

DEPARTMENT OF WATER RESOURCES

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SACRAMENTO, CA 94236-0001
(916) 653-5791



April 20, 2020

Ms. Donis Pacini Whaley
Delta Defenders
Post Office Box 128
Hood, CA 95369

Dear Ms. Pacini Whaley:

Thank you for your recent inquiry about the scoping deadline for the proposed Delta Conveyance Project.

The COVID-19 pandemic underscores the need to protect public health and safety. For the Department of Water Resources (DWR), this means continuing essential functions such as reliable water delivery, flood protection, dam safety, infrastructure maintenance and environmental enhancement, while maintaining the highest standards for transparency.

The California Environmental Quality Act (CEQA) generally requires a lead agency preparing an environmental impact report (EIR) to provide 30 days for entities to respond to a notice of preparation related to the scope of the EIR. For Delta Conveyance, DWR initially provided 60 days for comments. This initial public comment period occurred almost entirely before the worry and health risks caused by COVID-19 and related stay-at-home orders. However, DWR then extended this period by an additional 30 days to accommodate requests for delay.

While the pandemic makes it clear that we must find new ways to operate and engage under current restrictions, we cannot and should not pause efforts that are critical to the state. Climate change, sea level rise, flashy storms, atmospheric rivers and earthquakes will not pause for a pandemic. While work continues during this crisis, DWR will not do so at the expense of public involvement and transparency. To respond to these unprecedented times, the Department is working to strengthen and expand public outreach tools to make information accessible and participation possible.

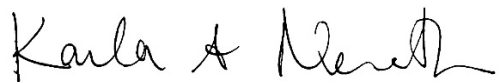
Following the close of scoping, DWR will consider feedback received as it develops the draft EIR. The next opportunity for significant public review and comment on DWR documents related to the proposed Delta Conveyance Project is unlikely to be any sooner than early 2021 when the EIR is published. In addition, federal agencies are working to identify a lead agency for preparation of a document to analyze the proposed Delta Conveyance Project in compliance with the National Environmental Policy Act (NEPA). It is expected that the federal lead agency will provide for a separate scoping period, possibly this summer, as part of the environmental documentation process under NEPA. In addition to formal comment periods, the state is always open to conversations and feedback even outside of a formal comment period.

The expansion of online and telephone resources during this time may create enhanced opportunities to engage and participate from home in ways not previously available or utilized. As DWR rolls up its sleeves to digest the comments received through the scoping process and begins to prepare the environmental analysis for the Draft EIR, the downtime following scoping for Delta Conveyance will allow for diligent and creative opportunities to respond to any communities who may have an interest in our analytical approach and tools.

And we are hopeful that in the meantime significant progress will be made in California's fight against the virus.

Thank you and stay well.

Sincerely,

A handwritten signature in black ink, appearing to read "Karla A. Nemeth". The signature is fluid and cursive, with a large initial "K" and "N".

Karla A. Nemeth
Director

cc: Commodore Bill Wells, CA Delta Chambers & Visitors Bureau
Gwynne Pratt, CA Water Research
Governor Gavin Newsom
Wade Crowfoot, Secretary for Natural Resources
Office of Administrative Law
Delta Conveyance Authority
Delta Conveyance Authority Stakeholder Engagement Committee
Delta Counties Coalition
Local Agencies of North Delta



DELTA DEFENDERS



April 15, 2020

Sent via email

Karla Nemeth, Director
Spencer Kenner, Chief Counsel
California Department of Water Resources
1416 9th Street, Room 1115-1
Sacramento, CA 95814

Re: DWR's failure to provide any opportunity for public review and comment on policies for providing reasonable accommodations during the COVID19 pandemic

Dear Director Nemeth and Chief Counsel:

The Department of Water Resources has posted on its website the following list of practices for public processes during the COVID19 pandemic.¹

DWR has already begun to utilize the following practices to ensure that while we continue our work in today's circumstances, we do so in ways that provide reasonable accommodations and hopefully even increase public participation in our collective new normal. When feasible, and while following all public health protocols, DWR will:

1. Extend comment periods
2. Reach out to community-based organizations and other stakeholders who may be in direct communication with local residents to enlist their help in using multiple channels to notify residents of remote options for public meetings.
3. Arrange for live participation in meetings via telephone and online tools, and record for later viewing
4. Provide ample time for public comment during meetings and offer multiple ways for the public to submit comments, including email, voice messages and other means.
5. Utilize digital tools like surveys, videos and virtual online "office hours" to expand ways to gain public input
6. Provide telephone access to staff, and ensure that there is direct staff response
7. Provide delivery of hard copy materials for those without access to the internet
8. Provide a written record of online meetings, including documentation of any Q&A or supporting materials
9. Help publicize telephone or online meetings being hosted by our partner or regulatory agencies
10. Provide telephone access to staff for technical assistance
11. Utilize social media channels for interaction with staff
12. Simplify and streamline processes to reduce the volume of information
13. Take communications back to basics: utilizing radio for publicizing meeting information; posting flyers at essential service locations (e.g. grocery stores, post offices); and allowing for telephone public comment.
14. Ensure all public meeting requirements are upheld and keep up to date with any new guidance or changes to meeting terms.

