

October 20, 2020

Via Email

Zachary.M.Simmons@usace.army.mil

Mr. Zachary M. Simmons
U.S. Army Corps of Engineers
Regulatory Division
Sacramento, CA

Re: Comments on Scoping and Notice of Intent to prepare an EIS for construction of the proposed Delta Conveyance Project

Dear Mr. Simmons and U.S. Army Corps of Engineers:

By this letter, our public interest organizations comment on scoping and the Notice of Intent to prepare an Environmental Impact Statement (EIS) for construction of the proposed Delta Conveyance Project (Project.) The U.S. Army Corps of Engineers published the Notice of Intent (Notice) in the Federal Register on August 20, 2020. (85 Fed. Reg. 51420 (August 20, 2020.)

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INTRODUCTION

Our public interest organizations joining this letter are AquAlliance, California Water Impact Network, California Sportfishing Protection Alliance, Center for Biological Diversity, Environmental Water Caucus, Planning and Conservation League, Restore the Delta, and Sierra Club California.

The Project, a water tunnel, would divert enormous quantities of freshwater that presently flow through the Sacramento River, sloughs, and the San Francisco Bay-Delta estuary before being diverted for export from the south Delta. Due to the new points of diversion north of the Delta, freshwater flows that presently contribute to water quality, water quantity, endangered and threatened fish species, fish habitat, Delta agriculture and public health by flowing through the already impaired Delta would instead flow through an underground tunnel no longer providing benefits within the Delta. One example of the environmental destruction that would be caused by the tunnel Project is worsening the harmful algal blooms threatening the public health of Delta residents and users.

In its January 30, 2020 *Comments on Draft Environmental Impact Report for the Long-Term Operation of the State Water Project* ([Copy attached](#)), the State Water Resources Control Board (Water Board) explained some of the harms to the Delta. There is “broad agreement in the scientific community that increased freshwater flows through the Delta and aquatic habitat restoration are needed to protect Bay-Delta ecosystem processes and native fish species.” (Water Board comments p. 4.) The Water Board continued:

As stated in the [2017 Water Board staff] Scientific Basis Report: It is widely recognized that the Bay-Delta ecosystem is in a state of crisis. . .

The Scientific Basis Report concluded that increased Delta inflows and outflows, and cold-water habitat and constraints on pumping in the interior Delta are necessary in order to reasonably protect at-risk fish species. Accordingly, it is not clear how the proposed project will not further degrade conditions for fish and wildlife species that are already in poor conditions, some of which are on the verge of functional extinction or extirpation. Given this, it is also not clear how the proposed project is consistent with existing obligations, including the California Delta Reform Act, CESA, the California Porter-Cologne Water Pollution Control Act (Porter-Cologne Act), various provisions of the California Water Code governing water rights, and the public trust doctrine. (Water Board comments p. 4.)

The Corps of Engineers’ Notice describes the alternatives presently under consideration. (85 Fed. Reg. 51420 at 51421.) The scope of alternatives is too narrow to

meet the requirements of the National Environmental Policy Act (NEPA.) The alternatives as described simply consist of essentially the same water tunnel Project in different outfits. According to the Notice,

Current alternatives to be analyzed include variations of the proposed project. Options include two or three possible intake structures, multiple intake structure designs based on impact footprint and fish screen designs, intake and tunnel capacity between 3,000 to 7,500 cfs, and optimizing a tunnel alignment to minimize impacts within either a central Delta or eastern Delta corridor. (85 Fed. Reg. at 51421.)

The Draft EIS must have a much larger scope than is set forth in the Notice. Contrary to the Notice, the scope of the EIS cannot be limited to construction activities. A foundational deficiency is the apparent intention evidenced by the Notice to violate the NEPA requirement to set forth a range of reasonable alternatives to the Project and evaluate comparative merits of the alternatives. The Notice also evidences apparent intention to ignore the Delta Reform Act and California's public trust doctrine, in the course of evading consideration of obvious and required alternatives that would protect California's rivers and restore freshwater flows through the San Francisco Bay-Delta Estuary (Delta) by reducing exports. The Delta is in a state of crisis. The crisis and NEPA require no-tunnel alternatives.

