



April 17, 2020

Department of Water Resources
DeltaConveyanceScoping@water.ca.gov

Re: Comments on January 15, 2020 *Notice of Preparation of Environmental Impact Report for the Delta Conveyance Project*

Dear Sir or Madam:

The California Sportfishing Protection Alliance, California Water Impact Network, AquAlliance and California Water Research respectfully submit the following comments on scoping for the Department of Water Resources' (DWR) proposed Delta Conveyance Project, as described in the January 15, 2020 *Notice of Preparation of Environmental Impact Report for the Delta Conveyance Project*.

Our comments are organized by number as a series of recommendations. The numeric designation is for ease of reference, and does not reflect any particular priority. Though we attempt to organize related issues sequentially, many issues have multiple facets, and we may not have fully reflected their connection to other issues in our comments.

Ownership of the Project and Federal Participation

1. The Draft Environmental Impact Report (DEIR) must describe who will own the project. It must describe who will pay for the construction and operation of the project and how they will pay for that construction and operation.

2. The DEIR must identify the actual project investors and beneficiaries. It must describe how much the beneficiaries will contribute to project cost and how much water they will be assured on what schedule in return for their investment.
3. The DEIR must describe whether and if so to what degree and under what conditions the Bureau of Reclamation and its contractors will receive water conveyed through the proposed new conveyance facilities. If the role of the Bureau of Reclamation in the proposed project is unknown or unresolved at the time the DEIR is issued, the DEIR must analyze the effects of various reasonably foreseeable levels of the Bureau of Reclamation's participation as part of the alternatives and cumulative effects analyses. The DEIR cannot segment analysis by deferring the effects of the Bureau of Reclamation's participation in the proposed project or project alternatives to a separate NEPA analysis.
4. If the Bureau of Reclamation and its contractors will receive water conveyed through the proposed new conveyance facilities, the DEIR must explicitly describe whether the Bureau of Reclamation will obey state law and recognize the authority of the State Water Resources Control Board and other California jurisdictional entities regarding the delivery and use of water so conveyed and regarding any other requirements the Board or other state entity may place on interrelated operation of the Central Valley Project (CVP). In such case, the DEIR must explicitly state the enforcement mechanisms DWR proposes to assure compliance by the Bureau of Reclamation with state law and authorities.

Operations

5. The DEIR must describe all sources of water that the project will divert. It must describe generally what amounts of water the project will divert from each source and under what conditions it will divert water from each source. The DEIR must also clearly describe the amounts of water historically diverted from each source.
6. The DEIR must describe the destinations of the water that the proposed project will divert, including but not limited to south of Delta conveyance and surface storage, groundwater banks, and groundwater replenishment. The DEIR must describe how DWR will make operational decisions about where to direct the water so diverted.
7. The DEIR must describe who will operate the project. It must describe how operators will make decisions about operations, and to whom operators will be accountable.
8. The DEIR must describe the role that the Bureau of Reclamation and/or the San Luis and Delta Mendota Water Authority will have in directly making operational decisions about the proposed new facilities and will have indirectly on the operation of the proposed new facilities by participating with DWR in decisions about the overall joint operation of the State Water Project (SWP) and CVP.

9. The DEIR must state how the project will operate during droughts and must specify the proposed constraints on operations during droughts. Reliance on Temporary Urgency Change Petitions is not an acceptable description for drought operation. The DEIR must evaluate an operational alternative would meet all current Bay-Delta Water Quality Control Plan requirements, as well as any proposed “appropriate Delta flow criteria,” in an extended drought,
10. The DEIR must describe operational alternatives for the project under a variety of critically dry, dry, average and wet water year conditions and sequences, including how much water the project will divert through new facilities and through new and existing Delta export facilities in combination.
11. The DEIR must clearly analyze present and future discretionary operations of the SWP and CVP as part of the alternatives analysis and not as part of baseline conditions. Existing SWP and CVP facilities are part of the baseline condition. Operation of existing SWP and CVP facilities to meet regulatory requirements are part of the baseline condition. Discretionary operations of the SWP and CVP are ongoing operational choices, not part of the baseline condition; the DEIR must analyze discretionary operations as part of the various project alternatives.
12. The DEIR must describe whether the new project facilities will divert water under the Joint Points of Diversion provisions of Water Rights Decision 1641 (D-1641), and if so under what claimed basis in right and under what circumstances, and whether the Bureau of Reclamation will obey state law and recognize the authority of the State Water Resources Control Board and other California jurisdictional entities regarding the delivery and use of water so conveyed.
13. The DEIR must describe the operations and cumulative impacts of the project in conjunction with proposed new south of Delta storage, including Pacheco Reservoir, the San Luis Dam raise, Temperance Flat Reservoir and with all other proposed south of Delta Proposition 1 Water Storage Investment Program water storage facilities.
14. The DEIR must analyze the difference in annual project diversions under assumptions that the Export Limits in Table 3 of D-1641 (export to Delta inflow ratio) apply or do not apply to diversions using the new north Delta diversion facilities.
15. The DEIR must clearly describe and analyze operations of the proposed new South Delta Forebay in conjunction with the existing Clifton Court Forebay.

