



October 18, 2021

Karla Nemeth, Director
California Department of Water Resources
1416 Ninth Street, 12th Floor
Sacramento, CA 95814

Sent via email to: karla.nemeth@water.ca.gov and deltaconveyance@water.ca.gov

RE: Request that DWR Reconsider the Proposed Operational Criteria for the Delta Tunnel Project

Dear Director Nemeth:

On behalf of the Natural Resources Defense Council, Restore the Delta, Sierra Club California, California Sportfishing Protection Alliance, San Francisco Baykeeper, Defenders of Wildlife, Save California Salmon, and Golden State Salmon Association, we are writing to express our concerns with the proposed operational criteria for the Delta tunnel project that were summarized in the August 3, 2021 Fisheries webinar. We were surprised and alarmed to see that DWR's proposed operational criteria for the Delta Tunnel are significantly more environmentally harmful than the operations required by state and federal permits for the California WaterFix project, even though the WaterFix project was shown to reduce the survival and abundance of salmon, would have worsened environmental conditions in the estuary, and was ultimately withdrawn in the face of numerous lawsuits. We therefore request that DWR substantially revise the proposed operational criteria and propose new operational criteria that are significantly more environmentally protective than those required by the permits for the California WaterFix project.

First, DWR is proposing to use the Delta tunnel for water exports in the summer months, whereas WaterFix prioritized pumping from the South Delta for the months of July to September. *See* WaterFix Final Biological Assessment at 3-96 ("Jul-Sep: Prefer south delta intake up to total pumping of 3,000 cfs; No specific intake preference beyond 3,000 cfs."). This change in operations appears likely to reduce Delta outflow and worsen water quality conditions in the estuary during the summer months, including by reducing the incidental contributions to

Third, DWR’s proposed bypass flow criteria for the Delta tunnel is significantly weaker than what was required by the permits for WaterFix.¹ The Delta tunnel criteria only allows for two pulse protection events when salmon are migrating through the Delta, only applies those pulse protection criteria during the months of December to April (which fails to protect fall run Chinook salmon and other salmon that migrate in May and June), and allows unlimited pumping even during periods when peer reviewed scientific studies show it would reduce salmon survival through the Delta. In contrast, the permits for WaterFix rejected criteria similar to those now proposed for the Delta tunnel and instead required “unlimited pulse protection,” meaning that diversions in the North Delta had to cease when salmon were migrating through the Delta and applied these pulse protection criteria from the months of December through June. *See* NMFS Biological Opinion for WaterFix at 100, 731-732, 751. The permits for WaterFix also established that full pumping was allowed when flows at Freeport were greater than 35,000 cfs. *See id.* at 731-732. These bypass flows and pulse protection measures were required because water diversions from the North Delta significantly reduce the survival of juvenile salmon migrating through the Delta when flows are less than 35,000 cfs. *See id.*; *see also* Perry et al 2018.

Bypass Flow Criteria for the North Delta Tunnel Intakes	WaterFix	Delta Tunnel (proposed)
Number of “pulse protection” events where pumping ceases to protect migrating salmon	Unlimited	2
Instream flow level when pumping is unlimited (offramp)	35,000 cfs	26,285 cfs for 2 pulse protection events 18,750 cfs after 2 pulse protection events
Months when pulse protection applies	December through June	December to April

Finally, DWR’s proposed Delta outflow criteria for the Delta Tunnel project is the same as the criteria included in the Incidental Take Permit, even though that permit shows that these outflow criteria will reduce the abundance of Longfin Smelt (which is listed as threatened under the California Endangered Species Act and is at near record lows of abundance). *See* California Department of Fish and Wildlife, Incidental Take Permit for the State Water Project, Appendix 7 at 75. Moreover, these criteria mean that the Delta tunnel is likely to significantly reduce Delta outflow during the winter months (December to March), harming other species as well, including salmon. Years of scientific data and studies demonstrate the need to increase Delta outflow during the winter and spring months, and in 2018 the State Water Resources Control Board explained that the staff proposal would significantly increase Delta outflow in the long overdue

¹ Many of our organizations have significant concerns with this general approach of modifying bypass flow requirements based on monitoring for fish presence, which is likely to significantly underestimate the harm that will be caused to migrating salmon and other native fish species.

update of the Bay-Delta Water Quality Control Plan. DWR's failure to include any increases in Delta outflow in the proposed operating criteria – instead proposing to reduce Delta outflow – is inconsistent with the best available science.

Analyses of the California WaterFix project showed that the project was likely to reduce the survival and abundance of salmon and other fish species listed under the state and federal Endangered Species Acts. *See, e.g.*, NMFS Biological Opinion for WaterFix at 795-796, 799-802 (reduced abundance of winter-run Chinook salmon under WaterFix as compared to the No Action Alternative); *id.* at 758-761 (concluding that WaterFix would reduce the survival of all salmon runs migrating through the Delta in the months of October through June). Moreover, the State Water Resources Control Board has a legal duty to protect fall-run Chinook salmon and other species that are not protected under the State and federal Endangered Species Acts, and the Board has the authority and legal duty to consider protections that are significantly stronger than those acts in order to maintain fish in good condition, achieve the salmon doubling objective in the water quality control plan, and provide reasonable protection of fish and wildlife.

Despite the fact that WaterFix would have worsened conditions for native fish species that live or migrate through the Delta, DWR has proposed operating criteria for the Delta tunnel project that will significantly increase the impacts to native fish species and further reduce their survival and abundance compared to WaterFix. Our native fish and wildlife cannot survive such additional impacts, and there is no scientific basis for proposing operational rules that are less protective than those required for the WaterFix project – indeed, a water rights permit from the State Water Resources Control Board will almost certainly require stronger environmental protections than what is required by the ESA and CESA.

In addition, the proposed operating criteria for the Delta tunnel project are likely to worsen water quality for all beneficial uses in the Delta, including contributing to the proliferation of harmful algal blooms, and further reduce fish populations available for subsistence fishers and Northern California Tribes. As a result, the Delta Tunnel project is likely to cause significant negative impacts for Northern California's environmental justice communities.

We therefore urge DWR to reconsider the proposed operations criteria for the Delta tunnel project.

Thank you for consideration of our views.

Sincerely,



Doug Obegi
Natural Resources Defense Council



Barbara Barrigan-Parrilla
Restore the Delta

*Coalition letter to DWR regarding concerns with Delta Tunnel Operational Criteria
October 18, 2021*



Brandon Dawson
Sierra Club California



Chris Shutes
California Sportfishing Protection Alliance



Jon Rosenfield
San Francisco Baykeeper



Regina Chichizola
Save California Salmon



Rachel Zwillinger
Defenders of Wildlife



John McManus
Golden State Salmon Association