

9:30 am to 3:00 pm  
Thunder Valley Casino Resort  
Lincoln, California



# External Meeting Notes

## September 11, 2019

### Delta Conveyance Pre-AB52 Tribal Informational Meeting #1

*Prepared by the Department of Water Resources*

## Purpose

*These notes summarize a pre-AB52 informational meeting conducted by the California Department of Water Resources (DWR) to provide information to the California Tribal Community about the status and next steps related to rehabilitating the water distribution infrastructure in the Delta. The goals of the meeting were to:*

- *Provide an informational update Tribes on the recent changes in approach for Delta conveyance and associated environmental planning efforts*
- *Discuss the status and next steps related to Delta conveyance, including future CEQA and AB 52 requirements and opportunities for Tribal engagement*
- *Discuss Governor Newsom's Executive Order N-10-19 and California's Water Resilience Portfolio and conduct a Tribal Listening Session in association with Governor's Tribal Advisor*

## Participants

*The following is a list of Tribes, state and federal agencies, NGO's, and Tribal NGO's represented at this meeting.*

- Berry Creek Rancheria
- Cachil DeHe Band of Wintun Indians of the Colusa Indian Community Council
- Cahuilla Band of Indians
- California Indian Environmental Alliance
- California Natural Resources Agency
- Colfax Todds Valley Consolidated Tribe
- Delta Conveyance Design and Construction Authority
- Delta Protection Commission
- Delta Stewardship Council
- Department of Water Resources, North Central Office
- Department of Water Resources, Northern Region Office
- Department of Water Resources, Sacramento Office
- Habematolel Pomo of Upper Lake
- Lone Band of Miwok Indians
- Northern Valley Yokuts Tribe

- Office of Governor Gavin Newsom, Tribal Advisor
- Rincon Band of Luiseno Indians
- Shingle Springs Band of Miwok Indians
- Tuolumne Band of Me-Wuk Indians
- United Auburn Indian Community of the Auburn Rancheria
- United States Bureau of Reclamation
- Western States Attorney General, Special Counsel
- Wilton Rancheria
- Winnemem Wintu Tribe
- Yocha Dehe Wintun Nation

## List of Acronyms

CEQA	California Environmental Quality Act
CHRIS	California Historic Record Information System
CNRA	California Natural Resources Agency (also referred to as Agency)
DCA	Delta Conveyance Design and Construction Authority
DCO	Delta Conveyance Office
DWR	Department of Water Resources
JPA	Joint Powers Authority
NAHC	Native American Heritage Commission
NOP	Notice of Preparation
PWA	Public Water Agency
SGMA	Sustainable Groundwater Management Act
SWP	State Water Project
SWRCB	State Water Resources Control Board
WRP	Water Resilience Portfolio

## Upcoming Tribal Informational Meetings

November 12, 2019 – Sacramento, CA (Delta Tribes)

## Table of Contents

Purpose .....	1
Participants .....	1
List of Acronyms.....	2
Upcoming Tribal Informational Meetings.....	2
Table of Contents.....	3
Welcome and Introductions .....	4
Presentations on Delta Conveyance Status .....	4
Modernizing Delta Conveyance to Meet California’s 21 <sup>st</sup> Century Water Needs .....	4
Delta Conveyance Environmental Planning.....	5
Tribal Engagement on Delta Conveyance Environmental Planning and Review .....	6
Discussion, comments, and questions.....	7
Action Items.....	12
Closing.....	122

## Welcome and Introductions

Kimberly Petree, of the United Auburn Indian Community, welcomed participants and gave a traditional blessing. Anecita Agustinez, Tribal Policy Advisor for the Department of Water Resources (DWR), also welcomed participants.

