

October 30, 2023

Karla Nemeth, Director, California Department of Water Resources
California Department of Water Resources

deltaconveyancecomments@water.ca.gov via email
Lea.Garrison@water.ca.gov

Re: Supplemental Comments on the Draft EIR for the Delta Conveyance Project

Dear Director Karla Nemeth and Department of Water Resources:

By this letter, our public interest organizations submit additional supplemental comments on the Department of Water Resources' (DWR) Draft Environmental Impact Report (EIR) for the Delta Conveyance Project.

909 12th Street, Suite 202, Sacramento, CA 9581(916) 557-1100 FAX (916) 557-9669

www.sierraclubcalifornia.org

These comments follow up the comments our organizations submitted on December 15, 2022, and supplemental comments we submitted on June 29, 2023. These supplemental comments provide significant new information regarding environmental impacts of the proposed project that became available after DWR made the subject Draft EIR available for public review on July 27, 2022. The public interest organizations joining in this supplemental comment letter are Sierra Club California, AquAlliance, California Water Impact Network, California Sportfishing Protection Alliance, Center for Biological Diversity, Environmental Water Caucus, Friends of the River, Planning and Conservation League, and Restore the Delta.

The new information set forth in these supplemental comments and the referenced documents add to the circumstances requiring revision of the Draft EIR and recirculation for public review and comment that our organizations said was required in our previous comments on the Draft EIR.

INTRODUCTION

On September 28, 2023, the State Water Resources Control Board (Water Board) issued its Draft, *Staff Report/Substitute Environmental Document in Support of Potential Updates to the Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary for the Sacramento River and its Tributaries, Delta Eastside Tributaries, and Delta*.

The Water Board Document will hereafter be referred to as the *Staff Report/SED*. The *Staff Report/SED* is furnished to DWR with these supplemental comments. The *Staff Report/SED* is also available online at

https://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/staff_report.html

The *Staff Report/SED* contains new significant information that adds to the circumstances requiring DWR to revise the Draft EIR and recirculate the revised Draft EIR for public review and comment. The Water Board's *Staff Report/SED* proposed Delta Plan amendments require *substantial increases in Delta outflows* to protect the environment including prevention of extinctions of endangered and threatened fish species. In stark contrast to that, DWR's Delta Conveyance Project would result in *substantial decreases in Delta outflows*. The new points of diversion for DWR's proposed Delta tunnel Project could only be developed if

approved by the Water Board. (*Staff Report/SED*, Ch. 7.22, p. 7.22-5.) DWR's march in the opposite direction from the Water Board's proposed Plan amendments must be aired by DWR in a revised Draft EIR on the Delta Conveyance Project for public review and decisionmaker information.

**A. ADDITIONAL SIGNIFICANT NEW INFORMATION HAS
BECOME AVAILABLE THAT WAS NOT INCLUDED IN THE DRAFT
EIR**

**1. The Water Board is Updating the Bay-Delta Plan in Response to the
Ecological Crisis Threatening Native Fish and Other Aquatic
Species**

Chapter 7 of the *Staff Report/SED* sets forth the Environmental Analysis for the Document. The Chapter explains, "The Sacramento/Delta update to the Bay-Delta Plan is critically important to the health and survival of the Bay-Delta ecosystem. Native species in the Bay-Delta ecosystem *are experiencing an ecological crisis.*" (Ch. 7.12, Hydrology and Water Quality, 7.12.1 Surface Water, p. 7.12.1-1) (Emphasis added.) The Chapter goes on to explain the quality of water in the channels has been degraded and,

There has been a substantial overall reduction in flows and significant changes in the timing and distribution of those flows, and species have been cut off from natal waters. These issues have led to severe declines, and in some cases extinctions, of native fish and other aquatic species. The overall health of the estuary for native species is in trouble, and expeditious action is needed on the watershed level to address the crisis, including actions by the State Water Board, fisheries agencies, water users, and others to address the array of issues affecting the watershed. (*Id.*)

Chapter 7.23 of the Environmental Analysis explains in similar fashion,

The Delta is experiencing an ecological crisis in the watershed and the prolonged and precipitous decline in numerous native species of spring-run and winter-run Chinook salmon, longfin smelt, Delta smelt, Sacramento splittail, and other species, and the factors involved in those declines...

