



DELTA DEFENDERS

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April 17, 2020

Sent via email to DeltaConveyanceScoping@water.ca.gov

Delta Conveyance Scoping comments

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

RE: Requirement for Scoping Comments Related to the Delta Tunnel Planning Process During COVID-19 Pandemic`

Dear Lead Agency,

Please accept this letter on behalf of the Delta Defenders in response to the requirement that scoping comments be submitted despite the ravages of the COVID-19 pandemic crisis. The Department of Water Resources (DWR) has been asked by the Delta Protection Commission, Delta Counties, Delta residents, Delta business owners, Delta community-based organizations, Tribal representatives, fishing and non-governmental organizations to pause Delta tunnel planning processes that require public participation due to the impact of the COVID-19 pandemic.

We, Delta Defenders, sent a letter to DWR Director Karla Nemeth on March 16 calling for a pause in Delta tunnel stakeholder engagement processes. We cited the effects of

the pandemic on Delta Counties, Delta Cities, Delta legacy cities, Delta legacy communities, Delta businesses and Delta residents.¹

On April 7, the Delta Counties Coalition sent a letter to Natural Resources Secretary Wade Crowfoot requesting that Delta Conveyance Project planning and engineering design processes that require Delta stakeholder engagement be put on hold.² That letter states in part:

“The Delta Counties Coalition (DCC) respectfully requests that you direct the Department of Water Resources (DWR) to pause all Delta Conveyance Project planning and engineering design processes that require Delta stakeholder engagement during the COVID-19 crisis, until the public can fully participate. We request you ask the Delta Conveyance Design and Construction Authority (DCA) to pause its processes that require public participation, including Stakeholder Engagement Committee meetings, so that the Delta tunnel engineering design can be informed by meaningful public input. We also ask that you direct DWR and other resource agencies to extend public comment periods by at least 45 days beyond the end of the declared emergency.”

On April 9, Restore the Delta sent a similar request to Governor Newsom.³

The requirement for Delta stakeholders to submit scoping comments during a national and state public health emergency and a major disaster is yet another example of DWR’s attempt to rush forward with this project in blatant disregard for Delta stakeholders. It is deeply disturbing and is directly contrary to the policy of the state as enacted by the legislature in Public Resources Code 21000 et. seq. Public Resources Code section 21002 states in part

“The Legislature finds and declares that it is the policy of the state that public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental effects of such projects, and that the procedures required by this division are intended to assist public agencies in systematically identifying both the significant effects of proposed projects and the feasible alternatives or feasible mitigation measures which will avoid or substantially lessen such significant effects.”

¹ Delta Defenders, Letter Re: Please don’t push forward with the Delta tunnel stakeholder engagement process during a public health emergency, March 16, 2020.

<https://secureservercdn.net/166.62.107.204/f4x.956.myftpupload.com/wp-content/uploads/2020/03/Ltr-re-Delta-SEC-and-coronavirus.pdf>.

² Delta Counties Coalition, Letter Re: Request for Stay of Public Processes for Delta Conveyance Planning During Novel COVID-19 Pandemic. <https://cah2oresearch.com/wp-content/uploads/2020/04/2020-04-07-DCC-Letter-to-Secretary-Crowfoot-re-Stay.pdf>

³ Restore the Delta, Letter Re: Request for Stay of Public Processes for Delta Conveyance Planning During Novel COVID-19 Pandemic, April 9, 2019. <https://www.restorethedelta.org/wp-content/uploads/Letter-to-Gov-Newsom-Request-for-Stay-of-Public-Processes-for-Delta-Conveyance-Planning-During-Novel-COVID-19-Pandemic.pdf>

(underlining added.)

Delta stakeholders must submit comments during the scoping comment period, but are unable to participate in scoping due to the COVID-19 crisis. As a result, they will be denied the opportunity suggest feasible alternatives to be studied in detail as part of the CEQA process. This has created a sham CEQA process and raises fundamental issues of abuse of discretion. Setting the deadline for scoping comments in the middle of a pandemic defeats the very purpose of scoping comments.

There are also fundamental issues that, contrary to CEQA guidelines § 15063, the initial study information used for determination of intake sites and tunnel corridors in the Notice of Preparation has not been provided with the Notice of Preparation. The Notice of Preparation only refers to the previous WaterFix project, for which all project approvals were withdrawn on May 2, 2019 (p. 9.) The Department of Water Resources has withdrawn all WaterFix project information from publication on the internet, so none of it is available for public inspection or reference in preparing scoping comments.

