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April 15, 2020

Via U.S. Mail:
 Delta Conveyance Scoping Comments
 Department of Water Resources
 P.O. Box 942836
 Sacramento, CA 94236
 Attn: Renee Rodriguez

Via email: DeltaConveyanceScoping@water.ca.gov

Subject: Delta Conveyance Notice of Preparation (NOP) Scoping Comments

Dear Ms. Rodriguez,

The Delta Protection Commission (Commission) is a California State agency created by the Delta Protection Act of 1992, which declared “the Delta is a natural resource of statewide, national, and international significance, containing irreplaceable resources, and that it is the policy of the state to recognize, preserve and protect those resources of the Delta for the use and enjoyment of current and future generations” (California Public Resources Code (PRC) section 29701).

The Act directed the Commission to regulate land use in the Delta to ensure that the populous metropolitan areas surrounding the Delta did not overrun this natural resource and forever alter those irreplaceable resources, including the agricultural, recreational, natural and cultural features that make the Delta the unique place that it is.

In response to the NOP, this letter sets forth the broad principles that serve as the foundation for the attached document detailing issue-by-issue comments. As with the predecessor conveyance proposals, a tunnel through the Delta will irreversibly damage Delta agriculture, recreation, cultural and natural resources. This letter presents our assessment of the potential impacts, offers promising alternatives and effective and feasible mitigation measures for consideration, and reaffirms our position that previously ill-defined impacts – or those not defined at all in previous environmental review – must now receive the attention they require.

Additional Authorities

In addition to the Delta Protection Act of 1992, the Commission’s authority with respect to the Delta conveyance proposal presented in the NOP stems from the following legislation and agreements.

Delta Reform Act: The Delta Reform Act of 2009 (Chapter 5, Statutes of 2009), as well as 2009 amendments to the Delta Protection Act of 1992, declared that the State's basic goals for the Delta are to provide a more reliable water supply for California and protect, restore and enhance the Delta ecosystem "in a manner that protects and enhances the unique cultural, recreational, natural resource and agricultural values of the Delta as an evolving place" (PRC section 29702(a) and Water Code section 85054). In addition, the law identifies the Commission as a "forum for Delta residents to engage in decisions regarding actions to recognize and enhance the unique cultural, recreational, and agricultural resources of the Delta" (PRC section 29703.5(a)). It directs the Commission to recommend ways to protect and enhance the Delta's unique values to the Delta Stewardship Council.

Sacramento-San Joaquin Delta National Heritage Area. The John D. Dingell, Jr. Conservation, Management, and Recreation Act, enacted in March 2019, created the Sacramento-San Joaquin Delta National Heritage Area (NHA). The law designates the Delta Protection Commission as the NHA's local coordinating entity, and charges it with preparing and submitting to the Secretary of the Interior a NHA management plan. Pursuant to the Act, the plan will emphasize the importance of agricultural resources and activities, flood protection facilities, and other public infrastructure, incorporating an integrated and cooperative approach for addressing them, and provide comprehensive policies, strategies and recommendations for conservation, management, development, and funding of the NHA. We are already at work on that plan, which is due to the Secretary of the Interior by March 2022. Federal agencies (such as the U.S. Army Corps of Engineers or U.S. Bureau of Reclamation) that are planning to conduct activities that may impact the NHA are to coordinate their actions with the Commission to the maximum extent practicable.

Staten Island Memorandum of Understanding

The Commission has a role in reviewing any land-use changes on Staten Island, which is subject to a 2001 conservation easement and a 2002 Memorandum of Understanding between the Commission and the Department of Water Resources (DWR). The stated intent of the conservation easement is that Staten Island be protected from "any actions that would result in the conversion of any material portion ... away from agricultural use." DWR holds the conservation easement and is legally responsible for its enforcement.

Principles

The Commission's comments are based on foundational principles that underlie our response to the Notice of Preparation, derived from what matters to those who live, work and recreate in the Delta. Since none of the stated project objectives specifically benefit the Delta region, we believe these principles should be given equal weight to the project objectives.

The Delta Reform Act of 2009 articulated the State's recognition that the Delta is a special place. Congress recognized its singular qualities when designating it a National Heritage Area. Its assets attracted people from around the world, whose hard work and creativity fashioned the unique landscape that is our home. These special attributes

include its productive farmlands, with its drainage and irrigation infrastructure; the waterways navigated by recreational and commercial vessels and attracting boaters, anglers and other recreationists; and its rich cultural history stretching from Native California Indians through waves of immigrants to today's legacy communities and multi-generational family farms. It enjoys quiet, dark night skies, and close-knit communities. It is a place of surprising diversity and continuity. Protecting the Delta as a unique place means adhering to the following basic principles.

Protect Delta Water

The reliability of water supplies for in-Delta users and the Delta ecosystem must be fully protected. Our local water utilities, farms, resorts, and industries benefit from abundant fresh water. Our fish and wildlife are attuned to the pulses of this water as it interacts with the Delta's tides. Complex infrastructure built to manage this water, including siphons, diversions, drains, other discharges, and levees, is also carefully adapted to current conditions. This water is protected by our rights as an area where these waters originate, by other water rights, and by federal and State law. Any Environmental Impact Report (EIR) for Delta isolated conveyance must carefully evaluate any harm to the region's water and fully protect all its uses, including its water management infrastructure.