Cindy Messer, Chief Deputy Director of DWR, introduced herself and explained some of the changes to DWR's plans for Delta conveyance, resulting from Executive Order N-10-19. The Executive Order, released by Governor Gavin Newsom on April 29, 2019, supported modernizing water conveyance through the Bay Delta with a new single tunnel project. Chief Deputy Director Messer explained that DWR is continuing to try to improve transparency and get more information out as the project progresses. DWR is currently waiting on more direction from the Governor and working on the Water Resilience Portfolio (WRP), also mandated in Executive Order N-10-19. Additionally, DWR is planning more stakeholder engagement for Delta conveyance.

Participants then introduced themselves and identified the Tribe, organization, or agency they represented.

## Presentations on Delta Conveyance Status

### Modernizing Delta Conveyance to Meet California's 21<sup>st</sup> Century Water Needs

Presentation by Gary Lippner, Deputy Director of Delta Conveyance, Department of Water Resources  
*Please refer to this presentation's PDF in the meeting materials for more details on the summary below.*

Gary Lippner gave some background on the State Water Project (SWP) and discussed the current state of Delta conveyance planning. Key points in this presentation included:

- Details on the history and background of the SWP as the largest publicly built and operated water supply project in the world.
  - The SWP began to be planned in the 1920's and was approved by voters in 1960. This led to the construction of the SWP and set the policy for moving water in California.
  - The SWP serves a wide geographic area, including the Bay Area, Central Valley, Southern California, and Coastal California.
  - Most of the flows into the Delta come from the Sacramento River Hydrologic Region, and most of the Delta inflows go out to the ocean.
  - The Bay-Delta is the hub of the State and Federal water infrastructure and is very important for California.
  - 27 million people and 3 million acres of farmland and ecosystems within the Delta are reliant on water that is moved through the Delta.
  - Climate risk adaptation (including sea level rise, earthquakes, and levee failure) threaten the reliability of the existing SWP system
  - The SWP is also experiencing stressors and constraints that include water demand (changing with population, agriculture and economy), highly variable precipitation,

extreme weather events (atmospheric rivers and droughts), climate change, and environmental awareness and regulations.

- Updates on the Delta conveyance
  - Having a reliable water supply and healthy ecosystem is not a new concept; every administration since the 1960's has been trying to solve the challenges of Delta conveyance.
  - Programs over the last 30 years (CALFED, Bay Delta Conservation Plan, California WaterFix, and current Delta conveyance efforts) have been trying to adapt to issues and better manage California's water under the many challenges and stressors discussed above.
  - Milestones of 2018 included the formation of the Delta Conveyance Office (DCO) and the Delta Conveyance Design and Construction Authority (DCA). The DCO consists of DWR staff and provides oversight of the DCA. The DCA includes water agencies, DWR, and consultant staff who provide project design support. Financing is provided by a Joint Powers Authority.
  - Delta ecosystems and fisheries will benefit from Delta conveyance, which will help restore the natural water flow of the Delta (east to west) by reducing artificial flows/reverse flows created by the SWP pumping from the south Delta.

## Delta Conveyance Environmental Planning

Presentation by Carrie Buckman, Environmental Program Manager, Department of Water Resources

*Please refer to this presentation's PDF in the meeting materials for more details on the summary below.*

Carrie Buckman provided information on the status and next steps of the Delta conveyance and gave an update on associated environmental planning and review. Key points in this presentation included:

- Recent updates:
  - During his first State of the State address on February 12, 2019, Governor Newsom stated that he did not support the California WaterFix (a dual tunnel conveyance project) but did support a single tunnel conveyance alternative. This led to the signing of Executive Order N-10-19 on April 29, 2019, which included the consideration of a single tunnel conveyance alternative.
  - On May 2, 2019, DWR withdrew California WaterFix approvals and permits, and all planning for California WaterFix ceased at this time. On August 13, 2019, termination for the California WaterFix Programmatic Agreement was initiated.
- Roles and responsibilities for Delta conveyance were described. *(Please refer to the PDF handout of this slide in the meeting materials for more information.)*
  - DWR, through the activities of the DCO, will lead the environmental permitting effort and provide oversight to the DCA.
  - The DCA will conduct engineering and design work to inform the planning process and minimize adverse effects. The DCA functions under a board of directors consisting of elected officials from Public Water Agencies. Those Public Water Agencies provide technical expertise to the DCA and DCO.
- Current work in-progress includes:

