

### **Delta Counties Coalition**

Contra Costa County · Sacramento County · San Joaquin County · Solano County · Yolo County  
*"Working together on water and Delta issues"*

April 17, 2020

**SENT VIA EMAIL:** DeltaConveyanceScoping@WATER.CA.GOV

Renee Rodriguez  
Department of Water Resources  
P.O. Box 942836  
Sacramento, CA 94236

**Re: Comments on Notice of Preparation of EIR for the  
Delta Conveyance Project**

Dear Ms. Rodriguez:

Thank you for the opportunity to comment on the Notice of Preparation ("NOP") for the development of an Environmental Impact Report ("EIR") for the Delta Conveyance Project ("Project"). This letter is submitted on behalf of the Delta Counties Coalition ("DCC"), a coalition of elected members from Contra Costa, Sacramento, San Joaquin, Solano, and Yolo counties.<sup>1</sup> As the majority of the Project footprint is within the lands and waters within the Delta, DCC members request to be duly informed of project developments and remind the Department of Water Resources ("DWR") of the counties' roles as responsible agencies. DCC has spent the past decade advocating for genuine Statewide water solutions that support all communities, and is correspondingly disheartened by DWR's decision to proceed with a Delta tunnel, instead of more cost-effective and environmentally-friendly alternatives.

DCC is disappointed that despite an indication in early 2019 that the State would be taking a fresh look at the issue of water exports from the Delta, a project nearly identical to the California WaterFix project is being proposed. In fact, a comparison of the Project and WaterFix project maps show that the current Project is largely the same in terms of intake locations, tunnel corridors, and pumping plant, forebay, and conveyance locations. (See Exhibit 1.) Thus, the Project is likely to have most of the same significant and unavoidable environmental and other impacts as its predecessors. DWR must scrupulously follow the mandates of CEQA to ensure that the Project's impacts are clearly disclosed and adequately mitigated, and all feasible alternatives are carefully considered.

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<sup>1</sup> The counties have separately provided comments to the Department of Water Resources ("DWR") regarding their status as responsible agencies pursuant to the California Environmental Quality Act ("CEQA") (Pub. Resources Code, § 21000, et seq.) with respect to the project described in the NOP.

This comment letter: (1) explains how the NOP does not meet minimum CEQA requirements; (2) requests that a Water Availability Analysis be completed to demonstrate the availability of water for the Project; and (3) suggests alternatives to reduce the significant effects of the Project that must be considered in the Draft EIR.

## **1. The NOP Does Not Meet Minimum CEQA Requirements**

The NOP fails to provide the minimum information for the DCC and the public to understand the Project. A NOP must include: (A) Description of the project; (B) Location of the project “either by street address and cross street . . . or by attaching a specific map”; and (C) Probable environmental effects of the project. (CEQA Guidelines section 15082, subd. (a)(1).) In all three areas, the NOP falls short of providing the required information.

### *Project Description*

The NOP fails to include an adequate Project description. This massive project spans multiple counties and yet the NOP merely lists major project components without ever describing them. To the extent any details are provided, they are expressed in ranges or are completely uncertain. The intake footprints, for instance, are described as a range from “75 to 150 acres” (NOP, p. 5), a 100 percent difference. Moreover, the NOP even qualifies that range with the word “could”. Three intake locations are identified with dots on the map, and the NOP states two of them will be selected. Two potential tunnel corridors are shown in wide swaths without any exact location. These approximations fail to provide a description of all Project components to which the public can respond.

Inclusion of the “Central Tunnel Corridor” option in the NOP is also questionable, as it was deemed infeasible by the Independent Technical Review (“ITR”) Committee, an independent panel of expert tunnel engineers convened by the Delta Conveyance Design and Construction Authority (“DCA”), in December 2019. The Panel found that “the Central Corridor is logistically impractical,” hindered by numerous waterways and only having access via farm roads to transfer materials and labor, in addition to safety and costing concerns.<sup>2</sup> The DCC concurs with the ITR that the unique geography of the Delta and the massive disturbance necessary to construct this Project option are incompatible. The ITR Panel’s recommendations should not be discounted.

