June 1, 2023

The Honorable Toni Atkins  
Senate President pro Tempore  
California State Senate

The Honorable Anthony Rendon  
Speaker of the Assembly  
California State Assembly

The Honorable Nancy Skinner  
Senate Budget Committee Chair,  
California State Senate

The Honorable Phil Ting Chair,  
Chair, Assembly Budget Committee  
California State Assembly

The Honorable Josh Becker  
Senate Budget Subcommittee 2  
California State Senate

The Honorable Steve Bennett Chair,  
Assembly Budget Subcommittee 3  
California State Assembly

The Honorable Dave Min  
Chair, Senate Natural Resources and Water  
Committee  
California State Senate

The Honorable Rebecca Bauer-Kahan  
Chair, Assembly Water, Parks, and Wildlife  
Committee  
California State Assembly
Subject: Opposition to Trailer Bills – Request to Move Significant Policy in Policy Process

Dear Senate President pro Tempore Atkins, Speaker Rendon, Senator Skinner, Senator Becker, Senator Min, Senator Allen, Assemblymember Ting, Assemblymember Bennett, Assemblymember Bauer-Kahan, and Assemblymember Luz Rivas:

On behalf of the undersigned Stockton-based organizations, NGOs, and Environmental Justice Communities, we strongly oppose the Newsom Administration’s use of the budget trailer bill process to move significant and comprehensive environmental policy changes without adequate opportunity for public discussion and debate. The 11-trailer bill package and other recently released trailer bills announced by the Governor will alter environmental permitting and judicial review, jeopardize species protections, remake water law, and degrade transparent community engagement for the Delta Reform Act and other important laws and policies. The bills include a hodgepodge of good and bad policy ideas that offer to streamline some and yet also lengthen some administrative processes without adequate explanation, seemingly muddying the Administration’s publicly-stated objective of streamlining environmental and permit process reviews, while also truncating citizens’ rights to litigate a broad class of “infrastructure” and private industrial projects. Such abuse of the budget process erodes open discussion of massive policy decisions that could have severe consequences on Stockton and Delta-based communities that they intend to exclude.

The proposed trailer bills are likely to have significant effects on environmental, water, energy, and good government policies. They are used to evade the necessary analysis and review by the public, and by policy and legal experts. It is inappropriate and unwise to move policy changes through the trailer bill process by denying transparent public engagement, except for select stakeholders. Use of the trailer bill process instead precludes inclusive and measured policy hearings, open and public consideration of amendments, and the correctives available from public discussion.

Three brief examples show how there is insufficient time to deal properly with some trailer bills, and that the bills are themselves not fully-baked:

1) We oppose Delta Reform Act trailer bill language because some amendments appear to be unnecessary (Water Code section 85210(k), for example), while others would relax Delta Stewardship Council voting rules that reduce Council representation in the transaction of Council business during meetings of low Council member attendance at the cost of accountability to other Council members and the publics they represent. Moreover, other trailer bill language (e.g., Water Code section 85225.20) would actually lengthen the time the Council has to decide an appeal from 60 to 90 days, a change
running counter to the Administration’s goal of streamlining the Council consistency determination process. Finally, making the holistic Delta Plan severable risks rendering consistency determination processes confused and irrational if one portion of the Plan is judicially severed from the rest.

2) We strongly oppose the drought trailer bill. It will fundamentally reform the water rights system by allowing appropriation of all “flood flows” as designated by the local county agency, beyond jurisdiction of the Water Board. Water right holders could divert flood flows under the pretense of “emergency” to prepare for drought, which would be self-fulfilling prophecy for rivers and streams, and is not permitted under present state water law. There are no definitions in this trailer bill for what constitutes flood water and exactly what is an emergency. The bill also defines storing water as a beneficial use and in effect, would allow water rights holders to take water from streams even when they don't need it just to store it underground and have the right for its use moving forward.\(^1\) It would privatize groundwater basins. Alarming, usage of the trailer bill process also completely ignores CEQA regulations and can have serious environmental impacts that would go unmeasured or unaccounted for. Giving water rights holders the power to store flood flows at any time is a major threat to our community subsistence, commercial, and tribal subsistence fisheries, and the water quality and safety of environmental justice communities who rely on Delta waters for subsistence and recreation. We urge you to oppose the drought trailer bill along with the aforementioned bills above, it excludes the public's right to engage and discuss the process and will turn into an environmental threat for fish species and Delta communities alike.

