoods, family health and ongoing jobs for its future.

RELATED ISSUES

"No Taxation without Representation" (Since Roman Law).

God Bless, USA (California and Delta, too) Prof. Jacklyn Shaw, Grower Lodi, CA 95242 *taught Bill of Rights in citizenship course

.

Here are the amendments in simple language (ACLU, Delaware): Amendment 1

Congress can't make any law that:

- Favors one religion over another religion, or no religion at all, or opposes any religion;
- Stops you from practicing your religion as you see fit;
- Keeps you from saying whatever you want, even if you are criticizing the President of the United States;
- Prevents newspapers, magazines, books, movies, radio, television or the internet from presenting any news, ideas, and opinions that they choose;

Stops you from meeting peacefully for a demonstration or protest to ask the government to change something.

Amendment 2

Congress can't stop people from having and carrying weapons.

Amendment 3

You don't have to let soldiers live in your house, except if there is a war, and even then Congress needs to pass a law and set the rules. Amendment 4

Nobody can search your body, or your house, or your papers and things, unless they can prove to a judge that they have a good reason for the search.

Amendment 5

Amendment 6

Except during times of war or if you are in the military:

- You can't be tried for any serious crime without a Grand Jury meeting first to decide whether there's enough evidence against you for a trial;
- If at the end of a trial, the jury decides you are innocent, the government can't try you again for the same crime with another jury;
- You cannot be forced to admit you are guilty of a crime and if you choose not to, you don't have to say anything at your trial at all;
- You can't be killed, or put in jail, or fined, unless you were convicted of a crime by a jury and all of the proper legal steps during your arrest and trial were followed; and
- The government can't take your house or your farm or anything that is yours, unless the government pays for it at a fair price.

If you are arrested and charged with a crime:

- You have a right to have your trial soon and in public, so everyone knows what is happening;
- The case has to be decided by a jury of ordinary people from where you are, if you wish;
- You have the right to know what you are accused of doing wrong and to see and hear and cross-examine the people who are witnesses against you:
- You have the right to a lawyer to help you. If you cannot afford to pay the lawyer, the government will.

Amendment 7

You also have the right to a jury when it is a civil case (a law case between two people rather than between you and the government). Amendment 8

The government can't make you pay more than is reasonable in bail or in fines, and the government can't inflict cruel or unusual punishments (like torture) even if you are convicted of a crime. Amendment 9

Just because these rights are listed in the Constitution doesn't mean that you don't have other rights too. Amendment 10

Anything that the Constitution doesn't say that Congress can do, is left up to the states and to the people. RELATED ISSUES

Free Speech Privacy & Technology Religious Liberty

From:Carol KennedyTo:DWR Delta Conveyance ScopingDate:Wednesday, April 15, 2020 12:17:27 PM

This project is a nightmare for people who live anywhere near it. We will all be driven insane by the dirt, smoke, vibrations and noise it the nightmare ever gets approved. It will be like someone fracking in our back yard. How will the levees withstand that? Anyone with pre-existing health issues will certainly have to sell their homes and move.

We have so much agriculture here is Discovery Bay, Byron, Brentwood and Oakley. There are new farms and vineyards popping up all over the area. We are becoming an huge exporter of fruit, vegetables and wine. What will they do for water?

The way of life out here is surrounded by water. Boating, water sports of every kind, swimming and just plain enjoying the wild life. We have hundreds of species of fish and game. Where are they to go?

I don't think this plan has been thought through. It's just a power trip of Politicians who have been trying to push this down people throats forever.

Aren't there some underground water storage areas south of us? Why does the water have to come from the Sacramento River? Can't the brains of this water push find another source that will not disturb the lives of millions of people?

Not Happy At All.

Carol Kennedy and Bobby Ferreira

From:Lawrence WallTo:DWR Delta Conveyance ScopingSubject:Attn: Renee RodriguezDate:Thursday, April 16, 2020 9:45:02 AMAttachments:delta conveyance.rtf

Department of Water Resources Attn: Renee Rodriguez From: Wintu Audubon Society

Re: Comments, proposed EIR

Dear Ms. Rodriguez: Attached hereto are Wintu Audubon Society's comments to the proposed EIR-Delta Conveyance Project. Thank you, Janet Wall, Conservation Committee Co-Chair

DCS781

Wintu Audubon Society P.O. Box 994533 Redding, CA.

96099-4533

Department of Water Resources Attn: Renee Rodriguez P.O. Box 942836 Sacramento, CA. 94236 Emailed to DeltaConveyanceScoping@water.ca.gov

> April 16, 2020 Comments-proposed EIR Delta Conveyance

Wintu Audubon Society submits the following comments regarding the proposed EIR, Delta Conveyance Project:

The EIR should analyze the ways that a "no tunnel" alternative or alternatives could increase Delta outflow.

The EIR should address methods to enhance water supply reliability which do not involve construction of a tunnel.

The EIR should address methods to increase efficiency of delivery which do not involve construction of a tunnel.

The EIR must analyze whether the project is consistent with the Delta Reform Act and its policy of reduced reliance on the Delta.

Cumulative impacts must be analyzed pertaining to water quality . Will pesticides, mercury and pollutants become more concentrated due to decreased flow in the Delta. Will salinity be increased.

The EIR must analyze the effect on habitat for flora and fauna "upstream" and "downstream" during construction and over the life of the project.

The EIR must adequately analyze the effectiveness of proposed mitigation and conservation measures.

Climate change implications must be addressed. Thank you.

Wintu Audubon Society, by Janet

Wall,

Conservation Co-Chair

DCS781

From:	Laura Hidas
To:	DWR Delta Conveyance Scoping
Cc:	Robert Shaver; Gina Markou; Thomas Niesar; Leonard Ash
Subject:	ACWD Comments on Delta Conveyance Project Scoping
Date:	Thursday, April 16, 2020 5:44:51 PM
Attachments:	DWR Delta Conveyance Scoping ACWD Comments 4-15-20.pdf

Dear Ms. Rodriguez,

Attached please find a comment letter from the Alameda County Water District on the Delta Conveyance Project scoping process. Thank you very much for the opportunity to provide comments.

Sincerely,

Laura Hidas Manager of Water Resources Alameda County Water District 43885 S. Grimmer Blvd. Fremont, CA 94538 (510) 668-4441 or (510) 585-5401 laura.hidas@acwd.com

DCS782



43885 SOUTH GRIMMER BOULEVARD • FREMONT, CALIFORNIA 94538

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DIRECTORS

AZIZ AKBARI JAMES G. GUNTHER JUDY C. HUANG PAUL SETHY JOHN H. WEED

April 16, 2020

VIA ELECTRONIC MAIL

Delta Conveyance Scoping Comments (DeltaConveyanceScoping@water.ca.gov) Attn: Renee Rodriguez Department of Water Resources P.O. Box 942836 Sacramento, CA 94236

Dear Ms. Rodriguez:

Subject: Comments on Delta Conveyance Project Scoping

I am writing on behalf of the Alameda County Water District (ACWD), which serves over 357,000 residents and businesses in the cities of Fremont, Newark, and Union City in the southeastern San Francisco Bay Area. Thank you for the opportunity to share ACWD's interests in the Delta Conveyance Project.

ACWD receives on average 40% of its water supply from the State Water Project, so has a significant interest in the long-term reliability of the State's water system. ACWD customers have made significant investments over many years in a diversified portfolio of water supplies, and we continue to pursue significant water conservation and in our service area, as well as regional partnerships. Even with these intensive efforts, the State Water Project remains an important water supply for our customers and region.

With the threats of climate change and sea level rise quickly approaching, the Delta Conveyance Project seeks to address these significant challenges. It would also reduce the risk of disruptions in State Water Project supplies to ACWD customers in the event of emergencies, such as earthquakes or other water quality emergencies in the Delta. This is critically important to us.

The costs of a Delta Conveyance Project that would be borne by ACWD customers are still being determined, and we will continue to evaluate the cost-effectiveness and benefits of the project as more information becomes available. We anticipate that a Delta Conveyance Project will have significant benefits to ACWD customers, and remain optimistic that it will be a cost-effective way to maintain a reliable and resilient water supply for our region.

ACWD also recognizes the importance of balancing water supply and ecosystem needs, and appreciates the State's efforts to collect input from the public on the Delta Conveyance Project.

Thank you for your consideration of ACWD's comments.

Sincerel

Robert Shaver General Manager

lh/tf By Email



MANAGEMENT

ROBERT SHAVER General Manager

KURT ARENDS Operations and Maintenance

LAURA J. HIDAS Water Resources ED STEVENSON Engineering and Technology Services JONATHAN WUNDERLICH

Finance

From:	Mark Miyoshi
To:	DWR Delta Conveyance Scoping
Cc:	Caleen Sisk; Claire Cummings; Deborah Ann Sivas; Luisa Navejas
Subject:	Winnemem Wintu Tribe comments of the NOP for the Delta Conveyance Project
Date:	Friday, April 17, 2020 4:53:04 PM
Attachments:	WWT comments to Delta Conveyance NOP 041720.pdf

Dear Ms. Rodriguez, Please accept the attached comment letter regarding the NOP for the Delta Conveyance Project. Please acknowledge receipt of this comment letter and reply if you have any questions. Thank you.

Respectfully,

Mark Miyoshi, THPO Winnemem Wintu Tribe 530-926-4408

WINNEMEM WINTU TRIBE



14840 BEAR MOUNTAIN ROAD • REDDING, CA • 96003 WWW.WINNEMEMWINTU.US

Renee Rodriguez Delta Conveyance Scoping Comments Department of Water Resources 1416 Ninth Street PO Box 942836 Sacramento, CA 94236-0001 DeltaConveyanceScoping@water.ca.gov

Re: Winnemem Wintu Tribe Delta Conveyance Project NOP scoping comments

Dear Ms. Rodriguez,

The Winnemem Wintu Tribe has continued to live as a Historic California Indian Tribe within our traditional territory of the McCloud, Upper Sacramento and Lower Pit River watersheds since time immemorial. The Winnemem Wintu, the Middle Water People, have always been Salmon People and have held salmon as sacred and as a staple food up to present time. The health and life of the rivers and streams of these watersheds are of extreme importance to our Tribe and we cared for the waters of our homeland, keeping them clean, pure and producing millions of salmon and an abundance of other foods, year after year.

The damming and diversion of the living waters that originate in Winnemem traditional territory could not have been possible without the flagrant violation of Federal law, the illegal theft of our land and the near genocide of our people. Congress passed the Indian Lands Acquisition Act of 1941 (55Stat612, 1941 Act) that authorized the taking of the heart of the Winnemem Wintu Tribe homeland containing hundreds of villages and that would be flooded to become Shasta Reservoir. The provisions of the 1941 Act to compensate the Tribe with like lands, funds and a cemetery in trust were never fulfilled and therefore the lands under the reservoir still belong to the Winnemem according to this Act of Congress.

Salmon and other life of the Sacramento River and the Delta have suffered the same fate as the Winnemem people, with Chinook now nearing extinction and the River itself channelized, polluted and over allocated. The Delta Conveyance now threatens to divert even more Sacramento River and Trinity River water to Southern California agricultural and municipal water districts, threatening the final death of the Delta and shutting off the last meager pathway for Salmon to travel from the Pacific to Winnemem territory and back.

"If the Sacred Fires are not lit, how will our children learn?" Honor Your Traditional Lifeways Shasta Dam is the keystone to the Central Valley Project and its construction began the transformation of Northern Central Valley Rivers and all their wondrous, diverse and abundant life into sterile water pipelines serving a money based economy moving headlong to disaster. The Delta Conveyance Project is part and parcel to this unspoken and unacknowledged ecological madness.

The Delta Conveyance Project (Project) will cost the State of California billions of dollars; transform the entire water delivery system of the State; and profoundly affect/adversely affect ecosystems from North to South. The Winnemem Wintu Tribe's future generations and at risk species will suffer the impacts of the Project. The legacy of this corporate welfare project will be the distant memory of the Delta and extinct salmon, Delta smelt and other species; a huge debt on the backs of citizen taxpayers; and a water delivery system that perpetuates the unsustainable paradigm of economic growth based on single family housing developments, profit based corporate farming and municipal commerce and expansion with water needs inappropriate for a desert location.

The purpose and objectives of the Project appear reasonable and well meaning but the complete absence of support for the ecosystems of the Delta and the whole of the Sacramento and Trinity River watersheds can only mean that these life systems are to be sacrificed. The non-committal references to the Central Valley Project (CVP) indicate that the Project is being developed to service the CVP without a transparent discussion of objectives and operations of the Project. The role of the CVP must be explicitly stated in the EIR.

The NOP does not adequately and completely describe both the source and destination of the water that will flow through the Project tunnel. The Trinity River is not even on the NOP map and yet half of the flow of the Trinity could be earmarked by the CVP to be directed south of the Delta, heavily impacting the Trinity ecosystem, its wildlife and the indigenous people who depend on that river for food and cultural meaning. The diversion of Trinity River water and the role of the CVP must be explicitly reviewed if this EIR is to be valid and meaningful.

Neither No Action and No Tunnel Alternatives are mentioned in the NOP. DWR appears to believe that the purposes and objectives of the Project cannot be accomplished by any other means other than a tunnel that will have vast and irreversible consequences. The need for water South of Delta can and should be reduced by only permitting the planting of food crops to be sold domestically rather than allowing high water demand export crops; developing and implementing water conservation measures and water conserving urban development models; repair and re-design leaking and inefficient water delivery systems; etc. Water saving models and technology are readily available, less expensive than this mega-dollar Project and would protect the natural systems that all in the State ultimately depends on for food and water.

