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Via email: DLL-DCP-EIS@usace.army.mil

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Subject: Restore the Delta Comments on Delta Conveyance Project Draft Environmental Impact Statement (DEIS)

To whom it concerns:

This letter originates from lands of the Lisjan Ohlones in the East Bay, of Yokut lands in the Stockton area, and Miwok lands of the Delta further north. These lands represent the great connections of the San Francisco Bay with the Delta estuary.

Restore the Delta (RTD) is a grassroots campaign of residents and organizations committed to restoring the Sacramento-San Joaquin Delta so that fisheries, communities, and family farming can thrive there together again; so that water quality is protected for all communities, particularly environmental justice communities; and so that Delta environmental justice communities are protected from flood and drought impacts resulting from climate change while gaining improved public access to clean waterways. Ultimately our goal is to connect communities to our area rivers and to empower communities to become the guardians of the estuary through participation in government planning and waterway monitoring. RTD advocates for local Delta stakeholders to ensure that they have a direct impact on water management decisions affecting the well-being of their communities, and water sustainability policies for all Californians.

We summarize our general comments in this cover letter. Our detailed specific comments on this Tunnel DEIS chapters and related appendices are in Attachment 1 of our letter. Our letter also incorporates by reference the group letter submitted by Natural Resources Defense Council (NRDC) on February 16, 2023 (Attachment 2).

General Comments

RTD has reviewed the DEIS for the Delta Conveyance Project (DCP or Tunnel Project). We conclude that beyond sidestepping operational impacts in contravention of the National

Environmental Policy Act (NEPA), the Clean Water Act, and Army Corps of Engineers (USACE or Army Corps) regulations as described in the NRDC letter, the DEIS minimizes and marginalizes Delta environmental justice communities and understates the impacts of climate change and 12 or more years of construction on them.

The fact there is yet another Delta conveyance project (the previous one being “California WaterFix”) for the public to evaluate (and likely reject) is evidence of a continuing failure of state and federal water policy to address expected and unfolding effects of climate change on the San Francisco Bay-Delta Estuary and its greater watershed. The existence of this DEIS is itself a marker of continuing, if more subtle, climate denialism by USACE. The DCP will not save the Delta, and it probably will not stabilize Delta exports to the State Water Project and Central Valley Project either. The very definition of the Delta’s role as an estuary is being disrupted by climate change and unsustainable agricultural operations now.

A stated purpose of the Tunnel Project is to invest billions of dollars to maintain a *status quo ante* of water deliveries from the State Water Project and Central Valley Project. It does little to address climate adaptation in the Delta and fails to preserve through-Delta conveyance which both systems will continue needing if they are to operate as they do at present. Along with the present threat of losing salinity control, many other climate extremes, emergencies, and tipping points are increasingly coming into focus. And while RTD would never accuse DWR and the USACE of ignoring or denying climate change, these two major governmental water agencies are nonetheless derelict in responding to it.

A huge failure of imagination by USACE is on display in this DEIS. Instead of providing independent leadership and meaningfully evaluating alternatives to the DCP, the Army Corps has followed the lead of DWR in continuing to pursue a destructive and costly Tunnel Project. While the Tunnel Project is not being proposed by the federal government, USACE and federal cooperating agencies (including EPA, and those within Commerce and Interior) have a responsibility to provide comprehensive assessments that transparently weigh potential impacts and benefits to all people and ecosystems that would be affected by the construction and operation of the DCP.

In general, the Army Corps’ approach to climate change parrots DWR’s flawed approach, which is to focus on extreme storms and the supplies that could be skimmed from their runoff, while discounting other major climate change effects. It is unrealistic and unwise, however, to pick and choose which climate change effects to analyze when striving to comply with NEPA. Reality will bring them all at varying times and intensities. The climate change modeling and tendencies presented in the DEIR, upon which the DEIS relies, is wholly inadequate because it ignores the panoply of extended dryness, extreme heat, and expanding hot seasons. The Tunnel Project should be discontinued immediately so that more effective and equitable climate mitigation, adaptation, and resilience investments can be implemented sooner than later.

