

DELTA PROTECTION COMMISSION

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December 14, 2022

Department of Water Resources
 Attn: Delta Conveyance Office
 P.O. Box 942836
 Sacramento, CA 94236-0001
 VIA EMAIL deltaconveyancecomments@water.ca.gov

Re: Delta Conveyance Project Draft EIR (SCH # 20200115)

Delta Conveyance Office:

Thank you for providing the Delta Protection Commission (Commission) the opportunity to comment on the Delta Conveyance Project Draft Environmental Impact Report (Tunnel Project DEIR or Project). 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).

The following comments reflect the concerns of the Commission, except for 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 Commission previously submitted comments on environmental review documents for predecessors to the current Tunnel Project DEIR in 2014, 2015, 2018 and most recently on the Notice of Preparation for this DEIR 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 DEIR 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.

Don Nottoli, Chair
 Sacramento County Board of Supervisors

Chuck Winn, Vice Chair
 San Joaquin County Board of Supervisors

Oscar Villegas
 Yolo County Board of Supervisors

Diane Burgis
 Contra Costa County Board of Supervisors

John Vasquez
 Solano County Board of Supervisors

Ron Kott
 Cities of Contra Costa and Solano Counties

Paul Steele
 Cities of Sacramento and Yolo Counties

Alan Nakanishi
 Cities of San Joaquin County

Jim Paroli
 Central Delta Reclamation Districts

Tom Slater
 North Delta Reclamation Districts

Nick Mussi
 South Delta Reclamation Districts

Toks Omishakin
 CA State Transportation Agency

Karen Ross
 CA Department of Food and Agriculture

Wade Crowfoot
 CA Natural Resources Agency

Brian Bugsch
 CA State Lands Commission

Ex Officio Members

Honorable Susan Eggman
 California State Senate

Honorable Carlos Villapudua
 California State Assembly

The Commission's legislative mandate, authorities and role in the Delta were detailed in our previous letters.

The project alternatives analyzed in the DEIR do not avoid or mitigate the most damaging impacts to Delta communities, economic well-being, and cohesiveness of the cultural landscape, despite some efforts to redesign certain project elements, improve public outreach, and improve the readability, graphics, and navigability of the document. The proposed Bethany Alternative (Alternative 5) generally focuses on reducing the impacts of the project by reducing footprint size and location in specific areas, with the overall effect of reducing activities in wetlands and other waters of the United States, rather than protecting Delta as Place values.

Reduction of the previous massive footprint in Hood by relocating the launch shafts and tunnel muck permanent storage to a 500-acre site at the Twin Cities complex will not reduce the effects of intake construction on Hood and the surrounding area. Tunnel muck cannot be referred to as "reusable" if it is not, in fact reused but instead become a permanent topographic feature. It is not acceptable to conclude that the loss of 71 structures including 15 homes is not a significant impact. Providing cursory analysis of recreation and cultural resource impacts by simply limiting the scope and time dedicated once again has resulted in inadequate assessment of human impacts.

The Commission continues to recommend that the Department of Water Resources (DWR) and the EIR should seriously analyze an alternative that promotes water reliability by strengthening Delta levees and dredging key Delta channels, rather than tunneling under the Delta, while also reducing other region's reliance on water from the Delta by investing in water use efficiency, water recycling, and other advanced technologies. The through-Delta conveyance components of this alternative should include all the features recommended in the Delta Plan (Delta Plan recommendation WR R1 2(a)(4) and (c)). This alternative's provisions to reduce reliance on the Delta should be informed by an analysis of water demand and promising alternative supplies in areas to be served by the project. The analysis should comply with the Delta Plan's regulatory policy WR P1.

In conclusion, despite some effort to address concerns that the Commission articulated most recently in our comments and suggestions to the NOP, the DEIR has fallen short of the Delta Protection Act's intent, and the Delta Reform Act's co-equal goals. Those goals are inseparable from, and unified by, the requirement that they shall be achieved in a manner that protects and enhances the unique cultural, recreational, natural resource, and agricultural values of the Delta as an evolving place.

The Commission voted to approve this letter at its meeting on November 17, 2022 on a 6 - 0 vote with two abstentions.

We appreciate the opportunity to provide input and are open to continuing dialogue with

DWR on how the co-equal goals can be achieved without sacrificing the Delta. Please contact the Commission office at (916) 375-4800 with any questions regarding the comments provided.

Sincerely,

A handwritten signature in blue ink that reads "Don Nottoli". The signature is written in a cursive style with a large initial "D".