Failing to take actions proposed by the proposed Plan amendments could result in the loss of Delta function beyond restoration of its original function and, therefore, would result in a significant irreversible environmental change. (Ch. 7.23, Cumulative Impact Analysis, Growth-Inducing Impacts, and Significant Irreversible Environmental Changes, p. 7.23-69.)

Chapter 7.6.2 of the Environmental Analysis explains, “Anadromous salmonids, which use habitat in the Bay-Delta estuary and upstream tributaries, have also exhibited substantial declines in population abundance in recent decades.” (Ch. 7.6.2, Aquatic Biological Resources, p. 7.6.2-4.) The Chapter goes on to explain,

It is estimated that the average annual natural production of Sacramento River winter-run Chinook salmon, Sacramento River spring-Chinook salmon, Sacramento River fall-run Chinook salmon (mainstem), and Sacramento River late fall-run Chinook salmon (mainstem) decreased between 1967 and 1991 and between 1992 and 2015 by 89, 61, 43, and 52 percent, respectively (see Table 3.4-3 in Chapter 3). Available data also show a long-term decline in escapement of steelhead from the Sacramento and San Joaquin River basins (McEwan 2001). Hatcheries now provide most of the salmon and steelhead caught in the commercial and recreational fisheries. (*Id.* p. 7.6.2-4.)

“The population abundance of Sacramento splittail, Delta smelt, and longfin smelt have declined by 98, 98, and 99 percent, respectively, since sampling began in 1967.” (Ch. 3, Scientific Knowledge to Inform Fish and Wildlife Flow Recommendations, p. 3-134.) Chapter 7.6.2 explains how the proposed increases in Delta inflows and outflows would improve flow and habitat conditions for anadromous, estuarine, and resident fish conditions to support their life stage needs. (Ch. 7.6.2, p. 7.6.2-36 and pp. 7.6.2-35-39.)

Escapement of winter-run Chinook salmon was 100,000 fish in the 1960s, as high as 35,000 fish in 1976, since declining to a few thousand. (Ch. 3, p. 3-23.) Spring-run Chinook salmon runs were as large as 600,000 fish from 1880 to 1940 but now average around 14,500 fish. (*Id.* p. 3-25.) Higher flows are protective of all Central Valley Chinook salmon and steelhead as they migrate through the Delta as juveniles. (*Id.* p. 3-42.)

“Delta outflow also affects biological resources in San Francisco Bay and the nearshore coastal ocean.” (*Id.* p.3-10.) “Increased Delta outflows provide higher water quality and habitat complexity, leading to positive effects on native fish species and foodwebs.” (*Id.*) “The abundance, reproductive success, and mortality rate of Orca whales that migrate and specialize in feeding on salmon outside the Golden Gate have been affected by the major salmon declines in recent years (Ford and Ellis 2006; Ford et al. 2010; Ward et al 2009). Their populations are limited by the availability of salmon prey, highlighting the importance of Delta

outflow all the way to the top of the aquatic chain.” (*Id.*) The abundance of longfin smelt is positively correlated to Delta outflow. (*Id.* p. 3-56.

Chapter 2 of the *Staff Report/SED* explains,

The combined effects of water exports and upstream diversions have contributed to reduce the average annual net outflow from the Delta by 33% and 48% during the 1948 through 1968 and 1986 through 2005 periods, respectively, compared with unimpaired conditions (Fleenor et al. 2010). Dayflow data also show a trend for decreasing Delta outflow through time. Since the 1990s, there has been a reduction in spring outflow and a reduction in the variability of Delta outflow throughout the year (Figure 2.4-7) due largely to the combined effects of exports, diversions, and variable hydrology. (Ch. 2, Hydrology and Water Supply, p. 2-106.)