The alternatives set forth in the EIS must include no-tunnel alternatives that include modern innovations reducing reliance on the Delta such as conservation, recycling, and increasing water use efficiency. Such no-tunnel alternatives would also eliminate adverse impacts of construction, and discharge of dredge and fill material.

EIS DISCUSSION REQUIRED OF CONFLICTS BETWEEN PROJECT AND CALIFORNIA LAW

The EIS will have to include discussion of, "Possible conflicts between the proposed action and the objectives of Federal, regional, State, Tribal, and local land-use plans, policies and controls for the area concerned." (NEPA Regulations, 40 C.F.R. § 1502.16(a)(5.) The declared policy of the State of California is, "to reduce reliance on the Delta in meeting California's future water supply needs through a statewide strategy of investing in regional supplies, conservation, and water use efficiency. . ." (Delta Reform Act, Water Code § 85021.) The water tunnel Project would do the opposite. It would increase instead of reduce reliance on the Delta in meeting California's future water supply needs. The EIS will have to discuss this conflict between the proposed action—the tunnel Project-- and California's declared policy to reduce reliance on the Delta.

Another critically important policy established by California’s Delta Reform Act, is the policy to, “Restore the Delta ecosystem, including its fisheries and wildlife, as the heart of a healthy estuary and wetland ecosystem.” (Water Code § 85020(c.) The tunnel Project does the opposite of restoring the Delta ecosystem. By reducing freshwater flows through the Delta, the Project would instead worsen the already degraded Delta ecosystem. This conflict also, must be discussed in the EIS.

The Corps of Engineers’ Notice declares its “jurisdiction is limited to construction activities resulting in the discharge of dredge or fill material within waters of the U.S., work or structures within navigable waters, and modifications to the federal levees and navigation projects.” (85 Fed. Reg. 51420 at 51421.) The Notice claims, “The scope does not extend to the potential downstream effects from the diversion of water through new intakes or to the overall SWP [State Water Project] and water deliveries.” (*Id.*)

Contrary to the Corps of Engineers attempt to limit the scope of the EIS, the NEPA Regulation set forth above requires EIS discussion of conflicts between the proposed action and California’s Delta Reform Act. There are no exceptions set forth in the NEPA Regulation.

ALTERNATIVES REDUCING INSTEAD OF INCREASING RELIANCE ON THE DELTA ARE REQUIRED BY CALIFORNIA LAW

As shown above, the Delta Reform Act has declared California State policy being “to reduce reliance on the Delta in meeting California’s future water supply needs through a statewide strategy of investing in regional supplies, conservation, and water use efficiency. . . (Water Code § 85021.) California State policy also is to, “Restore the Delta ecosystem, including its fisheries and wildlife, as the heart of a healthy estuary and wetland ecosystem.” (Water Code § 85020(c.)

The tunnel Project is antithetical to these provisions of the Delta Reform Act. Its purpose would be to divert enormous quantities of freshwater flows out of and away from the Sacramento River and Delta. The Project would do the opposite of *reducing* reliance on the Delta as required by the Delta Reform Act. The massive Project and expenditures to construct it would instead *increase* reliance on the Delta.

In July 2020, the California Natural Resources Agency, Cal EPA, and the California Department of Food and Agriculture issued the *Water Resilience Portfolio* (Portfolio) as required by Governor Newsom’s Executive Order N-10-19. The Portfolio admits,

Many river systems across California have been highly altered by water development and these changes have impacted natural ecosystems on which fish and wildlife depend. Climate change further threatens these ecosystems as air and water temperatures increase and dry periods become more punishing. (Portfolio p. 21.)