It is clear that the decision to push forward with CEQA scoping during the pandemic is related to the schedule for engineering design work for the Delta Conveyance, under DWR's Joint Exercise of Powers Agreement with the Delta Conveyance Design and Construction Authority (DCA.) In January of 2019, the DCA signed a \$93 million Engineering Design contract signed with Jacobs Engineering, and a \$75 million contract signed in January 2019 with Fugro for Geotechnical services for the WaterFix project.

In spite of withdrawal of all approvals for the WaterFix project, engineering design work has been proceeding under the WaterFix project engineering contracts since May of 2019. On June 12, 2019 North Delta Cares, Delta Defenders, and other Delta community-based groups sent a letter to DWR Director Karla Nemeth requesting that DWR withdraw DWR's authorization to commence work on the project. The Department of Water Resources stated in response⁴:

Neither the Department of Water Resources (DWR) nor the Delta Conveyance Design and Construction Authority (DCA) is continuing work on that project or currently performing any new planning based on the previous WaterFix approvals.

But it has become clear that both DWR and the DCA are performing new planning based on the previous WaterFix project approvals. In December of 2019, the Delta Conveyance Design and Construction Authority met with a panel of international tunneling contractors to do an Independent Technical Review of the proposed Delta Conveyance Project. For the project specifications, the DCA gave the panel a copy of

⁴ Department of Water Resources, Letter re: Next Steps on Delta Conveyance, June 17, 2019. <https://cah2oresearch.com/wp-content/uploads/2020/04/2019-06-17-North-Delta-Cares-Response-to-June-12-letter-1.pdf>.

the July 2018 WaterFix Conceptual Engineering Report.⁵ Although the Independent Review Panel found that the main tunnel alignment for the WaterFix project was impractical and recommended that it not be studied further, that alignment is in the Notice of Preparation as the Central Delta Corridor.

Under supervision of the Department of Water Resources, the Delta Conveyance Design and Construction Authority has also been conducting a Delta stakeholder engagement process to consider the Delta Conveyance engineering design being developed by the DCA. In November 2019, the DCA appointed 16 Delta stakeholders to a Delta Stakeholder Engagement Committee. The members represented a broad range of Delta interests, from Delta businesses to sportfishing, recreation, environmental justice, and aquatic and terrestrial NGOs. Each committee member was tasked with receiving information on the proposed Delta tunnel project design and conveying the information to their respective stakeholders, and conveying feedback on the proposed design to the DCA.

In presenting information to the DCA's Delta Stakeholder Engagement Committee on the choice of intake sites, the DCA's Engineering Manager Phil Ryan referred to the previous WaterFix project:⁶

DCA conducted a detailed site investigation. It is important to understand that DCA conducted its own detailed analysis and also utilized information compiled by the Fish Facility Technical Team (FFTT) for the previous WaterFix project. The FFTT was comprised of the fish regulatory agencies, consultants and other interested people who helped evaluate the river for potential intake sites. The FFTT identified, analyzed and then made conclusions on site locations. DCA reviewed their information to ensure understanding of their methodology, but then re-evaluated using new information such as the State's underwater river mapping conducted last summer. All of this information was used to re-evaluate and verify the potential intake sites.

...

Based on evaluation of all of these factors, five candidate sites emerged. These are the same sites identified in the previous project... All of the intakes are compatible with either corridor option in the NOP.

The DCA's engineering design processes was clearly based on information from the WaterFix project. At the same meeting, the DCA's Executive Director, Kathryn Mallon, also stated:

⁵ Delta Conveyance Design and Construction Authority, Independent Technical Review Panel Memorandum, January 31, 2020. <https://www.dcdca.org/pdf/2020-02-26-IndependentTechnicalReviewResponse.pdf>.

⁶ Delta Conveyance Design and Construction Authority, Stakeholder Engagement Committee, Materials for the February 12, 2020 Regular Committee Meeting <https://www.dcdca.org/pdf/02-12-2020-SEC4MeetingPacket.pdf>

...the State Department of Fish & Wildlife, the U.S. of Fish & Wildlife Service and the National Marine Fisheries Service are the primary drivers for identifying constraints and siting criteria for these intakes.

