

DEPARTMENT OF WATER RESOURCES

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November 5, 2020

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Dear Supervisors,

This letter is in response to the Delta Counties Coalition letter from October 27, 2020, relating to the alternatives analysis and selection process, and stakeholder engagement, for the Delta Conveyance Project.

First, the Department of Water Resources (DWR) is currently engaged in a robust environmental review process in compliance with the California Environmental Quality Act (CEQA). This process will include an opportunity for public review and comment once the Draft Environmental Impact Report (EIR) is published, which is expected to be in mid-2022. While the CEQA public review and comment period is the formal mechanism for input on issues related to environmental impact and mitigation, the Department is committed to continuing to collaborate more informally with the community on those topics of high interest. The Department is currently conducting an Environmental Justice survey in the Delta and will continue to engage in outreach with disadvantaged communities throughout the project review process. In addition to CEQA's process, there will be several other opportunities for public engagement on the Delta Conveyance Project associated with other permitting processes, including those in front of the State Water Resources Control Board and the Delta Stewardship Council.

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With regard to the Delta Conveyance Design and Construction Authority's (DCA) Stakeholder Engagement Committee (SEC), we do indeed see the work of that committee as having been of high value. But the SEC was never intended to be, and does not serve as, a substitute for the public engagement required under CEQA. It has been a good-faith effort to work with the community to use the design process as a way to avoid or minimize local community impacts. The SEC has made numerous suggestions that have greatly improved the early design of the proposed project, and we do see it as a successful process in that regard. That public review and comment on the Draft EIR has not yet happened is not an indication that it will not, and we look forward to those future opportunities to hear from the local community.

With regard to the alternatives selection process, I offer a couple of important clarifications. CEQA alternatives must address the fundamental project purpose and be capable of fulfilling the objectives of the proposed project. Also, the alternatives must be capable of avoiding or lessening expected environmental impacts of the proposed project. An EIR is not required to consider alternatives which are infeasible and do not support the fundamental project purpose.

The fundamental purpose of the Delta Conveyance Project is to restore and protect the reliability of State Water Project (SWP) water deliveries, consistent with the state's Water Resilience Portfolio, when faced with multiple challenges. DWR evaluated every project alternative proposed by the public during the scoping period. While suggestions such as conservation, recycling and desalination are important elements addressed in the Water Resilience Portfolio—and a priority for many local water agencies—they would not address the fundamental project purpose to continue reliability of SWP water deliveries by protecting infrastructure from climate change and seismic threats. However, these alternative actions may be addressed by local water agencies in the absence of a Delta Conveyance Project. Therefore, DWR will include an evaluation of them as likely conditions if the project does not move forward. This "No Project" alternative will identify and analyze the effects of the additional actions that local water agencies may take under these conditions.

The Sierra Nevada is the single largest and most important surface water source in the state. The SWP was designed and built to capture and move this water across the state, and today serves as a reliable and reasonably priced source for 27 million people. Climate change will bring sea level rise and dramatic changes to snow and rain patterns. Seismic events could compromise Delta water quality and interrupt SWP supplies. If the existing SWP infrastructure does not adapt to these changes, this source of water is at serious risk.

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Our genuine goal is to find a path forward that protects the SWP, while collaborating with the Delta community to avoid and minimize local impacts. The DCA's stakeholder committee has been extremely valuable in this regard. There is still quite a bit of work to do, and we are committed to continued community engagement.

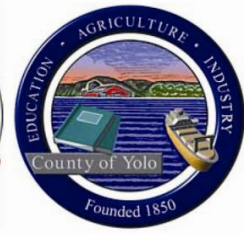
Sincerely,



Karla A. Nemeth
Director
Department of Water Resources

cc:

Wade Crowfoot, Natural Resources Agency
Tom Gibson, Natural Resources Agency
Sarah Palmer, Stakeholder Engagement Committee
Kathryn Mallon, Delta Conveyance Design & Construction Authority
Jessica Pearson, Delta Stewardship Council
Jeff Henderson, Delta Stewardship Council
Michael George, Delta Watermaster