Moreover, we are deeply disappointed that the Army Corps dismissed and minimized the environmental, environmental justice, and quality of life impacts the DCP would impose on the communities in the Legal Delta and of the Delta Region as a whole. It is incontrovertible

that the Legal Delta as well as the Delta Region are *bona fide* environmental justice communities, with relatively small proportions of white and wealthy populations. Even prior to experiencing operational impacts, Delta environmental justice communities would face over a decade of construction impacts to their health and quality of life. While the DEIS acknowledges that some of those impacts cannot be mitigated, it fails to grapple with their true significance given the devastating impacts of climate change. In particular, the DEIS minimizes impacts related to air quality, harmful algal blooms, subsistence fishing, public health, and transportation from the projected 12-14 year long construction period.

Thank you for considering our comments on this Tunnel DEIS.

Sincerely,



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Executive Director



Max Gomberg
Policy Consultant

cc: E. Joaquin Esquivel, Chair, State Water Resources Control Board
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Attachment 1 RTD's Specific Comments on the DEIS

Executive Summary

In Section 1.3 of the Executive Summary, the DEIS describes a long list of Areas of Controversy raised during the scoping process for both the EIS and the EIR. However, in reviewing the DEIS, it is clear that USACE did not meaningfully incorporate input from the scoping process into its analysis. There are many examples, including claiming no responsibility for operational impacts, ignoring effects from regulatory actions and statutory requirements, incomplete assessments of environmental justice and socioeconomic impacts, and a one-sided analysis of climate change impacts. These errors and omissions must be fixed.

Project Description and Alternatives (Chapter 2)

In the Project Description and Alternatives Chapter (Chapter 2), the DEIS describes alternatives that were eliminated in the initial screening and reasons for their elimination. The “portfolio approach without new water conveyance facilities” alternative was eliminated due to an assessment of lack of climate resiliency and insufficient water supply reliability (2-13). However, the No Action Alternative as defined by the DEIS is essentially the same alternative, consisting of various new regional supply and demand management projects (desalination, recycled water, groundwater management and recovery, water transfers and exchanges, and water conservation), which can be reasonably understood as a “portfolio approach.” Thus, prior to analysis of impacts, the DEIS has pre-determined that an alternative to the proposed project is not viable.

Moreover, when describing impacts associated with the No Action alternative, the DEIS assumes that those impacts would only occur if the Tunnel Project is not constructed. This supposition is directly contradicted by voluminous evidence that regional water supply and reliability projects will be completed regardless of whether the DCP is built.¹ Water agencies are moving ahead with these projects precisely because climate change impacts and regulatory requirements make them essential to water supply reliability even if the DCP is completed and operational in 2040. Therefore, the DEIS must either include analysis of impacts from these regional projects within the impacts of the DCP, or it must make assumptions about the additional regional projects that might be pursued if the Tunnel Project is not completed or does not deliver as much water as projected. However, the DEIS cannot set up the false dichotomy that impacts from regional supply and demand management projects will only occur if the Tunnel Project is not built.

¹ As but one example, the Metropolitan Water District is advancing significant investments in recycled water. See: <https://www.mwdh2o.com/how-we-plan/integrated-resource-plan/>, accessed February 24, 2023.

Affected Environment and Environmental Consequences (Chapter 3)

Air Quality (Chapter 3.3)

In the Air Quality chapter, the DEIS includes information showing that both the Sacramento Valley and the San Joaquin Valley are in violation (non-attainment) or air quality standards for Ozone and two types of particulate matter (PM-2.5 and PM-10). The DEIS then notes that those same pollutants are predominantly associated with construction of the Tunnel Project (3.3-11). After describing proposed mitigation measures, however, the DEIS concludes that the impact on regional air quality is not significant (3.3-16). This conclusion is spurious because it does not account for the Tunnel Project's contribution to cumulative impacts. Unhealthy air quality has been linked to reduced life expectancy and a host of health impacts.² While air quality in the Sacramento and San Joaquin valleys will likely remain unhealthy even if the DCP is not built, every project that contributes additional pollutants, as the DCP would for over a decade, increases the sustained prevalence of negative health outcomes. Environmental justice communities are particularly susceptible to the cumulative impacts of incremental pollution because many environmental justice communities live near pollution sources.³ Indeed, the DEIS recognizes this reality in the environmental justice chapter (3.8-21). A true commitment to environmental justice would mean both state and federal agencies seek to eliminate or reduce large construction projects in communities that are already overburdened. By pursuing the DCP, both the state and federal governments are demonstrating that despite the elevated rhetoric of equity and justice, their real commitments have not changed.