“The species evaluations indicate that multiple aquatic species in the Bay-Delta estuary are in crisis. Recovery of native species would require both habitat restoration and increased flow in Central Valley tributaries and the Delta. Successful recovery of native species is not possible without parallel investment in both efforts.” (*Id.* p. 3-134.) Most of the fish species mentioned so far are listed as endangered or threatened under the federal Endangered Species Act (ESA) and/or the California Endangered Species Act (CESA.)¹

“Based on available information regarding several proposed water diversion and conveyance projects and pending water right applications that propose surface water diversions during the wet season, it is assumed that streamflows may be reduced during the winter and spring under the no project alternative, which could result in potentially significant impacts on aquatic and terrestrial species and habitats in the Sacramento/Delta watershed.” Ch. 7.24, Alternatives Analysis, p. 7.24-9.)

So, Delta outflows must be increased. That means exports must be reduced.

2. Delta Water Quality is Impaired.

Delta water quality is impaired by reason of low dissolved oxygen, mercury, nutrients, salinity, and/or temperature in many specific locations of the Delta as shown in *Staff Report/SED*, Ch. 7.12, Table 7.12.1-3, Impaired

¹ Winter-run Chinook salmon are CESA and ESA endangered; spring-run Chinook salmon are CESA and ESA threatened; Delta smelt are ESA threatened; steelhead are ESA threatened, Longfin smelt are CESA threatened species. (Water Board Comment Letter on DWR’s Notice of Preparation of Delta Conveyance Project Draft EIR, p. 7, April 15, 2020.)

Waterbodies in the Study Area. (pp. 7.12.1-13, -14.) “The Delta is on the 303 (d) list for salinity, chloride, mercury, trace metals, legacy contaminants, pathogens, invasive species, and current use pesticides (SWRCB 2022). In addition, bromides and HABs [Harmful Algal Blooms] are issues of concern.” (*Id.* p. 7.12.1-35.)

New “points of diversion reduce streamflows, which could injure water right holders, alter water quality, affect surface water-groundwater interactions, and affect groundwater recharge. Changes in flows could alter water temperature, dissolved oxygen, conditions associated with HABs and growth of invasive aquatic vegetation, and Delta salinity, as well as dilute contaminants.” (Ch. 7.22, New or Modified Facilities, pp. 7.22-100-101.)

“Several studies indicate that low flows through the Delta are associated with increased HAB formation... In the southern Delta, blooms tend to be more severe when flows associated with Delta exports are low (Hartman et al. 2022).” (*Id.* p. 7.12.1-38.)

Reduced flushing flows during the winter and spring could exacerbate harmful algal blooms. (Ch. 7.24, p. 7.24-9.) “Reduced Delta inflows during the summer and fall months could also exacerbate water quality issues associated with harmful algal blooms in the Delta.” (*Id.* p. 7.24-27.)

“Harmful algal blooms (HABs) have become a regular occurrence in the Delta since 1999 (Lehman et al. 2005, 2013; Kurobe et al. 2013). In freshwater systems like the Delta, HABs are mostly attributable to cyanobacteria (Kudela et al. 2023).” (Ch. 4, Other Aquatic Ecosystem Stressors, p. 4-16.) “Cyanobacteria species secrete hepato and central nervous system toxins, *which can be toxic to humans* and aquatic wildlife (Lehman et al. 2008; Berg and Sutula 2015). (*Id.* p. 4-16) (Emphasis added.) “Delta communities have expressed significant ongoing concerns regarding proliferation of HABs in the Delta and requested that the Water Boards take actions to address these concerns. HABs are a component of the phytoplankton community with *potentially severe impacts* on fish and wildlife, as well as *on human and pet health and safety*. HABs have been increasing in recent years, especially in the Bay-Delta, although different species and toxins tend to occur in the more saline San Francisco Bay than in the fresher Delta (Kudela et al. 2023). HAB occurrence is related to flow such that HABs benefit from lower inflows, high residence times, and higher stratification (Kudela et al. 2023), as well as temperature, and nutrients.” (Ch. 5, Proposed Changes to the Bay-Delta Plan for the Sacramento/Delta, p. 5-60)(Emphasis added.)

“Cyanobacterial blooms can release toxins (cyanotoxins) that are hazardous to humans and are therefore a concern for recreational waters and municipal and domestic water supplies (specifically drinking water).” (Ch. 7.22, New or Modified Facilities, p. 7.22-85) (Emphasis added.)