3) We oppose anointing the Delta tunnel project so it will be covered by a 270-day limit within which all litigation against the project would be resolved. This problematic proposal is contained in the Judicial Streamlining trailer bill. We are concerned that 270 days for judicial resolution of litigation against certified infrastructure projects (like the Delta tunnel) is just not an adequate timeframe in the Judicial Streamlining trailer bill for judges and their clerk staffs to try cases and craft well-considered decisions; we are likely to get bad judicial consideration as a result on such a massive water project with many significant and unavoidable Delta environmental and community impacts. Expediting such a case also may clog already jammed court dockets. While the trailer bill claims to provide funds for additional court staff to address potential backlogs, there has been no time allotted for legislators and interested parties to assess the adequacy of resources for judicial streamlining: Are these resources adequate? More time and careful attention is required to decide this question on such a controversial and potentially destructive water project.

Gutting CEQA will prematurely hasten carbon capture/storage (CCS) projects (which are also singled out for tunnel-like special treatment in these trailer bills), pipelines for the oil

\(^1\) In other words, this would legalize a “dog in the manger” approach by private water users to acquiring additional water rights and would be contrary to the “due diligence” principle in appropriative water rights law. Such a massive change to state water rights law must be treated through the legislative policy process, not in budget trailer bills.
and gas industry in the Delta, and potentially air polluting projects at the Port of Stockton and the Delta without robust public oversight. Removing CEQA protections in California will potentially further endanger public health and species here for the largest environmental justice community percentage-wise (that is, the Delta region).

Not only would the Administration’s trailer bill infrastructure package fast-track the Delta tunnel and numerous other potential industrial threats and dangers—it would remove California Endangered Species Act protections for Sandhill cranes, an unacceptably unilateral proposal from this Administration.

We sympathize with other potential CEQA reforms—particularly for streamlining permitting processes for urban and suburban affordable infill housing—but not for large scale industrial projects that threaten public and environmental health, good in-channel and drinking water quality, and declining fisheries and wildlife. Such projects are often the starting points for disproportionate impacts on Delta and other California environmental justice communities.

Given the prospect of current budget shortfalls, it is neither good practice nor good government to use the budget process to resolve shortfalls and simultaneously press for complicated environmental policy reforms – all within the next few short weeks. That is not how good and durable public policies are made.

No one in California seriously disputes that our planet faces a climate crisis that must be dealt with quickly with the proper climate infrastructure. Gutting CEQA, rushing unconsidered deregulation of water rights acquisition and the destructive tunnel project, and relaxing of Delta Stewardship Council voting rules are inappropriate policy proposals to ram through the budget process. Instead, these and the other infrastructure trailer bill ideas should be vetted through regular legislative and budgetary processes and committees. This administration should trust those processes rather than contrive these bills based on climate change. We are prepared to engage with and discuss policy bills via transparent processes so that all parties have the right to debate, review, and compromise on policies that will impact natural resources, cultural resources, subsistence fisheries, environmental justice communities, the Delta estuary, and its surrounding communities.

Furthermore, our organizations have spent thousands of work hours engaging with state and federal agencies since 2018 communicating the protective environmental policies needed to improve environmental and public health outcomes for our region’s large environmental justice population. We have communicated on numerous occasions to state agencies that more engagement is needed with impacted communities to work through project planning processes in a just and equitable manner. The proposals contained in these trailer bills will instead undercut essential community engagement when collaboration is key to building a just future for the Delta region as part of climate change mitigation strategies.
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We thank you for considering our input on these trailer bills. We look forward to working with the Legislature to address our water and environmental justice goals in an open, deliberatively meaningful, separate, and less confusing policy and budget processes. If you have any questions, please do not hesitate to contact us.

Sincerely,

Barbara Barrigan-Parrilla  
Executive Director  
Restore the Delta

Councilmember Kimberly Warmsley  
City of Stockton  
District 6

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Director of State Policy  
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