

**DELTA PROTECTION COMMISSION**

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March 16, 2023

Zachary M. Simmons, Project Manager  
US Army Corps of Engineers  
Sacramento District Regulatory Branch  
Sacramento, CA 95814 VIA EMAIL: [DLL-DCP-EIS@usace.army.mil](mailto:DLL-DCP-EIS@usace.army.mil)

Re: Draft Environmental Impact Statement SPK-2019-00899

Dear Mr. Simmons:

The Delta Protection Commission (Commission) is a California state agency created by the Delta Protection Act of 1992, which declared the Delta “a natural resource of statewide, national, and international significance, containing irreplaceable resources, and that it is the policy of the state to recognize, preserve and protect those resources of the Delta for the use and enjoyment of current and future generations” (Public Resources Code § 29701). The Act directed the Commission to regulate land use in the Delta to ensure that the populous metropolitan areas surrounding the Delta did not overrun this natural resource and forever alter the irreplaceable agricultural, recreational, natural, and cultural features that make the Delta the unique place that it is.

The following comments reflect the concerns of the majority local government and water agency members of the Commission, and not members representing State agencies which do not necessarily share these concerns. This letter in no way implies a recommendation or position of the Governor or his administration.

The proposed Project, known as Alternative 5, consists of a 6,000 cfs conveyance facility (tunnel) constructed through the Delta on an eastern alignment in a corridor roughly parallel to and west of Interstate 5 to a site south of the Byron Highway and Clifton Court Forebay adjacent to Bethany Reservoir. Project alternatives are distinguished by tunnel alignment (i.e., central or eastern), size (tunnel diameter and length), capacity (ranging from 3,000 cfs to 7,500 cfs), and method of delivery to the State Water Project and potentially Central Valley Project facilities (i.e., through Southern Forebay Complex or Bethany Reservoir Complex).

For reasons we will document in this letter and corresponding attachments, we recommend the Corps adopt the “No Action” alternative. Our comments are offered to ensure that the full scope of the adverse impacts of the proposed project is described accurately. Consideration of alternatives in light of these adverse impacts, as well as reassessing the appropriateness of the project objectives, leads to a No Action alternative.

Consideration of a “No-Action” alternative set within a structured framework that would bring together and resolve the concerns of our affected local government constituents, responsible and trustee agencies, and other interested parties, including those who may not be entirely in accord with the action on environmental grounds, as well as those currently served by the State Water Project, would better satisfy the State’s co-equal goals of a reliable water supply, a restored Delta ecosystem and a Delta that is protected maintained and enhanced as a unique place.

In addition to the Delta Protection Act of 1992, the Commission’s authority with respect to the Delta conveyance proposal derives from the legislation and agreements enumerated in our comment letter on the Notice of Intent dated October 20, 2020.

**Delta Reform Act:** The Delta Reform Act of 2009 (Chapter 5, Statutes of 2009), as well as 2009 amendments to the Delta Protection Act of 1992, declared that the State’s basic goals for the Delta are to provide a more reliable water supply for California and protect, restore and enhance the Delta ecosystem “in a manner that protects and enhances the unique cultural, recreational, natural resource and agricultural values of the Delta as an evolving place” (PRC section 29702(a) and Water Code section 85054). In addition, the law identifies the Commission as a “forum for Delta residents to engage in decisions regarding actions to recognize and enhance the unique cultural, recreational, and agricultural resources of the Delta” (PRC section 29703.5(a)). It directs the Commission to recommend ways to protect and enhance the Delta’s unique values to the Delta Stewardship Council as it implements the Delta Plan.