Delta Counties Coalition

Contra Costa County · Sacramento County · San Joaquin County · Solano County · Yolo County
"Working together on water and Delta issues"

October 27, 2020

Karla Nemeth, Director
California Department of Water
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Sacramento, CA 95814

Kathryn Mallon, Executive Director
Delta Conveyance Design and
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Re: Delta Conveyance Alternatives and the Delta Conveyance Design and Construction Authority's Stakeholder Engagement Committee

Dear Director Nemeth and Executive Director Mallon,

This letter addresses two related concerns of the Delta Counties Coalition (DCC).¹ First, the DCC is concerned that a meaningful analysis of non-tunnel alternatives is not occurring in the Delta Conveyance planning process. Second, the DCC is also concerned about the overstatement of the value of the Delta Conveyance Design and Construction Authority Stakeholder Engagement Committee ("DCA's Committee"). Specifically, that the Delta Conveyance Design and Construction Authority ("DCA") and the Department of Water Resources ("DWR") continue to misconstrue the DCA's Committee process as meaningful engagement with Delta communities and local governments broadly. We are bringing these issues forward to correct the record.

¹ The DCC is an alliance of the Counties of Contra Costa, Sacramento, San Joaquin, Solano, and Yolo. These counties work collaboratively to give one voice on behalf of the Sacramento-San Joaquin River Delta and its four million area-wide residents. The DCC advocates to protect and enhance Delta communities and existing land uses, improve the Delta ecosystem and provide a more reliable water supply for the State.

Background

"New" Delta Conveyance Planning Process

On April 29, 2019, Governor Newsom adopted Executive Order N-10-19,² directing that the:

California Natural Resources Agency, the California Environmental Protection Agency, the California Department of Food and Agriculture, in consultation with the Department of Finance, shall together prepare a water resilience portfolio that meets the needs of California's communities, economy, and environment through the 21st century.

The Executive Order includes instruction to these entities to "first inventory and assess current planning to modernize conveyance through the Bay Delta with a new single tunnel project." Three days later, at the direction of the Governor, DWR rescinded its project approvals for the former California WaterFix Project ("CWF"). The *Modernizing Delta Conveyance Infrastructure Q&A* released on that same day stated that:

The Newsom administration wants to engage with Delta communities to hear their ideas and concerns Local input and active engagement will be critical to ensuring a solution that meets the project objectives.

(Q&A Question 6.)³

In addition, the May 2, 2019, Press Release stated that:

DWR will work with local public water agencies that are partners in the conveyance project to incorporate the latest science and innovation to design the new conveyance project, and work with Delta communities and other stakeholders to limit local impacts of the project.

² Executive Order N-10-19, available at: <https://www.gov.ca.gov/wp-content/uploads/2019/04/4.29.19-EO-N-10-19-Attested.pdf>.

³ Available at: <https://water.ca.gov/-/media/DWR-Website/Web-Pages/Programs/Delta-Conveyance/Modernizing-Delta-Conveyance-Infrastructure-QA-9419a.pdf?la=en&hash=5DC8C7C9AEF9E27666EC01702EFAD3E26B6D01A7>.

In the Resources Agency's Press Release dated May 2, 2019, Secretary Crowfoot was quoted as saying:

A smaller project, **coordinated with a wide variety of actions** to strengthen existing levee protections, protect Delta water quality, recharge depleted groundwater reserves, and strengthen local water supplies across the state, will build California's water supply resilience.⁴

(Bold added.)

Yet DWR's definition of the project objectives in the January 15, 2020, Notice of Preparation ("NOP") for the Environmental Impact Report ("EIR") for the Delta Conveyance Project ("DCP") was much narrower. The NOP states that the fundamental purpose of 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." Protecting Delta communities or Delta water quality is not included. (NOP p. 2.⁵) However, the Delta Stewardship Council's Delta Plan Policy DP P2 – Respect Local Land Use When Siting Water or Flood Facilities or Restoring Habitats (23 Cal. Code Regs., § 5011) ("DP P2") does require that:

Water management facilities, ecosystem restoration, and flood management infrastructure must 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. Plans for ecosystem restoration must consider sites on existing public lands, when feasible and consistent with a project's purpose, before privately owned sites are purchased. Measures to mitigate conflicts with adjacent uses may include, but are not limited to, buffers to prevent adverse effects on adjacent farmland.