The Project Objectives are clearly only short term bandaids for problems that people and our economy have created. The several billions of dollars cost of the Project could go a long way to addressing climate change and resultant sea level rise. Locally and sustainably sourced water delivered by efficient distribution systems designed for environmentally appropriate urban and commercial development would be more cost effective and less dependent on the fragile Delta levee system. Green infrastructure water storage has been ignored but would increase reliability of water systems if incorporated in a non-exploitive way. Improvement of Delta aquatic conditions can only be accomplished with wholistic planning and wholistic project implementation. This EIR must study the long term ecology, economics and ultimate applicability of both the Project and sustainable alternatives that would produce less environmental damage and chaos at lower cost outside the centralized, commoditized, corporatized paradigm of the SWP and the CVP.

This EIR must study the cumulative effects of the Project and the many past and reasonably foreseeable future projects on upstream source regions and ecosystems. All of the projects on the Sacramento combine to restrict the downstream AND UPSTREAM migration of species, nutrients, DNA and more. Sites Reservoir and the many overallocated diversions have increased temperatures, decreased flows and altered the timing of flows. Shasta Dam has already denied Salmon and other salmonids access to headwaters spawning grounds and the Project will be another major hurdle for adult Salmon going up the Sacramento River and young smolts migrating south to the ocean. Salmon are the most visible and understandable element of the river bio-connection that has enriched the source regions with elemental resources and nutrients from time immemorial. This exchange is not trivial and the Project could close this bio-connection door with unknown future consequences.

The Delta is on the verge of collapse now and the Project will add many additional and intense stressors to this struggling biome. The Project could very well be the death of the Delta. The protection of biological resources must by law carry equal weight in this EIR to the perceived benefits to human habitation and economy. A valid and rigorous study of the viability and survivability of the Delta if the Project is implemented must be a key element of this EIR. If the Delta will not survive the Project intact, then the Project must be abandoned.

Finally, corporate profits must NEVER supersede the Public Trust doctrine. Water must never be sold for profit. This EIR must include a transparent and thorough analysis of the economic benefits and a listing of economic beneficiaries of the Project as compared to the environmental costs to nature and natural systems and the monetary costs placed on the backs of citizens.

Thank you for your consideration.

Respectfully submitted,

Marke Mujoshi

Mark Miyoshi, THPO Winnemem Wintu Tribe 530-926-4408 markmwinnemem@gmail.com

cc: Caleen Sisk Chief and Spiritual Leader

> Claire Cummings Legal Advisor

Luisa Navejas Office of Historic Preservation Administrator

From:	Rick Downey
То:	DWR Delta Conveyance Scoping
Subject:	1900 gallons of water to grow 1 pound of almonds?????
Date:	Monday, April 13, 2020 1:48:45 PM

It is obvious to anyone with a brain that the use of Delta water to grow unsustainable crops is ridiculous.

We can do without almonds!!

Get real - California is going back to be a "semi arid region", which is how the Spanish explorers first described it.

You are trying to fight nature - you will not win! You will only destroy the non-arid regions in your attempts that will certainly fail.

USE YOUR BRAIN, and stop listening this nonsense!

Rick Downey rdowney@airmail.net

4/16/20

From:	Jim Blickenstaff
To:	DWR Delta Conveyance Scoping
Cc:	Foresman, Erin@Waterboards; "Barbara Barrigan-Parrilla, Restore the Delta"; "Jim Blickenstaff"
Subject:	"COMMENTS" > NEW INFORMATION [San Jose Mercury: Historic California Megadrought Underway / Delta Conveyance Scoping Session
Date:	Thursday, April 16, 2020 2:41:32 PM

California Department of Water Resources Delta Conveyance Scoping Session <u>DeltaConveyanceScoping@water.ca.gov</u>

Att: Renee Rodriguez

Re: <u>New Information</u> bearing on CEQA Process and Delta Conveyance Plan.

Please add the important information in the article below to the environmental review, to discern contributing factors, and cumulative effects, bearing on the spectrum of project's negative impacts -unmitigated, and mitigated, as well as, influence on possible Alternatives. [Incl., those noted in my comment submittal, 1:13pm today]. Thank You. -- Jim Blickenstaff

Historic 'megadrought' underway in California, American West, new study finds

Tree rings show that 2000-2018 is the driest 19-year period in centuries

By Paul Rogers | progers@bayareanewsgroup.com | April 16, 2020 https://www.mercurynews.com/2020/04/16/megadrought-underway-in-california-american-west-newstudy-finds/ https://www.eastbaytimes.com/2020/04/16/megadrought-underway-in-california-american-west-newstudy-finds/

The American West, including California, is in the middle of a historic "megadrought" — an ongoing stretch of extended arid conditions not seen in centuries — according to a major new study released Thursday.

In the nine Western states from Colorado to California, 2000 to 2018 ranks as second-driest 19-year period in the past 1,200 years, according the the study, led by scientists at Columbia University, and published in the journal Science.

The scientists, who studied tree rings from roughly 30,000 trees in 1,586 locations to measure the amount of rainfall and soil moisture over the centuries, found that the only time when conditions were drier in the West than they are now was between 1576 and 1603, when the Pilgrims had yet to set sail for Plymouth

Rock and Spanish conquistadors first ventured into New Mexico and Arizona.

The current megadrought is still underway, and while its causes are natural, it is being made worse by warmer temperatures from climate change, the researchers said. And although there have been wet years, such as in 2017 and 2010, they noted, those are exceptions in the longer two-decade pattern, similar to days when the stock market drops in value, even though the longer overall trend in prices is upward over decades.

"Across the broad American West, the last two decades have looked as bad as the worst two-decade period of the last millennium. This is an event of millennial significance," said Park Williams, a bioclimatologist at Columbia University's Lamont-Doherty Earth Observatory, and lead author of the study.

"The severity varies throughout the region," he said. "But when you look at the region as a whole, this is really truly a monumental event."

It's understandable that people don't always realize when they are living amid historic shifts, said Bill Patzert, a retired oceanographer and research scientist for 35 years at NASA's Jet Propulsion Laboratory in Pasadena.

"The thing about droughts in the West is that they are large. And they are long," Patzert said. "They don't go for a few months. They wax and they wane. They are on-again off-again. We have a couple of years with good rain and snowpack — like 2005 and 2010 and 2017 — and you think you are out. But it's like the Godfather. You are back in again. Everybody is too quick to terminate droughts."

Patzert studied ocean patterns for decades and concluded nearly 20 years ago that a shift was underway in which wetter conditions seen during thew 1980s and 1990s would give way to an extended drought.

He said the best way to measure whether a drought is over in the West is to look at the level of Lake Mead, the vast reservoir behind Hoover Dam on the Colorado River, which flows through seven Western states. The lake, a critical water source for the West, is currently just 44% full.

"Lake Mead has been low for a long time," he said. "It's still low. And there's no quick fix."

Ominously, the researchers in Thursday's study found that the 20th century was the wettest century in the entire 1,200-year record.

In other words, people in large parts of California, Las Vegas, Phoenix and other areas that are largely built in deserts have constructed vast cities, water systems and farms around expectations for rainfall and snowfall which are well above the long-term historical realities for the region.

California suffered through a five-year drought from 2012 to 2016. Former Gov. Jerry Brown declared it over when reservoirs filled after huge El Niño storms in 2017 that caused flooding in downtown San Jose and wrecked the spillway at Oroville Dam.

But the longer trend underway over the past 20 years shows that California needs to accelerate reforms that came out of that drought, said Felicia Marcus, former chairwoman of the State Water Resources Control board.

Those include building more off-stream reservoirs to capture water in wet years, expanding conservation programs like paying people to replace lawns with water-efficient landscaping, recycling more wastewater for irrigation and other uses, capturing storm water, and other solutions, she said. Because even when it seems like a drought may be over, it will return, she said.

"We've already had the wakeup call of the century in our drought, and this study is just more evidence of the fact that we need to light a fire under our efforts," Marcus said. "We are living in something of a dreamworld. Modern California — our economy, agriculture and our ecosystems — are built around

water. This is just one more alert that business as usual just won't cut it. How many reminders do we need?"

Over the past 20 years, California has had three stretches of short-term drought, Williams said. They were 2000-2003, 2007-2009 and 2012 to 2016.

"In California it looks more like 3 individual droughts, but when we look at the larger scale, we can see it's really one," Williams said.

The most severe conditions over the past two decades have come in Arizona and Southern California, the research shows. Overall, a record number of wildfires, hundreds of millions of dead trees in Western forests, declining groundwater levels and drying soil moisture levels are all evidence of the current megadrought, the researchers said.

The idea of decades-long droughts isn't new.

At least four major megadroughts have been well documented over the past 1,200 years in the American West. Some lasted a few decades, other a century or more. The most severe stretches ran from 867 to 898 AD; 1136 to 1172 AD; 1218 to 1310, and 1576-1603. They all caused major upheavals in wildlife and in human settlement. The third helped lead to the collapse of the Anasazi civilization in the Southwest, for example.

Scientists — who measure tree rings to the thousandth of a millimeter using high-powered microscopes to compare rainfall patters over centuries — believe those events were caused by naturally changing cycles of the ocean which result periodically in more La Niña conditions. During such conditions, ocean waters off South America are cooler than normal, affecting weather patterns that reduce rainfall in California and the West.

That's what's underlying the current megadrought, the researchers said. But based on those natural conditions, the past two decades would have ranked 11th worst in the last 1,200 years — significant but not historically extreme. Due to climate change caused by the burning of fossil fuels trapping heat in the Earth's atmosphere, however, the current megadrought has been made more severe.

Temperatures now are about 2 degrees Fahrenheit warmer than they would have been without climate change, Williams noted. Those warmer temperatures have further dried out soils and vegetation. Wet periods will return, he said, but if climate change continues to warm the Earth, droughts will continue to become more severe.

"We need to be educated enough in science and trusting enough of science to learn from this type of study," he said. "We are constantly reminded — most recently by the coronavirus — how much better off we'd be if we can interpret scientific information and understand what projections mean. Epidemiologists have been warning about the coronavirus for decades. Here we have a similar situation."

Submitted by: Jim Blickenstaff Former San Ramon City Council Member, Chair, Mt. Diablo Sierra Club, 30 year Environmental Activist.

cc: Interested Parties.

DCS785
From:Joseph Rizzi@sbcglobal.netTo:DWR Delta Conveyance ScopingSubject:Water for fish and people for next 100 years, possible now!Date:Friday, April 17, 2020 4:36:14 PMAttachments:Fish Death Trap 3.pdfImportance:High

Add 4 to 17 MAF of water for export south, while saving fish in the Delta. 1.5 million square feet of floating horizontal screen utilizing "up-screen" technology will do the trick in the most cost effective way. Under \$500 million for construction.

- **Delta and Environment** Replacing Clifton Court Forebay's 1.5 mile levee with fish screen to end killing of all aquatic life (including endangered species).
- **Delta Flows** Fill CCF only at night when most fish are sleeping, which makes daytime all natural flows. Pumps can operate 24/7 with CCF holding 1 3 day supply. CCF capacity can be increased if dredged.
- **Salt** keep a section free of obstruction, but add shipping lock and tidally controlled louvers to reduce salt water intrusion into Sacramento Delta.

These 3 are addressed in the attached PDF, which will:

- Make the Delta a more fresh water region that will support more life.
- 2/3 of each day will have normal flows in the Delta area.
- With Salinity (lock and tidal louvers) studies at Benicia we will know how much (50% to 85%) of the salinity can be controlled without harming environment.
- No blockage of Delta or straits allowed! Environment and Fish need to have access to freely come and go from Delta.
- Zero fish killed in exporting water from Delta. That should be a goal or requirement. 1.5 mile fish screen will keep fish safely in Delta.
- Reduce costs of operation of Fish capture and relocation, because these would not be when export water is obtained from screened CCF.
- Export more water with 0 fish deaths

Please keep in mind:

- Current CCF intake area is 5 gates 20 feet long and 30 feet deep which equals 3,000 square feet.
- New CCF at West Canal area (conventional Screens) is 7,800 Feet long by 30 feet deep which equals 234,000 Square Feet.
- New CCF at West Canal area (new <u>UP Screens</u>) is 7,800 Feet long by 200 feet wide, which equals 1,560,000 Square Feet of up screen, no moving parts, no clogging with floating debris, taking water from the middle depth of the river, using a 4 foot wide sill wall sunk 60' deep, screen size 1/3 of FW standards, CCF flow controlled by water filling in and out of lay flat hoses. Approx. \$50 Million project.

<u>ZeeWeed</u> or a similar type of membrane to extract the water from the Delta will give a <u>ZERO</u> ability to kill fish while cleaning the water of sediment for export if desired.

I would love to met with the board and give a presentation with Q&A if possible.

Thanks, Joseph Rizzi -- Cel: 707-208-4508 -- Email: <u>Joseph_Rizzi@sbcglobal.net</u>

From:	Bill Huber
To:	DWR Delta Conveyance Scoping
Subject:	Water, fish, Westlands water district, and the big water grab(s)
Date:	Friday, April 17, 2020 9:52:13 AM

Madams and Sirs,

We live in Hyampom, in Trinity County, on the South Fork of the Trinity River. By the odious act of the construction of Trinity Dam, we are connected to the greater plumbing systems put in place by BOR and the CVP. No, water does not flow uphill, but when it doesn't flow downhill, in the main stem Trinity River, it affects the South Fork. Specifically, the fisheries.

When Salmon return to the Klamath-Trinity watershed from the ocean, their survival is dependent on water. Trinity Dam effectively cut off that water since the dam was closed and excellent spawning habitat was flooded and cut off in 1965. Minimal summer releases from the dam and ineffective mitigation measures such as the Lewiston hatchery have diminished salmon populations despite many measures attempting to bolster them as a result of the 2002 record of decision which increased minimum flows 200%. (It's still only 47% of total River flows.) Fish counts at Willow Creek make little distinction between mainstem and South Fork Trinity River fish. All fish are counted the same and receive the same assaults on their survival.

As the mainstem fisheries decline, so do South Fork Trinity River fisheries.

And to what purpose?

Water diverted from the Trinity River flows through tunnels to Whiskeytown reservoir, effectively turning the Trinity River into a tributary of the Sacramento River. Electricity is generated at Carr powerhouse and at Keswick Dam, part of the Faustian deal with Trinity County to get the Supervisors at the time to get on board with the Trinity Dam project being conjured at the time by BOR.