Improve Levees and Reduce Reliance on Exports

The EIR should consider an alternative that reduces risks to Delta water supplies from earthquakes and sea level rise by improving Delta levees, as recommended in the Commission's Economic Sustainability Plan for the Sacramento-San Joaquin Delta (ESP). This alternative should consider a reduction of other region's reliance on water from the Delta by investing in water use efficiency, water recycling, and other advanced technologies. EIR alternatives and mitigation measures should also be consistent with regulations implementing the Delta Reform Act, the Clean Water Act, and the Davis-Dolwig Act's (Water Code sections 11910-11911) requirements about protecting Delta wildlife and fish, providing recreation opportunities, and consulting with local agencies.

Listen to Delta People

The Delta is a complex place. No one knows it better than those who live, work, and recreate there and the local governments who represent them. Involving these Delta people will be essential to understanding the project's effects and how to avoid or reduce them. The Bay-Delta Conservation Plan (BDCP) began by excluding many local stakeholders from discussions about it. Many Delta people felt excluded from substantive involvement in the BDCP EIR as well. The sense of skepticism that resulted will be difficult to overcome. But DWR has gained valuable experience developing constructive working relationships with wildlife and fish agencies that can be applied to working with people in the Delta. The Delta Conveyance Design and Construction Authority (DCA) outreach effort with its Stakeholder Engagement Committee (SEC) is a start, but should supplement, not substitute for consultation. DWR's outreach and listening effort should extend beyond pro forma California Environmental Quality Act (CEQA) notifications. The alternative is further decades of gridlock and impasse.

Protect People as Well as Wildlife

Delta residents and recreationists must be protected as effectively as its fish and wildlife. Like the fish and wildlife that receive so much attention, our multiracial population is also at risk. Too many residents and workers have low incomes, and others' jobs rely on water-dependent farms or tourism. The communities where they live and work, the waterways that attract our recreationists, and the highways traveled to jobs and shopping, to ship our produce, and to draw visitors are as critical as the river channels and other habitats where wildlife and fish live and migrate. Impacts to the Delta's residents and visitors should be assessed using current data, not outdated information or guesswork. Alternative points of diversion that avoid damaging our communities deserve the same consideration as locations that minimize harm to fish. Specific actions to reduce damaging effects should be spelled out whenever feasible, not deferred to be worked out later. Performance standards should be clearly stated. When harm is unavoidable, compensation to offset damage must be provided, just as it is for damage to waterfowl or salmon.

Treat Us as Well as Other Californians

Measures to mitigate impacts in the Delta must be at least equivalent to those used in other large public works projects in southern California, Santa Clara County, and the San Joaquin Valley that would receive water through the proposed tunnel. These regions have employed both practical and innovative ways to reduce and offset the damaging effects of public works projects. Homes have been insulated to quiet excess noise. State-of-the-art equipment has been used to reduce disruption during construction. Homes that must be purchased are subsequently replaced and made available at affordable prices. Historic structures have been carefully mothballed and then rehabilitated after project completion. Funds have been provided to help adversely-affected businesses persist despite the disruptions caused by project construction. The application of such measures elsewhere in California demonstrates that they can typically be accomplished successfully, considering economic, environmental, social and technological factors. The EIR must evaluate such measures applicability in the Delta and adopt them whenever feasible.

Use the Best Science

The EIR must be based on the best available science and employ adaptive management where impacts within the Delta are uncertain. Data about the Delta must be carefully collected and shared for review. Evaluations of impacts to agriculture, tourism, transportation, housing, cultural assets, and other Delta resources must be peer-reviewed, as should economic studies used to consider mitigation measures' feasibility. Where effects are uncertain, actual effects during the construction period should be monitored so that mitigation can be adjusted based on actual conditions rather than inexact forecasts.

Be Readable

As noted by the Delta Independent Science Board, the circumstances surrounding impact assessment of a conveyance project demand that the environmental review “go beyond legal compliance,” that it have “extraordinary completeness and clarity,” that it be “exceptionally clear about the scientific and comparative aspects of both environmental impacts and project performance.” The EIR should include summaries of impacts, by chapter, written plainly and with explanatory graphics, so that it is easily understood by Delta residents and agencies. The EIR’s purpose should be to inform public discussion and agency decisions about alternative ways to achieve the project’s objective, rather than just to compile an exhaustive and encyclopedic narrative about the project and its effects. Innovative communications, such as video clips, should supplement the written report.

Don’t Make the Delta Pay

DWR’s water contractors must agree to reimburse affected Delta local governments and special districts for the lost property taxes or assessments for land used in the project’s construction, location, mitigation, and operation, as required by the Delta Reform Act (Water Code section 85089). DWR should also anticipate reimbursing local agencies, many of whom operate on very modest budgets, when it calls on them for data or consultation during the preparation of the EIR.

Conclusion

The Delta Protection Commission offers these scoping comments in the spirit of constructive dialogue. We believe considering alternatives in light of these principles and giving them equal weight to the project objectives will change the perspective of a preferred alternative and mitigation measures significantly. We hope they will aid DWR in bringing together and resolving the concerns of our affected local government constituents, responsible and trustee agencies, and other interested parties, including those who may not be entirely in accord with the action on environmental grounds, as provided in CEQA Guidelines Section 15083.

Thank you for the opportunity to provide input. We are available to engage in multi-lateral discussion of how to protect and enhance the unique values of the Sacramento-San Joaquin Delta.

Sincerely,



Erik Vink
Executive Director

Attachment: “Attachment to NOP Comment Letter Dated April 15, 2020”

CC: Chairman Villegas and Commissioners, Delta Protection Commission