Delta Conveyance Design and Construction Authority Stakeholder Committee

⁴ Available at: https://water.ca.gov/-/media/DWR-Website/Web-Pages/Programs/Delta-Conveyance/CNRA_PressRelease_-5-2-19_a.pdf?la=en&hash=106A38E17FDA97B34F1453E14CE8B26164DE7883

⁵ Available at: https://water.ca.gov/-/media/DWR-Website/Web-Pages/Programs/Delta-Conveyance/Delta_Conveyance_Project_NOP_20200115_508.pdf?la=en&hash=74B80DAAE5B9C4BC2EB0619B6A252011F72D1087.

On September 19, 2020, the DCA formed the Stakeholder Engagement Committee ("Committee").⁶ The resolution forming the Committee specified that:

- B. The Committee's business discussions shall be only focused on DCA Activities and the Committee is expressly not the proper forum for:
 - 1. Debates or deliberations regarding whether or not DWR should undertake a Conveyance Project.
 - 2. DWR's consideration of the Conveyance Project and any alternatives under the California Environmental Quality Act or other applicable laws. A separate public process will be undertaken by DWR for this purpose.

According to the Joint Exercise of Powers Agreement between DWR and the DCA, the "Conveyance Project" is defined as a project "that would convey water from the Sacramento River in the north Delta through the Delta directly to the existing SWP and federal Central Valley Project ("CVP") pumping plants located in the South Delta."⁷ This definition does not encompass any other project configuration other than one with diversions on the Sacramento River.

As explained in its October 2, 2019 letter, the DCC elected not to participate in the DCA's Committee due to the restrictive scope of the Committee and, more generally, the narrow focus of the DCA.⁸ The DCC also explained that limiting the Committee to technical, engineering and design issues appeared to skip a step in the decision-making process and conflicted with the Governor's instruction for the water resilience portfolio report to "first inventory and assess current planning to modernize conveyance through the Bay Delta with a new single tunnel project."⁹

⁶ Agenda Item 7c: <https://dcdca.org/wp-content/uploads/2020/06/2019-09-19DCABODVF.pdf>.

⁷ See handouts here: <https://dcdca.org/wp-content/uploads/2020/07/2020-07-22-SECMetingPresentation.pdf> (pp. 7-30), <https://dcdca.org/wp-content/uploads/2020/07/2020-07-22-DCP-Alternatives-Considered.pdf>, <https://dcdca.org/wp-content/uploads/2020/07/2020-07-22-StakeholderEngagementMeetingMaterials.pdf>.

⁸ Available at: <https://delta.saccounty.net/content/Documents/2019-10-02%20DCA%20Stakeholder%20Engagement%20Committee.pdf>.

⁹ Executive Order N-10-19, available at: <https://www.gov.ca.gov/wp-content/uploads/2019/04/4.29.19-EO-N-10-19-Attested.pdf>.

The limited scope of DCA's Committee is outlined on each committee agenda:

The purpose of the Stakeholder Engagement Committee is to create a forum for Delta stakeholders to provide input and feedback on technical/engineering issues related to the DCA's current activities. Please note, **this meeting is not part of the Department of Water Resources' California Environmental Quality Act public outreach process related to a potential Delta Conveyance project and therefore comments made in this meeting will not be recorded or tracked for those purposes.** All items are information only.

(Bold added.)

Presentations by DWR and DCA to other agencies regarding the DCP and the Committee process, however, appear to overstate the input received from the DCA's Committee. For instance, an August 20, 2020, presentation to the Delta Stewardship Council ("DSC") by the DCA and DWR emphasized the design changes undertaken in response to the DCA's Stakeholder input; these did not include any changes to the intake locations or other "immovable" project components. In response, DSC staff explained that the context for the presentation was the DCP's compliance with Delta Plan Policy 2 ("DP P2") – Respect Local Land Uses, and indicated that the changes to the project in the design phase were responsive to stakeholder concerns regarding existing land uses.¹⁰ We disagree. In no way has DWR or the DCA attempted to investigate whether intake locations that avoid existing Delta legacy communities may be feasible, and the tunnel project, as configured, is not consistent with DP P2.