Climate Change

16. The DEIR must present a complete operations plan for the proposed new conveyance facilities as an adaptation to climate change. It must describe how DWR will determine preferred use of the proposed facilities as opposed to diverting water from the south Delta

at the south Delta diversion facilities of the SWP and (if applicable) the CVP. The DEIR must evaluate operations under sea level rise of one half meter (18 inches) by 2060.

17. The DEIR must describe how climate change and associated shifts in hydrology will affect project operations and existing project facilities, including Clifton Court Forebay. It must describe how project operations under changed climate conditions will alter project impacts.
18. The DEIR must consider the potential impacts of flooding due to sea level rise and/or increased frequency of river flooding on the project during the proposed construction period and early long-term operations. The DEIR must analyze an alternative that improves Delta levees over the near term to protect infrastructure, people, and property in the Delta.
19. The DEIR must evaluate a range of locations for project intakes that would make the project reliable under a range of reasonably foreseeable potential sea level rise over the expected service life of the project, according to the best available science. Tentatively, we recommend such analysis under sea level rise of up to two meters by 2100.

Upstream Storage and Impacts

20. The DEIR must clearly describe the existing operations of SWP and CVP storage facilities, including Trinity, Shasta, Oroville, Folsom, and San Luis reservoirs. This description must set forth existing operations as a set of rules or contingencies. Proffering a model run that professes to incorporate or embed existing SWP and CVP reservoir operations is not an acceptable description of baseline conditions of SWP and CVP reservoir operation. *See County of Amador et al. v. El Dorado County Water Agency et al.* (1999) 76 Cal.App.4th 931, 955, 956.
21. The DEIR must describe how operators will integrate the operation of proposed conveyance facility with the operation of the SWP and the CVP.
22. The DEIR must analyze impacts of the project on the operation of SWP and CVP storage facilities, including Trinity, Shasta, Oroville, Folsom, and San Luis reservoirs, and describe how the project will affect storage in these facilities. This analysis must consider a reasonable range of alternatives for reservoir operation, such as a high delivery scenario and a high carryover storage scenario.
23. The DEIR must analyze impacts of the project on fishery resources in rivers downstream of SWP and CVP storage facilities, including Trinity, Shasta, Oroville, and Folsom reservoirs, and describe how operation of the proposed new facilities will affect these resources under a reasonable range of reservoir operations. It must describe how the project would affect the ability of the DWR and Bureau of Reclamation to meet fish

protection requirements downstream of these reservoirs as applicable, including Order WR 90-05 and the existing and proposed American River flow standard.

24. The DEIR must describe whether the project will redivert water from the Trinity River, and must describe impacts of the project to the Trinity and Sacramento rivers that result from changes in the operation of the Shasta-Trinity Division of the CVP.
25. The DEIR must describe the cumulative impacts of the project in incentivizing the construction of new storage projects upstream of the Delta, particularly the proposed Sites Reservoir, the proposed raise of Shasta Dam, and other Proposition 1 Water Storage Investment Program water storage facilities.