Delta flows must be increased to prevent further worsening of Delta water quality and increasing the health risk to Delta residents and users.

3. The Proposed Plan Amendments Would Increase Delta Flows and Reduce Exports to Protect the Delta Environment

Despite the crisis for endangered and threatened fish species, “The last major update to the flow objectives for the protection of fish and wildlife beneficial uses in the Sacramento River watershed and Delta occurred in 1995.” (Ch. 5, p. 5-3.) Enhanced flows are the principal means identified to implement the objectives discussed in Chapter 5. (*Id.* pp. 7-10.) “In response to declines of several native aquatic species since the Bay-Delta Plan was last comprehensively updated, the State Water Board is in the process of updating and implementing the Bay-Delta Plan to provide for the reasonable protection of native fish and wildlife.” (Ch. 1, Executive Summary p. 1.) The Executive Summary explains,

Existing regulatory minimum Delta outflows would not be protective of the ecosystem, and without additional instream flow protections, existing flows may be reduced in the future, particularly with climate change and additional water development absent additional minimum instream flow requirements that ensure flows are preserved instream when needed for the reasonable protection for fish and wildlife. (*Id.* p. 1-9.)

The proposed minimum inflow objective is 55% of unimpaired flow within an allowed adaptive range between 45 % and 65% from Sacramento/Delta tributaries. (Ch. 5, p. 5-17.) The outflow objective includes, “Inflow-based Delta outflows that would require inflows required as part of the Bay-Delta Plan, including from the Sacramento/Delta tributaries and San Joaquin River and tributaries, to be provided as outflows.” (Ch. 7.2, Description of Alternatives, p. 7.2-2.) “Changes in hydrology would increase annual Delta outflow in all months except August.” Ch. 7.12, p. 7.12.1-77.) Water exports and upstream diversions have combined to reduce the average annual Delta net outflow 33% from 1948 to 1968 and 48% from 1986 to 2005 compared with unimpaired conditions. Moreover, “Since the 1990s, there also has been a significant decline in spring

outflow and a reduction in the variability of Delta outflow throughout the year (see Figure 2. 4-71 Chapter 2, Hydrology and Water Supply) due in part to water diversions as well as hydrology.” (Ch. 5, p. 5-27.) Chapter 5 explains,

Outflows are needed to provide for ecological processes, including continuity of flows from tributaries and the Delta to the Bay to protect native estuarine and anadromous aquatic species that inhabit the Bay-Delta and its tributaries throughout the year as juveniles or adults. Those outflows are needed to provide appropriate habitat conditions for migration and rearing of estuarine and anadromous fish species. (*Id.*)

Chapter 5 admits, “*Current Delta outflow requirements are far below protective levels.*” (*Id.* p. 5- 28)(Emphasis added.) “The proposed Delta outflow objectives, working with the inflow objectives, are intended to provide a comprehensive integrated flow regime that protects fish and wildlife from natal streams out to the ocean. The changes are proposed both to enhance Delta outflow protections and to ensure that existing protections are not diminished.” (*Id.*) The proposed narrative Delta outflow objective includes, “Maintain Delta outflows sufficient to support and maintain the natural production of viable native, anadromous fish, estuarine fish, and aquatic species populations rearing in or migrating through the Bay-Delta estuary.” (*Id.*)

By increasing Delta inflows and outflows the proposed Plan amendments lead to reductions in exports. Chapter 7.6.2 explains in general terms that there will be reduced exports for irrigation for agriculture and the Metropolitan Water District of Southern California (MWD.) (Ch. 7.6.2, pp. 7.6.2-96-98.) “Implementation of the proposed Plan amendments will result in changes in Sacramento/Delta water supply, including reductions to agricultural and municipal uses,..” (Ch. 7, p. 7.1-17.) The impacts of reductions in exports from the Sacramento/Delta for agricultural and municipal uses are discussed in Chapter 7.12 on Hydrology and Water Quality. (Ch. 7.12 pp. 7.12.1- 96-100.) According to the Chapter 6 explanation of the simulation period of 93 water years, 16% of years are critical, 23% are dry, and 18% are below normal collectively making up 57% of the water years. (Ch. 6, Changes in Hydrology and Water Supply, p. 6-52.) Under the proposed flow objectives of 55% unimpaired flow, exports from the Sacramento/Delta supply to the San Joaquin Valley region will be reduced by 383 TAF (thousand acre-feet per year) in critical years, 707 TAF in dry years, 510 TAF in below normal years, 277 TAF in above normal years, and 96 TAF in wet years. (*Id.* Table 6.4-20, p. 6-74.) Exports from the Sacramento/Delta supply to the

