

-FACT SHEET-
**National Environmental Policy Act Review of
Delta Conveyance Project is Incomplete and Inadequate**

Issue: The U.S. Army Corps of Engineers' (USACE) Draft Environmental Impact Statement (DEIS) inadequately informs federal agencies' decision-making on the Delta Conveyance Project (Delta Tunnel). This analysis must be redone to address operations and all of the issues raised by U.S. Environmental Protection Agency (USEPA) before federal agencies make any decisions on the Delta Tunnel project.

The USACE's decision on Delta Conveyance Project is a candidate for elevation to USACE Headquarters from the Sacramento District, pursuant to the 1992 Memorandum of Agreement between USEPA and USACE implementing Section 404(q) of the Clean Water Act (1992 MOA) because the proposed project would have substantial and unacceptable impacts on aquatic resources of national importance.¹

Under Clean Water Act section 404(c), USEPA has veto authority over section 404 permits issued by the USACE. USEPA can veto a permit if USEPA determines that the discharge would not comply with Clean Water Act section 404(b)(1) (Least Environmentally Damaging Practical Alternative), or would have unacceptable adverse impacts on water supplies, fishing, wildlife or recreational areas.

Background: In December 2022, the USACE released a DEIS required by the National Environmental Policy Act (NEPA) to serve as the basis for federal agency decision-making on the Delta Tunnel. The USACE acted as the lead agency under NEPA due to the placement of dredged or fill material under Clean Water Act section 404. Though federal and state environmental review documents are typically combined to best inform the public and decisionmakers, and to reduce the burden for the public to review two separate final documents, the analysis of the Delta Tunnel has been bifurcated. The California Department of Water Resources (CDWR) states that a final EIS may be released by the USACE in mid-2024, potentially six months *after* environmental review under California state requirements is planned for completion.

Why the DEIS is Incomplete and Inadequate:

1. Impacts from Operating the Project Were Not Analyzed as NEPA Requires

- USACE segmented environmental review by excluded any analysis of the effects of actually operating the massive water intakes and tunnel, which are designed to divert 6,000 cubic feet per second of water from the Sacramento River at Hood and Courtland.
- Excluding project operations led to the failure to analyze several other important impacts, such as water quality, fisheries, and harmful algal blooms.

¹ https://www.epa.gov/sites/default/files/2015-03/documents/1992_moa_404q.pdf

- Local cities in the Delta, such as Antioch, explained that operation of the project would negatively impact salinity levels in the Delta, worsening water quality and increasing treatment costs for local water utilities.
- The likelihood of harmful algal blooms would increase, as explained by the City of Sacramento. These blooms could have far-reaching implications to recreation, fisheries, and other resources, but are not addressed in the DEIS.
- According to USEPA, the proposed water diversions from the Delta could lead to the extension of some fish species and further imperil several threatened and endangered species.
- In addition to the need to analyze operational impacts under 40 CFR 230, USEPA explained that USACE was required to consider how the direct and secondary effects of the proposed project would contribute to cumulative effects on the aquatic ecosystem including:
 - changes in the salinity gradient and the location and volume of the low salinity zone in all seasons;
 - what adverse effects on water quality including the amplification of water quality impairments;
 - disruption of migratory corridors for salmonids and sturgeon; degradation of aquatic life beneficial uses; and
 - changes to wetland or river hydrology.
- USEPA commented that the USACE must conduct an alternatives analysis that clearly demonstrates that the proposed discharges represent the Least Environmentally Damaging Practicable Alternative that achieves the overall project purpose under 40 CFR 230.10(a)). This analysis must include operational effects.
- Despite the clear requirements under NEPA to analyze operations, along with construction impacts, CDWR still has no articulated plan to complete environmental review of the operation of what would be the addition of largest new diversions in the Delta since the Harvey O. Banks pumping plant in the 1960s.
 - Delaying critical analyses of operational impacts could lead to an irreversible or irretrievable commitment of resources, improperly foreclosing formulation/implementation of alternatives to the Tunnel.

2. The Delta Tunnel Would Impact Environmental Justice (EJ) Communities

- The DEIS contains conflicting information on air quality impacts that does not account for the full scope of air quality impact on EJ communities. The EIS finds the impact may be significant, but the public health section states no significant impacts. Most of these air quality impacts would occur in the Town of Hood, a largely Latinx community immediately adjacent to one of the

project's massive new intake facilities. EJ communities in the City of Stockton would also be disproportionately impacted by construction of the project.

3. The Delta Tunnel Would Violate the Antidegradation Policy of the Clean Water Act

- USEPA's comments on the DEIS noted concern with the effects of the project on flow conditions downstream of the proposed diversions, which are likely to result from decreased Sacramento River flows, with multiple potential effects including:
 - reduced primary production;
 - reduced through-Delta survival of migratory fish; and
 - degraded habitat conditions in receiving waters due to decreased turbidity, and
 - increased salinity.
- USEPA noted that the Delta already experiences degraded conditions due to insufficient inflow, increased surface water temperatures, invasive animal and plant species, harmful algal blooms, and sea level rise.
- The Clean Water Act does not allow discharge of dredged or fill material that causes significant degradation of waters of the United States, including significantly adverse effects on human health or welfare; life stages of aquatic life and other wildlife; aquatic ecosystem diversity, productivity, or stability; and recreational, aesthetic, and economic values. (40 CFR 230.10(c).)

4. The Delta Tunnel Would Leave Behind Large Piles of Muck and Scar Delta Landscapes

- Excavation of the proposed 35-mile long, 40-foot wide tunnel would generate nearly 14.5 million cubic yards of bulk material (i.e., more than a million dump trucks worth of material). The DEIS contemplates leaving piles of tunnel material around the Delta permanently.
 - USEPA urged for the optimization of beneficial reuse of Tunnel Muck. It is not clear whether the material can be safely used for other purposes, given the potential contaminants in the material.

USEPA's March 16, 2022 comments on the DEIS can be accessed here:

<https://www.dropbox.com/scl/fi/aab210fe93wk9h0cmcg9/23.3.16-EPA-comment-letter.pdf?rlkey=n8g9c13l4mi7gfs8ums7ckrbj&dl=0>