Delta Flows and Impacts on Aquatic Species

26. The DEIR must describe the operation and performance of the project under a reasonable range of alternative flow requirements for the Sacramento River, Delta inflow and Delta outflow.
27. The DEIR must describe how the proposed project will conform to the Delta Reform Act of 2009 requirement that the State Water Resources Control Board include “appropriate Delta flow criteria” in the order approving the Change in Point of Diversion.
28. The DEIR must deploy an appropriate temporal scope for its cumulative effects analysis. It must describe the cumulative impacts of the past and present operation of the SWP and CVP taken together with the proposed future operation of the SWP and CVP under the proposed project; the DEIR must not limit analysis to the incremental impacts of the proposed project compared to the existing operations of the SWP and CVP. These cumulative impacts must include, non-exclusively, impacts to fisheries and aquatic ecosystems.
29. The DEIR must consider an alternative that is designed to “halt species population declines and increase populations of ecologically important native aquatic species, as well as species of commercial and recreational importance, by providing sufficient water flow and water quality at appropriate times to promote species life stages that use the Delta,” as stated in the Biological Goals in the 2010 Department of Fish and Wildlife’s *Quantifiable Biological Objectives and Flow Criteria for Aquatic and Terrestrial Species of Concern Dependent on the Delta*.
30. The DEIR must clearly specify proposed bypass flow criteria at the project’s new intake facilities as an enforceable condition. The DEIR must clearly describe why the proposed intake and screen design and bypass operation will protect fish and other aquatic resources. The bypass criteria must clearly specify whether they are average daily or instantaneous bypass flow requirements. The DEIR must evaluate the design and capacity of the proposed North Delta intakes simultaneously with bypass flow criteria,

and must analyze the operation of the intakes for the full range of tidal flows at their proposed location.

31. The DEIR should dismiss as an unreasonable alternative the 3,000 cfs intake design and locations previously proposed for the “California WaterFix” project, because this design at these locations cannot reasonably protect fish and other aquatic species.
32. The DEIR must evaluate a smaller intake design that will allow juvenile salmon and sturgeon to be exposed to the intakes for no more than 15 minutes at the proposed minimum bypass flows. Tentatively, we suggest that the DEIR analyze intakes with a capacity of 1,000 cfs.
33. The DEIR must analyze near-screen sweeping velocities at the proposed intake locations. The DEIR must evaluate alternative locations with smaller intakes on the outside bends of the river channel to provide adequate near-screen sweeping velocities.
34. The DEIR must explicitly specify proposed daily and instantaneous diversion operations. Any dependence of diversion amounts on bypass flow requirements must clearly describe how diversions will be modified with the tidal cycle. The DEIR must consider an alternative that establishes minimum sweeping velocities at the diversion intakes as an instantaneous value adequate to protect all aquatic species. The DEIR should analyze a sweeping velocity greater than 0.67 feet per second.
35. The DEIR must establish minimum sweeping velocities at the diversion intakes as an instantaneous value. It must explicitly specify whether the sweeping velocities refer to both upstream and downstream movement of water or only to downstream movement of water.
36. The DEIR must base its analysis on transparent modeling to assess impacts on flow, water temperature, and water quality. The DEIR must clearly state all modeling assumptions. The DEIR must make publicly available all models and all model input and output generated in support of the DEIR.
37. The DEIR must disclose the impacts of the project to the food web in the Delta, including impacts resulting from diversions at the new project facilities and impacts of releases from storage.
38. The DEIR must evaluate an operational alternative that would restore a more natural hydrograph to the Bay-Delta ecosystem.
39. The geographic scope of the DEIR should extend to Suisun, San Pablo and San Francisco bays, and should extend into the Pacific Ocean as far west as the Farallon Islands. Changes in Delta outflow and water quality that are reasonably foreseeable to occur as a result of the proposed project may affect both water resources and aquatic resources.

40. The DEIR must analyze and disclose the impacts of the project on circulation, water quality and marine habitat in Suisun, San Pablo, and San Francisco bays.