- DWR and DCA are working on stakeholder engagement for Delta conveyance.
- Past environmental documents are being assessed to consider lessons learned, with an increased focus on Delta communities.
- Planning for future soil investigations is currently taking place, which will be undergoing its own CEQA process and analysis. DWR will use the data collected from the proposed soil investigations to assist in determining potential project features and alignment.
- AB 52 notices for the Initial Study/Mitigated Negative Declaration for the proposed soil investigations were sent to Tribes on August 29, 2019.
- The Agreement-in-Principle process has been initiated with the State Water Contractors to develop a methodology for cost allocation for Delta conveyance.
- Next steps:
  - A new environmental planning process under CEQA will begin in late 2019 with the Notice of Preparation and the initiation of AB 52 consultation for Delta conveyance.
  - Public involvement on alternatives development will begin in early 2020
  - Early design and engineering and preparation of environmental documents (including Environmental Impact Report development) will occur in 2020 as well.
  - Active public engagement will be critical to project success. Public engagement discussion topics will include tunnel routes, economic development, potential construction impacts, design concepts, integrated solutions, and mitigation solutions.

## Tribal Engagement on Delta Conveyance Environmental Planning and Review

Presentation by Anecita Agustinez, Tribal Policy Advisor, Department of Water Resources

*Please refer to this presentation's PDF in the meeting materials for more details on the summary below.*

Anecita Agustinez discussed standards and expectations from DWR for engagement with Tribes on Delta conveyance. Key points in this presentation included:

- DWR Tribal Engagement Policy:
  - Anecita Agustinez discussed DWR's Tribal Engagement Policy, and the adopted policy principles which intend to achieve early and meaningful Tribal engagement to strengthen and sustain collaboration with California Tribes. This includes establishing guidelines and meaningful dialogue to enable Tribes to use their knowledge to manage and act as caretakers of Tribal cultural resources.
  - DWR is hoping to lead state agencies in programmatic changes, including cultural competency training within DWR. This will be important for long-term projects, fieldwork, and for educating the next generation.
- Delta Conveyance Tribal Consultation
  - For Delta conveyance, DWR will be commencing a new AB 52 consultation process and outreach to Tribes. DWR wants Tribal knowledge and input and is currently drafting a guidance document regarding DWR's commitment to Tribal engagement for Delta conveyance.
  - DWR is also finalizing a monitoring agreement and payment contract for tribal monitoring between the Tribes and the State. Anecita recognized that many of the Tribes in the audience were Tribes that were working on that monitoring agreement with DWR.

- DWR recognizes that record searches from the California Historic Resources Information System (CHRIS) and the Native American Heritage Commission (NAHC) will not always reflect all sacred sites and should not be treated as a complete list. DWR hopes to learn about other sites omitted from these searches through government-to-government engagement. Consultation with Tribes will ensure these sensitive sites and information shared will remain confidential.
- Regarding the Section 106 process, DWR will honor the process and hopes to become a partnering agency with the federal agencies at future meetings.
- DWR will engage with Tribes in accordance with Executive Order B-10-11 (2011), CNRA's Tribal Consultation Policy (2012), DWR's Tribal Engagement Policy (2016), and AB 52 (2014).
- AB 52 Consulting Tribes
  - A slide was presented that provided a listing of Tribes who have submitted notices to DWR for AB52 consultation. It was shared that only 16 formal notices have been received for AB 52 consultation with DWR. AB 52 statute requires formal letters/requests to each specific agency for consultation. *Please see meeting materials for a list of these 16 Tribes.*
  - Tribes who are not on the list and are interested in the Delta and formal consultation for Delta conveyance, are encouraged to submit a formal letter to DWR.