There is more. The Delta Conveyance Project is simply a new name for essentially the same old proposed Project -- increasing exports and reducing freshwater flows through the Delta by way of new conveyance in the form of a canal or tunnel. The Delta Reform Act established some specific requirements for the then-named version of this Project, the Bay Delta Conservation Plan (BDCP.) The State eventually dropped the positive features of the BDCP and began calling the project the California WaterFix. More recently, the State converted the twin tunnel WaterFix Project into the single tunnel the State now calls the Delta Conveyance Project. Whatever the project is called, the Delta Reform Act includes very specific requirements for comprehensive environmental review of specific subjects for the Project in Water Code § 85320(b)(3):

- (A) A reasonable range of flow criteria, rates of diversion, and other operational criteria required to satisfy the criteria for approval of a natural community conservation plan as provided in subdivision (a) of Section 2820 of the Fish and Game Code, and other operational requirements and flows necessary for recovering the Delta ecosystem and restoring fisheries under a reasonable range of hydrologic conditions, which will identify the remaining water available for export and other beneficial uses.
- (B) *A reasonable range of Delta conveyance alternatives, including through-Delta, dual conveyance, and isolated conveyance alternatives and including further capacity and design options of a lined canal, an unlined canal, and pipelines.*
- (C) The potential effects of climate change, possible sea level rise up to 55 inches, and possible changes in total precipitation and runoff patterns on the conveyance alternatives and habitat restoration activities considered in the environmental impact report.
- (D) The potential effects on migratory fish and aquatic resources.

[deletions]

(G) The potential effects of each Delta conveyance alternative on Delta water quality. (Emphasis added.)

The declared policy of the State of California is to require a reasonable range of Delta conveyance alternatives, “*including through-Delta. . . alternatives. . .*” That means that no-tunnel alternatives must be included in the State’s Environmental Impact Report (EIR), and also *must* be included in the Corps of Engineers’ EIS. There is no discretion in either the State or Federal executive branch of government to narrow Project objectives and alternatives contrary to what is required by the California State Legislature. We do have governments of laws not rulers in America.

Moreover, the comprehensive environmental review required by Water Code § 85320(b)(3)(A), (C), (D), and (E), must also be accomplished and disclosed in the State’s EIR and the Corps of Engineers’ EIS.

The alternative of increasing flows through the imperiled Delta by reducing exports is so obvious that the Ninth Circuit reversed in part a district court decision denying environmental plaintiffs' summary judgment because the challenged environmental document issued by the U.S. Bureau of Reclamation under NEPA “did not give full and meaningful consideration to the alternative of a reduction in maximum water quantities.” *Pacific Coast Federation of Fishermen’s Assn’s v. U.S. Dept. of the Interior*, 655 Fed.Appx. 595, 2016 WL 3974183 *3 (9th Cir., No. 14-15514, July 25, 2016)(Not selected for publication). “Reclamation’s decision not to give full and meaningful consideration to the alternative of a reduction in maximum interim contract water quantities was an abuse of discretion, and the agency did not adequately explain why it eliminated this alternative from detailed study.” *Id.* at *2. Reclamation’s “reasoning in large part reflects a policy decision to promote the economic security of agricultural users, rather than an explanation of why reducing maximum contract quantities was so infeasible as to preclude study of its environmental impacts.” *Id.* at *3.

The requirement under NEPA for Reclamation to consider the obvious alternative of reducing exports to increase flows through the Delta is so obvious that the Ninth Circuit’s decision was not selected for publication because no new legal analysis was required to reach the decision. The decision pertained to interim two-year contract renewals. If the alternative of reducing exports must be considered during renewal of two-year interim contracts it most assuredly must be considered during the course of the epic decision involved here.