In contrast to its regional assessment, the DEIS recognizes that people in close proximity to construction activities would suffer significant impacts (3.3-18). It also recognizes that environmental justice communities would suffer disproportionate impacts as described in the environmental justice chapter.

Climate Change (Chapter 3.6)

The DEIS relies upon the DEIR for an analysis of climate change impacts. Therefore, it is unsurprising that the DEIS concludes that both the impacts of climate change on the Tunnel Project and the Tunnel Project's impact on climate change are not significant (3.6-13). The DEIR, however, is riddled with unrealistic modelling assumptions and unsupported conclusions as we described in our comment letter (included as Attachment 3). Moreover, the DEIS itself acknowledges environmental harms, stating "The action alternatives potentially would have negative effects on critical fish habitat and special status species ...," and "Climate change also presents challenges to fish, fish habitat, and food availability, resulting in the action alternatives potential for effects on species to compound with those driven by climate change" (3.6-12).

² See, <https://www.who.int/teams/environment-climate-change-and-health/air-quality-and-health/health-impacts>, accessed February 22, 2023.

³ See CalEnviroScreen 4.0 for data and maps showing the concentration of environmental impacts in low-income communities of color. <https://oehha.ca.gov/calenviroscreen>, accessed February 22, 2023.

The federal government is currently completing its fifth national climate assessment (NCA).⁴ Each one has emphasized the need for dramatic reductions in the world's carbon budget to avert dire consequences to billions of people. In addition, the current administration has focused on building climate resilience and incorporating environmental justice into agency plans and policies.⁵ The DCP is inconsistent with NCA findings and these priorities. It would decrease resilience by harming the Delta's communities and environment, placing huge cost burdens on economically struggling households, and contributing to wasteful and unsustainable agricultural and urban water use. USACE's attempt to evade responsibility for these impacts through claiming no authority to evaluate project operations is not only a violation of applicable environmental law, it is also a shameful dereliction of duty in response to the grave threat of climate change.

Environmental Justice (Chapter 3.8)

The DEIS suffers many of the same flaws as the DEIR relating to environmental justice analysis. First and foremost, the DEIS excludes many environmental justice communities that would be impacted by the Tunnel Project. This exclusion includes communities in the Delta region as well as communities that would end up paying for the massive costs of the Tunnel Project through rates. While we commend the DEIS for recognizing significant and unavoidable impacts to Delta environmental justice communities in the categories of agriculture, aesthetic and visual resources, cultural resources, air quality (partially), and noise; the findings of non-significant impacts for transportation and public health, and the finding of potential benefit for climate change, are unsupported and inconsistent with the rest of the chapter.

The analysis of transportation impacts (EJ-4) is flawed because it conveniently ignores the fact that most Delta residents belong to environmental justice communities, and it is Delta residents that would be most adversely impacted by the vehicular traffic, road closures and diversions during the 12-14 year long construction period. Thus, when the DEIS states: "Construction of the proposed action would not result in direct or discernible indirect effects on environmental justice populations greater than those on the general population," (3.8-19) it misses the point entirely. If the proposed project were in an affluent community, or a mixed-income neighborhood of a city, the DEIS could reasonably reach the conclusion of no disparate impact. The proposed project, however, is in a region comprised primarily of disadvantaged communities, and therefore the finding of no significant impact must be amended.

Likewise, the no significant impact finding for public health (EJ-7) is both overly narrow and suffers from the same logical flaws as the transportation section. For public health impacts, the DEIS focuses on exclusively on mosquito-borne disease and mitigation measures.

⁴ See <https://www.globalchange.gov/nca5>, accessed February 23, 2023.

⁵ See <https://www.whitehouse.gov/briefing-room/statements-releases/2021/10/07/fact-sheet-biden-administration-releases-agency-climate-adaptation-and-resilience-plans-from-across-federal-government/>, accessed February 23, 2023.

However, a full public health analysis would examine psychological and social impacts to people living in a construction zone for years on end. USACE should investigate whether the Tunnel Project would impact educational outcomes for school age children, and cumulative psychological impacts to adults and children alike. A thorough approach would evaluate the impacts of similarly sized projects (i.e., the ‘Big Dig’ in Boston) to evaluate potential public health impacts from the DCP.