Don Nottoli
Chair

Attachment 1 – Delta Protection Commission Comments on Delta Conveyance Draft
Environmental Impact Report

cc: Vice Chair Chuck Winn, and Commissioners
Executive Director Bruce Blodgett

Attachment 1 - Delta Protection Commission Comments, Draft Environmental Impact Report (DEIR) Delta Conveyance Project (DCP)

Chapter 3: Proposed Project and Alternatives

No project alternative. The Commission continues to recommend serious consideration of a no-project alternative consistent with the Commission's Economic Sustainability Plan (ESP), which at this time may be more feasible than the tunnel.

Proposed Project effects area. The area of project effects (APE) should be revised to incorporate the area of visual effects reported in Section 18.1.1 (page 18-4) and described on page 18-6 as up to 3 miles from potential viewers. The APE should also include areas adversely affected by project noise, measured against a more appropriate threshold of significance as recommended in our comments about noise impacts in Chapter 24, section 24.3.2.

Chapter 4: Framework for the Environmental Analysis

The DEIR Improperly Limits Thresholds of Significance and Consideration of Impacts. The DEIR framework improperly and unreasonably narrows the threshold of significance such that many resource impacts are found to be less than significant. Chapters with unreasonably narrow thresholds include but are not limited to Chapter 7, Flood Protection; Chapter 8, Groundwater; Chapter 14, Land Use; Chapter 16, Recreation and Chapter 24, Noise.

As an example, the Land Use chapter (page 14-17, line 33), claims that California Environmental Quality Act (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 § 15382. However, this is a selective interpretation of CEQA Guidelines § 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.

The Department of Water Resources (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 for land use 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 and those noted in other comment sections.

Chapter 7: Flood Protection

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.

Indemnification of Reclamation Districts (Levee Management Agencies). 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 (RDs) 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 supports this work, rather than creating a new burden on the local RDs.

Reusable Tunnel Material (RTM). 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 RDs. 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 stockpiles 15 feet high occupying over two hundred acres at the Twin Cities Complex and nearly two hundred acres at the Lower Roberts Island Complex, then planted with native grasses (page 7-51, lines 18-23). The cost of fill materials has sky-rocketed in recent years. Increasingly, bids received from RDs solicitations are consistently higher than the construction estimates. 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 a critical issue. All suitable fill materials should be sorted and available for use by local area for the required improvement and continual maintenance of levees.

Equitable Funding of Levee Improvement Operations and Maintenance. As highlighted in its 2012 Economic Sustainability Plan, the Commission supports the improvement and maintenance of all Delta levees to at least the federal 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 broad 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 the Commission’s 2020 EIR NOP Comments, the Commission recommended DWR and the Delta Conveyance and Design Authority (DCA) should pay local RDs 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.

Chapter 10: Geology and Seismicity

Truck traffic on levee roads. Most travel by heavy equipment is proposed to be on rated highways and the DEIR found any use of heavy equipment on levee roads was not sufficient to cause liquefaction (page 10-62). Figure 10-8 shows locations where levees are near a transportation route and where access might be needed. All equipment travel on levee road will be “prohibited” except along State Routes 4 and 12, and 160 during construction of intakes. See Transportation comments regarding lack of enforceability.

Chapter 14: Land Use

The Land Use analysis makes incorrect assumptions about the significance of impacts in a rural setting. Key elements of the Commission’s and counties’ land use approach are: 1) to preserve the rural lands for agriculture and agricultural-related businesses, 2) allow for rural, visitor-serving venues such as wineries and event facilities, marinas and resorts in optimal locations for fishing, pleasure travel and water sports to support recreation, and 3) protect and enhance the legacy communities as retail and residential centers to support agriculture and tourism. The proposed tunnel is incompatible with this fundamental strategy, both during the 13-year construction period and during project operation. Not all Delta communities will be affected in the same way by the project, or perhaps with the same intensity, but all will be affected.

For example, construction of intake facilities on the Sacramento River would result in adverse impacts on the communities along State Route 160 including Hood, Clarksburg, and Courtland. Hood would be permanently adversely affected by construction of the intakes. In San Joaquin County, launch shafts, tunnel material handling, and maintenance and retrieval shafts will convert farmland and disrupt marinas and recreational boating. Contra Costa county communities such as Discovery Bay would suffer major recreation impacts. In Solano County, the economic and cultural impact of required project mitigations from agricultural lands being converted to restoration projects are a major concern, as are water quality impacts on municipal wells for Rio Vista and agricultural users in the Cache Slough region.