Southern California region would be reduced 177 TAF in critical years, 673 TAF in dry years, 655 TAF in below normal years, 541 TAF in above normal years, and 265 TAF in wet years. (*Id.* Table 6.4-24, p. 6-79.) The referenced tables give the reductions under all scenarios under all 3 alternatives presented in the *Staff Report/SED*.

There will be a significant reduction of water exports under the proposed Plan amendments.

4. The Total Volume of Water Authorized for Diversion in the Sacramento/Delta watershed is over Five Times the Total Annual Average Unimpaired Outflow for the Entire Bay-Delta watershed

Chapter 2 points out the “paper water” problem with the Sacramento/Delta watershed being over authorized for diversion by a total volume over 5 times the total annual average unimpaired outflow for the watershed. Specifically,

A review of the water right records in the Sacramento/Delta watershed included in the demand dataset shows that the total volume of water authorized for diversion in the Sacramento/Delta watershed exceeds the annual average unimpaired outflow from the Bay-Delta watershed. The total average unimpaired outflow from the Bay-Delta watershed is about 28.5 MAF [million acre-feet]/yr. The face value, or total volume of water authorized for diversion, of the active consumptive post-1914 appropriative water right records in the Sacramento/Delta watershed is approximately 159 MAF/yr (Table 2. 7-1a), *which is over five times the total annual average unimpaired outflow for the entire Bay-Delta watershed*. This total face value amount excludes statements of diversion and use (including riparian and pre-1914 appropriative claims), which are not assigned a face value amount, but account for many of the water right records in the Sacramento/Delta watershed. (Ch. 2, p. 2-117)(Emphasis added.)

Current State Water Project (SWP) and Central Valley Project (CVP) authorized contract quantities have no basis in reality because they are not based on water quantities that actually exist.

5. In Glaring Contrast to the Needs to Increase Delta Outflows the Delta Conveyance Project would Reduce Outflows Significantly

The *Staff Report/SED* establishes that *increasing Delta outflows is necessary* to prevent more extinctions of endangered and threatened fish species.

Increasing Delta flows would also protect public health in the Delta from worsening impairment of Delta water quality including the dangers posed by harmful algal blooms. *The Delta Conveyance Project, however, would actually reduce Delta outflows* by 758 TAF (thousand acre-feet) in wet years, 1061 TAF in above normal years, 649 TAF in below normal years, 326 TAF in dry years, and 156 TAF in critical years. (Ch. 7.24, Table 7.24-1, p. 7.24-7.) *A related project, the Sites Reservoir Project, would further reduce Delta outflows* by 275 TAF in wet years, 227 TAF in above normal years, 121 TAF in below normal years, 25 TAF in dry years, and 20 TAF in critical years. (*Id.*)

The *Staff Report/SED* establishes the dangers posed by new diversions and points of diversion. “New or changed points of diversion could affect special-status fish species and interfere with the movement of native resident or migratory fish during periods of diversion, if present.” (Ch. 7.22, p. 7.22-42.) “For larger projects, new or modified reservoirs and points of diversion would require extensive analysis and evaluation and would likely have significant environmental impacts. New or modified reservoirs and points of diversion would require State Water Board approval of either a new water right, or a change of an existing right.” (*Id.* p. 7.22-5.) Operation of points of diversion can affect biological resources and pose potential long-term adverse effects on aquatic biological resources. (*Id.* pp. 7.22-40-41.) Adverse effects of new points of diversion pose “likely long-term significant impacts on hydrology and water quality.” (*Id.* p. 7.22.100.)