The NOP’s description of proposed project facilities is also too vague to determine whether the Project would advance the identified Project objectives. For example, the Project seeks to address “anticipated rising sea levels” as well as to provide “operational flexibility to improve aquatic conditions.” (NOP, p. 2.) Yet the ensuing description never mentions either objective or explains how the proposed facilities would help achieve them. With respect to the objective associated with protecting water deliveries from the impacts of a major earthquake, the DCA’s ITR Panel noted that no active fault crossings exist along the Delta Conveyance alignment. This conclusion indicates that a tunnel may not be needed to “minimize[e] the potential for public health and safety impacts ... resulting from a major earthquake.” (NOP, p. 2.) The ITR’s

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<sup>2</sup> See <https://www.dcdca.org/pdf/2020-02-20DCABoardPkgV2.pdf>, ITR report, p. 6.

observation that no active fault crossings exist along the Delta Conveyance alignment undermines the oft-repeated rationale that construction of a tunnel in the Delta is necessary to prevent water supply disruptions from earthquakes.<sup>3</sup>

In addition, the NOP fails to provide any information regarding the proposed operation of the Project. Without a description of proposed Project operations, it is not possible to provide input on the analysis of Project operations. Based on the prior environmental review of the WaterFix, the DCC is concerned that the draft EIR for the Project will similarly defer proposed operations to later regulatory processes and rely on model runs that continually change. Clear operational proposals in various water conditions (e.g., wet, above average, average, below average and dry years) would be necessary to conduct a complete environmental analysis of the Project. This should include how triggers will be set to establish the applicable operations in each foreseeable hydrologic condition. The governance approach to operations should also be defined, in order to analyze reasonably foreseeable impacts on local water supplies, water quality and other resources.

#### *Project Location*

A street address or a specific map of the Project location is required. (CEQA Guidelines, § 15082, subd. (a)(1)(B).) The NOP vastly falls short in this regard, providing neither addresses for intakes, corridors or any of the associated facilities.

The map provided with the NOP as “Figure 1” is not “specific” and the identified areas are described as still “under consideration.” (NOP, p. 3.) Figure 1 states that “Only Two [of three] Sites will be Selected,” however, two entirely different sites other than the three depicted could be chosen for the intakes. Figure 1 also identified two different tunnel corridors, which would impact different land and water areas. No support facilities, such as batch plants, fueling stations and construction staging areas are identified by address or by map.

The NOP also fails to define the Project area in a meaningful way, generally listing upstream of the Delta, the Delta and south of Delta service areas. The NOP defers identification of the study areas for each resource, stating that “The study areas will be specifically defined for each resource area evaluated in the EIR.” (NOP, p. 6.) As a Project with statewide implications, the study areas should be clearly defined at the outset so the public can understand the intended approach to analysis in the Draft EIR.

From the NOP, it is also unclear within which Delta counties DWR proposes to conduct Project activities. If activities are planned in DCC counties, discretionary county zoning code approvals and permits may be necessary. Construction in conflict with prevailing land uses in

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<sup>3</sup> In any case, Contra Costa Water District and others have pointed out that any salinity intrusion from levee failures would last at most a few months, even in a critically dry year because winter flows flush out salts. In any case, water export agencies already must diversify their water supplies and maintain some water in storage to use if necessary when water cannot be exported from the Delta or there are other disruptions.

Project areas would require conditional use permits, special development permits, variances, rezones, code text amendments and/or master plan amendments. Counties also have approval authority over geotechnical exploratory drilling, boring and construction of wells, road and highway encroachment permits, building permits, and other local permits. The NOP should be revised to reflect these areas of jurisdictional authority.

In short, the scope of the Project is massive and would have significant environmental impacts in all of the Delta counties. Much more location detail is necessary for any county or agency to make a meaningful response and analyze the potential significant impacts to areas within their jurisdictions.

