



FREEPORT
CLARKSBURG
HOOD
COURTLAND
LOCKE
WALNUT GROVE
RYDE
ISLETON
RIO VISTA
BETHEL ISLAND
KNIGHTSEN

A California Nonprofit Mutual Benefit Corporation

June 29, 2020

Via email

The Honorable Wade Crowfoot
Secretary
California Natural Resources Agency
1416 Ninth Street, Suite 1311
Sacramento, CA 95814

Re: Premature Delta tunnel Section 404 permit application

Dear Secretary Crowfoot,

Delta Legacy Communities advocates for the eleven Delta Legacy Communities from Freeport to Knightsen. We write to express our outrage that the Department of Water Resources (DWR) and the Delta Conveyance Design and Construction Authority (DCA) continue to push forward with a Delta conveyance based on the cancelled WaterFix project.

Delta residents strongly opposed WaterFix and it now has no underlying approvals or environmental review. The WaterFix was also a project that did not use best available science, or comply with the Delta Plan, according to the Delta Stewardship Council's draft 2018 findings. Yet DWR's recent Section 404 permit application to the US Army Corps of Engineers is based in substantial part on the withdrawn WaterFix project specifications. This continuation of the previous project is wholly unacceptable to our communities.

DWR has set a deadline for completion of the Delta tunnel Conceptual Engineering Report by September of this year, before alternatives submitted by Delta stakeholders in CEQA scoping comments will even be considered. In addition, DWR and the DCA have failed to even start required consultation processes for the proposed facility siting. Yet when the DCA's Stakeholder Engagement Committee (SEC) members asked for a pause in the DCA's Delta stakeholder process due to the pandemic, they were told by the DCA Executive Director that the deadlines are "not moving."

We can see no reason for such rigid inflexibility in deadlines for the Conceptual Engineering Report, except for a rush to get federal permits. Delta Legacy Communities, Inc. would strongly object to DWR taking advantage of the President's June 4, 2020 *Executive Order on Accelerating the Nation's Economic Recovery from the COVID-19 Emergency by Expediting Infrastructure Investments and Other Activities* to accelerate federal permitting for the Delta tunnel project or to limit the scope of federal environmental review under the National Environmental Policy Act. To do so would violate commitments made by yourself and Governor Newsom to limit the impacts of the single tunnel project on Delta legacy communities and fish. The Delta tunnel is *not* an economic stimulus project for Delta communities.

One of the most important ways to keep your commitment to limit the impacts of the project on Delta legacy communities and fish is for DWR to completely re-evaluate their insistence on the WaterFix project's monster intakes, and to consider alternatives to reduce, rather than increase, diversions from the Delta. DWR must also repair and maintain the current functioning through-Delta system.

The original five twin tunnel intakes were each designed to divert over 3,000 cubic feet per second. These intakes were huge industrial structures over 1,200 feet long and over 4 stories high, sandwiched among historic communities in the North Delta, and too close to historic North Delta ranch houses. Our Delta Legacy Communities are nestled along California's Scenic Victory Highway which meanders along the beautiful Sacramento River. Fishing and environmental groups have cried out alarms for years that the intakes would be catastrophic for salmon and the environment. Yet the DCA, supported by DWR, has refused to consider alternatives in the new conceptual design process.

Given that DWR and the DCA are proposing a new Eastern main tunnel alignment, we see no reason for this inflexibility. Yet the DCA's Stakeholder Engagement Committee (SEC) process has been structured to avoid any real consideration of alternatives to the WaterFix project intakes.

At the January 22, 2020 SEC meeting, the DCA's Intake Lead Engineer, Phil Ryan, announced to the SEC members that the DCA had reviewed potential intake locations, and decided that the WaterFix locations were the best possible locations. DCA Executive Director Kathryn Mallon then stated to the SEC that the fish agencies had approved the

intake design and locations and the DCA would not be considering suggestions for alternatives. As with the twin tunnels project, Delta stakeholders had no input into this internal decision.

Phil Ryan's presentation of the WaterFix intakes to the SEC did not mention sea level rise. There is no indication that the DCA has done any new analysis of the impact of sea level rise on the intakes based on current best available science. At the June 24, 2020 Stakeholder Engagement Committee meeting, we were stunned to hear that DCA engineers are not even considering effects of sea level rise on potential flooding of tunnel facilities during construction.

On February 26, 2020, the DCA gave the SEC members a "Feedback Guidance Form" which stated,

The siting of the intakes is largely a regulatory process and thus input on potential alternative locations is not being solicited from the SEC although comments on siting maybe submitted separately under the CEQA Scoping process.

However, DCA would like specific input from SEC members on ranking the sites for favorability, feedback on truck access logistics and responses to suggestions for reducing truck traffic.

The SEC members characterized this direction from the DCA as "Sophie's choice," or a "Greek tragedy."