According to the *Staff Report/SED*, “altered flow regimes can reduce or eliminate important geomorphic processes and floodplain inundation, decrease habitat conductivity, alter temperatures to the detriment of cold water species, and alter salinity gradients and circulation patterns in the Delta. Importantly, the purpose of the proposed Plan amendments is to restore a more natural hydrologic flow regime to protect the ecosystem that supports fish and wildlife beneficial uses.” (Ch. 7.22, p. 7.22-100.)

Increasing Delta outflows and reducing exports is imperative to protect listed fish species and the health of Delta residents and users.

6. Actions including Recycling, Conservation, and Desalination are Reasonable Alternatives to Exporting Water

Chapter 6 explains that recycled water can be used to replace existing water supplies. Ch. 6, pp. 6-90-92.) Also, “Water conservation is often considered the

fastest, easiest, and most cost-effective way to extend existing supplies.” (*Id.* p. 6-92, and 6-92-95.) Desalination has provided high quality water in California for more than 10 years. (*Id.* pp. 6-95-96.) Chapters 5 and 7.12 provide similar information with respect to water recycling, conservation, and desalination. (Ch. 5, p. 5-67; Ch. 7.12, pp. 102-103.)

DWR must present these types of alternatives to the proposed Delta Conveyance Project for public review and comment in the revised Draft EIR.

B. THE ADDITIONAL SIGNIFICANT NEW INFORMATION IN THE WATER BOARD’S *STAFF REPORT/SED* REQUIRES REVISION OF THE DRAFT EIR AND RECIRCULATION FOR PUBLIC REVIEW AND COMMENT

The Water Board’s *Staff Report/SED* constitutes significant new information that must be added to DWR’s Delta Conveyance Project (DCP) Draft EIR. Consequently, DWR must revise the Draft EIR and recirculate the revised Draft EIR for public review and comment. CEQA requires,

When significant new information is added to an environmental impact report after notice has been given pursuant to Section 21092 and consultation has occurred pursuant to Sections 21104 and 21153, but prior to certification, the public agency shall give notice again pursuant to Section 21092, and consult again pursuant to Sections 21104 and 21153 before certifying the environmental impact report. (Pub. Res. Code § 21092.1.)

The CEQA Guidelines (14 Cal. Code Regs § 15000 et seq.) provide additional detail regarding the requirement to revise and recirculate for public review a Draft EIR when significant new information is added. CEQA Guidelines section 15088.5(a) states in pertinent part, “As used in this section, the term ‘information’ can include changes in the project or environmental setting as well as additional data or other information.” Section 15088.5(a) states, “ ‘Significant new information’ requiring recirculation include, for example, a disclosure showing that:”

- (1) A new significant environmental impact would result from the project or from a new mitigation measure proposed to be implemented.

(2) A substantial increase in the severity of an environmental impact would result unless mitigation measures are adopted that reduce the impact to a level of insignificance.

(3) A feasible project alternative or mitigation measure considerably different from others previously analyzed would clearly lessen the significant environmental impacts of the project, but the project's proponents decline to adopt it.

(4) The draft EIR was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded. (*Mountain Lion Coalition v. Fish & Game Com.* (1989) 214 Cal.App.3d 1043).

The new information set forth in the *Staff Report/SED* shows that new significant environmental impacts would result from the Project and there would be a substantial increase in the severity of environmental impacts resulting from the Project. Moreover, alternatives to the Project including water recycling, conservation and desalination must be considered. The new information must be added to the EIR. That requires revision and recirculation of the Draft EIR. (Pub. Res. Code § 21092.1; CEQA Guidelines § 15088.5(a); *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 447-449 (“potentially significant impact of reduced river flows on the aquatic species, including migrating salmon”); *We Advocate Through Environmental Review v. County of Siskiyou* (2022) 78 Cal.App.5th 683, 695-696 (revision in project greenhouse gas emissions; *Save Our Peninsula Committee v. Monterey County Board of Supervisors* (2001) 87 Cal.App.4th 99, 130-134 (feasibility of mitigation for increased pumping of water.))