In *California v. Block*, 690 F.2d 753, 765-769 (9th Cir. 1982), the project at issue involved allocating to wilderness, non-wilderness or future planning, remaining roadless areas in national forests throughout the United States. The court held that the EIS failed to pass muster under NEPA because of failure to consider the alternative of increasing timber production on federally owned lands currently open to development; and also because of failure to allocate to wilderness a share of the subject acreage "at an intermediate percentage between 34% and 100%." 690 F.2d at 766. Like the situation here where a trade-off is involved between water exports and Delta restoration, the Forest Service program involved "a trade-off between wilderness use and development. This trade-off however, cannot be intelligently made without examining whether it can be softened or eliminated by increasing resource extraction and use from already developed areas." 690 F.2d at 767. Here, likewise, trade-offs cannot be intelligently analyzed without examining whether the impacts of alternatives reducing exports can be softened or eliminated by increasing water conservation and recycling, and eventually retiring drainage-impaired agricultural lands in the areas of the exporters from production.

Accord, Oregon Natural Desert Assn. v. Bureau of Land Management, 625 F.3d 1092, 1122-1124 (9th Cir. 2010) (EIS uncritical alternatives analysis privileging of one form of use over another violated NEPA).

NEPA expressly requires an EIS to include "alternatives to the proposed action." 42 U.S.C. § 4332(C)(iii.) Moreover, NEPA expressly requires Federal agencies to, "study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources." 42 U.S.C. § 4332(E.)

"Unresolved conflicts concerning alternative uses of available resources" are precisely what are involved here. The Project takes the side in the conflict of increasing and maximizing exports to water users. The other side in the conflict would instead focus on preserving Delta water supply and water quality by increasing, maintaining, or at least not reducing freshwater flows through the Delta. As set forth earlier, the Corps of Engineers presently intends to issue a Draft EIS limited to construction activities, and not extending to the potential downstream effects from the diversion of water through new intakes. (85 Fed. Reg. 51420 at 51421.) That would violate the statutory command established by Congress in NEPA, 42 U.S.C. § 4332(E.)

Here, the alternatives analysis by confining alternatives to tunnel alternatives, would unlawfully privilege water exports over protection of Delta water quality, water

quantity, public trust values, and Endangered Species Act (ESA) values. That would violate NEPA, 42 U.S.C. § 4332(E.)

The limitation of alternatives to tunnel alternatives is also like the situation in *Muckleshoot Indian Tribe v. U.S. Forest Service*, 177 F.3d 800 (9th Cir. 1999.) The Ninth Circuit held an EIS inadequate because, “the Forest Service failed to consider an adequate range of alternatives. The EIS considered only a no action alternative along with two virtually identical alternatives.” (177 F.2d at 813.) A federal agency cannot ignore applicable goals or policies “when it determines the reasonable range of alternatives for NEPA review of site-specific actions.” *Western Watersheds Project v. Abbey*, 719 F.3d 1035, 1053 (9th Cir. 2013)(holding Environmental Assessment (EA) violated NEPA by not considering a reasonable range of alternatives.)

The EIS must not be confined to tunnel alternatives. No-tunnel alternatives must be included.

WE PRESENT AN ALTERNATIVE

We present *A Sustainable Water Plan for California* (Environmental Water Caucus, May 2015) as a reasonable alternative to the Delta Conveyance Project. The alternative is at: <http://ewccalifornia.org/reports/ewcwaterplan9-1-2015.pdf>. A copy of *A Sustainable Water Plan for California* is also attached hereto. The actions called for by this no-tunnel alternative include: reducing exports to no more than 3,000,000 acre-feet in all years in keeping with State Water Board Delta flow criteria (for inflow as well as outflow); water efficiency and demand reduction programs including urban and agricultural water conservation, recycling, storm water recapture and reuse; reinforced levees above PL 84-99 standards; installation of improved fish screens at existing Delta pumps; elimination of irrigation water applied on up to 1.3 million acres of drainage-impaired farmlands south of the Bay-Delta; return the Kern Water Bank to State control; restore Article 18 urban preference; restore the original intent of Article 21 surplus water in SWP contracts; conduct feasibility study for Tulare Basin water storage; provide fish passage above and below Central Valley rim dams for species of concern; and retain cold water for fish in reservoirs. We also request that the range of reasonable alternatives include reducing exports both more and less than the 3,000,000 acre feet limit called for by this alternative.