They had no idea, or little sense that it was a water grab, pure and simple, and the nascent Westlands Water District would be the head grabber.

Westlands is a huge water district, perhaps largest and thirstiest in the state, maybe the nation. It's basically desert land, fouled by selenium salts. To even think of irrigating it, it first has to be ripped, and washed with vast amounts of clean water, and that tainted water then drained off with under drains installed.

Westlands wants clean water free or cheap, and lots of it. They then want to drain off their salt polluted water to waterways, abdicating any responsibility.

This is NOT the best use, nor even a beneficial use of the water. It is Bad for the Trinity River, and by connection, the South Fork Trinity River and The Klamath River and all of these rivers fisheries.

The Delta Reconveyance, Twin Tunnels, Rainbow Unicorn Perpetual Water Generator, whatever you want to call it, will be detrimental to the Klamath Trinity River System. It will be detrimental to the Sacramento- San Joaquin River Delta by altering the ecosystem, already damaged by agriculture and pumping at Tracy.

Warm water kills fish. We are experiencing a warming climate from anthropomorphic climate change. The Sites Reservoir plan will further degrade the watersheds of the Sacramento, and Klamath Trinity, by drawing down Trinity Lake, heating the outflow from Lewiston Dam in the process, to say nothing of the heating and concomitant water loss by evaporation from a proposed Sites reservoir which will be a bathtub reservoir like San Luis Reservoir to further impound waters of the Trinity River by dint of the mega plumbing that is the California Water Project, and The Central Valley Project.

While wonders of engineering, all of these giant water projects won't make it rain, and come at a huge cost not yet calculated nor considered or paid for. Stop the water grab!

I recommend a resounding No Project on the Delta Tunnel(s) Or Delta Reconveyance...again, whatever you care to call it, I say "No Sir!, No Madam!"

Sincerely,

William Huber

Sent from my iPad

Jill North
DWR Delta Conveyance Scoping
comment NOP
Friday, April 17, 2020 3:25:53 PM

With the State vulnerable to seismic events in this particular area, how can this project even be considered?

To dig in the San Joaquin Valley where dirt is likely to contain the Valley Fever fungus doesn't make sense.

The most significant feature of our State is the Delta where the 2 major rivers meet and form a special environment with species of all kinds that depend on this environment. Why would the State allow a big business water grab to destroy this?

Fishing is a major industry for commercial and native Americans and to remove fresh water that allow fish to live and thrive and send it south is absurd.

As a consequence the Delta will become more saline which will not provide habitable water for fish. We lose an industry.

If the Metropolitan Water District needs more water due to expansion or, god forbid, Fracking then they could have found a way to store rain water by now. They could build a desalinization plant. They can't be allowed to steal from fellow Californians as our use has to have first come rights.

Don't allow one big business to change the lives of Northern Californians and destroy our beautiful Delta.

Thank you, Jill North 20055 East Clinton Rd , Jackson 95642 April 17th 3:25pm

From:	Thomason, Christie@DeltaCouncil
To:	DWR Delta Conveyance Scoping
Cc:	Yee, Marcus@DWR; Buckman, Carolyn@DWR; Marquez, Katherine@DWR; kathrynmallon@dcdca.org; Vink, Erik@DPC; Ingram, Campbell@SSJDC; Riddle, Diane@Waterboards; Fain, Jessica@BCDC; Henderson, Jeff@DeltaCouncil; Constable, Daniel@DeltaCouncil
Subject:	Comment Letter
Date:	Friday, April 17, 2020 12:06:15 PM
Attachments:	Conveyance NOP CommentLetter 2020-0417.pdf

Dear Ms. Rodriguez:

We appreciate and thank you for the opportunity to review and comment on the Notice of Preparation of an Environmental Impact Report for the Department of Water Resources Delta Conveyance Project. Attached is our comment letter.

Thank you,

Christie Thomason Executive Assistant Delta Stewardship Council 980 9th Street, Suite 1500 Sacramento, CA 95814 Phone (916) 445-4560 Fax (916) 445-7505 cthomason@deltacouncil.ca.gov



980 NINTH STREET, SUITE 1500 SACRAMENTO, CALIFORNIA 95814 HTTP://DELTACOUNCIL.CA.GOV (916) 445-5511

April 17, 2020

Chair Susan Tatayon

Members

Renee Rodriguez California Department of Water Resources P.O. Box 942836, Sacramento, CA 94236 Sent via email: DeltaConveyanceScoping@water.ca.gov Frank C. Damrell, Jr. Randy Fiorini Michael Gatto Maria Mehranian Oscar Villegas Daniel Zingale

Executive Officer Jessica R. Pearson

RE: Comments on Notice of Preparation of an Environmental Impact Report for the Delta Conveyance Project

Dear Ms. Rodriguez:

Thank you for the opportunity to review and comment on the Notice of Preparation (NOP) of an Environmental Impact Report (EIR) for the Department of Water Resources (DWR) Delta Conveyance Project (Project). The Delta Stewardship Council (Council) recognizes the stated purpose of the Project is to develop new diversion and conveyance facilities in the Sacramento-San Joaquin Delta (Delta) in order to ensure a reliable water supply south of the Delta. (NOP, p. 2) Stated project objectives include, but are not limited to, addressing anticipated rising sea levels and other reasonably foreseeable consequences of climate change and extreme weather events, minimizing potential for health and safety impacts from reduced quantity and quality of water deliveries south of the Delta resulting from a major earthquake, protecting the ability of the State Water Project (SWP) (and potentially the Central Valley Project (CVP)) to deliver water under varying hydrologic and regulatory conditions, and providing operational flexibility to improve aquatic conditions in the Delta and better manage impacts of further regulatory conditions on SWP (and potentially CVP) operations. (NOP, p. 2).

The Council is an independent state agency established by the Sacramento-San Joaquin Delta Reform Act of 2009, codified in Division 35 of the California Water Code, sections 85000-85350 (Delta Reform Act). The Delta Reform Act charges the Council with furthering California's coequal goals of achieving a more reliable water supply and restoring the Delta ecosystem, to be achieved in a manner that protects and enhances the unique cultural, recreational, natural resource, and agricultural values of the Delta as an evolving place. (Wat. Code, § 85054.)

[&]quot;Coequal goals" means the two goals of providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem. The coequal goals shall be achieved in a manner that protects and enhances the unique cultural, recreational, natural resource, and agricultural values of the Delta as an evolving place."

Pursuant to the Delta Reform Act, the Council has adopted the Delta Plan, a legally enforceable management framework for the Delta and Suisun Marsh for achieving the coequal goals. The Delta Reform Act grants the Council specific regulatory and appellate authority over certain actions that take place in whole or in part in the Delta and Suisun Marsh, referred to as "covered actions." (Wat. Code, §§ 85022(a) and 85057.5.) The Council exercises that authority through its regulatory policies (set forth in Title 23 of the California Code of Regulations, Sections 5002 through 5015) and recommendations incorporated into the Delta Plan. State and local agencies are required to demonstrate consistency with the Delta Plan when carrying out, approving, or funding a covered action. (Wat. Code, §§ 85057.5 and 85225.)

Covered Action Determination and Certification of Consistency with the Delta Plan

Water Code section 85057.5(a) provides a multi-part test to define what activities would be considered covered actions. Based on the Project location and scope described in the NOP, the Project appears to meet the definition of a covered action because it:

- <u>Will occur in whole or in part within the boundaries of the Legal Delta (Wat. Code, §12220) or Suisun Marsh (Pub. Res. Code, §29101)</u>. The new Project alignments (i.e., central tunnel corridor and eastern tunnel corridor shown on NOP Figure 1, p. 4) and facilities (i.e., intakes, tunnel reaches and shafts, forebays, pumping plant, and South Delta conveyance facilities described on NOP p. 3) would be located in the Legal Delta.
- 2. <u>Will be carried out, approved, or funded by the State or a local public agency</u>. DWR, a State agency, would carry out and approve the Project.
- 3. <u>Will have a significant impact on the achievement of both of the coequal goals or the implementation of a government-sponsored flood control program to reduce risks to people, property, and State interests in the Delta.</u> The Project would construct and operate new conveyance facilities in the Delta, including a single-tunnel facility designed to increase reliability of water supply, and would add to existing SWP infrastructure. The Project proposes to size new north Delta facilities to convey up to 7,500 cfs of water from the Sacramento River to SWP facilities in the south Delta to increase reliability of water supply under varying earthquake, climate change, and regulatory conditions. It would also include mitigation and operational characteristics that would contribute to ecosystem restoration. Therefore, the Project would have a significant impact on achievement of both coequal goals.
- 4. <u>Is covered by one or more of the regulatory policies contained in the Delta Plan (Cal.</u> <u>Code Regs., tit. 23, §§ 5003-5015</u>). Delta Plan regulatory policies that may apply to the Project are discussed below.

In addition, DWR previously submitted a Certification of Consistency with the Delta Plan to the Council for the proposed California WaterFix project (which was subsequently withdrawn). Although the NOP describes a new project, the Project scope and facilities described in the NOP are similar to California WaterFix and will likely implicate a similar range of Delta Plan policies.

Comments Regarding Delta Plan Policies and Potential Consistency Certification

The following information is offered to assist DWR in preparing environmental documents to support a certification of consistency. It describes regulatory Delta Plan policies that may apply to the Project based on the available information in the NOP. The information below may also assist DWR in describing the relationship between the Project and the Delta Plan in the EIR.

The NOP includes a range of flow capacities and describes potential federal participation. These two topics should be further explained in the EIR project description and addressed to the degree possible throughout the EIR.

The Council notes that, on behalf of DWR, the Delta Conveyance Design and Construction Authority (DCDCA) is currently exploring alternative configurations of Project features described in the NOP as part of a public process with a Stakeholder Engagement Committee (SEC). The DCDCA also recently received and published input from an Independent Technical Panel (ITP) regarding, among other things, alternative tunnel alignments that do not correspond to those described in the NOP. Thus, additional details regarding potential Project components and alternatives not described in the NOP are publicly available and being publicly discussed. The Council looks forward to receiving and reviewing the scoping and alternatives report DWR intends to prepare following the NOP review period and reserves the right to offer additional public comments regarding applicable Delta Plan policies considering more detailed alternative alignments and configurations of Project features at that time.

General Issues

As a preliminary matter, in 2018 DWR submitted a Certification of Consistency with the Delta Plan for the California WaterFix project. This certification was appealed by nine parties, who alleged that for various reasons the project was not consistent with one or more Delta Plan policies. Council staff reviewed both the certification and appeals and provided a staff draft determination for the Council's consideration in November 2018.¹

The staff draft determination describes the certification and appeals and makes staff recommendations regarding whether the certification was supported by substantial evidence in the record with respect to issues raised in the appeals. The staff draft determination stated that the certification was not supported by substantial evidence in the record for multiple Delta Plan policies:

<u>G P1</u>, subd. (b)(1) (Cal. Code Regs., tit. 23, § 5002, subd. (b)(1)) ("G P1(b)(1)"): Full consistency infeasible, but on the whole the covered action is consistent with the coequal goals

¹ The staff draft determination is available upon request from <u>archives@deltacouncil.ca.gov</u>.

- <u>G P1</u>, subd. (b)(3) (Cal. Code Regs., tit. 23, § 5002, subd. (b)(3)) ("G P1(b)(3)"): Best Available Science
- <u>WR P1</u> (Cal. Code Regs., tit. 23, § 5003) ("WR P1"): Reduce Reliance on the Delta through Improved Regional Water Self Reliance
- ER P1 (Cal. Code Regs., tit. 23, § 5005) ("ER P1"): Delta Flow Objectives
- <u>DP P2</u> (Cal. Code Regs., tit. 23, § 5011) ("DP P2"): Respect Local Land Use When Siting Water or Flood Facilities or Restoration Habitats

Although DWR ultimately withdrew the certification, Council staff recommended that the matter be remanded to DWR for reconsideration to address several issues outlined in the staff draft determination regarding these policies. Because the Project appears similar to California WaterFix in some areas, based on the previous record for California WaterFix, the Council recommends that DWR review the staff draft determination as it relates to the Project and engage with the Council in robust early consultation to ensure that the EIR addresses these matters in detail.

General Policy 1: Detailed Finding to Establish Consistency with the Delta Plan

Delta Plan Policy **G P1** (Cal. Code Regs., tit. 23, § 5002) specifies what must be addressed in a certification of consistency for a covered action. The following is a subset of Policy G P1 requirements that a project must meet to be considered consistent with the Delta Plan:

Coequal Goals

Delta Plan Policy **G P1, subsection (b)(1)** (Cal. Code Regs., tit. 23, § 5002, subd. (b)(1)) allows for covered actions, in a certification of consistency, to include a determination that despite inconsistency with one or more other Delta Plan policies, the covered action is consistent with the Delta Plan because, on the whole, it is consistent with the coequal goals.

In the EIR, DWR should analyze and document potential impacts – whether positive or negative – on the coequal goals. It may be useful to describe the impacts of the Project on the coequal goals to the public in the EIR to establish a record for a future certification of consistency.

Mitigation Measures

Delta Plan Policy **G P1, subsection (b)(2)** (Cal. Code Regs., tit. 23, § 5002, subd. (b)(2)) requires that actions not exempt from CEQA and subject to Delta Plan regulations must include all applicable feasible mitigation measures adopted and incorporated into the Delta Plan as amended April 28, 2018, or substitute mitigation measures that are equally or more effective. Mitigation measures in the Delta Plan's Mitigation Monitoring and Reporting Program (Delta Plan MMRP) are available at:

https://www.deltacouncil.ca.gov/pdf/delta-plan/2018-appendix-o-mitigation-monitoringand-reporting-program.pdf.

If the EIR identifies significant impacts that require mitigation, Council staff recommends that DWR review the Delta Plan MMRP and, when feasible, apply the mitigation measures adopted and incorporated into the Delta Plan. Given the scope of the Project, it appears likely that numerous mitigation measures would be relevant.