The Department of Water Resources has not provided any opportunity for the public to review or comment on this list of practices, and none of the requirements for public participation in Chapter 3.5 of Division 3 of Title 2 of the Government Code have been

¹ From *Amid COVID-19, Essential Work Continues with Commitment to Public Engagement and Transparency* (<https://water.ca.gov/News/Blog/2020/April/COVID-19-Essential-Work.>)

followed in adopting the practices. Due to the absence of provision for the public to review or comment, these practices constitute “underground regulations”.

We protest this list of practices being applied to the Delta tunnel planning processes as they are underground regulations. By doing so, a significant burden is placed on small businesses in the Delta, which are experiencing major economic disruption due to the pandemic. The following shows responses to a survey taken by the National Federation of Independent Businesses. Half of businesses are in danger of closing within 1-2 months.²

How long will you be able operate your business under current economic conditions?



While we understand that the situation with the pandemic is fluid and may require flexibility, we do not believe that it requires that state agencies adopt rules for public engagement during the pandemic with no public input. The Delta Stewardship Council has been able to accept comments on their Draft Public Participation Plan³, and to modify the draft plan to incorporate consideration of the pandemic impacts.

The Department of Water Resources has also not provided substantiating information or an opportunity to comment on the designation of Delta tunnel planning as an “essential

² National Federation of Independent Businesses, Small Employers are in Crisis with Half Saying They’ll Have to Shut Down in Less than 2 Months Without Help. <https://www.nfib.com/assets/Final-Coronavirus-write-up-pt-3-1.pdf>

³ Delta Stewardship Council, Public Review Draft Public Participation Plan, February 27, 2020. Available at <http://deltacouncil.ca.gov/pdf/council-meeting/meeting-materials/2020-02-27-item-9-attachment-1-public-draft-dsc-public-participation-plan.pdf>

service.” Governor Newsom's Executive Order N-33-20⁴ references the March 19, 2020 memorandum by the Director of Cybersecurity and Infrastructure Security Agency (CISA) on identifying critical infrastructure workers during the COVID-19 response.⁵ The March 19, CISA memo only identifies workers involved in operations and maintenance of existing infrastructure. The March 22, 2020 clarification by the California State Public Health Officer⁶ also only identifies workers involved in operations and maintenance of existing water supply infrastructure.

To extend the definition of “essential services” to planning for a project that has been ongoing for over a decade seems to be quite a stretch. As the Delta Counties Coalition stated in their April 7, 2020 letter to Secretary Crowfoot,

The DCC believes that disruptions caused by COVID-19 will deprive citizens, local communities, and other stakeholders the opportunity to engage with agencies on important matters, and this includes the Delta Conveyance Project. We also believe that virtual meetings are an inadequate substitute to a temporary stay of public processes around Delta conveyance. Remote meeting options are most appropriate for situations where an agency must conduct its business without delay, for instance in relation to the COVID-19 crisis and other operational necessities. Public participation via webcast or telephone cannot provide the robust public input necessary for the controversial Delta Conveyance Project.

Finally, while referencing “following all public health protocols,” DWR’s list of practices does not consider the effects of the public health emergency on individuals with chronic health conditions. Individuals with chronic health conditions are not only more likely to be hospitalized when infected by COVID-19, they are also more likely to experience impacts of health resource restriction and interrupted care for the chronic conditions due to the pandemic. For these individuals and their families, the only real accommodation is a pause until the public health emergency has passed.

In conclusion, DWR’s proposed accommodations for Delta tunnel public engagement processes are wholly insufficient for Delta businesses and for individuals with chronic health conditions.

⁴Governor Newsom’s Executive Order N-33-20. Available at <https://covid19.ca.gov/img/N-33-20.pdf>.

⁵Christopher C. Krebs, Director Cybersecurity and Infrastructure Security Agency (CISA) Memorandum on Identification of Essential Critical Infrastructure Workers During Covid-19 Response, March 19, 2020. <https://www.cisa.gov/sites/default/files/publications/CISA-Guidance-on-Essential-Critical-Infrastructure-Workers-1-20-508c.pdf>

⁶ California State Public Health Officer, list of Essential Critical Infrastructure Workers, March 22, 2020. <https://covid19.ca.gov/img/EssentialCriticalInfrastructureWorkers.pdf>

Sincerely,

/s/

Donis Pacini Whaley

Donis Pacini Whaley

Facilitator, Delta Defenders

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info@deltadefenders.org

Bill Wells

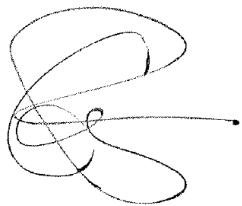
Commodore Bill Wells

Executive Director

California Delta Chambers & Visitors Bureau

PO Box 1118, Rio Vista, CA

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A handwritten signature in black ink, appearing to be 'Gwynne T. Pratt', with a long horizontal stroke extending to the right.

Gwynne T. Pratt, Esq

Counsel, California Water Research

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gtpratt@yahoo.com

Cc:

Governor Gavin Newsom

The Honorable Wade Crowfoot, Secretary, California Natural Resources Agency

Office of Administrative Law

Delta Conveyance Design and Construction Authority

Delta Conveyance Design and Construction Authority Stakeholder Engagement
Committee

Delta Counties Coalition

Local Agencies of the North Delta