## Discussion, comments, and questions

*Please note that this section represents a summary of the questions asked and answers given by DWR and/or the DCA and are not meant to act as a transcript of the Q&A session.*

### Discussion in between and after the presentations included:

- Tribal Representative: With regard to CEQA compliance and the Executive Order, have there been any fundamental changes to CEQA to accommodate this project?
  - DWR response: There have been no statutory or regulatory changes. DWR is starting the CEQA process over for this project.
- California Indian Environmental Alliance Representative: These comments are regarding the separation between environmental considerations and conveyance. The separation of project components/impacts with mitigation/EcoRestore has made it difficult to assess impacts and mitigation in CEQA documents in the past. We request that these need to be more connected and put back together to make it easier for others (such as the Tribes) to review.
  - DWR response: EcoRestore has been moving forward in advance of conveyance because of its high priority to the State.
- Winnemem Wintu Tribal Representative: What is the difference between WaterFix and Delta conveyance besides one tunnel?

- DWR response: At the moment, the project is not fully defined because it is in the beginning stages of development. WaterFix has ceased to exist, and now DWR is considering how to modernize Delta conveyance under the Governor's direction to develop a single tunnel project.
- Winnemem Wintu Tribal Representative: Is DWR looking at where else to put a tunnel and not dig into the Delta?
  - DWR response: The only parameter currently is a single tunnel project. DWR is not automatically considering the location before as the basis for the future analysis, but the project alternatives are not developed at this stage.
- California Indian Environmental Alliance Representative: When will we find out about differences between WaterFix and Delta conveyance and the alternatives being considered?
  - DWR response: The Notice of Preparation will likely go out at the end of the year and AB 52 consultation will also be initiated. The scoping process under CEQA will be used to define the alternatives being considered.
- California Indian Environmental Alliance Representative: What geographic region will the environmental review include? Headwaters? Just the Delta?
  - DWR response: Environmental review will include anywhere that could have potential impacts from the project (if upstream, then it would need to be analyzed).
- United Auburn Indian Community Tribal Representative: Will tribal recommendations be considered moving forward?
  - DWR response: Right now, we are in a pre-AB 52 phase. Formal submission of comments or requests for future discussions, etc. through comment cards or during the listening session with the Governor's Tribal Advisor will be taken into consideration and addressed as best we can. DWR would also like to know if the Tribes think that there are other topics we should be discussing.
- United Auburn Indian Community Tribal Representative: There is a lot of talk about people/human benefits from the project, but there is also a huge concern about wildlife impacts, groundwater recharge, and other environmental effects that are not being addressed by conversations so far. From Gary Lippner's presentation (on page 13 of his presentation's handout) there is a slide showing a map with Delta flows going from east to west. There is a red line from Sacramento down to the Delta-Mendota Canal – is this where the tunnel will go?
  - DWR response: This was a slide showing the alignment from the prior effort. It is unclear what the alignment will be for the current effort.
- Habematolel Pomo of Upper Lake Tribal Representative: Do we know the list of the water agencies that are part of the DCA?
  - DWR response: Yes
    - This was supplied as an additional slide after the listening session. *Please see the meeting materials for a copy of this slide.*

- Metropolitan Water District (Board Member), Santa Clara Valley Water District (Board Member), San Bernardino Valley Municipal Water District (Board Member), Zone 7 Water Agency (Board Member), San Geronio Pass Water Agency, Mojave Water Agency, Antelope Valley East Kern, Coachella Valley, Desert Water Agency, Santa Clarita Valley, Alameda County Water District

A Listening Session on Water Resilience Portfolio was convened after the lunch break. This was a Tribal only listening session and agency and other non-Tribal representatives left the room. During the listening session, Tribes were able to speak directly to Governor's Tribal Advisor on their concerns and comments on the Water Resilience Portfolio. Information discussed at this Tribal-only listening session will not be made public as it was intended to be government to government consultation.

