



July 26, 2022

Via email

Ms. Karla Nemeth, Director
California Department of Water Resources
1416 9th Street, Room 1115-1
Sacramento, CA 95814

Re: Please clarify the peer review process for the design and proposed operations of the Delta Conveyance project

Dear Director Nemeth,

We wanted to thank you for expressing your support for the review by the Delta Independent Science Board (“Delta ISB”) of the Delta Conveyance Project at the Delta ISB’s June 8, 2022 meeting. As you stated, the Delta Reform Act requires the use of “best available science” for the project, and one of the components of “best available science” is peer review.

This letter is to request that the Department of Water Resources (“Department”) clarify the details of the peer review process for the design and proposed operations of the Delta tunnel project. While the Department has been consulting with the Delta Stewardship Council staff as the project has been developed, the Department has not been consulting with the Delta ISB, nor did the Department release the Administrative Draft of the Delta Conveyance EIR for review by the Delta ISB.¹

With respect to timing of peer reviews, the Delta Stewardship Council’s guidelines for best available science state: “[i]ndependent scientific peer review shall be applied formally to proposed projects and initial draft plans, in writing after official draft plans or policies are released to the public, and to final released plans.”²

We are extremely concerned that the failure to release the Department’s Administrative Draft EIR for the single tunnel has adversely affected the peer review process for the project. As you know, the Delta ISB expressed major concerns in the May 2014 review of the previous project.³

¹ The Delta ISB was also not funded to consult on the Delta tunnel project in FY 2020-21.

² Delta Stewardship Council. 2015. [Delta Plan Appendix 1A, Best Available Science](https://www.deltacouncil.ca.gov/pdf/delta-plan/2015-appendix-1a.pdf). <https://www.deltacouncil.ca.gov/pdf/delta-plan/2015-appendix-1a.pdf>

Those concerns were summarized as follows:

1. Many of the impact assessments hinge on overly optimistic expectations about the feasibility, effectiveness, or timing of the proposed conservation actions, especially habitat restoration.
2. The project is encumbered by uncertainties that are considered inconsistently and incompletely; modeling has not been used effectively to bracket a range of uncertainties or to explore how uncertainties may propagate.
3. The potential effects of climate change and sea-level rise on the implementation and outcomes of BDCP actions are not adequately evaluated.
4. Insufficient attention is given to linkages and interactions among species, landscapes, and the proposed actions themselves.
5. The analyses largely neglect the influences of downstream effects on San Francisco Bay, levee failures, and environmental effects of increased water availability for agriculture and its environmental impacts in the San Joaquin Valley and downstream.
6. Details of how adaptive management will be implemented are left to a future management team without explicit prior consideration of (a) situations where adaptive management may be inappropriate or impossible to use, (b) contingency plans in case things do not work as planned, or (c) specific thresholds for action.
7. Available tools of risk assessment and decision support have not been used to assess the individual and combined risks associated with BDCP actions.
8. The presentation, despite clear writing and an abundance of information and analyses, makes it difficult to compare alternatives and evaluate the critical underlying assumptions.

Intervening years have shown how critically important it is that this project adequately evaluate the potential effects of climate change and sea level rise on the proposed North Delta diversions, as well as thoroughly and accurately assessing cascading risks from climate change and potential levee failure.

For the above reasons, we believe the release of the Draft Delta Conveyance EIR is the appropriate time to start a peer review by the Delta ISB of the Delta Conveyance. However, the ninety-day comment period on the Draft Delta Conveyance EIR is simply not an adequate period of time for a peer review of such a huge and complex project. At the July 14, 2022 Delta ISB meeting, the member's proposed review schedule provided only 60 days to draft the main report. Sixty days is a wholly adequate period of time for review of any of the modeling in the Draft Delta Conveyance EIR, especially if the model outputs are not provided in an appropriate format.⁴

Should any other peer review panel be convened under the Department's authority, it would be subject to the requirements established by the Public Works Project Peer Review Act of 2013

³ [Delta Independent Science Board. 2014. Transmittal from Delta Independent Science Board to the Chair of the Delta Stewardship Council of the Review of the Draft EIR/EIS for the Bay Delta Conservation Plan.](https://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/california_waterfix/exhibits/docs/PCFFA&IGFR/PCFFA_09_ISB.pdf)

⁴ The Department should provide the model outputs in an appropriate Excel spreadsheet or other format that is suitable for a 21st century review by scientists and engineers. Scientists and engineers stopped using printed data tables for review over thirty years ago.

(Gov. Code §§ 8847 et. seq.) The following explains how the Public Works Peer Review Act of 2013 applies to the project.

The Department intends to construct the Delta tunnel under the authorization of the Central Valley Project Act (Wat Code §§ 11100 et. seq.)⁵ The Central Valley Project Act requires that the Department design any works that will be constructed under the Act. (Wat. Code § 11551.) The Central Valley Project Act also requires that “[t]he department shall have full charge and control of the construction, operation, and maintenance of the project and the collection of all rates, charges, and revenues from it.” (Wat. Code § 11551.)

The Department is an administering agency, as discussed in the Public Works Project Peer Review Act of 2013 because it is the public agency principally tasked with administering, planning, developing, and operating a public works project” (Gov. Code § 8847.1(a).)

