

Delta Conveyance Project (DCP) Draft Environmental Impact Report (DEIR) Areas of Deficiency

In our review of the DEIR, Commission staff have identified deficiencies, as summarized below, that we believe result in under-estimation or mischaracterization of impacts on Delta resources and over-estimation of the effectiveness of mitigations. These are currently organized by deficiency for the purpose of the Commission presentation. These comments will be expanded and organized by DEIR chapter, to be submitted to DWR as an attachment to the cover letter provided in Agenda Item 9a of the November 17, 2022 packet.

DEIR Improperly Limits Thresholds of Significance and Consideration of Impacts

Land Use: The DEIR (page 14-17, line 33) claims that CEQA “directs a lead agency to focus on the potential for the proposed project to cause significant impacts on the *physical environment*” quoting CEQA Guidelines S 15382. However, this is a selective interpretation of CEQA Guidelines S 15382, which states in full (with emphasis added):

15382. SIGNIFICANT EFFECT ON THE ENVIRONMENT “Significant effect on the environment” means a substantial, or potentially substantial, adverse change in any of the physical conditions within the area affected by the project, including land, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic significance. An economic or social change by itself shall not be considered a significant effect on the environment. A social or economic change related to a physical change may be considered in determining whether the physical change is significant.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Sections 21068, 21083, 21100, and 21151, Public Resources Code; Hecton v. People of the State of California, 58 Cal. App. 3d 653.

DWR has the discretionary authority, in its impact assessment of the DCP land use impacts, to consider social and economic changes that relate to temporary and permanent physical changes resulting from the project. It is not CEQA that directs this authority. DWR can and should consider the social and economic changes related to the physical land use changes as impacts.

Furthermore, the DEIR states (page 14-18, line 2), that “For the purpose of this analysis” the significance thresholds consist of only two criteria –

- (1) if the project results in a conflict with any applicable land use plan, policy, or regulation that consequently has an adverse effect on the physical environment, this would be considered a significant effect on land use;

(2) any activities lasting longer than 1 year that would cross a community or create physical structures and be considered an adverse effect on the physical environment would also be a significant effect on land use.

And at line 8, the DEIR states that “DWR, in preparing this assessment, has framed its conclusions” These qualifiers clearly demonstrate that the DEIR could give more weight to land use and overall Delta as Place concerns in impact assessment and development of avoidance or mitigation. The Final EIR should correct this deficiency.

Drainage: The Commission’s 2020 EIR Notice Of Preparation (NOP) Comments recommended that DWR review construction activities which could have an impact on levees and the drainage systems in the Delta. Drainage is critical to consider, as the foundations of the existing levees can become weak without adequate drainage. However, DEIR Section 7.3.2 has included only two Threshold of Significance limits, one for Water Surface Elevation (WSE) changes and second, for increases to the amount or rate of surface runoff that would result in localized flooding. Including only two limits is inadequate to establish significance of impact to levees, as other issues (such as drainage) could be impacted and compromised by the project’s construction and permanent facilities. For example, there could be an inability to siphon or remove flood waters at the toe of a levee because of an increased WSE from the proposed project

Cultural Resources: Assessment of potential impact to cultural resources requires historical research, inventory, and documentation of existing conditions, site analysis and evaluation of integrity and significance, according to the National Park Service’s Preservation Brief 36: *Protecting Cultural Landscapes: Planning, Treatment and Management of Historic Landscapes*. As defined by the National Park Service, a cultural landscape is a geographic area, including both cultural and natural resources and the wildlife or domestic animals therein, associated with a historic event, activity, or person, or that exhibits other cultural or aesthetic values.

DEIR Appendix 19A (page 16) states that “this level of analysis was outside the scope of this project, so these islands were evaluated only for the extent of their built resources only” confirms the incomplete nature of these resources’ investigation. To truly evaluate the Delta as a cultural landscape, the Final EIR must:

- Identify all the cultural resources at risk from the project not just buildings and structures.
- When describing places and features, also mention their role in the overall landscapes or the tracts’ other character-defining features, such as orchards, vineyards, crops, and farm buildings.
- Provide spatial organization and cluster arrangements of these features.
- Provide cultural traditions of the tracts’ settlers that influenced these landscapes
- The historical context provided for Delta farmlands is also incomplete, describing the Delta’s diverse agriculture in only four paragraphs about “industrial agriculture” in San Joaquin County from the 1910s to 1950s. Entirely ignored is 19th century agriculture,

during which patterns of land tenure, farming systems, labor, and agricultural markets were established.