Additional Q&A session after reconvening from the Tribal-only listening session

*Please note that this section represents a summary of the questions asked and answers given by DWR and/or the DCA and are not meant to act as a transcript of the Q&A session.*

- Winnemem Wintu Tribal Representative: Do those in the DCA have control over the water?
  - DWR response: No. DWR maintains control, but the DCA has a say in the design and construction of the project. They are interested in advancing the project and formed to have a unified say moving forward. DWR will continue to own and operate the SWP. This is a temporary agency to get through the planning and design of the project, with DWR oversight. The JPA is posted online on DWR's website, for those interested.
- Habematolel Pomo of Upper Valley Tribal Representative: Could you define the responsibilities of the DCA?
  - DWR response: They are responsible for providing engineering guidance that will be used to inform project design.
  - DCA response: The DCA will provide guidance to DWR. The DCA will stand on the sidelines and give insight when needed (such as for engineering, soil studies, and analysis). They will provide resources and additional information and are looking at impacts to Delta communities through public participation and stakeholder meetings.
- United Auburn Indian Community Tribal Representative: Who pays for the DCA services?
  - DCA response: The beneficiaries of the project (the state water contractors) are paying for the project.
- United Auburn Indian Community Tribal Representative: How much water will go out of the Delta, where, and who is holding onto it?
  - DWR response: There is no defined project yet so it would be speculative to discuss capacity right now. It will be within DWR's water rights and likely less than what would have been conveyed under a two-tunnel project.
- United Auburn Indian Community Tribal Representative: What are the existing DWR water rights?

- DWR response: DWR does not have the exact information at this meeting but can find and share that information at a later date. This information will be shared during formal consultation and in future Tribal Informational Meetings update and at future public meetings.
- United Auburn Indian Community Tribal Representative: Who are the consultants for the project?
  - DWR response: The existing contract with ICF expires in December. A RFQ (Request for Qualifications) is being advertised now, and DWR will be going through a process of selecting a consultant over the next few months.
- Habematolel Pomo of Upper Valley Tribal Representative: This is being viewed through the lens of those who are benefitting/investing and is therefore from the view of water supply. We need other lenses to make sure the process isn't a silo. Some input could include those from a technical advisory committee, for example an advisory committee such as was developed by DWR for the SGMA process, that participates in fleshing out design options. Otherwise, we run the risk of doing the same loop and not thinking holistically from beginning to end. If the same people are involved, making the same decisions each time, you will have the same cycle and outcome with this project as those previously.
  - DWR wishes to assist interested Tribes in the development of a Tribal Engagement Committee on the Delta Conveyance planning, this will be a topic to be discussed at future meetings.
- California Indian Environmental Alliance Representative: Since DWR is a public agency, is there a transparent process we can find out which consultant you will be choosing and how you made the decision?
  - DWR response: DWR has an extensive RFQ process, which is publicly posted. All files are part of the public records act and are available.
- United Auburn Indian Community Tribal Representative: Who is going to hold onto the water at the end of the line? Will there be a lake or silo? Where is it going?
  - DWR response: DWR anticipates a single tunnel project with north Delta diversions and a tunnel to existing pumps. This is an infrastructure upgrade to the SWP, and therefore the water will go into the existing system of the SWP.
- United Auburn Indian Community Tribal Representative: Will the water be stored or free flowing and turned on/off at the tunnel when needed?
  - DWR response: Operations of the State Water Project can be complex, and a subject matter expert would be able to fully answer this question. Water demand is identified to the department, and is delivered through multiple turnouts, reservoirs, and areas of infrastructure along the SWP. Terminal reservoirs and canals are already established for the SWP – infrastructure is generally brought on at various timelines for the SWP. Updated conveyance will be one part of the SWP that needs to be done, but many other

upgrades (such as additional canals, reservoirs, etc.) could be done in the future to meet the demands of California.