Terrestrial Impacts

41. The DEIR must ground its analyses of project impacts to terrestrial species in biological surveys conducted on terrestrial species and their habitat within the footprint of the project facilities and their construction area. The DEIR must analyze alternatives that fully mitigate those impacts, including relocation of facilities away from the sites selected for the previous “California WaterFix” project. The DEIR must analyze project impacts on golden eagle, bald eagle, Swainson’s hawk, greater sandhill crane, California black rail, California clapper rail, giant garter snake, riparian brush rabbit, burrowing owl, tricolored blackbird, bank swallow, least bell’s vireo, California yellow warbler, western yellow-billed cuckoo, loggerhead shrike, pallid bat, valley elderberry longhorn beetle, vernal pool invertebrates, and rare or sensitive native plants.
42. The DEIR must analyze an alternative that will contribute to the recovery of the at-risk terrestrial species in the Bay-Delta estuary and its watersheds, meeting the Biological Goals and Objectives identified in the Department of Fish and Wildlife’s 2010 *Quantifiable Biological Objectives and Flow Criteria for Aquatic and Terrestrial Species of Concern Dependent on the Delta*.
43. The DEIR must analyze and disclose the impacts of project operations on water birds, including impacts on north and south of Delta wildlife refuges and other habitat, as well as food sources in San Francisco Bay and the Farallon Islands. The DEIR must explicitly analyze impacts to migratory waterfowl, greater sandhill cranes, cormorants, pelicans, and the common murre.

Impacts to Local Communities and Recreation

44. The DEIR must describe both the short-term and long-term impacts of each project alternative and its construction to Delta communities and Delta recreational uses, particularly those in the vicinity of the proposed intakes. This includes, non-exclusively, noise impacts, traffic impacts, impacts to boat traffic, and impacts to recreational fishing and associated businesses.
45. The DEIR must analyze the effects of the project construction and operation on Delta levees, including potential increased risks of flooding.
46. The DEIR must analyze an alternative that relocates intakes away from Delta legacy communities.

47. The DEIR must reject locating the project along the Central Delta Corridor as an unreasonable alternative because of impacts to terrestrial species, Delta levees, local communities, and Delta recreational uses

Water Rights and Other Permits

48. The DEIR must describe the water rights that will apply to the project, and who will own them. The DEIR must provide the priority date of the water rights and all sources of water. The DEIR must describe whether use of those rights implies or requires extension of time to put water to beneficial use.
49. The DEIR must consider reasonably foreseeable changes to existing SWP and CVP facilities that DWR and the Bureau of Reclamation might seek to make if the State Water Resources Control Board were to grant pending petitions by the Department of Water Resources and the Bureau of Reclamation for extension of time to put water to beneficial use under the SWP and CVP water right permits. Such reasonably foreseeable changes include potential increases in the capacity of the California Aqueduct and the Delta-Mendota Canal. The DEIR must analyze operation of the proposed project in conjunction with such reasonably foreseeable changes in infrastructure.
50. The DEIR must specify whether the project facilities will divert water under water rights for the CVP, and if so when and on what basis.
51. The DEIR must describe how operation of the new project facilities will affect use at existing south Delta SWP and CVP diversion facilities of the Joint Points of Diversion provisions of D-1641.
52. The DEIR must situate the proposed project in the context of the existing overappropriation and overallocation of water in the Bay-Delta watershed and the Central Valley. The DEIR must consider the cumulative effect of project construction and operation together with future demands under existing water rights, particularly those in the areas of origin.
53. The DEIR must describe the complete regulatory setting, including contingencies should a preferred regulatory approach or outcome prove infeasible. The DEIR must describe all permits and approvals necessary to complete the project and bring it on line, and must describe how proponents will sequence proceedings to obtain such permits and approvals.
54. The DEIR must fully describe and disclose the Delta Conveyance Design and Construction Authority's engineering design efforts, ongoing since May of 2019, and must describe how the DCA's efforts relate to DWR's CEQA process. The DEIR must provide a clear timeline for DWR's approval of the design of the project. The DEIR must describe the sequence of permit applications for the project and of approvals under CEQA by responsible agencies that will be issuing permits for the project.

Water Quality

55. The DEIR must disclose the water quality impacts of the project, including impacts in the Sacramento River and the Delta resulting from diversions at the new project facilities and impacts of releases from storage. The water quality analysis must pay particular attention to salinity, water temperature, and algal blooms.

Groundwater

56. The DEIR must disclose impacts of the construction and use of new project facilities on groundwater resources in the Delta and adjacent groundwater basins.