- The DEIR would be improved by following the approach of the BDCP EIR, which in its Built Historical Resources Evaluation Report (page 87) identified Grand Island (Reclamation District 3) and Netherlands District (Reclamation District 99) as significant historic districts and recommended further research and obtaining access to the properties to establish the integrity of their features
- National Register criteria must be applied consistently. National Register criteria are applied inconsistently in these landscapes' evaluation. A useful guide is CalTrans' report Water Conveyance Systems in California, Historical Context Development and Evaluation Procedures.
 - Most of the Delta's levees and ditches also retain their original designs, with only modest variations to adapt to modern safety standards. We contend they should be evaluated in more detail following the Caltrans "seven aspects"

The Delta's landscape also provides context for individual buildings or historic districts that are listed on the National Register of Historic Sites or eligible for listing. Degrading this surrounding landscape would diminish the integrity of specific sites, districts, or landmarks. The Commission contends that the Delta is a landscape that has evolved through use by the people whose activities or occupancy shaped that landscape, which the National Park service calls a "historic vernacular landscape". Examples in the National Park Service guidance documents correspond well to the areas affected by the Delta conveyance project: rural villages, agricultural landscapes such as farms and ranches, including landscapes with a total absence of buildings, and landscapes encompassing linear resources including transportation systems, such as the Sacramento River or the River Road. Appendix 19A fails to assess all of the Delta districts and properties potentially eligible for listing in the National Register that the project will affect.

The area of potential effects (APE) is inappropriately limited. The DEIR improperly restricts its assessment of cultural resources affected by the project to resources "in the project footprint" (page 19-16). It is well-recognized that effects such as noise, scenic degradation, and glare can significantly degrade the setting and integrity of historic properties. The DEIR acknowledges that these project impacts may extend well beyond the project footprint, or the quarter mile boundary proposed for the APE. The DEIR should assess an expanded area of potential effect as identified in our comments on noise and visual impacts, including glare. Temporary visual and auditory impacts of construction should not be excluded, as proposed on Appendix 19A's page 5. As acknowledged in the BDCP EIR, impacts over the decade-long duration of the project's extensive construction period are effectively permanent and could lead to abandonment of some buildings and land uses, which would constitute fully permanent effects.

Visual Resources: Section 18.2 (page 18-15) should be expanded to state relevant provisions of the scenic highway corridor protection program submitted by Sacramento County and approved by Caltrans for Highway 160 and the River Road, especially provisions related to land

use, site planning, design review, earthmoving, and landscaping. A similar review of relevant provisions of county scenic highway plans and ordinances affecting locally designated scenic routes should be undertaken. Conflicts with these state and local standards should be noted. The risk of Caltrans' revoking scenic highway designation of Highway 160 should be assessed in consultation with Caltrans and Sacramento County.

Noise: The thresholds of significance for construction noise underestimate the harm of construction related noise and should be revised. Impacts reported in Section 24.3.3.2 and Appendix 24A should be revised to adhere to more appropriate noise standards. The thresholds used in the DEIR are lower than the standards of the US Environmental Protection Agency. Noise consistent with the proposed thresholds would impair community life in affected Delta communities and recreation at affected sites. Noise at the proposed thresholds could result in noise twice as loud as current ambient levels.

- Instead, thresholds of significance used to assess noise impacts should reflect the Delta's existing conditions and the land use in areas where noise effects would occur. One threshold would be noise that exceeds the background sound level by at least five (5) dBA during daytime or nighttime hours, as proposed.
- Noise standards of applicable local government general plans and ordinances should provide another set of thresholds, as these reflect local land use, residents' expectations, and other local conditions. Where local standards are unavailable, or where there are special uses, such as parks, nature areas, recreation sites, schools, libraries, churches, or other especially sensitive uses, these federal guidelines should be considered.
- Increased noise that exceeds any of these standards should be considered significant.

Impacts are Underestimated and Data Incomplete or Recent Data Ignored

Agriculture: While the DEIR does lay out the commodities grown in the Delta, there is not enough emphasis on the changes in Delta agriculture. The significant conversion to high-value permanent crops is not even discussed in the document. More recent information is available in our recent update to the Commission's economic sustainability plan (<https://delta.ca.gov/wp-content/uploads/2020/07/Ag-ESP-update-agricultural-trends-FINAL-508.pdf>).