The SEC's meeting minutes also record that the DCA was relying on California Department of Fish and Wildlife approvals for the previous project⁷:

Ms. Whaley asked if the Department of Fish and Wildlife (DFW) completed a CEQA process for their decision for the WaterFix project as to where the intakes would go? Ms. Buckman said there was a siting study to consider intake locations. DWR led the CEQA effort as the lead agency. DFW completed an incidental take permit related to that application, but all of these have been withdrawn at this point.

The three WaterFix sites described by the DCA's Engineering Manager Phil Ryan are the same as those shown in the Notice of Preparation.

During the February 12, 2020 Delta Stakeholder Engagement Committee meeting, Delta Stakeholder Engagement Committee member Karen Mann asked if the Delta Stakeholder Engagement Committee should also be considering different sites for the intakes. The response is recorded in the February 26, 2020 meeting packet⁸:

Ms. Marquez reminded members the scoping process is currently underway. If there are suggestions related to alternatives such as alternative locations for the intakes, that comment can be submitted as a scoping comment. There are quite a few constraints that determined what intakes were listed in NOP.

The constraints that determined "what intakes were listed in the NOP" are not in the Notice of Preparation.

On February 26, 2020 Lindsay Liebig, the Delta agriculture representative to the Delta Stakeholder Engagement Committee, asked if project alternatives that came out of the CEQA scoping process would be given the same consideration as options developed by the Design and Construction Authority and presented to the SEC. This was the response, as recorded in the March 11, 2020 SEC meeting packet^{9, 10}:

⁷ Delta Conveyance Design and Construction Authority, Stakeholder Engagement Committee, Materials for the March 11, 2020 Regular Committee Meeting <https://www.dcdca.org/pdf/2020-03-11-StakeholderEngagementMeetingMaterials.pdf>, p. 12.

⁸ Delta Conveyance Design and Construction Authority, Stakeholder Engagement Committee, Materials for the February 26, 2020 Regular Committee Meeting <https://www.dcdca.org/pdf/2020-02-26-UPDATEDStakeholderEngagementMeetingMaterials.pdf>

⁹ Delta Conveyance Design and Construction Authority, Stakeholder Engagement Committee, Materials for the March 20, 2020 Regular Committee Meeting

¹⁰Delta Conveyance Design and Construction Authority, Stakeholder Engagement Committee, Materials for the January 22, 2020 Regular Committee Meeting <https://www.dcdca.org/pdf/01-22-2020-SECMeetingPacketVF-UPDATED.pdf>, p. 7.

Ms. Liebig asked if the alternatives that come out of the CEQA process based off of scoping comments will be given the same consideration as the options being presented to the SEC. It would be a huge disservice to not give as much consideration to the alternatives suggested by local residents as is being given to the plans discussed in SEC meetings. Ms. Buckman said all alternatives suggested during scoping will be analyzed for their ability to meet the project objectives and/or reduce environmental effects, which determines which alternatives will move forward for further analysis in the EIR. An entire suite of alternatives has already been proposed through scoping comments. Those alternatives suggestions will be narrowed down through the analysis process and included in the EIR for analysis at a similar level of detail.

But Delta stakeholders are affected by the shutdown, and have almost no capacity to meet with engineers or other technical experts and consider or develop alternatives for the intake sites. By constraining consideration of alternatives to those submitted during scoping, DWR continues with the same disregard it has demonstrated since the onset of the pandemic. This is a time of dire crisis. It is a time for administrative flexibility, not rigid disregard for the communities most affected by the Delta tunnel planning process. The actions of DWR are the antithesis of equity and fairness expected of governmental bodies and are an abuse of discretion.

We ask that the Department of Water Resources cure this deficiency by providing full and complete disclosure of all studies and other technical information used in determining the intake sites and tunnel corridors in the Notice of Preparation, and providing an opportunity for Delta stakeholders to submit suggestions for alternatives to be considered as part of the EIR and part of the engineering design process, 45 days after the end of the current public health emergency.

Sincerely,
/s/

Donis Pacini Whaley

Donis Pacini Whaley

Facilitator, Delta Defenders

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A handwritten signature in black ink, appearing to read 'D. Des Jardins', with a small superscript 'c' at the end.

Deirdre Des Jardins

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