From March 17-19, 2020 the DCA convened an Independent Technical Review panel on the intakes. The DCA gave the ITR panel a copy of the 2018 WaterFix Conceptual Engineering Report, as well as a copy of two 2011 BDCP reports, the *5-Agency Technical Recommendations for the Location of BDCP Intakes*, and *BDCP Fish Facilities Technical Team Technical Memorandum*, as if these documents were still approved. The DCA did not give the ITR panel past reviews of the BDCP / WaterFix project by the Delta Independent Science Board, or the 2016 Aquatic Science peer review by NOAA fisheries.

The BDCP twin tunnels were a monstrous, 15,000 cfs river-sucking project. The twin tunnels project planned to divert the Sacramento River around the Delta and would have decimated the Delta and San Francisco Bay, and was based on obsolete science. The enormous 3,000 cfs intakes are a relic of that cancelled project. They would turn the Delta communities into an industrial area, resulting in blight and abandonment.

DWR and the DCA have failed to address the concerns expressed by the Delta Protection Commission in their comment letter to the Delta Stewardship Council in 2018:

It is not hyperbole to suggest that the CWF [California WaterFix] project presents an existential crisis for the small Delta communities that would be most affected by the protracted, intensive construction period, the permanent infrastructure, and the radical – not evolutionary – effects on the Delta economic drivers of agriculture, recreation, and emerging heritage tourism. DWR has failed to grapple with the reality, demonstrated through evidence in the record, that CWF puts the long-term sustainability of small Delta communities in serious jeopardy; it also thoroughly fails to offer any meaningful mitigation for such impacts.

DWR's efforts to partner with the DCA in designing new access roads to construct the enormous BDCP / WaterFix intakes fails to consider the radical impacts of the project on the economic drivers of agriculture, recreation, and emerging heritage tourism. And DWR has not even begun the consultation with local agencies and the Delta Protection Commission, required under the Delta Plan.

Delta Plan Policy DP P2 (Cal Code Regs, Title 23, § 5011(a)) requires that “[w]ater management facilities ... must be sited to avoid or reduce conflicts with existing uses or those uses described or depicted in city and county general plans for their jurisdictions or spheres of influence when feasible, considering comments from local agencies and the Delta Protection Commission.” **Comments from members of the Stakeholder Engagement Committee are not a substitute for actual consultation with the Delta Counties, all Delta water agencies and Reclamation Districts, and the Delta Protection Commission.**

DWR was also required to initiate consultation under the National Historic Preservation Act at 10% design, but has not done so, although Delta Community groups requested that it be started a year ago. A thorough inventory of historic resources in the North Delta should have been available to the DCA engineers and the Delta Stakeholder Engagement Committee in considering the proposed facility sites. **Comments from the members of the Stakeholder Engagement Committee are not a substitute for a careful analysis and inventory of affected historic resources.**

We request that DWR suspend or withdraw the premature permit applications to the US Army Corps of Engineers, and immediately begin the consultation with local agencies and the Delta Stewardship Council required under Delta Plan P2, as well as the National Historic Preservation Act consultation. DWR must also do an updated analysis of the proposed intake locations with current best available science on sea level rise. **The DCA's “Independent Technical Reviews” are not a substitute for using the current, best available science, with review by the Delta Independent Science Board.**

No final Conceptual Engineering Report should be produced until these processes are complete, and more effective, environmentally protective alternatives have been adequately evaluated in the Draft Environmental Impact Report. It should also be obvious that failure to recognize and take steps to comply with legal requirements cited herein render the one tunnel project vulnerable to long and extensive litigation.

Finally, we request that you convene your Delta roundtable again, to have a real conversation and hear from affected Delta stakeholders. Our voices are not being heard.

cc:

The Honorable Gavin Newsom, Governor
Karla Nemeth, Director, Department of Water Resources
Carolyn Buckman, Department of Water Resources
Michael G. Nepstad, Deputy Chief, Regulatory Division, US Army Corps of Engineers
Zachary Simmons, Senior Project Manager, US Army Corps of Engineers
Ali Porbaha, Central Valley Flood Protection Board
Chuck Bonham, Director, California Department of Fish and Wildlife
Tony Estremera, Chair, Delta Conveyance Design and Construction Authority
Kathryn Mallon, Executive Director, Delta Conveyance Design and Construction Authority
Susan Tatayon, Chair, Delta Stewardship Council
Jessica Pearson, Executive Officer, Delta Stewardship Council
Oscar Villegas, Chair, Delta Protection Commission
Erik Vink, Executive Director, Delta Protection Commission
Delta Counties Coalition

Sincerely,

/s/ Dan Whaley

Dan Whaley
Chair
Delta Legacy Communities, Inc.

/s/ Dave Stirling

Dave Stirling
Vice Chair
Delta Legacy Communities, Inc.