- United Auburn Indian Community Tribal Representative: When you do develop a plan on the tunnel, will we be provided with information on how that will work and what it will look like in the future?
  - DWR response: Some of that will be answered with the NOP (Notice of Preparation) and during the water rights process for the State Water Resources Control Board (SWRCB). Some of this will also have to be determined from the regulatory agencies. Size and capacity will be known during environmental review, but detailed operations will need to be determined in the future.
  
- Winnemem Wintu Tribal Representative: The DCA will be the beneficiaries and hold the water contracts?
  - DWR response: We do hold contracts with water contractors (29 Public Water Agencies), but not all PWA's are in the DCA.
  
- Winnemem Wintu Tribal Representative: Will the direction of the tunnel be the same as WaterFix? Is it still going to Westlands?
  - DWR response: Alignment may be different but will still be delivering water to the existing south Delta pumps. WaterFix never included infrastructure delivering water directly to Westlands. It did, however, propose a connection to the existing Central Valley Project (CVP) facilities and proposed operational scenarios which may have delivered water to the CVP Export Service Areas (such as Westlands).
  
- Winnemem Wintu Tribal Representative: Is there a list of all Public Water Agencies?
  - DWR response: DWR's website has a list of all 29 PWA's that are in contract for water deliveries
  
- Winnemem Wintu Tribal Representative: Regarding the 2008 Biological Opinion (BiOp), will the same PWAs be incorporating the BiOp?
  - DWR response: We don't have a BiOp for the project yet. PWAs may comment on Biological Assessments and Biological Opinions. PWAs are aware of them but do not have authority or oversight of those processes.
  - DCA response: BiOp includes court ordered restrictions, and these stand in place. The court and the State make sure that water is there to protect the fish. For example, during a drought year there was only 5% water allocation due to these regulations.
  
- Winnemem Wintu Tribal Representative: We might have to rethink how we deal with the fish. Where do the tribes fit into the planning?
  - DWR response: There will be opportunities through formal consultation in the environmental planning. The potential project may go over different types of public/private lands. Consultation will be important to figure out ancestral land impacts and sacred sites and for using Tribal knowledge during the planning process.

- Winnemem Wintu Tribal Representative: This is after the fact that we will be consulted. Consultation is not the same as being directly involved (such as those in the DCA). There should be a Tribal entity within the planning process with equal standing. Tribes still have to have their water rights adjudicated and are being excluded from decisions.
  - DWR response: Prior to the transition from Brown to Newsom, DWR was proposing advisory groups for project (pre-AB 52 time period). This is a new planning period, and DWR would love to help facilitate future Tribal-only communications to help answer some of these questions. DWR would take direction from the Tribes on that.
- Winnemem Wintu Tribal Representative: This is not about individualizing for the Tribes. We need a delegate who can deal with the beneficiaries and the contractors.
  - DWR response: DWR requests that this comment be made in writing directly to the Governor's Tribal Advisor, as this needs to be done at the Governor's level. DWR cannot make these changes, but it would be useful for the Governor's Tribal Advisor to hear and could spur changes from the top which could ultimately lead to changes in DWR.
- Northern Valley Yokuts Tribal Representative: When does DWR plan to release the Notice of Preparation?
  - DWR response: Late 2019 – possibly October or November.
- Northern Valley Yokuts Tribal Representative: Who is the environmental consultant who will write the NOP? Will they choose another consultant in December?
  - DWR response: DWR (Carrie Buckman) is leading the effort for the NOP.

## Action Items

- Meeting notes will be provided to all attendees and will be posted on a future website
- All meeting powerpoints, materials, and handouts will also be made available to attendees and will be posted on a future website

## Closing

DWR looks forward to continuing to work with the Tribes through government-to-government consultation and through informational updates in order to advance a much-needed infrastructure upgrade that will help solve problems in the Delta. Informational meetings will continue to grow in subject and technical matter. DWR also offered to go to Tribal communities and provide information for Tribal communities on the planning process (if requested) to keep everyone informed.