### *Probable Environmental Effects of the Project*

The NOP also lists “Water Supply” as a probable effect category but for “changes in water deliveries.” (NOP, p. 9.) The tunnel Project proposes changes to the hydrology of the Delta that will affect water availability and water quality throughout the Delta. Prior iterations of environmental review for Delta conveyance projects relegated impacts on local water supplies to other resource chapters of the EIR, making it necessary to review multiple chapters for impacts to local water supplies. On the other hand, impacts to export water supplies were conveniently organized in one chapter. The Draft EIR should analyze the changes in water supplies for all water users, both in and out of the Delta, using a readily understandable analytical approach.

## **2. No Water Availability Analysis Supports the Operability of a Tunnel in the North Delta without Injuring Other Water Uses and Users**

The development of a proposed Project and analysis in the Draft EIR should be preceded by a quantitative analysis to inform the sizing of the Delta tunnel and the volume of water it is intended to convey. As the DCC explained in its comments on the January 2020 Draft Water Resiliency Portfolio (“WRP”), Executive Order N-10-19 requires that the three WRP working group agencies “shall first inventory and assess” . . . “[e]xisting demand for water on a statewide and regional basis and available water supply to address this demand.” (EO N-10-19, section 2(a).)

The NOP notes that DWR has previously studied a similar project through the Bay Delta Conservation Plan (“BDCP”) and California WaterFix efforts. However, the NOP states that the proposed Project is a new project and “not supplemental to these past efforts or tiered from previous environmental compliance documents.” (NOP, p. 10.) Thus, DCC expects that the Draft EIR Project description and alternatives will be informed by a *new* quantitative assessment of our state’s *contemporary* water supplies and demands.

The technology is available today to better understand and predict river flows and related water data including dam operation efficiency. This information is crucial in calculating how much water is available for consumptive uses. Without quantifying the water needs of people and fish, along with relevant climate change information such as the future loss of snowpack,

projections of how much water the system can export and separate from the Delta estuary in the locations proposed by the Project are unsupported and erroneous.

### **3. Alternatives to Reduce the Significant Effects of the Project Must be Included in the Draft EIR**

Feasible alternatives to a tunnel that would meet the identified project objectives must be considered in the Draft EIR. (CEQA Guidelines section 15126.6, subd. (a).) The truncated and incomplete approach to project alternatives in the prior BDCP and California WaterFix environmental review processes must not be repeated. At a minimum, the following alternatives must be evaluated and included in the Draft EIR.

#### *Through Delta Conveyance Alternative*

A feasible alternative that improves the existing through Delta conveyance system to meet the state's water supply needs must be included in the Draft EIR. While the EIR for the California WaterFix project did include a through Delta alternative, that Alternative included components that would have significant effects on Delta Legacy towns that were unacceptable. The DCC is available to assist DWR in developing the various components of a more acceptable through Delta alternative in the draft EIR. Such an alternative would include levee improvements to ensure protection of the state's water supply infrastructure, along with other local and state infrastructure.

The Draft EIR should also recognize that under *any* alternative, the Delta levees must continue to be upgraded and maintained. Use of the existing Delta levee system as water conveyance channels for the delivery of water to the pumping plants will require a plan for funding their maintenance if the Delta agriculture, infrastructure and ecology are to be protected.<sup>4</sup> In addition, the Project must be designed to protect, and preferably improve, flood protections levels in the Delta.

Preparing the existing South Delta facilities for sea level rise and increased salinity should also be considered. The existing pumps in the South Delta are protected by levees, appear to already accommodate all but the highest sea level rise model projections for 100 years, and can be raised as necessary.<sup>5</sup> In addition, brackish water desalination could be a potential adaptation to

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<sup>4</sup> The DCC and its local flood control partners have spent millions of dollars rehabilitating and maintaining the levees that provide their livelihood and protect their property. In addition, they understand the levees provide protection to many other beneficiaries and the environment. There are a significant number of public and private beneficiaries of the Delta levee system that are not funding the levee repair, operations and management. Those beneficiaries rely on the local flood control agencies, but only indirectly support them through the state bonding for the prior Propositions.