Construction and operation of the Twin Cities and Lower Roberts Island Complexes and the two concrete batch plants would also alter and adversely affect the current and designated land uses, as well as neighboring areas and the Stone Lakes National Wildlife Refuge. Much of the road construction and widening, bridge modifications and interchange improvements occur within the primary zone, in direct conflict with the most fundamental principles of the land use approach of the Delta Protection Act and the Commission’s Land Use and Resource Management Plan. After project construction is completed, pressure will grow for non-farm development at areas adjoining sites that cannot be returned to agriculture.

The proposed project will result in significant changes in land use, mainly conversion of agricultural uses to industrial uses related to:

- Tunnel intakes
- Twin Cities and Lower Roberts Island Double Launch Shaft Complexes and Lambert Road Concrete Batch Plants
- Maintenance shafts
- New or improved access roads

Construction of the tunnel intakes will also create significant noise impacts incompatible with the commercial, residential, and community park uses of Hood.

Other comparable large state public works projects have addressed land use impacts more appropriately, even at a program level. For example, the California High Speed Rail Authority Final EIR/S describes extensive potential land use incompatibilities and inconsistencies, despite a similar disclaimer that as a state agency they would not be subject to local plans and ordinances:

The discussion of potential inconsistencies with planned land uses does not imply that the California High Speed Rail Authority (Authority), a state agency, would be subject to such plans or local ordinances, either directly or through the NEPA or CEQA process. The information is provided in order to indicate potential land use changes that could result in potential environmental impacts. (emphasis added)

The Land Use analysis incorrectly dismisses the project's potential to divide communities. The DEIR cannot help but acknowledge that construction of the conveyance project facilities will permanently convert land uses from residential, agricultural, commercial, recreational open space and other uses. However, it dismissively concludes that the project will not divide communities simply because, for example, "residential structures that would be removed are in areas of scattered residences in agricultural areas." This demonstrates a lack of understanding about what rural agricultural communities are, and a lack of recognition of what the Delta as a Place is. As noted in our comments on Chapters 18 and 19, the Delta itself is a community, a collection of existing and historical communities linked by its waterways and scenic highways, and united by both common and unique features of significance. In a rural landscape, land use changes on the scale of the proposed project are more noticeable and more significant because they are not lost in surrounding urbanization, but instead stand out starkly on the landscape.

Chapter 15: Agricultural Resources

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.

DEIR does not use available data. While the DEIR lists the commodities grown in the Delta, treatment of changes in Delta cropping are insufficient to allow appropriate analysis. 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 ESP (<https://delta.ca.gov/wp-content/uploads/2020/07/Ag-ESP-update-agricultural-trends-FINAL-508.pdf>).

This document was published 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 harvest times as late as November.
- The DEIR model of impacts assumes normal water years to calculate the water quality impacts when it actually needs to 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 to the Proposed Alternatives beyond just the construction footprint. This table should include 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 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 as mitigation 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.

Chapter 16: Recreation

Limiting surveys of recreational locations and access points to two days is inadequate to provide a proper baseline. During meetings in 2020 and 2021, Commission staff repeatedly encouraged DWR's Delta Conveyance Office and consultants to conduct surveys at key recreation locations such as marinas and boat ramps. Specific simple, non-contact observational survey techniques used on a multi-state Natural Resource Damage Assessment were recommended to allow data to be gathered safely despite the pandemic conditions. Contact information for the survey designer was provided. However, despite ample time to conduct almost a full year of surveys, only two days field reconnaissance of a handful of project sites were completed, in February 2021. (DEIR, pp. 16A.2-6-20.) Limiting surveys of chosen recreational locations and access points to two days is inadequate to provide a proper baseline. As with cultural resource surveys, this brief effort during winter does not accurately reflect activity levels and types at recreational access locations. Recreational activities vary seasonally and even daily based on weather conditions and other considerations. The known recreational locations that would be impacted by the project should have been properly evaluated over a longer period.

The recreation economy in the Delta is second only to the agricultural economy, yet the analysis failed to consult with the extensive pool of experts regarding recreational uses in the Delta. A handful of parks and recreation staff provided input, however none of the data that the Commission developed from interviews with focus groups for the recreation update to the Economic Sustainability Plan in 2020 appears to have been used in the DEIR's analysis of

impacts. The minimal effort to characterize the recreation baseline was inadequate to properly analyze the project’s environmental impacts.

Chapter 18: Aesthetics and Visual Resources

Scenic Highways. Section 18.2 (page 18-15) of the DEIR 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.