Consultation with the DCA's Committee members does not substitute for consideration of comments from local agencies, as required by DP P2. In addition, the DCA's Committee process cannot be used to satisfy broader statutory requirements under the California Environmental Quality Act ("CEQA") or the 2009 Delta Reform Act regarding the nature and scope of the project because the DCA's Committee, by its own rules and definitions, is not permitted to have input beyond technical design aspects of the DCP.

¹⁰ August 20, 2020 DSC Meeting Video, at hour 1:56:50, available at: [https://cal-span.org/unipage/index.php?site=cal-span&owner=DSC&date=2020-08-27&target=.](https://cal-span.org/unipage/index.php?site=cal-span&owner=DSC&date=2020-08-27&target=)

Alternatives Being Considered Do Not Track Prior Commitments by Resources and DWR Regarding New Process for DCP

Through DCA's Committee, DWR is receiving input from stakeholders in the Delta selected by the DCA. The DCC supports thorough planning and reducing impacts but the DCA's Committee process cannot substitute for full consideration of alternatives required both by CEQA and committed to as part of the 2019 CWF reset. At CEQA scoping meetings for the DCP EIR earlier this year, DWR repeatedly stated that the new environmental review process would thoroughly consider the many alternatives to the tunnel project suggested by the public and described in the NOP.

Despite these obligations, a July 22, 2020, presentation by DWR updating the DCA's Committee on alternatives under consideration in the Draft EIR disclosed that the EIR won't consider *any* of the main alternatives to a tunnel that the public has suggested for further analysis.¹¹ Alternatives rejected by DWR without thorough analysis include the Western Delta Intake Concept (Pyke Plan) and a no-tunnel alternative that improves levees and reduces export water demand. The DCA's Committee heard from DWR that it preliminarily rejected these alternatives without further analysis because the alternatives did not meet DWR's project objectives.¹² While the DCC has not endorsed any of these alternatives, DCC supports full consideration of alternatives such as these. We believe this is consistent with the Governor and DWR's commitments when the CWF/two-tunnel version of the project was set aside.

While DWR rejects considering any major alternatives suggested by the public, DWR disclosed it *would* fully analyze a Bethany Forebay Alternative. This appears to be an alternative suggested by DWR itself, not a member of the public. This alternative would retain the same intake locations and also increase construction activity near the Mountain House community. Because this alternative would bypass the existing SWP and CVP pumps in the South Delta, DCC is concerned that this alternative could lead to abandonment of water supply and quality obligations upon which construction and operation of the SWP and CVP were initially premised.

In response to the news that the Draft EIR would not consider the alternatives suggested by the public, the DCA's Committee members understandably expressed their frustration with the early rejection of structural alternatives

¹¹ Available at: <https://dcdca.org/wp-content/uploads/2020/07/2020-07-22-SECMeetingPresentation.pdf>, slides 9-30.

¹² A summary of DWR's alternatives presentation is here: <https://nodeltagates.com/2020/07/27/alternatives-to-the-tunnel/>.

to the tunnel project.¹³ Stakeholders identified the lack of objective criteria by which DWR determined that the alternatives would not meet the project objectives of “climate resiliency, seismic resiliency, water supply reliability, and operational resiliency.” With respect to the water supply reliability and climate resiliency objectives, there were also important questions from Committee members as to why DWR assumes that it will not continue to maintain salinity control in the south Delta (through reservoir releases), and whether climate “resilience” for the SWP would be achieved by depriving the Delta of fresh water.