<sup>5</sup> The elevations of the levees and other structures around the existing pumps are around 24-28 feet. (See 2018 Conceptual Engineering Report, Table 4-5, p. 4-13, available at: [https://www.waterboards.ca.gov/waterrights/water\\_issues/programs/bay\\_delta/california\\_waterfix/exhibits/docs/petitioners\\_exhibit/dwr/part2\\_rebuttal/dwr\\_1304.pdf](https://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/california_waterfix/exhibits/docs/petitioners_exhibit/dwr/part2_rebuttal/dwr_1304.pdf); see also 2015 Conceptual

increased salinity in the South Delta under various sea level rise scenarios. Brackish water treatment is far less costly than desalination of ocean water.<sup>6</sup>

SWP and CVP implementation of the reasonable and prudent alternatives (“RPAs”) in the 2008 Biological Opinion for the Coordinated Operations of the Central Valley Project and State Water Project (“BiOps”) could be an important component of a through Delta Alternative. These RPAs were readopted in the 2019 BiOps. (See 2019 BiOps, p. 168 [Action 4, which applies to Delta Smelt and Critical Habitat, not modified].) Specific actions contemplated under both the 2008 and 2019 BiOps include modifying the Delta Cross Channel gate operations to reduce diversions of protected fish from the Sacramento River, as well as improving fish screening and salvage operations to reduce mortality from entrainment and salvage from existing facilities. (2008 BiOps, p. 630 (Actions 4.1 and 4.4).) RPAs such as Actions 4.1 and 4.4 would meet Project objectives such as keeping water deliveries consistent with the federal Endangered Species Act.

Studies carried out to implement Actions 4.1 and 4.4 concluded that a bubble curtain “could be used to successfully guide Chinook salmon away from Georgiana Slough, or a similar structure could be installed in other river junctions to move fish towards low-risk migration corridors.”<sup>7</sup> Thus, non-physical barriers should be considered as a means to reduce the entry of fish into the South Delta, in combination with other “through Delta” conveyance improvements. An effective non-physical barrier using sound, air bubble curtain, and strobe light components, for instance, could be deployed at the confluence of the Georgiana Slough and the Sacramento River to deter fish from entering the Georgiana Slough. This would make fish less susceptible to entrainment in the South Delta. Improving fish population size through use of non-physical barriers could ultimately provide some of the “flexibility to improve aquatic conditions” that the Project seeks to achieve.

In addition, the installation of fish screens operable at low flows at the existing Clifton Court Forebay facilities is a potential action that could reduce fish salvage and predation losses, leading to reduced mortality of sensitive species and increasing water supply reliability. Installation of Clifton Court Forebay fish screens was identified as a potential Early Action in SB7x-1 (Water Code, § 85085, subd. (c).) In 2010, Contra Costa Water District and others suggested that DWR consider screens that would operate at low-flow (diversions < 2,000 cfs) to

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Engineering Report, pp. 4-2, 4-13, available at:

[https://www.waterboards.ca.gov/waterrights/water\\_issues/programs/bay\\_delta/california\\_waterf/x/exhibits/docs/petitioners\\_exhibit/dwr/dwr\\_212.pdf](https://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/california_waterf/x/exhibits/docs/petitioners_exhibit/dwr/dwr_212.pdf).

<sup>6</sup> The efficiency of creating drinking water from seawater is typically in the 35% range while brackish water is typically from 1% to 10% of the concentration of seawater. (See <https://www.wwdmag.com/desalination/desalination-seawater-and-brackish-water>; <https://www.sciencedirect.com/topics/earth-and-planetary-sciences/brackish-water-desalination>, <http://www.caldesal.org/groundwater.php>.)

<sup>7</sup> See 2014 Georgiana Slough Floating Fish Guidance Structure

Performance Evaluation Project Report, available at:

[https://www.waterboards.ca.gov/waterrights/water\\_issues/programs/bay\\_delta/california\\_waterf/x/exhibits/docs/petitioners\\_exhibit/dwr/part2\\_rebuttal/dwr\\_1390.pdf](https://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/california_waterf/x/exhibits/docs/petitioners_exhibit/dwr/part2_rebuttal/dwr_1390.pdf).

reduce fish mortality at the existing Clifton Court Forebay. However, the feasibility studies for this action were never completed, ostensibly in favor of work on the twin tunnels project.