Best Available Science

Delta Plan Policy **G P1, subsection (b)(3)** (Cal. Code Regs., tit. 23, § 5002, subd. (b)(3)) states that covered actions must document use of best available science as relevant to the purpose and nature of a project. The regulatory definition of "best available science" is provided in Appendix 1A of the Delta Plan (<u>https://www.deltacouncil.ca.gov/pdf/delta-plan/2015-appendix-1a.pdf</u>). Best available science is defined in the Delta Plan, Appendix 1A. Six criteria are included in Appendix 1A: relevance, inclusiveness, objectivity, transparency and openness, timeliness, and peer review. (Cal. Code Regs, tit. 23, § 5001, subd. (f).) This policy requires that the lead agency clearly document and communicate the processes and information used for analyzing project alternatives, impacts, and mitigation measures of proposed projects, in order to foster improved understanding and decision making.

As it develops the EIR, DWR should identify and document use of best available science when analyzing and assessing impacts, including but not limited to the following areas:

- Documentation of consideration of best available science in analyzing the selected project alternatives.
- Best available science on climate change, including sea-level rise projections appropriate to the type of project and planning horizon selected.
- Consideration of best available science related to invasive species and water quality issues such as salinity, nutrients, harmful algal blooms, and contaminants.
- If a range of uncertainty is associated with the scientific data or information used to support design decisions or environmental analysis, DWR should document or communicate the uncertainty as required by the best available science Transparency and Openness criterion.

Adaptive Management

Delta Plan Policy **G P1, subsection (b)(4)** (Cal. Code Regs., § 5002, subd. (b)(4)) requires that ecosystem restoration and water management covered actions include adequate provisions, appropriate to the scope of the action, to assure continued implementation of adaptive management. This requirement is satisfied through: a) the development of an adaptive management plan that is consistent with the framework

described in Appendix 1B of the Delta Plan (<u>https://deltacouncil.ca.gov/pdf/delta-plan/2013-appendix-b-combined.pdf</u>), and b) documentation of adequate resources to implement the proposed adaptive management plan.

Considering the water management components of the Project, an adaptive management plan will be required that addresses Project construction activities, implementation, and ongoing operations. Ecosystem restoration components of the Project would also require DWR to prepare an adaptive management plan.

Water Resources Policy 1: Reduce Reliance on the Delta through Improved Regional Water Self-Reliance

Delta Plan Policy **WR P1** (Cal. Code Regs., tit. 23, § 5003) requires proposed actions that export water from, transfer water through, or use water in the Delta to contribute to reduced reliance on the Delta and improve regional self-reliance.

The Project proposes to increase water supply reliability, among other objectives, by constructing new facilities, including an isolated conveyance facility to be used in conjunction with existing through-Delta conveyance. The Council understands that as proposed, the Project would not alter existing water rights or contractual amounts.

Because the Project proposes to export water from, transfer water through, or use water in the Delta, this policy is applicable. DWR should describe in detail how all water suppliers (defined as both wholesalers and retailers)² that would receive water from the Delta as a result of the Project have adequately contributed to reduced reliance on the Delta and improved regional self-reliance consistent with the Delta Plan. DWR should provide information for each water supplier that includes: (1) identifying which water agencies have a current Urban or Agricultural Water Management Plan; (2) the identification, evaluation, and commencement of implementation activities identified in an Urban or Agricultural Water Management Plan that would reduce reliance on the Delta; and (3) the expected outcome for measurable reduction in Delta reliance and improvement in regional self-reliance.

As for any large project that would trigger this policy, DWR should ensure that the record supporting the certification of consistency for the Project specifically addresses the following items:

- Listing of all urban and agricultural water users that would receive water as a result of the Project.
- Inclusion of quantifiable data documenting reduced reliance, as described by this policy, or a discussion of why this is not feasible.

² Water suppliers are defined in Cal. Code Regs., tit. 23, § 5001.

• Analysis of reduced reliance under different export scenarios, considering the current range in Project capacity described in the NOP (3,000 to 7,500 cfs).

In addition, the Council notes that at this time it is not clear how the CVP may or may not be involved in the Project. To the extent feasible, the EIR should clarify involvement of the Federal Government and clearly define which water suppliers would receive water as a result of the Project. This specificity would help the Council and other stakeholders understand the full range of potential impacts of the Project.

Water Resources Policy 2: Transparency in Water Contracting

Delta Plan Policy **WR P2** (Cal. Code Regs., tit. 23, § 5004) requires the contracting process for water from the SWP and/or the CVP be done in a publicly transparent manner consistent with applicable DWR and Bureau of Reclamation (Reclamation) policies. The Council notes that DWR has proposed extension of the SWP contracts as a separate project. However, the NOP states that the Delta Conveyance Project may involve modifications to one or more of the SWP water supply contracts to incorporate the Project. (NOP, p. 6).

To the extent that the Project includes the types of contract modifications described generally in the NOP, the EIR project description should clearly identify such modifications, and the EIR should assess potential environmental impacts associated with reasonably foreseeable potential contract modifications (as described in the NOP, p. 6). In a future certification of consistency, DWR should describe if and how it proposes to modify SWP water supply contracts and how such contracting was conducted in a transparent, public manner aligned with applicable DWR and Reclamation policies.

Ecosystem Restoration Policy 1: Delta Flow Objectives

Delta Plan Policy **ER P1** (Cal. Code Regs., tit. 23, § 5005) requires the State Water Resources Control Board's (Water Board) *Water Quality Control Plan for the San Francisco Bay/Sacramento–San Joaquin Delta Estuary* (Bay-Delta Plan) flow objectives be used to determine consistency with the Delta Plan for a project that could significantly affect flow in the Delta. This policy applies to the Project because the Project proposes new intakes at two locations along the Sacramento River, which have potential to significantly affect flow.

The EIR should document DWR's analysis of how the Project may impact or alter Delta flows that are subject to the Bay-Delta Plan flow objectives. While these flow objectives are currently described by Decision-1641, the Water Board is undertaking updates to the Bay-Delta Plan. In addition, the ongoing voluntary agreements process could influence flow objectives on a timeline similar to the EIR. As part of a certification of consistency, the relevant flow objectives would be those in effect at the time of certification. Given this, we encourage DWR to consider updates to flow objectives during the EIR development process and analyze those as part of the document. Specifically, the following items related to Delta flow objectives may be relevant to include in the EIR:

- Documentation of ability to meet the requirements of the Bay-Delta Plan, as it exists at time of development of an EIR and at the time of a certification of consistency with the Delta Plan.
- Consideration of a range of operations and climate scenarios when conducting flow and compliance modeling.
- Documentation of model implementation and potential uncertainties.

In addition, the Council strongly encourages DWR to obtain a permit for a Change in Point of Diversion from the Water Board prior to submitting a certification of consistency for the Project to the Council. The Council acknowledges that the schedule for a certification is unknown at this point. However, DWR should include the permit in the record supporting the certification to demonstrate consistency with Delta Plan Policy ER P1.

Ecosystem Restoration Policy 2: Restore Habitats at Appropriate Elevations

Delta Plan Policy **ER P2** (Cal. Code Regs., tit. 23, § 5006) requires habitat restoration to be consistent with Appendix 3 (<u>https://deltacouncil.ca.gov/pdf/delta-plan/2013-appendix-b-combined.pdf</u>), which describes the many ecosystem benefits related to restoring floodplains. The elevation map included as Figure 4-1 in Appendix 4 (<u>https://deltacouncil.ca.gov/pdf/delta-plan/2013-appendix-b-combined.pdf</u>) of the Delta Plan should be used as a guide for determining appropriate habitat restoration actions based on an area's elevation.

The NOP does not describe any habitat restoration associated with the Project, other than a general statement that other ancillary facilities may be built to support construction of conveyance facilities, including mitigation areas (NOP, p. 3). The EIR project description and/or mitigation measures should identify locations of proposed habitat restoration or mitigation sites, and the EIR should analyze the elevation proposed for each site in relation to current or long-term average water levels and best available science for projected sea level rise, documenting how the proposed restoration project is an appropriate habitat restoration action.

Ecosystem Restoration Policy 3: Protect Opportunities to Restore Habitat

Delta Plan Policy **ER P3** (Cal. Code Regs., tit. 23, § 5007) states that within priority habitat restoration areas (PHRAs) depicted in Appendix 5 (<u>https://deltacouncil.ca.gov/pdf/delta-plan/2013-appendix-b-combined.pdf</u>), significant adverse impacts to the opportunity to restore habitat at appropriate locations must be avoided or mitigated.

Based on the NOP project description and ongoing discussions with the SEC, Project construction activities and operations could have significant adverse impacts on habitat restoration within the Cosumnes/Mokelumne Confluence PHRA. However, the locations of specific facilities that have potential to impact the Cosumnes/Mokelumne Confluence PHRA are not disclosed in the NOP. In the EIR, DWR should disclose whether ancillary facilities will be located within the PHRA and analyze the potential for construction activities and operations

of these facilities to result in significant adverse impacts to the opportunity to restore habitat in the PHRA. Proposed mitigation measures should clearly identify how such potential impacts would be avoided or mitigated.

Ecosystem Restoration Policy 4: Expand Floodplains and Riparian Habitats in Levee Projects

Delta Plan Policy **ER P4** (Cal. Code Regs., tit. 23, § 5008) requires levee projects to evaluate and, where feasible, incorporate alternatives to increase floodplains and riparian habitats. As described in ongoing discussions at the SEC, modifications of Delta levees will be required to construct two intakes and potentially for tunnel launch shafts and other ancillary facilities. Therefore, this policy applies to the Project.

ER P4 requires evaluation of setback levees in several areas of the Delta, including the Sacramento River between Freeport and Walnut Grove, Steamboat Slough, and Sutter Slough. The EIR should evaluate the potential to incorporate setback levees at locations within these areas where Delta levees would be modified to accommodate Project or ancillary features, identify alternatives that would expand floodplains and riparian habitats, and describe the feasibility of such alternatives. Council staff encourage DWR to review the January 2016 report "Improving Habitat along Delta Levees".³ This report recommends habitat designs along levees that may provide greater benefits to target native species (with an emphasis on salmon and riparian birds).

In addition, the ongoing SEC meetings have informed the public about potential Project infrastructure (e.g., intakes, alignments/corridors, a southern forebay) with greater specificity than is included in the NOP. To the degree relevant, such information should be used to develop the EIR project description and should be analyzed in the EIR.

Ecosystem Restoration Policy 5: Avoid Introductions of and Habitat Improvements for Invasive Nonnative Species

Delta Plan Policy **ER P5** (Cal. Code Regs., tit. 23, § 5009) requires that the potential for new introductions of or improved habitat conditions for nonnative invasive species, striped bass, or bass must be fully considered and avoided or mitigated in a manner that appropriately protects the ecosystem.

The EIR should analyze how the Project would avoid or mitigate introductions or improved habitat conditions for nonnative invasive species, striped bass, or bass. Proposed mitigation and minimization measures should be consistent with, and equally or more effective than, those identified in the Delta Plan MMRP (<u>https://www.deltacouncil.ca.gov/pdf/delta-plan/2018-appendix-o-mitigation-monitoring-and-reporting-program.pdf</u>), including Delta Plan Mitigation

³ Available upon request by contacting <u>archives@deltacouncil.ca.gov</u>

Measure 4-1, which requires development and implementation of an invasive species management plan for any project where construction activities or operations could introduce or facilitate establishment of invasive species.

Delta as Place Policy 1: Locate New Urban Development Wisely

Delta Plan Policy DP P1 (Cal. Code Regs., tit. 23, § 5010) requires that new residential, commercial and industrial development be restricted to areas described in Delta Plan appendices 6 and 7.

The NOP does not describe residential, commercial or industrial development as part of the Project, but does describe ancillary features that could be constructed. The EIR should analyze the Project's potential to create both temporary and permanent residential, commercial, and industrial development in applicable areas and describe the resulting potential impacts.

Delta as Place Policy 2: Respect Local Land Use when Siting Water or Flood Facilities or Restoring Habitats

Delta Plan Policy **DP P2** (Cal. Code Regs., tit. 23, § 5011) requires the siting of project improvements/facilities to avoid or reduce conflicts with existing or planned future land uses when feasible. DP P2 may also apply if mitigation habitat is required within the Delta. Independent from state law related to local land use authority and CEQA requirements, DP P2 is a directive to state and local public agencies proposing covered actions, and it specifically requires water management facilities, ecosystem restoration projects, and flood management infrastructure to be sited to avoid or reduce conflicts with existing uses or those uses described or depicted in city and county general plans for their jurisdictions or spheres of influence when feasible, considering comments from local agencies and the Delta Protection Commission.

DP P2 considers a range of effects that extend beyond CEQA requirements. The EIR should describe the project process to avoid or reduce conflicts with existing or planned future land uses. This is a wide-ranging policy relevant to many resource areas in the Delta. Given the importance of agricultural land use, presence of Legacy towns, and the unique culture and history of the region, DWR should include in the EIR detailed analyses of potential impacts as well as documentation of how existing and planned land uses would be protected, or how potential conflicts with planned land uses would be mitigated, when feasible.