The NEPA Regulations require,

The draft environmental impact statement *shall include a summary that identifies all alternatives*, information, and analyses submitted by State, Tribal, and local

governments and other public commenters during the scoping process for consideration by the lead and cooperating agencies in developing the environmental impact statement. (40 C.F.R. § 1502.17(a)(Emphasis added.)

There are no exceptions set forth in the NEPA Regulation. Our public interest organizations are “public commenters during the scoping process.” The Draft EIS *must* include a summary identifying our *A Sustainable Water Plan for California* as an alternative to the Delta Conveyance Project. Moreover, in contrast to the proposed Project; the *A Sustainable Water Plan for California* no-tunnel alternative is consistent with, instead of contrary to, California’s Delta Reform Act and public trust doctrine.

**PUBLIC TRUST DOCTRINE ANALYSIS WILL BE OF CRITICAL
IMPORTANCE IN DOING THE QUANTIFICATION WORK
REQUIRED BY THE DELTA REFORM ACT AND PREPARING AN
ADEQUATE EIS**

The California Supreme Court has held that under California’s public trust doctrine, “[t]he state has an affirmative duty to take the public trust into account in the planning and allocation of water resources.” (*National Audubon Society v. Superior Court* (1983) 33 Cal.3d 419, 446). The Delta Reform Act incorporates this principle. It mandates, “[t]he longstanding constitutional principle of reasonable use and the public trust doctrine shall be the foundation of state water management policy and are particularly important and applicable to the Delta.” (Water Code § 85023.)

The Corps of Engineers must consider the public trust doctrine during all stages of the proposed Project, especially when assessing the quantity of water that will be allocated to flow through the Project. The Corps of Engineers’ Notice fails to mention the public trust doctrine altogether, even though the doctrine is crucial in understanding the State’s water supply availability.

Adequate quantification is necessary to carry out an informed analysis of how much water is actually available for export and how much water can be exported while restoring the Delta. *Moreover, it is an undeniable fact that consumptive water rights claims are 5 ½ times more than available supply.* Additionally, quantification is necessary to determine how much claimed water needs can be reduced by such means as conservation and recycling.

California’s Water Resilience Portfolio reported, that “[i]mproved understanding is needed about the amount of water that must stay in rivers and streams to protect fish, wildlife, habitat, and water quality....Drastic loss of fish and wildlife habitat makes it

important to restore and connect habitat where feasible. (Portfolio p. 13.) The Portfolio goes on to admit,

The projected statewide water needs of California fish, wildlife, and natural ecosystems have not been quantified, given the diversity of the state's river systems and evolving understanding of both the biological needs of species and future climate-driven conditions. However, it is clear that each river system requires adequate season-by-season water flow to protect the natural functions fish and wildlife need. Such flows also support healthy water quality and temperatures and should be complemented by adequate habitat and removal of invasive species to enable fish and wildlife to thrive. (Portfolio p. 15.)

The EIS must include an analysis of the 26 rivers of the Delta watershed that conforms with the public trust doctrine and allows decision makers to make informed, rational decisions about whether the Project is a reasonable or even a feasible alternative. Having a real public trust analysis that includes all non-market public trust resources, including clean water, healthy flowing rivers, healthy abundant fish, and recreational opportunities, is also critical information for a holistic alternatives analysis. Such analysis will be necessary in order to comply with NEPA.