This document was published and available prior to the NOP and was provided to DWR's Delta Conveyance Office at their request. Specifically, the following sections deserve an update to reflect the most recent data compiled on Delta crop types:

- In several locations, crop conversions over the past 5 years need to be included in the impact analysis. The significant conversion to high-value permanent crops is not even discussed in the document.

- Section 15.1.1.2 references Delta agriculture but omits any discussion of the significant proportion of Delta lands that have been converted to high value crops including almonds, pistachios, cherries, wine grapes and even corn for distilling purposes.
- Section 15.1.1.7 describes crop planting and harvesting times for “major commodities” but then fails to describe the fastest growing Delta commodities such as wine grapes, almonds, and walnuts. Without this data, the DEIR characterization of water needs and harvest times for these important commodities is incomplete and inaccurate.

The timing of the Project’s water quality impact from Operations is critical to understanding the true longer-term impacts to Delta agriculture. The DEIR depends on a model and that model predicts poor water quality only after August 15 of any normal water year. Based on the assumption of late fall as the tipping point, DWR concluded the project operations “would not be expected to trigger a substantial conversion of Important Farmland to nonagricultural uses.” Such analysis is predicated on the assumption that “many of the crops are harvested by early fall” and outlines a series of crop types that no longer exists in the Delta. The model and its output need to include and take into consideration:

- The fastest growing commodities including tree nuts and wine grapes are irrigated and harvested in the fall, with some as late as November harvest times.
- The DEIR model of impacts assumes normal water years to calculate the water quality impacts when it needs to actually study the worst (drought) years on record to fully show the impact of the Project’s operations.
- Finally, with climate change affecting the onset of seasonal changes, the use of terms like “early” or “late” fall is an increasingly impractical gauge.

The State and Federal governments clearly articulated the need to preserve the irreplaceable Delta. The Delta Protection Act of 1992 ensures that the Delta’s agricultural resources do not face the threat of conversion to urban uses. More recently (2019) the Delta unique resources were recognized by Congress as well by creating the Sacramento- San Joaquin Delta National Heritage Area. The Commission felt the DEIR greatly underestimates the impact to agricultural resources in several places including

- We have repeatedly asked for one table to show all the potential impacts to farmland from No Project in comparison not the construction of the Proposed Alternatives. This includes everything from actual farmland converted due to the construction of the project, to farmland rendered useless due to construction impacts, to those acres lost due to the water quality impacts, and a clear description of the final acres lost permanently inside of the “Reusable Tunnel Material” (RTM) areas.
- We are particularly concerned with the cumulative amount for habitat mitigation that will be part of this project’s mitigation for construction impacts. In a rough calculation, staff found DWR would be converting thousands upon thousands of acres of agricultural land agriculture to habitat to mitigate for the construction and operational

impacts of this project. On page 15-40, there are 1200 acres noted on Bouldin and other parcels, 18-76 acres for tidal habitat, 1100-1400 for smelt habitat, and another 110-140 for construction impacts. Again, the value ranges are large, and not well presented in the document.

Visual Resources: The value of a Visual Resources section is highly dependent on the photo rendering of the landscape. Select Key Observation Points (KOPs) in the Area of Visual Effects were incorrectly documented. It is unfortunate that photos taken in November, when agricultural vegetation has been removed or gone dormant, were used as the basis for the photo simulations used in the KOPs (page 18-28). These images are not representative of the landscape. New KOPs should be developed based on summer-time images and used as the basis for evaluating visual impacts. In addition:

- Additional renderings along Highway 160 should be developed to supplement those provided in Figure 18-10. Travelers on this scenic highway are as more likely to draw to view towards the Sacramento River and the adjoining orchards.
- The screen of “native” trees depicted in Figure 18-10 does little to either visualize the extent of this damage or encourage confidence about the mitigation value of the proposed planting. A more useful visualization would depict the intakes as viewed from the river and from Highway 160 looking north to south.

The quality of the landscape left behind by the project should be rated as “low”. Its natural landscape will be “very disrupted”, “very discordant”, and will be perceived as an eyesore. Its cultural landscape lacks design cohesion and any sense of place and will be perceived as blight. The piles of tunnel muck remaining on site will substantially degrade the landscape. Only a major redesign, such as relocating the tunnel muck outside the Delta, can rectify this incompatibility with surrounding environments.