When members of the DCA’s Committee have requested consideration of no tunnel alternatives, the DCA has refused to discuss them:

Consistent with its purposes under California Legislative [sic], DWR's objectives for the Delta Conveyance Project are focused on enabling the State Water Project (SWP) to continue to function in the face of multiple challenges (including sea level rise, climate change, and earthquake risk). Many of the no tunnel alternatives proposed do not meet these objectives because they would not be under DWR's legislative authority and would not help the SWP continue to function. However, these non-tunnel proposals represent actions that may be taken by California public water agencies that contract with DWR for SWP deliveries if Delta Conveyance does not move forward. While DWR is not planning to evaluate these actions (including conservation, recycling, and desalination) in detail as part of an action alternative in the EIR, DWR is going to be developing a robust No Project alternative that considers actions that may be taken if the Delta Conveyance Project does not move forward.

(SEC Member Question/Comment Tracking Master Log Updated 09.23.2020, Id. #11.29, 11.34.¹⁴)

DCC believes there are feasible alternatives that do not include a tunnel. It is unclear why DWR would not at least consider a tunnel alternative that also includes actions such as conservation, recycling, and desalination, which could potentially reduce the scale of a tunnel, for instance.

¹³ Available at: <https://dcdca.org/wp-content/uploads/2020/08/2020-08-26StakeholderEngagementMeetingMaterials.pdf>, July 22, 2020 Meeting Minutes, pp. 4-12.

¹⁴ Available at: <https://dcdca.org/wp-content/uploads/2020/09/2020-09-23-MasterSECTrackingPacket.pdf>.

DWR's focus on a tunnel project to the exclusion of other available alternatives appears inconsistent with Secretary Crowfoot's May 2, 2019, statement about coordination of the tunnel proposal with "a wide variety of actions to strengthen existing levee protections, protect Delta water quality, and recharge depleted groundwater reserves." Coordination of these actions with the tunnel proposal must be implemented, consistent with Executive Order N-10-19, as explained in the DCC's comments on the Draft Water Resilience Portfolio report.¹⁵

In February 2020, the DCC wrote to Secretary Crowfoot to ask that DWR not reference the Delta Stakeholder Roundtable meetings that occurred prior to the COVID-19 pandemic as part of public participation about the tunnel project.¹⁶ DCC feels similarly about the DCA's Committee process. The DCA's Committee, which has no input on alternatives, does not substitute for the collaboration the Governor and DWR has promised with Delta communities. A true collaboration, on the other hand, would consider alternatives and would not begin with a set project definition that irreparably alters the lands, waters and communities of the Delta.

Conclusion

In summary, DWR and DCA are not adequately engaging Delta communities regarding the Delta Conveyance Project/Tunnel. As a result, DWR and the DCA continue to pursue essentially an identical project (then called the CWF) that failed to move forward in 2019 and continue to ignore requests that a reasonable range of alternatives be considered. This is both a legal inadequacy as well as a breach of prior commitments. In addition, the DCA's Committee is no substitute for the consultation and outreach that the DCC and other local stakeholders were promised. The new process for the single tunnel should have had the possibility of yielding a modified or different result. Yet, this "new process" contemplates basically the same, if perhaps more carefully designed, project.

As an area of origin for water exported to vast areas of the state, the DCC expects that our region has a meaningful voice in the decisions made about it. We are disappointed that, in substance, there has not been a substantive role in determining our own fate. While the Water Resiliency Portfolio report was a good start, it was ultimately a missed opportunity to do the hard work of creating equitable solutions for California water management.

¹⁵ Available at: <https://delta.saccounty.net/content/Documents/2020-02-07%20%20DCC%20WRPI%20Comments-%20FINAL.pdf>.

¹⁶ Available at: <https://delta.saccounty.net/content/Documents/2020-02-03%20DCC%20Letter%20to%20Secretary%20Crowfoot.pdf>.

DWR Director Nemeth
DCA Executive Director Mallon
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We hope this information is helpful in forging a more productive path forward.


Sincerely,



Patrick Kennedy
Supervisor, Sacramento
County



Skip Thomson
Supervisor, Solano
County



Karen Mitchoff
Supervisor, Contra
Costa County



Oscar Villegas
Supervisor, Yolo County



Chuck Winn
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cc: Wade Crowfoot, Secretary, Natural Resources Agency
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Jeff Henderson, Deputy Executive Officer, Delta Stewardship Council
Michael George, Delta Watermaster