THE PROJECT WILL HAVE NUMEROUS, SERIOUS, ADVERSE ENVIRONMENTAL IMPACTS

The California Department of Water Resources (DWR) issued its Notice of Preparation (NOP) of Draft EIR for the Delta Conveyance Project on January 15, 2020. DWR's NOP included a list of probable environmental effects of the Project:

Probable effects may include:

- Water Supply: changes in water deliveries.
- Surface Water: changes in river flows in the Delta.
- Groundwater: potential effects to groundwater levels during operation.
- Water Quality: changes to water quality constituents and/or concentrations from operation of facilities.
- Geology and Seismicity: changes in risk of settlement during construction.
- Soils: changes in topsoil associated with construction of the water conveyance facilities.
- Fish and Aquatic Resources: effects to fish and aquatic resources from construction and operation of the water conveyance facilities.
- Terrestrial Biological Resources: effects to terrestrial species due to construction of the water conveyance facilities.
- Land Use: incompatibilities with land use designations.
- Agricultural and Forestry Resources: preservation or conversion of farmland.
- Recreation: displacement and reduction of recreation sites.

- Aesthetics and Visual Resources: effects to scenic views because of water conveyance facilities.
- Cultural and Tribal Cultural Resources: effects to archeological and historical sites and tribal cultural resources.
- Transportation: vehicle miles traveled; effects on road and marine traffic.
- Public Services and Utilities: effects to regional or local utilities.
- Energy: changes to energy use from construction and operation of facilities.
- Air Quality and Greenhouse Gas: changes in criteria pollutant emissions and localized particulate matter from construction and greenhouse gas emissions.
- Noise: changes in noise and vibration from construction and operation of the facilities.
- Hazards and Hazardous Materials: potential conflicts with hazardous sites.
- Public Health: changes to surface water could potentially increase concerns about mosquito-borne diseases
- Mineral Resources: changes in availability of natural gas wells due to construction of the water conveyance facilities.
- Paleontological Resources: effects to paleontological resources due to excavation for borrow and for construction of tunnels and canals.
- Climate Change: increase resiliency to respond to climate change
- Growth Inducement and Other Indirect Effects: changes to land uses as a result of changes in water availability resulting from changes in water supply deliveries (NOP at pp. 9-10.)

The EIS must include analysis of the above effects among the environmental consequences of the project.

A more detailed and comprehensive recital of what must be included in the environmental analysis of the Project is set forth in the April 15, 2020, State Water Resources Control Board (Water Board) comments on the NOP. (Copy attached; copy included in DWR's scoping summary, Appendix E at DCS561, July 15, 2020.) The Water Board notes,

the Project also has the potential to adversely affect aquatic resources by modifying the timing, volume, and duration of freshwater flows and tidal energy that influence the amount of aquatic habitat and water quality habitat conditions such as freshwater flow, salinity, dissolved oxygen, turbidity, and temperature. In particular, adding new water diversion facilities closer to the major migratory routes of vulnerable fish populations, such as Sacramento River Chinook salmon (all runs), has the potential to expose these species to greater risks and impacts as compared to current conditions. (Water Board letter p. 6.)

The Water Board letter listed 12 fish species, seven of them endangered or threatened, “that should be evaluated in the EIR at the life-stage and population level to determine the potential for the Project to cause significant environmental effects and appropriate avoidance and mitigation measures.” (Water Board letter pp. 6-7.)

The Water Board letter also explained,

The water quality analysis should evaluate the potential for the Project to cause or contribute to potential significant environmental impacts related to salinity, submerged and floating aquatic vegetation, harmful algal blooms, mercury, nutrients, dissolved oxygen, dissolved organic carbon, turbidity, temperature, and other water quality constituents. (Water Board letter p. 8.)

The Water Board letter noted,

Portions of the Delta within the project area are currently on the Clean Water Act Section 303(d) List of Impaired Waters for not meeting water quality standards due to chlordane, chlorpyrifos, DDT. . , diazinon, dieldrin, electrical conductivity, Group A pesticides, invasive species, mercury, PCBs. . , and toxicity. (Water Board letter p. 8.)

