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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.

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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, the project objectives are: To address anticipated rising sea levels 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 **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.)

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 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 *arguendo* 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 intends 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.

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DWR's historical practice in its prior EIRs, and NOPs, 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.

One 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 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. **Additional Impacts to Discuss and Analyze:** 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. **Earthquake Impacts to the Project's Facilities:** 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. **State and Federal Anti-degradation Laws:** This project could rightfully be renamed to "the Delta Water Quality Degradation Project." At the end of the day,

even setting aside DWR's sinister intents discussed above, any Sacramento 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 northernmost 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. **Piecemealing:** 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. **Water Transfers:** 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. **Alternatives:** 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.” (Ibid.) 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 increase reliance on the Delta than this project.

The EIR, accordingly, must include a reasonable range of non-tunnel alternatives that actually 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.

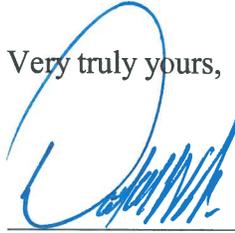
The bottom line for alternatives is to simply ask DWR what it would do to address all of its concerns, including levee failures, if a tunnel was 100% not an option.

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."