The analysis of climate change impacts to environmental justice communities is particularly problematic. To begin with, the DEIS claims that it is “too speculative” to project impacts on environmental justice communities from climate change if the DCP is not built (3.8-14). When it comes to the DCP, however, the DEIS has no qualms concluding that environmental justice populations could benefit “to the extent that the project would provide greater reliability and water quality.” (3.8-22 & 23). There are two core flaws with this conclusion. First, there is no evidence that the project would provide greater reliability or water quality in the Delta (or in the export areas). In fact, active regulatory proceedings make it unlikely that the DCP would achieve the reliability benefits both the DEIR and the DEIS presume it would deliver (see cumulative analysis discussion below). Second, there is no analysis of how climate change combined with project construction and operations would harm environmental justice populations. For example, climate change impacts combined with project operations would increase the frequency and severity of water quality impacts, such as Cyanobacteria Harmful Algal Blooms (CHABs), especially during extended dry periods. As we explained in our comments on the DEIR, CHABs impact recreation and subsistence fishing for Delta communities (e.g., environmental justice communities). This section is yet another example of how the DEIS, like the DEIR, cherry picks impacts and benefits to make the project look more environmentally favorable than it actually is.

Water Quality (Chapter 3.21)

The way the DEIS treats analysis of CHABs vastly understates the potential for increased adverse impacts due to the DCP combined with climate change impacts. Although the DEIS acknowledges that CHAB concentrations in various parts of the Delta, including Cache slough⁶, were high in extremely dry years (2015-16) and that climate change is increasing favorable conditions (extreme heat and extended dry periods) for CHABs, it only looks at CHAB formation from the perspective of compensatory mitigation and completely ignores the impact of project operations. Moreover, Cache Slough is an important area for fishing and increasingly vulnerable to CHAB formation. In addition, as we pointed out in our comments on the DEIR⁷, there is a risk that CHABs could become present in greater concentrations at the export facilities. Please refer to our DEIR comments for details on the way the environmental analysis understates the impacts of CHABs.

⁶ See ESA Microcystis Technical Memorandum, pg. 4, May 24, 2022. (Attachment 4).

⁷ See Attachment 3, RTD comments on DEIR, page 46 of 61.

Cumulative Analysis for various impact categories (Chapter 3)

First, while the DEIS (unlike the DEIR), includes the Water Quality Control Plan (WQCP) for the Bay-Delta as a regulatory action that could improve environmental quality (mainly through instream flow requirements that would improve water quality), the DEIS does not account for those requirements when discussing water supply scenarios in Section 3.22.2 (Environmental Consequences). This omission and referral to the DEIR, which ignores the WQCP completely, inflates the appearance of reliability, especially during dry and critically dry periods. Since the last WQCP update in 1995, environmental conditions in the Bay-Delta have deteriorated. Therefore, it is reasonable for the DEIS to project higher instream flow requirements and a commensurate reduction in allowable deliveries by the SWP and CVP. The probable reduction in allowable deliveries has implications for socioeconomic impacts and environmental justice impacts, directly related to the likelihood of higher costs per acre-foot of water delivered and costs related to greater investments in regional supply and demand management projects to provide for supply resiliency when SWP and CVP deliveries are low.

Second, the ongoing negotiations and regulatory process relating to the Colorado River, whose flow is in permanent decline due to climate change, must be accounted for. It is reasonable to assume that California, which uses the largest share of Colorado River water, will be forced to reduce its use, and that a portion of that reduction will accrue to the Metropolitan Water District of Southern California (MWD). As a result, MWD and its member agencies are likely to pursue regional supply projects on an accelerated timeline and may not forgo any regional supply investments between now and 2040 even if the DCP receives regulatory approvals and financing, survives lawsuits, and is under construction beginning in the next five years. This reality reinforces the point above regarding the cherry picking of impacts to compare the Action alternatives to the No Action alternative.

Third, while the DEIS describes expected outcomes from implementation of the Sustainable Groundwater Management Act (SGMA) (3.11-11), it draws the unsupported conclusion that despite SGMA requirements, groundwater levels would decline further under the No Action alternative due to increased groundwater pumping (3.11.2.2). However, SGMA will be implemented regardless of whether the DCP is built, and it is equally likely that due to SGMA's groundwater basin sustainability requirements, additional land will be retired, or shifted to low water use activities if the DCP is not completed.

In summary, no matter how much lipstick DWR and USACE apply to the Tunnel Project, its clearly identifiable harms far outweigh its purported and overstated benefits. The time has come to invest in equitable resilience and to abandon the ill-conceived dream of sucking ever more water out of the Delta.