Select Key Observation Points (KOPs) in the Area of Visual Effects were incorrectly documented.

The value of a Visual Resources section is highly dependent on the photo rendering of the landscape. 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 drawn 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 with the project should be rated as “low” in contrast to the No Project alternative. The natural landscape with the project will be “very disrupted”, “very discordant”, and will be perceived as an eyesore. Similarly, the cultural landscape with the project lacks design cohesion and any sense of place and will be perceived as blight. The RTM stockpiles remaining on site will substantially degrade significant portions of the landscape. Only a major redesign, such as relocating the RTM stockpiles outside the Delta, can rectify this incompatibility with surrounding environments.

Visual resource impacts 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 sediment the basins are likely to receive or how often sediment may need to be

removed. Reducing the size of the sediment basins, coupled with more frequent sediment removal if needed, would minimize both the visual and the land use impacts.

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.

Chapter 19: Cultural Resources

The DEIR’s assessment of impacts on cultural resources is deficient. 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” which confirms the incomplete nature of the DEIR’s 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 Bay Delta Conservation Plan (BDCP) EIR, which in its Built Historical Resources Evaluation Report (page 87) identified Grand Island (RD 3) and Netherlands District (RD 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 are applied inconsistently in the DEIR’s 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 the degradation potentially brought on by the project to all of the Delta districts and properties eligible and potentially eligible for listing in the National Register.

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 in Appendix 19A (page 5). As acknowledged in the BDCP EIR, impacts over the 13-year duration of the project’s construction period are effectively permanent and could lead to abandonment of some buildings and land uses, which would constitute fully permanent effects.

Inadequate consultative outreach. The Commission’s 2020 EIR NOP Comments advised outreach to local groups and experts ranging from local transportation authorities to historical societies and representatives of local cultural groups. Despite 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 decision to not consult with local historical societies and museums (Appendix 19A, p. 10) is contrary to best practices. In addition, the Appendix 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 as informants, historians, architects, landscape architects, folklorists, sociologists, or anthropologists.

Appendix 19A asserts on page 10 that sufficient outreach to local groups for this project had been conducted during past projects. This approach is inadequate as well as inaccurate. Because this preferred alignment has not been the object of prior studies such as BDCP's historical resources reports, 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 mentions 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 these groups could have information useful to analysis of historic and cultural resources affected by this project. New outreach about this project as described in this DEIR and other new features of this project is warranted.

Many districts and sites warrant evaluation and avoidance or impact mitigation. Because of the DEIR methodological errors, many districts and sites potentially eligible for the National Register are inadequately or improperly evaluated. Sections 19.1.3-19.1.4.2 (pages 19-10 to 19-27) and Appendix 19A should be revised to identify the following additional resources, at a minimum, as well as others identified by local agencies and local experts. We believe these RDs and historic sites or areas warrant evaluation as rural historic district or sites as appropriate. A narrative justification for the value of each can be provided upon request:

- Sacramento River
- Sacramento Southern Railroad
- Victory Highway
- Pierson District
- The 40-mile Orchard
- Hood
- Terminous Tract
- Roberts Island
- Jones Tract
- Bacon Island
- Union Island
- Byron Tract

Impacts on historical resources resulting from project construction and operation. After the identification of historical resources, including significant landscapes, is revised following consultation with local experts, then the Chapter 19 assessment of impacts should be revised accordingly. This should include consideration of impacts of noise, glare, and visual degradation on these settings of the project.

Chapter 20: Transportation and Traffic

According to the Office of Planning and Research's (OPR) Technical Advisory on Evaluating Transportation Impacts, a proposed project exceeding a level of 15 percent below existing regional Vehicle Miles Travelled (VMT) per employee may indicate a significant transportation impact. The DEIR (page 20-23) should use this 15 percent reduction as the significance threshold for VMT.

While the proposed project includes improvements to various roads and bridges as well as new transportation facilities, the cost and responsibility for on-going maintenance and operation of these new facilities should be assessed in the DEIR.

Chapter 24: Noise and Vibration

Thresholds of significance. 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 DEIR's thresholds are lower than the standards of the US Environmental Protection Agency (US EPA). Noise consistent with the DEIR's thresholds would impair community life in affected Delta communities and affected recreation sites. Noise at the DEIR's 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 could 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, the US EPA guidelines should be considered.
- Increased noise from the project that exceeds any of the US EPA standards should be considered significant.

Ambient noise. The measurements of ambient noise in San Joaquin and Alameda counties reported in the DEIR's Tables 24-3 (page 24-14) and 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 DEIR's 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.