

DPC January 19, 2023 meeting – Agenda Item 15 (Approach for comments on Delta Conveyance Project Draft EIS)

**Delta Protection Commission Meeting**  
**January 19, 2023**

**AGENDA ITEM 15: Approach for comments on Delta Conveyance Project Draft Environmental Impact Statement (EIS)**

Prepared by: Virginia Gardiner

Presented by: Virginia Gardiner

**Requested Action: Receive report on approach for comments on Delta Conveyance Project Draft EIS and consider providing direction for finalizing letter**

Type of Action: Action Item

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**Background:** The Commission and staff have actively participated in review, verbal testimony and written comments on the predecessors to the current Delta Conveyance Project (DCP, or tunnel) over the past decade. For the current DCP, Commission staff provided extensive comments to the California Department of Water Resources (DWR) California Environmental Quality Act (CEQA) Notice of Preparation (NOP) of an Environmental Impact Report (EIR) on April 15, 2020, and on the Draft EIR itself on December 14, 2022. Detailed comments were submitted to the U.S. Army Corps of Engineers (Corps) in response to the National Environmental Policy Act (NEPA) Notice of Intent (NOI) to Prepare an Environmental Impact Statement (EIS) on October 20, 2020.

**Current Status:** The DCP Draft EIS became available on or about December 19, 2022, with a comment deadline of February 14, 2023. With public participation unreasonably curtailed by the short review period and no in-person meetings proposed by the Corps, former Commission Chair Nottoli submitted a letter to the Corps on December 30, 2022, requesting extension of the comment period through April 14, 2023, and for scheduling of in-person public meetings in the Delta. On January 10, 2023, the Commission received a response extending the comment deadline to March 16, 2023 but refusing to schedule in-person public meetings.

Commission staff have initiated but are still in the very early stages of our review. Therefore, this staff report provides an overview of the approach rather than detailed comments. The review of the Draft EIS includes attention to those areas of concern that were detailed in the NOI comments, as well as some new concerns based on the additional details of the project that have become available since 2020.

**Coordination of State and Federal Environmental Review:** An overall concern that the Commission expressed in its NOI comments was the basic need to coordinate the

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environmental review closely, to avoid duplication of the public’s review effort. Clearly, this has not occurred. While the content may have been internally coordinated by DWR and the Corps by having the same consultant prepare both documents, this has not benefited the Delta communities’ review. The necessity of preparing sequential comments was a significant reason for requesting an extended comment deadline beyond what was approved.

**Expanded Cultural and Historic Resource Emphasis:** As described in the staff report for Item 14, the Commission’s participation in the National Historic Preservation Act Section 106 consultation process has allowed development of considerable cultural and historical resource information. This will result in a more in-depth review of the adequacy of the Draft EIS not only for Cultural Resources but also the Aesthetics and Visual Resource, Noise, Transportation and Land Use Sections.

**No-Action Alternative:** The NEPA requirement for consideration of a No-Action Alternative allows the Commission to emphasize the consideration of reasonable and practical alternatives. Commission staff will be reviewing the extent to which the Draft EIS provides adequate consideration in the No-Action Alternative. The Commission’s position has been that a tunnel through the Delta will irreversibly damage Delta agriculture, recreation, cultural and natural resources, impacts which are by definition eliminated by a No-Action Alternative.

**Expanded Areas of Review:** Commission staff will include additional relevant comments on the Draft EIS to those provided on the Draft EIR that were unfortunately not included due to time constraints. These include comments on Recreation, Agriculture, Transportation, and Environmental Justice, as well as Land Use and Socioeconomics. In addition, the Commission asserted in the NOI comments that the scope of the Corps’ review should include the area of the tunnel project’s alteration and those adjacent areas that are directly or indirectly affected by the alteration. Staff continues to believe that the area indirectly affected is larger than evaluated in the DEIS. For example, the Flood Protection Section will be closely reviewed in light of the recent flooding in the immediate vicinity of the proposed Twin Cities Complex.

**Recommended Action:** Commission staff requests the Commission provide direction for the following possible options to finalize a comment letter on the Draft EIS:

1. Commission review and approval of a draft comment letter at the rescheduled March meeting (proposed for March 9, 2023) for submittal by the March 16, 2023, deadline, or
2. Delegate a sub-committee of the Commission which would work with Commission staff to finalize and submit a comment letter by the March deadline, or
3. Direct the Executive Director to complete and submit comments under the Chair’s signature by the comment deadline.

**Relationship to Vision 2030 (Commission strategic plan):**

**Water (Strategic Theme)**

*W.1 Promote Delta water solutions that reduce reliance on Delta fresh water supplies, provide through-Delta fresh water conveyance to protect Delta water quality and water rights, and protect and enhance the Delta’s natural resources, recreation, agriculture, adjacent urban areas and economies.*

*1.3 Analyze proposals for addressing water supply reliability for compatibility with Delta values.*