Based on the record for California WaterFix, similarity of the proposed central tunnel alignment, and ongoing discussions with the SEC, the following issues should receive particular focus in the EIR to demonstrate that DWR has avoided or reduced underlying conflicts with existing or planned Delta land uses when feasible:

- Potential conflicts with local land use plans
- Potential conflicts with existing Delta communities

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- Potential conflicts with existing Delta parks and recreation uses
- Potential conflicts with existing agricultural lands
- Potential conflicts with community land uses or economic conditions in legacy Delta communities that rely on agriculture
- Potential conflicts with existing land uses due to:
 - Cultural and historical resource impacts
 - o Traffic impacts
 - Noise and vibration impacts
 - o Visual and aesthetic resource impacts
 - Public health and hazards impacts
 - Wastewater discharge facility impacts

In addition, as part of the previous WaterFix project, DWR committed to "the implementation of a Community Benefits Fund, or its equivalent. This fund would incorporate good neighbor policies to avoid negative impacts on agricultural lands, residents and businesses by providing a mechanism for communication with local government and community members and disburse funds to protect and enhance the Delta as an evolving place." (<u>DWR Certification of</u> <u>Consistency for California WaterFix, DP P2, pp. 21-22</u>). The NOP does not describe a similar mechanism as part of the Project. If such a fund is proposed as part of the Project or as mitigation for potentially significant or significant impacts, it should be described in the EIR and in a future certification of consistency. DWR should describe how the fund would be managed and administered, how fund expenditures would reduce significance of Project impacts contributing to conflicts with existing land uses, and how the fund would constitute an enforceable commitment to reduce such impacts.

Risk Reduction Policy 1: Prioritization of State Investments in Delta Levees and Risk Reduction

Delta Plan Policy **RR P1** (Cal. Code Regs., tit. 23, § 5012) calls for the prioritization of discretionary State investments in Delta flood risk management, including levee operation, maintenance and improvements. Policy RR P1 further establishes interim priorities to guide such investments.

The EIR should describe if and how DWR has incorporated the prioritization of state investments in Delta levees and risk reduction to the extent that modifications of Delta levees will be required as part of the Project.

Risk Reduction Policy 2: Require Flood Protection for Residential Development in Rural Areas

Delta Plan Policy **RR P2** (Cal. Code Regs., tit. 23, § 5013) requires that "New residential development of five or more parcels shall be protected through floodproofing to a level 12 inches above the 100-year base flood elevation, plus sufficient additional elevation to protect

against a 55-inch rise in sea level at the Golden Gate, unless the development is located within:

- (1) Areas that city or county general plans, as of the date of the Delta Plan's adoption, designate for development in cities or their spheres of influence;
- (2) Areas within Contra Costa County's 2006 voter-approved urban limit line, except Bethel Island;
- (3) Areas within the Mountain House General Plan Community Boundary in San Joaquin County; or
- (4) The unincorporated Delta towns of Clarksburg, Courtland, Hood, Locke, Ryde, and Walnut Grove, as shown in <u>Appendix 7</u>."

As described in the NOP, the Project does not appear to involve residential development in rural areas. If such development is proposed, the EIR should analyze and describe such development.

Risk Reduction Policy 3: Protect Floodways

Delta Plan Policy **RR P3** (Cal. Code Regs., tit. 23, § 5014) restricts encroachment in floodways that are not either a designated floodway or a regulated stream. RR P3 states that "no encroachment shall be allowed or constructed in a floodway unless it can be demonstrated by appropriate analysis that the encroachment will not unduly impede the free flow of water in the floodway or jeopardize public safety".

The EIR should describe how construction activities and operations of Project and ancillary features would not impede the free flow of water in the floodway or jeopardize public safety.

Risk Reduction Policy 4: Floodplain Protection

Delta Plan Policy **RR P4** (Cal. Code Regs., tit. 23, § 5015) states that no encroachment shall be allowed or constructed in the floodplain areas specified within the regulation – including the Yolo Bypass, the Cosumnes-Mokelumne River Confluence, and the Lower San Joaquin River Floodplain Bypass area – unless it can be demonstrated by appropriate analysis that the encroachment will not have a significant adverse impact on floodplain values and functions.

The EIR should describe how construction activities and operations of Project and ancillary features would not result in encroachment on a designated floodplain.

CEQA Regulatory Setting

For each resource section in which a Delta Plan policy is applicable, the EIR's description of the regulatory setting should include the Delta Reform Act, the Delta Plan and a reference to the specific applicable regulatory policy or policies. The Council encourages DWR to consider including a section in the EIR that specifically describes alignment with Delta Plan policies,

identifying where supporting information can be found throughout the document and supporting appendices.

Closing Comments

As DWR proceeds with design, development, and environmental impact analysis of the Project, we invite you to continue to engage the Council in early consultation (prior to submittal of a Certification of Consistency) to discuss Project features and mitigation measures that would promote consistency with the Delta Plan. We also encourage DWR to continue to present Project updates at Council meetings.

In addition, information on the Conveyance, Storage, and Operation amendment to the Delta Plan (April 2018) can be found online at http://deltacouncil.ca.gov/pdf/delta-plan/2018-04-26-amended-chapter-3.pdf. This amendment updated Delta Plan Chapter 3 to include new recommendations (Recommendations WR R12a through WR R12j) supporting the concept of dual conveyance that are relevant to the Project. We encourage DWR to review these and incorporate them in the Project and its environmental analysis as appropriate.

More information on covered actions, early consultation, and the certification process can be found on the Council website at <u>https://coveredactions.deltacouncil.ca.gov/</u>. Council staff are available to discuss issues outlined in this letter as you proceed in the next stages the Project. Please contact Daniel Constable at (916) 322-9338 (<u>daniel.constable@deltacouncil.ca.gov</u>) with any questions.

Sincerely,

MUHE

Jeff Henderson, AICP Deputy Executive Officer Delta Stewardship Council

CC: Marcus Yee, Department of Water Resources (Marcus.Yee@water.ca.gov) Carrie Buckman, Department of Water Resources (Carolyn.Buckman@water.ca.gov) Katherine Marquez, Department of Water Resources (<u>Katherine.Marquez@water.ca.gov</u>) Kathryn Mallon, Delta Conveyance Design and Construction Authority (kathrynmallon@dcdca.org) Erik Vink, Delta Protection Commission (<u>Erik.Vink@delta.ca.gov</u>) Campbell Ingram, Sacramento-San Joaquin Delta Conservancy (Campbell.Ingram@deltaconservancy.ca.gov)

Diane Riddle, State Water Resources Control Board (Diane.Riddle@waterboards.ca.gov) Jessica Fain, Bay Conservation and Development Commission (Jessica.Fain@bcdc.ca.gov) From:arabellamills@aol.comTo:DWR Delta Conveyance ScopingSubject:comment letter attachedDate:Wednesday, April 15, 2020 2:29:10 PMAttachments:Delta Conveyance Project Comments.pdf

Please fine my attached letter, Arabella Merlo

DCS791

Arabella Merlo

P.O. Box 627 Woodbridge, CA 95258 arabellamills@aol.com

April 15, 2020

Delta Conveyance Project Scoping Comments ATTN: Renee Rodriquez Department of Water Resources P.O. Box 942836 Sacramento, CA 95236

DeltaConveyanceScoping@water.ca.gov

RE: Comments on the Scope of Issues to be considered in the Delta Conveyance Project Environmental Analysis

Dear Ms. Rodriquez:

As a property owner on Brack Tract, located at the west end of Woodbridge Road, and as a member of Reclamation District #2033, I am writing in opposition to the proposed new diversion and conveyance facilities, especially the Eastern Tunnel Corridor option. This option is shown going thru Brack Tract and would directly affect my property.

In regards to Location:

The Eastern Tunnel Corridor Option would directly affect our ability to farm with the construction obstacles and pollution, especially with only one entry, Woodbridge Road, to the tract. This option would directly affect Reclamation District 2033's ability to provide drainage and levee maintenance. The Eastern Tunnel Corridor option is also closer to Lodi and Stockton, bring its problems and pollution closer to large populations.

Brack Tract is known for the Woodbridge Ecological Reserve, home to Sandhill Cranes, Tundra Swans and other birds. This Reserve (according to the California Department of Fish and Wildlife) provides the largest area of freshwater marsh wintering habitat in the State, not only for Sandhill Cranes, but for other waterfowl as well. Many birds use the reserve as their fall and winter home. Local residential birds include the red-wing blackbird, black-shouldered kite, American Kestrel, ring-neck pheasant, meadow larks and other small song birds. As President of a local chapter of the National Audubon Society stated at a Scoping Public Hearing, new habitats would have to be established prior to construction and surveys over several years would be needed as birds often return only to their same place of birth habitat to breed. Brack Tract and the proposed Eastern Tunnel Corridor option is <u>NOT</u> the location for this project.

In regards to Alternatives:

This project does not provide equal protection under the law. There would clearly be damage to the people and habitat of the Central Valley and the Delta in terms of air quality, increased algae blooms, water quality, and damage to the health of the people by redistributing water to benefit water contractors. In fact, the Metropolitan Water District, by funding this DWR work creates a vested interest, has created a situation where DWR is predetermining the project and working backwards to approve so called feasible mitigation measures.

Alternates must include <u>No Diversion Alternatives</u>, such as desalination plants and/or water storage. Areas benefitting must find their own alternatives to increase their water supply in order to maintain the existing fragile water quality in the Delta.

In regards to Impacts and Mitigation:

The argument was made by DWR staff at a Scoping Public Hearing that salt water intrusion is a foregone conclusion due to climate change. This is obviously to take the impact of salt water intrusion out of the discussion of impacts and mitigation. Salt water intrusion is a real issue now and not something the EIR can overlook due to the excuse that sea water levels may rise in the future. Removing water from the Delta with this project does increase salt water intrusion and the impact to habitat and farming must be considered.

The EIR must consider drought and high water events and their effects (algae blooms, air and water quality) as well as how less water will be allocated.

The EIR must consider hidden costs to the landowners through disruptions to farming, levee maintenance, damage to ground levels due to soils, damage to ground water, affects of construction, pollution and possible new regulations due to poor water and air quality (i.e. fish screens, etc).

DCS791

The EIR must consider the effect to Reclamation Districts, which on the backs of landowners have to maintain levees and provide drainage.

This project clearly would destroy wildlife and habitat by taking water out of the existing ecosystem, one of the greatest deltas in the world. Once destroyed it cannot be "mitigated".

Sincerely, Aabella Merlo

From:	Sarah Salisbury
To:	DWR Delta Conveyance Scoping
Subject:	Comment on Delta Conveyance Environmental Scoping
Date:	Thursday, April 16, 2020 1:11:53 PM

To Whom It May Concern~

I attended the ONLY scoping meeting regarding the Delta Conveyance Project held in northern California. This in itself is objectionable. How can it be possible for you decisionmakers to get the full scope of responses from those who live where the water comes from when you schedule just one meeting there? I understand that there were several such meetings south of the delta, where the recipients of the water, of course, think it's a lovely plan. Up here, not so much.

It was tremendously moving to hear and see the various Tribal representatives as they responded. I believe there were videos being made; I suggest you look at one to get the full flavor of the passion and desperation and injustice felt by those representatives.

My objections: The scope of the EIR is insufficient. The Trinity River complex is not included (see tribal responses). Nor was the Feather River complex (the area where I live). To proclaim, as the presenters did, that there was no reason to include those river systems, since the project will be constructed south of these areas, is disingenuous at best, deceptive, insulting, and, at the worst, a craven lie.

Of course, there will be environmental impacts north of the delta! Where do you think the water comes from that will be more "efficiently" conveyed? If the conveyance is more "efficient", that means that more water will leave the north state to be delivered to highly questionable (in many, though not all, instances) destinations. The water that naturally flows out to sea through the delta must continue to do so, otherwise there will be considerable environmental impacts to the creatures and people of the delta, as well as the same at the confluence of fresh and salt water. Should it be truly the case that sea rise will make for greater salinity in inland waterways, surely, at a cost similar to that of a HUGE tunnel, clever modern science and engineering can adjust for that.

We humans alter the perfect balance of "Mother Nature" at our peril. It would be best to abandon this project in the service of the salmon, the oaks trees, the people and all living things of the north state rather than to contribute to their destruction. NO TUNNEL!

~Sarah Salisbury

From:	Rebekah Olstad
To:	DWR Delta Conveyance Scoping
Subject:	Comment on Delta Tunnel Project
Date:	Friday, April 17, 2020 12:01:36 PM

Hello,

I am writing to provide comments on the proposed Delta Tunnel project. I live in Oakland, CA and I am concerned about the project's impact on indigenous people. Our government cannot ignore their requests and continue the actual and cultural genocide of their people. It is also unacceptable to try to move forward such a huge project that has such a large impact on people's lives when many communities cannot meaningfully engage with the commentary process because they don't have high speed internet and cannot attend meetings in person because of social distancing requirements. I agree with the following comments: -If the California governor's office does not have the free, prior and informed consent of the Indigenous people, then he has no right to build the tunnel. No consent, no tunnel!

-The EIR (Environmental Impact Report) should analyze impacts to California's salmon people, including salmon dependent Tribes along the length of the affected watersheds, as well as coastal fishing communities.

-The EIR should analyze alternatives that would increase Delta outflow and reduce water exports as compared to current conditions in the Delta.

-The EIR should analyze the impacts to source waters, and their reservoir storage, including the Trinity, Klamath, Sacramento, Feather, Yuba and San Joaquin Rivers and their tributaries. Water quality impacts from any increased diversions should be included in this analysis.

-The EIR should analyze the cumulative impacts of the Delta tunnels in the context of the new Trump administration Biological Opinions for the Trump Water Plan, the BOR plan to raise Shasta Dam, the long term operations of the State Water Project, and the proposed Sites Reservoir. Would these new projects and rules be used to fill the tunnels?

-The EIR should analyze water conservation, efficiency, and additional demand reduction measures that would be less environmentally harmful and more economical than the tunnel and achieve the same water supply reliability goals and targets.

-The EIR must analyze the tunnel's consistency with the Delta Reform Act's policy of reduced reliance on the Delta as a water source.

-The EIR must analyze the tunnel's cumulative impacts, with particular focus on:

oglobal climate change impacts;

 \circ water quality, including effects of increases in salinity, toxic hot spots, pesticides, mercury, and other pollutant discharge that won't be cleaned out due to lack of freshwater in the Delta;

 \circ biological resources, including all species that may be impacted by the SWP, as well as upland habitats that may be affected;

 \circ impacts on tunnel alignment, since the proposed eastern alignment has potential for significant urban impacts for Delta residents; and

• Impacts incurred during construction of the tunnel

-The EIR must adequately analyze the effectiveness of proposed mitigation and conservation measures over the term of the tunnel project, and include mitigations and protections for every impacted watershed.