**Sacramento-San Joaquin Delta National Heritage Area:** The John D. Dingell, Jr. Conservation, Management, and Recreation Act, enacted in March 2019, created the Sacramento-San Joaquin Delta National Heritage Area (NHA). The law designates the Delta Protection Commission as the NHA’s local coordinating entity, and charges it with preparing and submitting to the Secretary of the Interior a management plan. The plan is in preparation, overseen by an advisory committee, and will be submitted to the Secretary of the Interior by March 2024. The management plan will highlight the Delta region’s national significance, facilitate economic development, and promote heritage tourism, ecotourism, and agritourism compatibly with continued active agriculture through partnerships with public and private local and regional entities. Interpretive themes will include the historic reclamation of marshland to one of the most fertile agricultural regions in the world, the diverse cultures that have shaped the Delta’s rural landscape, and the central role the Delta plays in California’s water resource challenges. Federal agencies (such as the U.S. Army Corps of Engineers) that sponsor, permit or plan to conduct activities that may impact the NHA must coordinate their actions with the Commission to the maximum extent practicable. Toward that end, the Commission is currently a consulting party to the National Historic Preservation Act (NHPA) Section 106 process.

**Staten Island Memorandum of Understanding:** The Commission has a role in reviewing any land-use changes on Staten Island, which is subject to a 2001 conservation easement and a 2002 Memorandum of Understanding between the Commission and the Department of Water Resources (DWR). The stated intent of the conservation easement is that Staten Island be protected from "any actions that would result in the

conversion of any material portion ... away from agricultural use." DWR holds the conservation easement and is legally responsible for its enforcement.

**Global Comments:** It is encouraging that the Corps EIS appears to cover the same project footprint as the Environmental Impact Report (EIR), although this is difficult to fully understand due to many errors and omissions in the EIS. The project footprint to be analyzed in the DEIS should be clarified to confirm this. It is disappointing that the Corps NEPA review is expressly only for construction of the project and not for project operation. The Commission believes the entire project area and the operation of the project cannot reasonably be separated from construction of the project, and therefore should be included in the EIS.

The Commission has consistently made a significant effort over the years, together with our communities and partners, to document the adverse impacts of this project. Most recently we have compiled a draft Cultural Resources Survey (CRS) as part of the Section 106 consultation. A comprehensive inventory of Delta cultural resources will eventually be a product of the NHA process. In the interim, the draft CRS is intended to aid the Corps in identifying historical and cultural resources that could be impacted by the project, and to document the importance of the Delta landscape in defining "Delta as Place."

As summarized in the attachments, the DCP will impact all Delta communities, including those within the new NHA. Proposed launch shafts, tunnel material handling, and maintenance and retrieval shafts will convert farmland and disrupt marinas and recreational boating. Socio-economic impacts of required project mitigations from agricultural lands being converted to construction sites (whether temporary or permanent) and restoration projects are a major concern, as are water quality impacts on Delta agricultural and municipal uses.

The Commission previously submitted comments on environmental review documents for predecessors to the current Tunnel Project in 2014, 2015, 2018 and most recently on the NOI for this DEIS in 2020. As in these letters and elsewhere, we must once again point to the unacceptable significant, irreversible, and permanent environmental effects of the proposed Delta conveyance projects on Delta communities, the cultural qualities that define "Delta as Place," and the pillars of the Delta economy, agriculture, and recreation. The current proposed tunnel is fundamentally no different in key structural elements such as the intakes, alteration of the Delta landscape with double launch shaft and tunnel muck storage complexes, and overall disruption of much of the northeastern and southern Delta during at least a projected decade and a half of construction. The DEIS fails to adequately document, analyze and mitigate for impacts that will damage the unique character of the Delta that makes it the "Delta as Place" that is protected by the Delta Reform Act. Given these concerns, we must again urge the Corps to adopt the "No Project" alternative.

Sincerely,

Diane Burgis  
Chair

US Army Corps of Engineers, Sacramento Regulatory Division  
Mr. Zachary Simmons  
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cc: XXX and members, Delta Protection Commission

Attachment 1 Detailed Comments

Attachment 2 Draft Survey of Cultural Resources in the Conveyance Project Area

[Possible] Attachment 3 NOI Comment Letter dated October 20, 2020