Noise: The measurements of ambient noise in San Joaquin and Alameda counties reported in Table 24-3 (page 24-14) and Table 24-4 (page 24-15) are insufficient. None measure ambient noise along the preferred route or near the footprint of the preferred project alternative, such as near the Lower Roberts Island Double Launch/Reception shaft, the proposed haul route on Lower Roberts Island or the Bethany complex. This additional information is essential to determine whether project-related noise exceeds the proposed threshold of significance – an increase in noise exceeding 5 dB relative to existing noise levels. Additional monitoring at these additional sites should be conducted and reported in the Final EIR.

Proposed Mitigation is Inadequate

Water Quality: Page 15-52 clearly states the conveyance facilities will alter water quality but that such an impact will be managed by the State Water Resources Control Board proceedings and rulemaking. It is well established that delegating an action to other Boards and Commission is unacceptable as mitigation.

Agriculture: In light of the irreplaceable nature of the Delta, the Commission did not see enough emphasis on mitigation for impacts to agriculture land from the permanent facilities and habitat mitigation that is proposed. In particular:

- The mitigation ratio (1:1) for loss of agricultural land from construction is not sufficient. This area is protected from urban development due to the passage of the Delta Protection Act of 1992. As such, any easement for land conversions (resulting from either RTM piles, permanent facilities) in the primary or secondary zone should be at least a 2:1 ratio and potentially up to a 5:1 ratio.
- Based on table 15-12, the impacts from habitat conversions need to be mitigated in Delta on a 2:1 basis with an agricultural conservation easement.
- The Grizzly Slough and McCormack-Williamson Tract habitat projects already have an approved mitigation measure. The commission suggest DWR look at a new project rather than one that has been cited in at least one other EIR as mitigation. How can DWR use the habitat from Grizzly Slough and McCormick when those projects were part of another North Delta EIR? This seems like a double dip of habitat projects.
- The lands protected under the DWR mitigation program should be through easements instead of land purchases by state entities. Easements allow DWR to take away some rights of the landowner, but will not preclude the landowner from paying taxes and assessments. Often state lands remain untaxed and preclude their payment of assessments.
- There should be zero restrictions on agricultural operations as a result of easements. Any agricultural commodity as well as facilities to store and process relevant agricultural commodities should be allowed on the subject lands.

Visual resources are not correctly mitigated. A mitigation measure that should be considered is constructing smaller sediment basins that are set back sufficiently from Highway 160 to allow planting of a wide strip of trees, such as pears or walnuts, to screen the basins and associated facilities from views of travelers on the scenic highway. We are told there is no clear estimate of the volume of sediment the basins are likely to receive or how often sediment may need to be removed. There seems little reason, therefore, to not reduce this blemish on the highway's scenery, coupled with more frequent sediment removal if needed.

Rather than planting conifers or other "native" trees, as depicted in Figure 18-10, mitigation landscaping should consider palms, Lombardy poplars, or other shade trees typical of agricultural landscapes, mimicking the tree line that the project will remove. Nearby residents should be consulted about preferred options for tree screens and other landscaping.

Local Ideas and Information are Ignored

The Commission has recommended that excavated tunnel material should be handled and stored to segregate material of different quality so it can more easily be reused by Reclamation

Districts. Costs of hauling tunnel material to reuse sites should be borne by the project, rather than by those who may reuse it. We were unable to find this in the Project Description, nor as a mitigation measure. Instead, permanent RTM stockpiles are proposed to be left in piles 15 feet high occupying over two hundred acres at the Twin Cities complex and nearly two hundred acres at the Lower Roberts Island complex, planted with native grasses (page 7-51, lines 18-23). The costs of fill materials has sky-rocketed in recent years. In fact, most construction estimates are far lower than any bids received from Levee Management Agencies' Request for Bid packages. The Commission has heard directly that this impacts how much of a project can be completed and still stay on budget. With heavy competition for fill materials for the many haul roads needed by the project (or the alternatives) this will become critical. Any and all fill materials should be sorted and available for use by local area for the improvement and continual maintenance of levees.