- The EIR should analyze the economic costs and benefits of the single tunnel project, as well as those of a "no tunnel" alternative and investment in water conservation and efficiency improvements to meet water supply needs.

-DWR must investigate serious alternatives, including a no tunnel alternative that could address the main objectives of this project without any additional water diversions. Input from tribes, traditional ecological knowledge, and the recommendations in the Environmental Water Caucus' "A Sustainable Water Plan for California," should be considered in developing a No Tunnel alternative.

-The ancestral lands and watersheds of the Hupa, Yurok, Karuk, Pit River and Winnemem Wintu tribes should be added to the project area, and they must be consulted as required by CEQA AB 52 as the Delta Tunnel would impact their cultural resources. The Delta Tunnel, if constructed, would be pumping water from these rivers, the flows of which have already been heavily degraded by reservoirs, diversions and hydroelectric projects.

-As required by the UN Declaration on the Rights of Indigenous People, the Department of Water Resources must seek out the free, prior and informed consent of the tribes before greenlighting this project.

-The EIR must include an environmental racism analysis to determine if the environmental burden of this project will disproportionately fall upon people of color and Indigenous people.

Sincerely

Rebekah Olstad

From:	Stacy Sebring
To:	DWR Delta Conveyance Scoping
Subject:	comment on on Delta Conveyance
Date:	Friday, April 17, 2020 11:26:27 AN

To whom it may concern, I live in Trinity County California, specifically Hyampom on the South Fork of the Trinity River. All of us in the Trinity River drainages have watched the fisheries decline since the building of Trinity Dam. Last years report on Salmon numbers in the Trinity River was very grim. Very low with prospects for future runs looking seriously poor. I am writing in complete disagreement to the Delta Tunnel Project. It will end up taking way more water than already taken for Ag use to the South. You need to study how your project will end up affecting the South Fork Trinity River and all other tributaries to the Trinity. The Trinity River is NOT a tributary of the Sacramento River!!! It is the largest tributary to the Klamath, and in it's natural state, added much need fresh, cold water to the Klamath system. This is a time for restoration NOT NEW DIVERSIONS! What alternatives have you looked at? I have seen none. No one has. This project will be severely detrimental to not only the Trinity River system, but to the Delta. The Delta needs fresh water to enter the SF Bay for all aquatic life forms. My says Is NO to the Delta Tunnel and NO to Sites Reservoir. We are entering a new phase of drought. Do not suck our rivers dry! Signed, Stacy Sebring

From:	Thomas P. Schlosser
To:	DWR Delta Conveyance Scoping; Small, Nadine@DWR; carrie.buckman@water.ca.gov;
	anecitaagustinez@gmail.com; Bobbie.Randhawa@water.ca.gov; Marquez, Katherine@DWR;
	Ken.Bogdan@water.ca.gov; Kistina.Reese@water.ca.gov; Nelson, Tim@DWR
Cc:	Michael Orcutt (director@hoopa-nsn.gov); Danny Jordan (de_jordan@earthlink.net); Joseph R. Membrino - Hall,
	Estill, Hardwick, Gable, Golden & Nelson (Membrino, Joseph); Alexandra Mojado (hvtota.mojado@gmail.com);
	<u>Amber Turner (hvtcsecretary@hoopa-nsn.gov); Colegrove, Tess (ota@hoopa-nsn.gov); Darcy Miller</u>
	(hupa_darcy@yahoo.com); Davis, Joe (jgd119@humboldt.edu); Everett. gov (Everett.colegrove@hoopa-
	<u>nsn.gov); Hedi Bogda (hedibogda@hotmail.com); Leilani Pole (witchpecjones@aol.com); nelson Jr. Byron</u>
	(bighorn1004@hotmail.com); Oscar Billings (oscar.billings@hoopa-nsn.gov); Ryan Jackson; Vivienna Orcutt
	(viorcutt@gmail.com)
Subject:	Comments of Hoopa Valley Tribe re Notice of Preparation of EIR for Delta Conveyance Project
Date:	Friday, April 3, 2020 10:11:55 AM
Attachments:	Signed Comment Letter DWR Notice Preperation of EIR Delta Tunnel.pdf

Attached please find the comments of the Hoopa Valley Tribe. Please let me know if you have any difficulty with the document or have questions concerning issues noted there.

Best,

Tom Schlosser Hoopa Valley Tribe attorney 206 386 5200



HOOPA VALLEY TRIBAL COUNCIL

Hoopa Valley Tribe Post Office Box 1348 Hoopa, California 95546 PH (530) 625-4211 • FX (530) 625-4594 www.hoopa-nsn.gov



April 2, 2020

Via E-mail (DeltaConveyanceScoping@water.ca.gov)

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

Re: Scoping Comments of Hoopa Valley Tribe on Notice of Preparation of an Environmental Impact Report (EIR) for the Delta Conveyance Project in the Sacramento-San Joaquin Delta, California

Dear Ms. Rodriguez:

On behalf of the Hoopa Valley Tribe ("Tribe"), we submit the following scoping comments on the Department's Notice of Preparation ("NOP") of an Environmental Impact Report ("EIR") for the Delta Conveyance Project in the Sacramento-San Joaquin Delta, California, which was published on January 15, 2020. The Tribe's intent is to provide the Department of Water Resources ("DWR"), as the lead agency, with specific detail about the scope, significant environmental issues, reasonable alternatives, and mitigation measures related to the Tribe's area of statutory responsibility that will need to be explored by DWR in the EIR.

As shown in the NOP, the "Trinity System" is part of the Project Area, north of the Delta. Briefly, the significant issues of concern to the Tribe are centered on (1) protection of the water reserved to the Trinity River by federal law and the 2000 Trinity River Fisheries Restoration Record of Decision (ROD); (2) protection of water quality, particularly temperature, of that reserved Trinity River water; and (3) protection of other water reserved to the Trinity River by the Trinity River Division Act of 1955, (Pub. L. No. 84-386) (1955 Act). These issues directly affect the timing and amount of water available to the conveyance project, and hence, its benefits.

Interest of the Hoopa Valley Tribe

The Tribe is a federally recognized Indian tribe and is located on the Hoopa Valley Reservation ("Reservation"), which was established for the Tribe by the United States in 1864. *Parravano v. Babbitt*, 70 F.3d 539, 542 (9th Cir. 1995), *cert. denied*, 518 U.S.1016 (1996). The lower twelve miles of the Trinity River, and a stretch of the Klamath River near the Trinity confluence, flow through the Tribe's Reservation. Since time immemorial, the fishery resources of the Trinity and Klamath Rivers have been the mainstay of the life and culture of the Tribe.

The principal purpose of the Tribe's Reservation was to set aside sufficient resources of these rivers for the Indians to be self-sufficient and achieve a moderate standard of living based on fish. Memorandum from John D. Leshy (M-36979), Solicitor of the Department of the Interior to the Secretary of the Interior (Oct. 4, 1993), *cited with approval, Parravano*, 70 F.3d at 542. The United States, as trustee for the Tribe, has a fiduciary responsibility to protect and preserve the Tribe's trust resources. *Klamath Water Users Ass'n v. Patterson*, 204 F.3d 1206, 1213 (9th Cir. 2000); Memorandum to Regional Director, Bureau of Reclamation from Regional Solicitor, Pacific Southwest Region (July 25, 1995) ("Reclamation must exercise its statutory and contractual authority to the fullest extent to protect the tribal fisheries and tribal water rights").

When Congress authorized the Trinity River Division ("TRD") of the Central Valley Project ("CVP") in 1955, Congress recognized that "an asset to the Trinity River Basin, as well as to the whole north coastal area, are the fishery resources of the Trinity River." S. Rep. No. 1154, 84 Cong., 1st Sess. (1955 Senate Report) at 5; H.R. Rep. No. 602, 84th Cong., 1st Sess. (1955 House Report) at 4. Congress accordingly limited the integration of the TRD into the CVP and required the Secretary of the Interior to exercise a priority for use of all TRD water necessary to protect fish and other in-basin needs. 1955 Trinity River Division Central Valley Project Act, Pub. L. No. 84-386, 69 Stat. 719 ("1955 Act"), § 2 (provisos); Memorandum from Solicitor to Assistant Secretary, Land and Water Resources, Dec. 7, 1979. See also Memorandum from Solicitor to Secretary (M-37030) re Trinity River Division Authorization's 50,000 Acre-Foot Proviso and the 1959 Contract between the Bureau of Reclamation and Humboldt County, December 23, 2014.¹

Nonetheless, development and operation of the TRD without faithful adherence to the foregoing legal and fiduciary obligations took a devastating toll on the Tribe, its tribal members, the tribal community, the Trinity and Klamath Rivers, and the fish species that rely on those rivers. Between 1963 and 1981, Chinook salmon runs in the Trinity River declined by 80%. Eighty to ninety percent of total salmonid habitat in the Trinity Basin was lost during that time. In 1981, relying on an environmental study, the authority provided by the 1955 Act, § 2, and the trust obligation to protect tribal resources, the Secretary ordered an increase of annual flows released from the TRD to the Trinity River downstream of Lewiston Dam to 340,000 acre-feet annually and further directed initiation of a Trinity River Flow Evaluation Study ("TRFES") to study and develop a flow regime and other measures to improve habitat conditions in the Trinity River. The Secretary concluded "there are responsibilities arising from congressional enactments, which are augmented by the federal trust responsibility to the Hupa and Yurok tribes, that compel restoration of the river's salmon and steelhead resources to pre-project levels." 1981 Secretarial Order.

In 1984, Congress affirmed and authorized the Secretary's restoration directive in the

¹ The first proviso of Section 2 of the 1955 Act provides that "... the Secretary is authorized and directed to adopt appropriate measures to insure the preservation and propagation of fish and wildlife" The second proviso of Section 2 of the 1955 Act provides that "... not less than 50,000 acre-feet shall be released annually from the Trinity Reservoir and made available to Humboldt County and downstream water users." These two provisos "represent separate and independent limitations on the TRD's integration with, and thus diversion of water to, the CVP." Memorandum M-37030, December 23, 2014.

Trinity River Basin Fish and Wildlife Management Act ("1984 Act"), Pub. L. No. 98-541, 98 Stat. 2721. Congress extended the scope of the restoration mandate to the Klamath River in the Klamath River Basin Conservation Restoration Area Act ("1986 Act"), Pub. L. No. 99-552, 100 Stat. 3080. The express goal and directive of these acts was to restore anadromous fish populations to optimum levels in both the Klamath and Trinity River Basins. Congress reauthorized and amended the 1984 Act in the Trinity River Basin Fish and Wildlife Management Act of 1996 ("1996 Act"), Pub. L. No. 104-143, 110 Stat. 1339 (1996). The 1996 Act amended and expanded the scope of the 1984 Act's mandate to include rehabilitation of fish habitat "in the Klamath River downstream of the confluence with the Trinity River." 1996 Act, § 3(b).

In 1992, Congress passed the Central Valley Project Improvement Act ("CVPIA"), Pub. L. No. 102-575, § § 3401-12, 106. Stat. 4600, 4706-31 (1992). Section 3406(a) of the CVPIA modified the purposes of the CVP to include the mitigation, protection, and restoration of fish and wildlife. Section 3406(b)(23) of the CVPIA expressly confirmed the Bureau of Reclamation's trust responsibility to the Tribe and its fishery. The CVPIA required the Secretary to take specific actions "in order to meet Federal trust responsibilities to protect the fishery resources of the Tribe, and to meet the fishery restoration goals of the [1984 Act]." CVPIA, § 3406(b)(23). Congress directed the Secretary to complete the TRFES and, if the Secretary and the Tribe concurred in the TRFES' recommendations once completed, directed the Secretary to implement any increase in flow and CVP operations accordingly. *Id.*, § 3406(b)(23)(B).

The U.S. Fish and Wildlife Service, the Tribe and other agencies completed the TRFES in 1999. The TRFES recommended a flow regime and management actions to rehabilitate habitat in the mainstem channel of the Trinity River between Lewiston Dam and the Klamath confluence at Weitchpec. The TRFES did not address restoration issues downstream of the Trinity-Klamath confluence. Following completion of the TRFES and an EIS under NEPA, the Secretary, with the Tribe's concurrence as required by Section 3406(b)(23) of the CVPIA, executed the Trinity River Mainstem Fishery Restoration Record of Decision ("ROD") in December 2000. The 2000 Trinity ROD adopted the TRFES' recommendations to restore physical fishery habitat in the mainstem Trinity River pursuant to Congress' direction in the 1984 Act and the CVPIA. The Tribe has been and remains an active leader in implementation of habitat rehabilitation projects pursuant to the ROD.

In September 2002, thousands of fall-run Chinook salmon died in the lower-Klamath River during their migration upstream when a combination of unusually low flows, warm water temperatures, and a large number of returning fish led to a severe disease outbreak. In certain recent years (2003-2004, 2012-2015), the Secretary has scheduled extra releases of water from Trinity Reservoir during the late summer when fishery managers and scientists determined that fish returns and low flow conditions were expected to duplicate conditions present in 2002. The Ninth Circuit affirmed the Secretary's authority to implement these "flow augmentation releases" pursuant to Section 2 of the 1955 Act. *San Luis & Delta-Mendota Authority v. Haugrud*, 848 F.3d 1216 (9th Cir. 2017). On April 20, 2017, the Bureau of Reclamation executed its Record of Decision re Long-Term Plan to Protect Adult Salmon in the Lower Klamath River Final Environmental Impact Statement (FARs ROD). The Bureau selected the

Proposed Action of providing supplemental flows from mid-August to late September, from Lewiston Dam to prevent a disease outbreak in the lower Klamath River in years when the flow in the lower Klamath River is projected to be less than 2,800 cfs. The Bureau relied on Section 2 of the 1955 Act for the statutory authority for its decision.