The fact is, Delta urban waterways are stagnant and thick with algal scum and toxins, resulting in harmful algal blooms (HABs). HABS can be easily found from Stockton to Discovery Bay with smaller ones becoming visible in sloughs between the cities. According to the EPA, HABs can:

- Produce extremely dangerous toxins that can sicken or kill people and animals
- Create dead zones in the water
- Raise treatment costs for drinking water
- Hurt industries that depend on clean water

(<https://www.epa.gov/nutrientpollution/harmful-algal-blooms>). Reducing freshwater flows by the Project will increase the buildup of these dangerous algal blooms.

The State is well aware of the increased frequency of these harmful algal blooms. The Portfolio explains, “[a] warmer climate provides optimal conditions for worsening harmful algal blooms, which can force the closure of beaches, rivers, and lakes due to health risks for people and pets.” (Portfolio p. 13)

The EIS must address all of the issues set forth in the Water Board letter including the requirements for an adequate project description, accurate baseline conditions, effects

of climate change, project alternatives and operating scenarios, impact assessment, evaluation of additional conveyance capacity, cumulative effects, detailed modeling results, and Project-caused dangers to public health and safety.

THE EIS MUST EVALUATE THE PROJECT IN LIGHT OF WORSENING CONDITIONS CAUSED BY CLIMATE CHANGE

The Water Resilience Portfolio notes some impacts climate change will have on the Delta. “The Delta overview in this section focuses on climate risks to the low-lying estuary, as they are particularly acute, with far-reaching implications.” (Portfolio p. 49.) “Rising winter temperatures will reduce mountain snowpack in the Sierra Nevada and Cascade ranges by 65% on average by the end of the century, increasing flashy winter run off and flood risks while reducing spring and summer stream flow.” (Portfolio p. 14.) Additionally, “San Francisco Bay and the Sacramento-San Joaquin Delta will face salinity intrusion as sea level rises” due to climate change. (Portfolio p. 15.) “Although the Delta is not one of the state’s ten major hydrologic regions, it plays a complex role in the water resilience of California and faces particularly acute climate risks.” (Portfolio p. 110.) The Portfolio explains that exports will be naturally curtailed over time,

Even the most gradual expressions of sea level rise will eventually transport more ocean salinity into the Bay-Delta. This will affect brackish and freshwater habitats. The trade-off to manage salinity could reduce the amount of water available to support an ecosystem already under stress and for export from the Delta. Exports could be naturally curtailed by about 10% under mid-century climate projections, and by about 25% by 2100. (Portfolio p. 111.)

Proceeding to approve and develop a multi-billion-dollar tunnel Project to further reduce freshwater flows through the Delta in the face of reduced flows and increased salinity intrusion due to climate change looks like intentional infliction of an environmental disaster on the Delta. It would create a future choice between completing the destruction of the Delta or on the other hand, having constructed a hugely expensive but empty water Tunnel. The Corps of Engineers needs to prepare an EIS that will honestly and accurately disclose the degree of the environmental harms that would be caused by the tunnel Project.

THE EIS MUST DISCLOSE AND ASSESS THE FUTURE REDUCTION IN CLAIMED NEEDS FOR THE PROJECT AS A RESULT OF NEW TECHNOLOGIES

The Portfolio notes that diversifying water supply resources “and reuse and recycling of water have helped many communities effectively weather drought.”

(Portfolio p. 12). “The most cost-effective, environmentally beneficial way to stretch water supplies is through better water use efficiency and eliminating water waste....Recycled water is a sustainable, nearly drought-proof supply when used efficiently, and the total volume of water California recycles today could triple in the next decade.” (Portfolio p. 19.) The Portfolio admits,

Under 2009 law [the Delta Reform Act], water districts that depend upon delivery of water drawn from the Delta must reduce their reliance on the Delta for those supplies. Many Southern California water districts are building regional self-sufficiency but do not expect to be able to feasibly replace *all* water supply diverted from the Delta over the next couple of decades. (Portfolio p. 113.)