The Public Works Project Peer Review Act of 2013 defines a "Peer review group" as "a group of persons qualified by training and experience in particular scientific or technical fields related to the public works project under review, who give expert advice on the scientific and technical aspects of the public works project" (Gov. Code § 8847.1(b).)

If the Department or the Delta Conveyance Design and Construction Authority establishes its own peer review group for the Delta tunnel project, the Department must comply with all of the following under requirements of the Public Works Peer Review Act of 2013 (Gov. Code § 8848(b)):

(b) If an administering agency establishes a peer review group, the administering agency shall do all of the following:

- (1) Before establishing a peer review group, develop a transparent process for selecting members of the group.
- (2) Draft a charter. The charter also shall be posted on the administering agency’s Internet Web site as a public document and shall contain all of the following information:
 - (A) The group’s official name or designation.
 - (B) The group’s objective and the scope of its activities.
 - (C) A statement of the expertise and balance of interests required of the group membership to perform its charge.
 - (D) The name of the administering agency and official to whom the group reports.
 - (E) A description of the duties for which the group is responsible.
 - (F) The estimated number and frequency of group meetings.
 - (G) The estimated annual operating costs for the group.

⁵ California Department of Water Resources. 2020. [Delta Program Revenue Bond General Bond Resolution](https://water.ca.gov/-/media/DWR-Website/Web-Pages/Programs/Delta-Conveyance/Public-Information/Complaint-for-Validation-with-Exhibits-8-6-20received_508.pdf). P. 30 of Complaint for Validation with Exhibits. https://water.ca.gov/-/media/DWR-Website/Web-Pages/Programs/Delta-Conveyance/Public-Information/Complaint-for-Validation-with-Exhibits-8-6-20received_508.pdf

(H) A statement that authorizes a peer reviewer to conduct his or her duties under the charter impartially, without restriction or limitation, and in a manner the peer reviewer believes is necessary to appropriately review a proposed project.

(I) A statement that declares whether the members of the peer review group have signed a conflict of interest disclosure form that would identify real or perceived conflicts between a peer reviewer and the specified public works project.

The Delta Conveyance Design and Construction Authority conducted several Independent Technical Reviews (ITRs) of the engineering design of the Delta tunnel project, including a review of the intake design on 2020⁶, and a review of proposed tunneling and shafts on May 13-15, 2020.⁷ These ITRs do not qualify as peer reviews, because the selection of external reviewers was not transparent, the scope of the technical reviews was limited, and no public document was posted that contained the mandated information about the review panel.

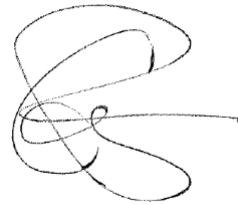
Finally, the reviews by the Department of Fish and Wildlife of some aspects of the project for the Incidental Take Permit under the California Endangered Species Act, and the reviews by the United States Fish and Wildlife Service and National Marine Fisheries Service of some aspects of the project under the Federal Endangered Species Act do not constitute peer reviews. These are reviews by biologists. In this circumstance, the appropriate peer reviews must be by scientists and/or engineers with appropriate backgrounds in climate science, hydrology, geology, or civil engineering.

Therefore, we respectfully request that the Department clarify whether the Delta ISB is expected to do a peer review of the project, whether the Department will be convening its own peer review group for the project and, if so, the process the Department will follow to do so, what the timeline will be and how the full peer review will relate to the Delta ISB's review.

Sincerely,



Deirdre Des Jardins, Director
California Water Research
ddj@cah2oresearch.com 831
566-6320



Gwynne T. Pratt, Counsel,
California Water Research
gtpratt@yahoo.com

⁶ [Delta Conveyance Intakes Independent Technical Review \(ITR\) Panel, Intakes ITR Panel Report – Meeting 1, March 17-19, 2020. https://www.dcdca.org/wp-content/uploads/2022/03/2020-Intakes-ITR-Report-and-Response-V.F-ADA-Compliant.pdf.](https://www.dcdca.org/wp-content/uploads/2022/03/2020-Intakes-ITR-Report-and-Response-V.F-ADA-Compliant.pdf)

⁷ [Delta Conveyance Independent Technical Reviews \(ITR\) Panel, Tunneling and Shafts ITR Report – Meeting 1, May 29, 2020. https://www.dcdca.org/wp-content/uploads/2022/03/2020-Tunneling-and-Shafts-ITR-Report-and-Response-V.F-ADA-Compliant.pdf.](https://www.dcdca.org/wp-content/uploads/2022/03/2020-Tunneling-and-Shafts-ITR-Report-and-Response-V.F-ADA-Compliant.pdf)

cc:

Jeff Henderson, Delta Stewardship Council

Delta Stewardship Council members

Delta Independent Science Board members

Marcus Yee, Department of Water Resources

Carrie Buckman, Department of Water Resources

Graham Bradner, Delta Conveyance Design and Construction Authority

Bruce Blodgett, Delta Protection Commission

Diane Riddle, State Water Resources Control Board

Jessica Fain, Bay Conservation and Development Commission