The DEIR demonstrates (Page 7-49, lines 5-7) that DWR understands the importance of levee maintenance and monitoring for quickly identifying vulnerabilities in or damage to levees during construction. However, the DEIR does not document any commitment by DWR and partner contractors agreeing to defend, indemnify, and hold harmless affected reclamation districts against all claims, liabilities, charges, losses, expenses, and costs (including their attorneys' fees) that may arise from the project. This statement should be made part of the project description and the analysis in this chapter to confirm that state funding is backing this work, and that it is not a new burden on the local Reclamation Districts (RDs).

As highlighted in its 2012 Economic Sustainability Plan, the Commission supports the improvement and maintenance of all Delta levees to at least the Delta-specific PL 84-99 standard. Given the difficulties with PL 84-99 inspections, the Commission would now endorse the (similar) DWR Bulletin 192-82 standard (page 7-21) instead of PL 84-99. It is notable that two islands' levees would be brought to PL 84-99 standards (page 7-28 and 7-29) in support of protecting the launch sites and personnel during construction of the tunnels. While this is an improvement of protection over existing conditions, maintenance of a PL 84-99 Levee to the US Army Corps of Engineers exacting inspection standards is borne by the landowners (see page 7-22) and is known to be very costly. We would expect the Final EIR to cover the following:

- There needs to be a larger consensus-building process with local agency officials and on-island agricultural interests on how to implement a new fee structure. This EIR needs to evaluate the value and interests of "tunnel beneficiaries," and estimate the value of their assets and other interests at risk. Maintenance fees should not be based simply on a per-acre basis. In addition, the limited subventions funding for Delta levees should not be used for the two islands which will be brought to PL 84-99 standards.
- In our NOP Comments, the Commission recommended DWR/DCA should pay local reclamation districts an inspection fee to cover inspection costs, including staff and/or consultant time and expenses, for any inspections before, during, post-construction, and regularly thereafter. This would include the time expected for new PL 84-99 standard

inspections. However, DEIR Chapter 7 fails to account for the additional time or extra activities associated with inspections, nor are there mitigation measure(s) mentioning cost reimbursement.

Affected residents, business operators, and homeowners should be consulted about the acceptability of the proposed sound insulation program. Special care should be made to consult with renters, who comprise most of Hood's residents. For some residents, the sound insulation program may be just one more disruption added to other impacts of the project's construction. It is unclear why wall insulation is excluded from the program, which offers only improved window and doors. We note that Los Angeles residents were offered wall insulation under the LAX Master Plan. Delta residents who would want wall insulation deserve no less. Any sound barriers should be removed at the end of construction unless residents want them retained. Local agencies, community members, and affected residents and businesses should be involved in developing noise mitigation plans. At a minimum, these measures must comply with the Delta Plan's MMRP measures 15 1-3.

Inadequate Consultative Outreach

The Commission comments on the DEIR's NOP advised outreach to local groups and experts ranging from local transportation authorities to historical societies and representatives of local cultural groups. Contrary to these recommendations, the DEIR's Appendix 19A, for example, lists no local historical organizations, neighborhood groups, archaeological societies. Local expertise was undocumented, and DWR would be unable to assess the area's historic resources without this information. DWR's direction that the EIR preparers should not consult with local historical societies and museums (Appendix 19A, p. 10) is inexplicable and contrary to best practices. In addition, the document did not document Traditional Cultural Properties. Such work is done partly through consultation with community representatives. Landowners, local businesses, local historians/preservationists, and local agencies are all helpful informants, historians, architects, landscape architects, folklorists, sociologists, or anthropologists.

Appendix 19A asserts on page 10 that sufficient outreach to local groups had been conducted during past projects. An obvious inadequacy of this approach is that this project's currently preferred alternative was not among alternatives evaluated in the prior Bay Delta Conservation Plan (BDCP's) historical resources reports. Because the preferred alignment has not been the object of prior studies, it is premature to conclude that additional outreach would not yield new results. Moreover, the methods section of the Built Historical Resources Evaluation Report for the BDCP Project mention no outreach to important historical societies and cultural resource organizations in key areas directly affected by this project, including the Sacramento River Delta Historical Society, the Locke Foundation, the Rio Vista Museum, the Rio Vista's Dutra Museum of Dredging, Stockton's Filipino American National Historical Society, or the Portuguese Historical Society in Sacramento. All could have information useful to analysis of historic and cultural resources affected by the project. Deliberately restraining outreach to them is

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inappropriate. New outreach about the currently preferred project and other new features of the current project is warranted.