The fact that exporters can feasibly replace much, if not all, water supply diverted from the Delta, over the next couple of decades, is a red flag that the Project would be an unnecessary disaster for the Delta and an unnecessary waste of billions of dollars. “DWR expects permitting to be complete in mid-2024.” (DWR Delta Conveyance Project August Update, published August 21, 2020.) The Corps of Engineers estimates that “Construction of the overall conveyance project, if approved, would take approximately 13 years, . . .” (Notice, Fed. Reg. 51420 at 51421.) In other words, the Project, if approved, would not even be available “over the next couple of decades.” By the time the Project would be available, climate change will have further exacerbated the Delta crisis and technological innovations will have further reduced the claimed need for the Project.

For example, the City of Los Angeles has established steps to reduce its imported water supply by 50% by the year 2025. According to Water Replenishment District President John Allen, “Water recycling is the wave of the future.” (Release, August 22, 2019). Increasing water recycling and efficiency is enshrined in state law: SB 606 and AB 1660, enacted in 2018, emphasize efficiency and stretching existing water supplies in our cities and on farms.

Understanding the degree of need, if any, for the Project is pertinent information that the Draft EIS must fully assess. In the absence of a full understanding, the Draft EIS would simply be a stacking of the deck in favor of the tunnel Project and prevent a fair, adequate comparative analysis of it with through Delta no-tunnel alternatives.

THE CORPS OF ENGINEERS’ DRAFT EIS SHOULD FOLLOW, NOT PRECEDE, DWR’S DRAFT EIR

The Corps of Engineers’ Notice states, “The draft EIS is scheduled to be available for public review and comment in mid-2021.” (85 Fed. Reg. 51420 at 51421-51422.)

DWR's Delta Conveyance Project August Update states its "schedule has been modified to align the state and federal environmental review processes, as well as to accommodate additional time needed for modeling." (DWR Update Published August 21, 2020.)

DWR's Delta Conveyance Project Schedule shows that what it calls an "Admin Draft EIR/EIS" will be completed by mid-2021, with the "Public Draft EIR/EIS" not available for public review until about mid-2022. (DWR Schedule attached.)

It makes no sense for the Corps of Engineers, a permitting agency, to be issuing its Draft EIS *before* the agency actually carrying out the Project—DWR—issues its Draft EIR. It will be DWR that will be defining the details of its proposed tunnel Project which would be the basis and definition of what the Corps of Engineers would be asked to permit. The Corps of Engineers must modify its schedule so it will have the benefit of the information in DWR's Draft EIR, before the Corps issues its Draft EIS for public review and comment.

CONCLUSION

The Draft EIS must include real alternatives, including the no-tunnel *A Sustainable Water Plan for California* alternative, to the proposed Project. The Draft EIS must honestly and accurately provide environmental full disclosure of the adverse impacts that would result from the proposed Project.

Contacts for this comment letter are Conner Everts, Facilitator, Environmental Water Caucus (310) 804-6615 or connere@gmail.com, or Robert Wright, Counsel, Sierra Club California (916) 557-1104 or bwrightatty@gmail.com. We would do our best to answer any questions you may have.

Sincerely,



E. Robert Wright, Counsel
Sierra Club California



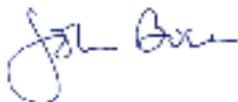
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Jonas Minton, Senior Water Policy Advisor
Planning and Conservation League

Attachments:

State Water Resources Control Board Comments on Draft Environmental Impact Report for the Long-Term Operation of the State Water Project (January 30, 2020.)

A Sustainable Water Plan for California (Environmental Water Caucus, May 2015.)

State Water Resources Control Board Comments (April 15, 2020) on DWR's Notice of Preparation of Draft EIR on Delta Conveyance Project

Department of Water Resources Delta Conveyance Project Schedule