Water Supply and SWP Service Area

57. The DEIR must quantify the amount of water that the project will reliably produce on an annual basis under a quantified variety of bypass flow and other physical and regulatory scenarios.
58. The DEIR must describe the end users of water that the project diverts.
59. The DEIR must evaluate reasonably foreseeable changes in water supply demand in the SWP service areas. Among these changes are impacts to both agricultural and urban demand caused by the COVID-19 pandemic and the resulting economic contraction. Also among these changes are recent reductions in population projections by the California Department of Finance due to changes in migration into and out of California.
60. The DEIR must demonstrate that the proposed project will conform to the requirements in the Delta Reform Act of 2009 to reduce reliance on the Delta, and must describe how it will do so.
61. The DEIR must consider an alternative that maximizes local water supplies, including conservation, water recycling, stormwater capture, brackish groundwater desalination and other groundwater remediation. The DEIR must analyze and compare embedded greenhouse gas emissions of the local water supply alternative and the proposed project.
62. The DEIR must use the current best available scientific information on seismic sources and ground movements in the Delta to determine the maximum considered earthquake in the Delta. The DEIR must use the same assumptions about seismic hazards and geotechnical conditions to analyze both the existing Delta levees and the proposed new project facilities.
63. The DEIR must analyze a reasonable range of project alternatives that are sufficiently distinct from one another. We recommend that the DEIR evaluate an alternative that includes a smaller conveyance facility than that of the proposed project, with smaller

intakes as described in the section of these comments on Delta Flows and Impacts on Aquatic Species, above.

64. The DEIR must analyze an alternative that includes reducing agricultural water demand in the SWP service area and adjacent areas through crop shifting, agricultural water conservation, and soil management, as well as retirement of marginally productive lands and land without reliable dry year supply. The DEIR must also discuss and evaluate greater reliance on local supplies for agricultural and urban entities south of Delta, in lieu of a new Delta conveyance facility, consistent with the Delta Reform Act.
65. The DEIR must describe the imminent necessary reduction in agricultural water supply as an underlying baseline condition created by the cumulative effect of agricultural business decisions and the diversion of water; it must not describe such reduction as the product of regulatory response to the impacts of the underlying baseline condition.
66. The DEIR must describe how the project will incentivize or facilitate water transfers from Sacramento Valley water rights holders or CVP and/or SWP contract holders to other entities. The DEIR must identify the likely recipients of such transfers by geographic region and by the types of water rights and/or contracts the recipients hold. The DEIR must disclose impacts of any such transfers, including impacts to Sacramento Valley groundwater.
67. The DEIR must describe the cumulative impacts of the project in incentivizing the continuation and expansion of irrigation on lands in the southern San Joaquin Valley that would otherwise likely cease or never begin production; among these impacts, the DEIR must identify increasing groundwater overdraft based on the occasional availability of surface water for irrigation.
68. The DEIR must consider the ongoing process of the salinization of soil and groundwater in the San Joaquin Valley, and the resulting loss of productivity. The DEIR should analyze an alternative that does not include any further state investments in impaired lands, except for funding for habitat acquisition and restoration.

Document Structure

69. Finally, the DEIR must be a stand-alone document that does not rely on references to previous iterations of CEQA documents for the Bay-Delta Conservation Plan and/or the “California WaterFix.” The DEIR will be an extensive and complex document. Previous EIR’s and supplements for the Bay-Delta Conservation Plan and California WaterFix are 90,000 pages in volume and were already daunting due to the difficulty in understanding which sections which were superseded by subsequent documents. Retention of previous CEQA documents would force even a well-informed reader to conduct a treasure hunt through earlier documents to extract pertinent information. The problem is not so much whether there is useful information in previous documents, but in determining which

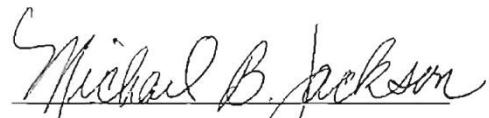
specific information would be relevant and germane to the instant new proposed project. Reliance on cross-referencing with earlier documents would thus defeat the informational purpose of CEQA.

Thank you very much for the opportunity to comment on the *Notice of Preparation of an Environmental Impact Report for the proposed Delta Conveyance Project*.

Respectfully submitted,



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