The Water Board’s *Staff Report/SED* proposed Plan amendments require substantial *increases* in Delta outflows in order to prevent further extinctions of endangered and threatened fish species. In stark contrast to that, the Delta Conveyance Project would result in substantial *decreases* in Delta outflows. A revised Draft EIR is required from DWR to disclose for public review and comment and decision-maker information that the proposed Project is contrary to proposed governing limitations on exports reducing Delta outflows.

The *Staff Report/SED* devotes an entire section consisting of 119 pages to surface water; focusing on the impacts of reduction of flows and the adverse environmental impacts of flow reductions including on endangered and threatened fish species. (Ch. 7.12.1, Surface Water, pp. 7.12.1-1-119.) In stark contrast,

DWR's Draft EIR on the Delta Conveyance Project did not evaluate changes to surface water resources that would result from diversions for the proposed tunnel Project under CEQA. DWR's Draft EIR stated "Changes to surface water resources, by themselves, are not considered an impact of the project under CEQA and thus are not evaluated as impacts in this chapter." (DCP Draft EIR, Executive Summary, p. ES-48; Ch. 5, p. 5-2.) Our organizations pointed out in our December 15, 2022, comment letter that DWR's failure to evaluate the massive, proposed water Project's impacts on surface water violated CEQA. (Sierra Club California et al. Comment letter pp. 7-11, December 15, 2022.) The *Staff Report/SED* adds expert information demonstrating that DWR must issue a revised Draft EIR for public review and comment addressing the impacts of the Delta Conveyance Project on surface water under CEQA. The *Staff Report/SED* contains extensive expert information and conclusions that flow reductions and new points of diversion cause extensive environmental impacts on biological resources and water quality.

The *Staff Report/SED* contains extensive information about harm to listed fish species by reduction of flows which is their critical habitat. That is significant new information supporting our organizations' previous comments that the admitted significant impacts of Project operations on fish and aquatic species will, contrary to DWR's Draft EIR, *not* be mitigated. (Sierra Club California et al. Comment letter pp. 44-48, December 15, 2022.)

The *Staff Report/SED* also contains information about the Delta's worsening water quality impairment including increasing harmful algal blooms. That is significant new information supporting our organizations' comments that the impacts of project operations on public health will be significant. (Sierra Club California et al. Comment letter pp. 51-54, December 15, 2022.)

The California Supreme Court held in *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 434,

The ultimate question under CEQA, moreover, is not whether an EIR establishes a likely source of water, but whether it adequately addresses the reasonably foreseeable *impacts* of supplying water to the project. (Emphasis in original.)

DWR must prepare a revised EIR as we pointed out in our December 15, 2022, comment letter (at pp. 7-9) identifying the source of water for the Delta

Conveyance Project, and the impacts of supplying the water. That requires assessment in light of the *Staff Report/SED* information that exports must be *reduced not increased*.

The *Staff Report/SED* also requires inclusion of additional alternatives in a revised DCP Draft EIR. The California Supreme Court held in *Banning Branch Conservancy v. City of Newport Beach* (2017) 2 Cal.5th 918, 936-937,

The [CEQA] Guidelines [§ 15126.6(f)(1)] specifically call for consideration of related regulatory regimes, like the Coastal Act, when discussing project alternatives... Thus, the regulatory limitations imposed by the Coastal Act's ESHA provisions should have been central to the Banning Ranch EIR's analysis of feasible alternatives.

The proposed Project does not appear to even be a feasible alternative given the planned reduction of exports from the Sacramento/Delta in order to increase Delta outflows. On the other hand, alternatives including water recycling, conservation, and desalination in areas currently receiving exports from the Sacramento/Delta are feasible and must be central to the Delta Conveyance Project Draft EIR analysis of feasible alternatives. Our December 15, 2022, comments pointed out that such alternatives are required by related regulatory regimes including the Delta Reform Act, Climate Change Legislation, and the California Endangered Species Act. (Sierra Club California et al. Comment Letter, pp. 17-24, December 15, 2022.)

Our organizations December 15, 2022, comment letter pointed out the requirement to conduct integrated environmental review, citing *Banning Branch Conservancy*, 2 Cal.5th 918, 939, 942. (Sierra Club California et al. Comment Letter, pp. 43-44, December 15, 2022.) DWR must revise and recirculate the DCP Draft EIR to conduct the integrated environmental review required by CEQA given the information in the Water Board's *Staff Report/SED*.