The current state of the fishery in the Klamath-Trinity river system remains unstable and imperiled due to continued federal mismanagement, particularly in the coordinated operation of the CVP and SWP. Abundance and fishery allowances for Chinook salmon in 2017 were at the lowest levels since the stock was first managed in 1978. In consideration of the unprecedented low stock size, the Pacific Fishery Management Council significantly limited 2017 marine fisheries affecting Klamath River fall Chinook ("KRFC"). The harvest guideline for the in river Tribal fishery was set to 814 adult KRFC. The Tribe and the Yurok Tribe share the annual harvestable surplus of KRFC on a 50-50 basis with non-Tribal fisheries. This harvest of only 814 KRFC was the lowest ever reserved for the two tribes whose collective membership exceeds 8,000 persons. Adding to the collapse of the tribal fishery for KRFC were record low returns of Coho salmon, which are listed (since 1997) under the Federal ESA as a "threatened" species. Klamath-Trinity origin Coho salmon are part of the Southern Oregon Northern California Coastal ("SONCC") Evolutionarily Significant Unit ("ESU)" that are listed under the Federal Environmental Species Act ("ESA").

The federal statutory directive to return fish species in the Klamath and Trinity Rivers to pre-TRD levels has fallen woefully short due to mismanagement and continuing failure to recognize the priority for use of TRD water necessary to protect fish and other in-basin needs and for economic development. As an example, Trinity hatchery mismanagement has contributed to the instability and degradation of the fishery through CVP/SWP coordination mismanagement lacking proper oversight or goal and objective review. Nor can the Hoopa Valley Tribe or its members achieve the promised moderate livelihood based on fish. The United States, the State of California, and the Bureau of Reclamation, collectively and independently have a responsibility to ensure protection, preservation, and restoration of the Tribe's fisheries resources, which at the present time are in extremely imperiled condition. Any action taken by DWR with respect to coordinated operations of the CVP must be consistent with existing legal obligations to the Tribe and the Trinity and Klamath Rivers.

Scoping Comments of the Hoopa Valley Tribe

 Modification of Coordinated SWP-CVP Operations Must Fully Account For, Develop, and Implement Necessary Measures for Mitigation, Restoration, Preservation, and Propagation of the Affected Fish Species, Habitat, and Indian Trust Assets.

The January 15, 2020 Notice of Preparation appears to be focused on physical alternatives to maximize water deliveries for consumptive purposes south of the Delta while largely ignoring environmental impacts of the coordinated operations with the CVP. However, one of the essential purposes of the CVP, as approved by Congress, is to mitigate, restore, preserve, and propagate fish and wildlife. CVPIA Section 3406(a). Consequently, the description of the purpose of the proposal as well as subordinate objectives must also include protection of

fisheries, including those in the Trinity and Klamath rivers, for which the State of California is responsible. To ensure full disclosure of environmental impacts, inclusion of fisheries protection to the EIR statement of purpose is required as a benchmark against which EIR alternatives will be measured. Moreover, as discussed above, federal reclamation law establishes a first priority for use of the CVP water developed by the TRD for restoration, preservation and propagation of Trinity River fish and wildlife, and economic development of the Hoopa Valley Tribe and other water users downstream of the TRD. Any alternatives considered for long-term operation with the CVP must consider ways to fully implement the mitigation, restoration, preservation, and propagation of fish and wildlife and Hoopa Valley Tribe economic development as mandated by Congress and required by the United States' and the State's obligations.

Specific examples of protective and restorative measures that the EIR should evaluate and ultimately adopt include:

- Full funding and implementation of actions under the 2000 ROD.
- Augmentation of flows beyond the requirements of the 2000 ROD as necessary for preservation and propagation of fish in the Trinity and/or Klamath Rivers when conditions warrant.
- Coordinating and integrating operation of CVP/TRD operations with the Klamath Irrigation Project in a joint directorate with the Tribe.
- Funding and developing infrastructure to establish and maintain temperature of water releases from TRD facilities suitable for fish and wildlife preservation and propagation.
- Upgrading the TRD hatchery facilities and funding the Tribe's plans for additional selective harvest;
- Transferring management of TRD hatchery to the Tribe.
- When called upon by the Tribe as a third party beneficiary of the June 19, 1959 contract between the United States and Humboldt County for annual release of 50,000 acre-feet of TRD water for: (a) facilitating economic development of the Hoopa Valley Reservation; and (b) fishery preservation and propagation activities in addition to those provided for with Proviso 1 TRD water.
- Accumulating and maintaining in TRD carryover storage for use in the Trinity/Klamath basin for beneficial uses, up to 150,000 acre-feet of Proviso 2 water.
- Facilitating lease or exchange of Proviso 2 water in carryover storage to CVP contractors and the State Water Project on terms acceptable to the Tribe.

In summary, no coordinated CVP-SWP operations should be undertaken without full recognition and implementation of the Congressional priorities and mandate to mitigate, restore, preserve, and propagate fish and wildlife and provide for economic development of TRD water in the Trinity/Klamath basin. The Hoopa Valley Tribe depends on the water and fish of the Trinity and Klamath Rivers and the EIR must recognize that the Bureau of Reclamation, as trustee to the Tribe, must exercise its statutory and contractual authority to the fullest extent to protect the tribal resources and the in-basin water needs. The Secretary must identify and avoid any impacts in any program it undertakes to make water deliveries to CVP contractors whose

entitlement to use CVP water is manifestly junior to the Tribe's right under reclamation law to CVP water.

2. Recognize Priorities for use of TRD water downstream of Lewiston Dam.

As described above, the Trinity River Fishery Restoration ROD of 2000 resulted from Congress's requirement in CVPIA Section 3406(b)(23). In that subsection, Congress directed that the ROD concerning "the minimum Trinity River instream fishery releases established under this paragraph [(b)(23)] and the operating criteria and procedures referred to in subparagraph (A) shall be implemented accordingly." Thus, federal law demands compliance with the ROD. The ROD provides detailed flow releases for each day, depending on the water year type. These are mandatory. It also projects that "long-term average water exports to the Central Valley would be 630,000 acre-feet."

Further, Proviso 1 TRD water for fishery preservation and propagation is also established in the 2017 FARs ROD. There may be additional Proviso 1 needs identified in the future, which also will have priority over diversions to the CVP. 1955 Act Proviso 2 water for economic development must also be protected from export. Accordingly, the EIR must make no assumption that, on average, more water can be exported from the Trinity System to the CVP-DWR coordinated operation than the amounts required to fulfill Proviso 1 and Proviso 2 priorities. Only water surplus to the flow releases of those provisos, and other federal obligations, is available to the coordinated operations of the CVP and SWP.

3. <u>Avoid assuming that changes in the timing of TRD water exports to the CVP can be</u> made.

Trinity River water is stored behind Trinity Dam, then flows approximately 10 miles to Lewiston Dam, where it is either released by the Bureau of Reclamation to the Trinity River or diverted to the Sacramento River. During warm weather, the temperature of water released to the Trinity can rise substantially as it flows between the two dams, especially when Trinity Dam releases are small and little flow is present in that reach. For this reason, the ROD provides: "the TRD [will] be operated to release additional water to the Trinity River, and the timing of exports to the Central Valley would be shifted to later in the summer to help meet Trinity River instream temperature requirements."

Compliance with Trinity River instream temperature requirements is required by water quality standards of the North Coast Regional Water Quality Control Board (NCRWQCB), the water rights permits of the Bureau of Reclamation, and by the Biological Opinion adopted by the ROD. The Biological Opinion includes a mandatory condition, as follows: "7. In dry and critically dry water year types, Reclamation and USFWS shall work cooperatively with the upper Sacramento River Temperature Task Group to develop temperature control plans that provide for compliance with temperature objectives in both the Trinity and Sacramento rivers."

The NCRWQCB temperature objectives are:

Lewiston Dam to Douglas City Bridge

> 60°F July 1 – September 14 56°F September 15 – October 1

Lewiston Dam to confluence of North Fork Trinity River

> 56°F October 1 - December 31

Further, Water Rights Order 90 \Box 5, which governs the Bureau of Reclamation's TRD water rights certificates, provides:

Permittee shall not operate its Trinity River Division for water temperature control on the Sacramento River in such a manner as to adversely affect salmonid spawning and egg incubation in the Trinity River. Adverse effects shall be deemed to occur when average daily water temperature exceeds 56F at the Douglas City Bridge between September 15 and October 1, or at the confluence of the North Fork Trinity River between October 1 and December 31 due to factors which are (a) controllable by permittee and (b) are a result of modification of Trinity River operations for temperature control on the Sacramento River. If the temperatures in the Trinity River exceed 56F at the specified locations during the specified periods, Permittee shall immediately file with the Chief of the Division of Water Rights a report containing project operational data sufficient to demonstrate that the exceedance was not due to modifications of Trinity River operations for water temperature control on the Sacramento River. If, within fifteen days, the Chief of the Division of Water Rights does not advise Permittee that it is violating this condition of its water right, Permittee shall be deemed not to have caused the exceedance in order to control temperature on the Sacramento River.

These temperature standards require rigorous adherence; they can made unattainable if the schedule for water exports to the CVP-SWP is modified. Accordingly, it is essential that the EIR not assume that changes in the schedule of Trinity River exports are possible even if that is desirable from the standpoint of the Delta conveyance.

4. <u>Recognize the influence that management of TRD carryover has on the ability to</u> meet water quality standards in Trinity River

End of season carryover storage behind Trinity Dam influences the ability to meet water temperature standards protective of salmon spawning below Lewiston Dam. Specifically, the total volume of cold water available on 1 June is of significance; this can vary substantially from year to year with volume of runoff, volume and temperature profile of carryover from previous years, and temperature of the present year's runoff into Trinity Lake.

Limitations of TRD infrastructure also affect the ability to meet water temperature needs, as the current facilities cannot be operated to avoid considerable heat gain during summer months. As described in a letter written on 23 May 2016 by the Chair of the Trinity River Restoration Program, Federico Barajas, in a letter to Reclamation Regional Director, David Murillo. "During periods of drought, and in the future under virtually all climate warming

scenarios, the 2-3°F increase in water temperature that occurs in Lewiston Reservoir will likely elevate temperatures to unsuitable levels for salmonids for which Reclamation has Tribal Trust, Public Trust, and Endangered Species Act (ESA) responsibilities."

Water temperature standards for Trinity River below Lewiston Dam were exceeded in October 2015 for a period of two weeks during the onset of salmon spawning. On 21 January 2016, the Tribe filed a request for enforcement of Water Rights Order 90-5², which prohibits diversions from Trinity River that adversely affect salmonid spawning and incubation.

5. <u>Model water deliveries in recognition of 1955 Act priorities for use of Trinity River</u> water.

The second exception in Section 2 of the 1955 Act states: "That not less than 50,000 acre-feet shall be released annually from the Trinity Reservoir and made available to Humboldt County and downstream water users." That mandate requires the annual 50,000 acre-feet release from the Trinity Division to be made in such a way that the water will be available for use by Humboldt County and downstream users. In other words, the 50,000 acre-feet comes with the attributes of TRD storage, regulation and scheduling.

The State of California issued several permits for the Trinity Division. Permit 11968 includes conditions that limit diversions. Permit Condition 9 states "Permittee [Bureau of Reclamation] shall release sufficient water from Trinity and/or Lewiston Reservoirs into the Trinity River so that not less than an annual quantity of 50,000 acre-feet will be available for the beneficial use of Humboldt County and other downstream users." Permit Condition 10 states: "This permit shall be subject to the prior rights of the county in which the water sought to be appropriated originates to use such water as may be necessary for the development of the county, as provided in Section 10505 of the Water Code of California."

In the Department's previous planning, such as the Delta Plan planning process, it appears that modelers assumed that the 1955 Act's reserved 50,000 acre-feet of water could be treated as available for diversion to the Central Valley. This is unlawful. In 1979 the Solicitor of the Department of the Interior reviewed the legal status of the fishery flow releases and the 50,000 acre-feet of water developed and controlled by the Trinity Division. The Solicitor wrote:

On occasion the Congress has specifically limited the Secretary's discretion in meeting the general CVP priorities. For example, in authorizing the Trinity River Division of the CVP in 1955, Congress specifically provided that in-basin flows (in excess of a statutorily prescribed minimum) determined by the Secretary to be necessary to meet inbasin needs take precedence over needs to be served by out-of-basin diversion. See Pub. L. No. 84-386, §2. In that case, Congress' usual direction that the Trinity River Division be integrated into the overall CVP, set forth at the beginning of section 2, is expressly modified by and made subject to the provisos that follow giving specific direction to the

² Letter from Ryan P. Jackson, Chair Hoopa Valley Tribal Council, to John O'Hagan, Permitting and Enforcement Branch Assistant Deputy Director, Division of Water Rights, California State Water Resources Board
April 2, 2020 Page 9

T:\WPDOCS\0020\05543\HVT Scoping Comments on NOF

Secretary regarding in-basin needs.

Memorandum opinion from the Solicitor to the Assistant Secretary, Land and Water Resources 3-4 (December 7, 1979) (1979 Opinion). See also Memorandum from Solicitor to Secretary (M-37030) re Trinity River Division Authorization's 50,000 Acre-Foot Proviso and the 1959 Contract between the Bureau of Reclamation and Humboldt County, December 23, 2014. So long as the EIR does not confirm that the 50,000 acre-feet entitlement for the Trinity Basin is unavailable to the CVP-DWR coordinated operation, it will significantly overstate the water benefits of the alternatives under consideration.

In summary, no further planning for the Bay-Delta should occur that assumes the availability for diversion of any Trinity River water resources that are committed by law to the Trinity River Basin and its communities. The EIR. should preclude the availability for use in a delta conveyance water allocated to: the ROD flow releases; the 50,000 acre-feet of additional Trinity Division water for Humboldt County and downstream users; the carryover storage for preservation of temperatures needed for the Trinity River fishery; or the area of origin rights of Trinity County.