Our organizations December 15, 2022, comment letter pointed out the failure of DWR's Draft EIR to include the necessary quantification to enable assessment of environmental impacts of the proposed Project. (Sierra Club California et al. Comment letter pp. 35-38, December 15, 2022.) We cited a nongovernmental report, the *Roadmap to California Water Sustainability*, showing that the Delta watershed was oversubscribed by 5 1/2 times the water actually available. (*Id.* p. 37.) Now, the Water Board's *Staff Report/SED* shows the Sacramento/Delta watershed waters authorized for diversion are "over five times

the total annual average unimpaired outflow for the entire Bay-Delta watershed.” (Ch. 2, p. 2-117.) A Project objective is to deliver SWP and CVP water under the existing water delivery contracts. (DCP Draft EIR, Ch. 2, pp. 2-2,-3.) That objective must be reevaluated in a revised Draft EIR in light of the undeniable fact the contracts are based on quantities of water that do not actually exist.

Our organizations pointed out the need for DWR to prepare and circulate a benefit-cost analysis for the Project prior to recirculation of a revised Draft EIR for public review and comment. (Sierra Club California et al. Comment letter pp. 56-61, December 15, 2022.) The *Staff Report/SED* raises the possibility the proposed Delta Conveyance Project could become a stranded asset; with billions of dollars of ratepayers’ money being used to pay for a Project that cannot be used or cannot be used very much because of the requirement to increase, not reduce, Delta outflows. That makes the need for the public to have an accurate benefit-cost analysis to be able to compare the risks of the Delta Conveyance Project with conservation, recycling, desalination, and other alternatives imperative.

CONCLUSION

The new significant information set forth in the Water Board’s *Staff Report/SED* adds to the requirement that DWR prepare a revised Draft EIR and recirculate it for public review and comment. The contact for this supplemental comment letter is E. Robert Wright, Counsel, Sierra Club California (916) 557-1104 or bwrightatty@gmail.com . We will do our best to answer any questions you may have.

Sincerely,



*E. Robert Wright, Counsel
Sierra Club California*



Howard Penn, Executive Director
Planning and Conservation League



*Brandon Dawson, Director
Sierra Club California*



Conner Everts, Facilitator
Environmental Water Caucus



John Buse, Senior Counsel
Center for Biological Diversity



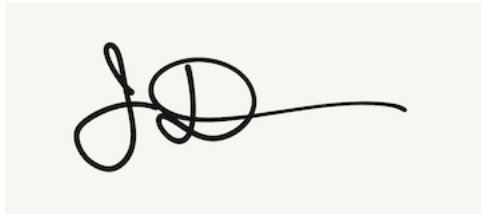
Carolee Krieger, Executive Director
California Water Impact Network



Barbara Vlamis, Executive Director
AquAlliance



Chris Shutes, Executive Director
California Sportfishing Protection
Alliance



Jann Dorman, Executive Director
Friends of the River



Barbara Barrigan-Parrilla, Executive
Director, Restore the Delta

Cc. deltaconveyance@water.ca.gov
Thomas.Gibson@water.ca.gov
Kathryn.Icelow@water.ca.gov
Diane.Riddle@waterboards.ca.gov
Paige.Uttley@wildlife.ca.gov
Edmund.Yu@deltacouncil.ca.gov
DeltaCouncilSB@deltacouncil.ca.gov
DLL-DCP-EIS@usace.army.mil
Zachary.M.Simmons@usace.army.mil
Deborah.L.Lewis2@aermy.mil
Chan.Janice@epa.gov
GORDON.STEPHANIES@EPA.GOV
amanda.cranford@noaa.gov
evan.sawyer@noaa.gov
jana_Affonso@fws.gov

Exhibit sent separately due to volume:

State Water Resources Control Board, Draft *Staff Report/Substitute Environmental Document in Support of Potential Updates to the Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary for the Sacramento River and its Tributaries, Delta Eastside Tributaries, and Delta.*