Sincerely yours,

HOOPA VALLEY TRIBAL COUNCIL

Byron Nelson, Jr., Chairman

From:	Socorro Pantaleon	
To:	DWR Delta Conveyance Scoping	
Subject:	Cucamonga Valley Water District Letter of Support for the Delta Conveyance Project	
Date:	Tuesday, April 7, 2020 3:00:12 PM	
Attachments:	image001.png	
	image002.png	
	image003.png	
	image004.png	
	Comment Letter for Delta Conveyance Scooping Process.pdf	

Good Afternoon,

Cucamonga Valley Water District is pleased to provide input for the scoping process of the singletunnel Delta conveyance project being advanced by the Department of Water Resources. We appreciate Governor Newsom's leadership to help ensure, safe, affordable and reliable water supplies to much of California. If you have any questions, please don't hesitate in contacting our District.

Thank you,

Socorro Pantaleon Government and Public Affairs Ph: 909-483-7491 Fax: 909-476-5694

Logo Transparent - PNG



10440 Ashford Street Rancho Cucamonga, CA 91730 <u>CVWDwater.com</u>

Connect with us on social media!





10440 Ashford Street, Rancho Cucamonga, CA 91730-2799 P.O. Box 638, Rancho Cucamonga, CA 91729-0638 (909) 987-2591 Fax (909) 476-8032

John Bosler Secretary/General Manager/CEO

April 6, 2020

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

RE: Comment Letter for Delta Conveyance Scooping Process

Dear Renee Rodriguez:

On behalf of the Cucamonga Valley Water District, I am pleased to provide input for the scoping process of the single-tunnel Delta conveyance project being advanced by the Department of Water Resources. We appreciate Governor Newsom's leadership to help ensure, safe, affordable and reliable water supplies to much of California.

Modernizing and improving California's water system is essential for the reliable delivery of water supplies to much of the state. Depending on the year, the Cucamonga Valley Water District's water supply is comprised of anywhere from 40-50% of imported water, which is water that comes from Northern California via the Sacramento-San Joaquin Delta and the State Water Project. But the Delta's declining ecosystem and 1,100 miles of levees are increasingly vulnerable to earthquakes, flooding, saltwater intrusion, and further environmental degradation.

More than 30 percent of Southern California's water supply comes from the Sierra Nevada and it provides the backbone water supply for millions of people, our \$1.6 trillion economy, farms and our environment. Modernizing and upgrading our state's aging infrastructure with a single tunnel properly sized to convey 6,000 cubic-feet-per-second of water supply for the State Water Project will allow us to more efficiently move water, restore the Delta ecosystem and manage our water supply through climate extremes.

We are not alone in our support. There is widespread backing for the project in Southern California and throughout the state from diverse interests, ranging from labor and business to public agencies, nonprofits and agriculture. We all recognize that a severe water shortage would come with an enormous economic cost and the time to move forward is now.

This project is not the only step we must take to ensure water resiliency. Ensuring Southern California has a reliable water supply in the future requires a diverse portfolio of both imported and local supplies and conservation. Much progress and significant investments are being made on a wide

range of local projects and water efficiency, but the Delta conveyance project remains vitally important.

We support the Newsom administration's work to move forward in the planning process in a manner that achieves the goals of water supply reliability and ecosystem restoration. With our largest and most affordable supply at risk, we need the reliability the proposed Delta conveyance project will provide.

Sincerely,

John Boler

John Bosler General Manager/CEO

Cc: Association of California Water Agencies

From:	David F. Scatena
То:	DWR Delta Conveyance Scoping
Subject:	Delta conveyance
Date:	Thursday, April 16, 2020 8:31:28 PM

I submitted an alternative plan earlier in this process! I pray that it will be given maximum consideration! It contained provisions to provide water by other means than killing the Delta. It would be more economical and non-invasive to farmland that has been farmed for near 100 years. It would also prevent salt water intrusion into the Delta killing off farmland in the Delta Region! Reminder: stop the pumps along the aqueducts, build storage areas to capture rai runoff south of the pumps, require drip irrigation, stop planting of tree crops that require lots of water and build desalination plants paid for by Metropolitan Water District & Westlands irrigation District etc. etc. Do not build the tunnel and shutdown the pumps!!! David F. Scatena

Sent from my iPhone

From:	Buckman, Carolyn@DWR
To:	DWR Delta Conveyance Scoping
Subject:	FW: Delta Conveyance Project NOP - CDFW Comments
Date:	Friday, April 17, 2020 3:34:43 PM
Attachments:	FINAL CDFW NOP comment letter 4-17-2020.pdf

From: Grover, Joshua@Wildlife <Joshua.Grover@wildlife.ca.gov>
Sent: Friday, April 17, 2020 3:34 PM
To: Buckman, Carolyn@DWR <Carolyn.Buckman@water.ca.gov>
Cc: Yee, Marcus@DWR <Marcus.Yee@water.ca.gov>; Bogdan, Kenneth M.@DWR
<Kenneth.Bogdan@water.ca.gov>; Wilcox, Carl@Wildlife <Carl.Wilcox@wildlife.ca.gov>; Dibble,
Chad@Wildlife <Chad.Dibble@wildlife.ca.gov>; Jacobs, Brooke@Wildlife
<Brooke.Jacobs@wildlife.ca.gov>; Little, Shannon@Wildlife <Shannon.Little@wildlife.ca.gov>
Subject: Delta Conveyance Project NOP - CDFW Comments

Ms. Buckman,

Attached are the California Department of Fish and Wildlife's comments on the Notice of Preparation for the Delta Conveyance Project. The original will follow in the mail. Please let us know if you have any questions.

Sincerely,

Joshua Grover, Chief Water Branch Department of Fish and Wildlife (916) 376-5460 Joshua.Grover@wildlife.ca.gov



State of California – Natural Resources Agency DEPARTMENT OF FISH AND WILDLIFE Water Branch P.O. Box 944209 Sacramento, CA 94244-2090 www.wildlife.ca.gov GAVIN NEWSOM, BOVERBO CHARLTON H. BONHAM, Director



April 17, 2020

Ms. Carolyn Buckman Chief, Delta Conveyance Office Department of Water Resources 901 P Street Sacramento, CA 95814

Dear Ms. Buckman:

DELTA CONVEYANCE PROJECT (PROJECT) SCH# 2020010227

The California Department of Fish and Wildlife (CDFW) received a Notice of Preparation (NOP) from Department of Water Resources (DWR) for the Project pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.¹

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish and wildlife. Likewise, we appreciate the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may be required to carry out or approve through the exercise of its own regulatory authority under the Fish and Game Code.

CDFW ROLE

CDFW is California's **Trustee Agency** for fish and wildlife resources, and holds those resources in trust by statute for all the people of the State. (Fish & G. Code, §§ 711.7, subd. (a) & 1802; Pub. Resources Code, § 21070; CEQA Guidelines § 15386, subd. (a).) CDFW, in its trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species. (*Id.*, § 1802.) Similarly, for purposes of CEQA, CDFW is charged by law to provide, as available, biological expertise during public agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources.

CDFW is also submitting comments as a **Responsible Agency** under CEQA. (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381.) CDFW expects that it may need to exercise regulatory authority as provided by the Fish and Game Code. As

¹ CEQA is codified in the California Public Resources Code in section 21000 et seq. The "CEQA Guidelines" are found in Title 14 of the California Code of Regulations, commencing with section 15000.

proposed, for example, the Project may be subject to CDFW's lake and streambed alteration regulatory authority (Fish & G. Code, § 1600 et seq.) or the Native Plant Protection Act. (Fish & G. Code, § 1900 et seq.) To the extent implementation of the Project as proposed may result in "take" as defined by State law of any species protected under the California Endangered Species Act (CESA), the Project proponent may seek related take authorization as provided by the Fish and Game Code. (Fish & G. Code, § 2050 et seq.) At the request of an applicant for an incidental take permit (ITP), CDFW shall, to the greatest extent practicable, consult with the applicant regarding the preparation of a permit application in order to ensure that it will meet the requirements CESA and its implementing regulations when submitted to CDFW. (Cal. Code Regs., tit. 14, § 783.2, subd. (b).)

PROJECT DESCRIPTION SUMMARY

Proponent: California Department of Water Resources

Objective: The objective of the Project is to develop new diversion and conveyance facilities in the Delta to restore and protect the reliability of the State Water Project (SWP) water deliveries and, potentially Central Valley Project (CVP) water deliveries south of the Delta. Additional objectives for physical improvements to the SWP Delta conveyance system include 1) addressing sea level rise and other reasonably foreseeable consequences of climate change and extreme weather events, 2) minimizing the potential for public health and safety impacts from reduced quantity and quality of SWP water deliveries, and potentially CVP water deliveries, south of the Delta resulting from a major earthquake that causes breaching of Delta levees and the inundation of brackish water into the areas in which the existing SWP and CVP pumping plants operate, 3) protecting the ability of the SWP, and potentially the CVP, to deliver water when hydrologic conditions result in the availability of sufficient amounts, consistent with the requirements of state and federal law, including the California and federal Endangered Species Acts and Delta Reform Act, as well as the terms and conditions of water delivery contracts and other existing applicable agreements, and 4) providing operational flexibility to improve aquatic conditions in the Delta and better manage risks of further regulatory constraints on Project operations. Location: The Project area for purposes of CEQA encompasses SWP water diversion, storage, and conveyance facilities and SWP service areas in three geographic regions, 1) upstream of the Delta, 2) the statutory Delta, and 3) the south-of Delta SWP service area. The Project area may also include CVP water diversion, storage, and conveyance facilities as well as the CVP service area.

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments below to assist DWR in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources. Based on the potential for the Project to have

a significant impact on biological resources, CDFW concludes that an Environmental Impact Report (EIR) is appropriate for the Project. CDFW looks forward to ongoing discussions with DWR staff during the development of DWR's EIR and anticipated ITP application for take of State listed, candidate, rare, sensitive, and special-status species associated with construction and operations of the Project, and lake or streambed alteration notification.

CDFW would like to emphasize the importance of several key components for consideration in the development of Project alternatives and the EIR's disclosure and analysis of impacts and identification and description of mitigation measures. The following key components should be considered by DWR during the development of an EIR:

- An adaptive management approach based on established biological goals and objectives that utilizes best available science to evaluate progress towards those objectives. The approach should include a clear decisionmaking structure through which any changes in approach to minimizing or mitigating impacts to species would ensure that biological objectives are met;
- Application of best available science and thorough literature reviews to support descriptions of the status of species, known population trends, cumulative impacts to the species from other related projects and activities, Project effects analyses, and mitigation measures;
- Quantifiable operating criteria that will be used to make decisions about north Delta and south Delta operations and coordination for dual conveyance (in real-time and longer seasonal or annual time steps);
- Complete descriptions of how the SWP and CVP will continue to operate under the Coordinated Operation Agreement (COA) through joint operations and increased conveyance capacity in the north Delta;
- Descriptions of modeling assumptions (e.g., CalSim) and rationale for Project operations described in the EIR;
- Thorough analyses of potential impacts of Project construction and operations and maintenance to terrestrial and aquatic species for each Project alternative with consideration of different tunnel alignments and footprints and a range of conveyance capacities;
- An analysis that considers Project impacts in comparison to the existing species and environmental conditions including habitat restoration projects that have been completed. The EIR's cumulative impacts analysis may consider the impacts of probable future projects, including habitat restoration actions that are expected to be completed;
- Biological analyses and Project operations that:
 - Consider the need to minimize potentially significant Project impacts to aquatic species by life stage including, for example, the Project's impacts on longfin smelt juveniles as a result of reduced spring

> outflow, the Project's impacts on Delta smelt juveniles as a result of impacts to summer-fall habitat conditions, Project impacts on Chinook salmon juveniles as a result of reduced through-Delta survival, the Project's impacts on Delta smelt habitat in the vicinity of the north Delta intakes, and the Project's impacts on aquatic species as a result of entrainment into Project facilities;

- Consider known impacts to species and status of the species as a result of cumulative effects of the Project in connection with the effects of past, present, or reasonably foreseeable future projects, including the operations of the CVP;
- Disclose and analyze any significant Project impacts to non-CESA listed species, such as fall-run Chinook salmon and steelhead, and species of recreational importance, and if necessary, measures to reduce impacts to less than significant levels;
- Minimization measures (e.g., Project operations, construction monitoring) that minimize impacts as a result of construction of the Project facilities on terrestrial species, including giant garter snake and Swainson's hawk, and aquatic species including Delta smelt, longfin smelt, and Chinook salmon;
- Project description with a sufficient level of specificity to quantify and analyze impacts to terrestrial species as a result of Project construction; and
- Design features and measures to ensure that no take of fully protected species, including the greater sandhill crane, occurs as a result of Project construction and operation.

ENVIRONMENTAL DATA

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database which may be used to make subsequent or supplemental environmental determinations. (Pub. Resources Code, § 21003, subd. (e).) Accordingly, please report any special status species and natural communities detected during Project surveys to the California Natural Diversity Database (CNDDB). The CNNDB field survey form can be found at the following link: http://www.dfg.ca.gov/biogeodata/cnddb/pdfs/CNDDB_FieldSurveyForm.pdf. The completed form can be mailed electronically to CNDDB at the following email address: CNDDB@wildlife.ca.gov. The types of information reported to CNDDB can be found at the following email address: http://www.dfg.ca.gov/biogeodata/cnddb/pdfs/CNDDB_FieldSurveyForm.pdf. The types of information reported to CNDDB can be found at the following link: http://www.dfg.ca.gov/biogeodata/cnddb/plants_and_animals.asp.

FILING FEES

The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the fee is required in order for the underlying project approval to be

operative, vested, and final. (Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089.)

CONCLUSION

CDFW appreciates the opportunity to comment on the NOP to assist DWR in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Brooke Jacobs at (916) 903-6426 or <u>Brooke.Jacobs@wildlife.ca.gov</u>.

Sincerely,

Joshua Grover Water Branch Chief

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