#### *Alternative Intake Locations*

From information developed in the California WaterFix CEQA process, it is clear that the currently proposed intake locations would have significant impacts to the environment, including impacts to cultural resources as well as surface water, groundwater supplies and agriculture, among other impacts. The Draft EIR should evaluate alternative intake locations that could lessen these significant impacts.

While it has been claimed that the Fish Facilities Technical Team (“FFTT”) recommended the three intakes shown in the NOP, that is incorrect. In 2011, the FFTT made a series of recommendations for siting new diversion intakes along the Sacramento River that provided specified siting parameters that “could allow intakes along much of the river.” (2011 FFTT Recommendations 1-5, p. 6.) In other words, the FFTT did not previously provide recommendations for specific diversion locations, but gave overall recommendations that could be applied to review additional potential diversion locations.

Options should also be considered that allow natural flows to pass through as much of the Delta as possible before surplus water is extracted. In this way, the conveyance system could be self-regulating and assure protection of water rights priorities because water could only be exported downstream of other users and likely when salinity levels are low, i.e. “during high flow events.” (NOP, p. 3.) Such a location would help restore a more natural pattern of flows through the Delta, consistent with the DWR objective to “improve aquatic conditions” and the Delta Reform Act’s “coequal goals” of “providing a reliable water supply for the State while restoring the Delta’s ecosystem.” Surplus water could then be stored in expanded or newly constructed storage south-of-Delta. Western Delta locations owned by the state or water contractors would also be more suitable for use than privately owned property in the northern Delta.

#### *Improving Existing Facilities with a Smaller Conveyance System*

Though the size and cost of the currently proposed Project is massive, it does not create any new water nor provide for protection of the Delta environment. DWR could approach building a smaller conveyance system paired with other system improvements in various ways. An alternative could combine repair and improvement of Delta levees to improve “through Delta” conveyance, with strategic use of new and expanded existing storage facilities. A much smaller conveyance system could potentially be paired with these improvements to deliver some minimal amount of Sacramento River water needed for public health and safety.

#### *Accurate Evaluation of the No Project Alternative*

In addition, DWR must fully consider and evaluate a realistic No Project Alternative, including the compliance of the SWP and CVP with all existing permit conditions and regulatory requirements. This would include the RPAs relating to reduction of take at the existing facilities



as well as creation of required habitat to meet the SWP and CVP Endangered Species Act permit conditions. While implementation of these requirements has been inexplicably delayed, the No Project Alternative in the Draft EIR must assume that all legally required protections will be pursued and met. In addition, the no Project Alternative should include compliance with all adopted Water Quality Control Plan requirements.

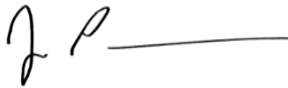
#### 4. Conclusion

The DCC is disappointed that despite the potential for a better path forward, the NOP's superficially described Project is not significantly different than the previously abandoned California WaterFix project in terms of impacts on the Delta environment and its communities. As DWR contemplates options and alternatives to improve the state's water system, DCC expresses its sincere hope that a better alternative that does not harm Delta communities will ultimately be developed, analyzed and adopted. Should DWR proceed with analyses of the Project described in the NOP, that analysis must be robust and complete in order to adequately inform the public, as required by CEQA. The DCC and is available to work with DWR on implementing the suggestions in this comment letter to advance real improvements to the state's water supply system that also protect the Delta environment and the communities that reside there.

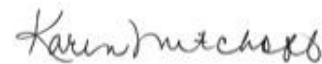
Sincerely,



Patrick Kennedy  
Supervisor, Sacramento County



Jim Provenza  
Supervisor, Yolo County



Karen Mitchoff  
Supervisor, Contra Costa County



Skip Thomson  
Supervisor, Solano County



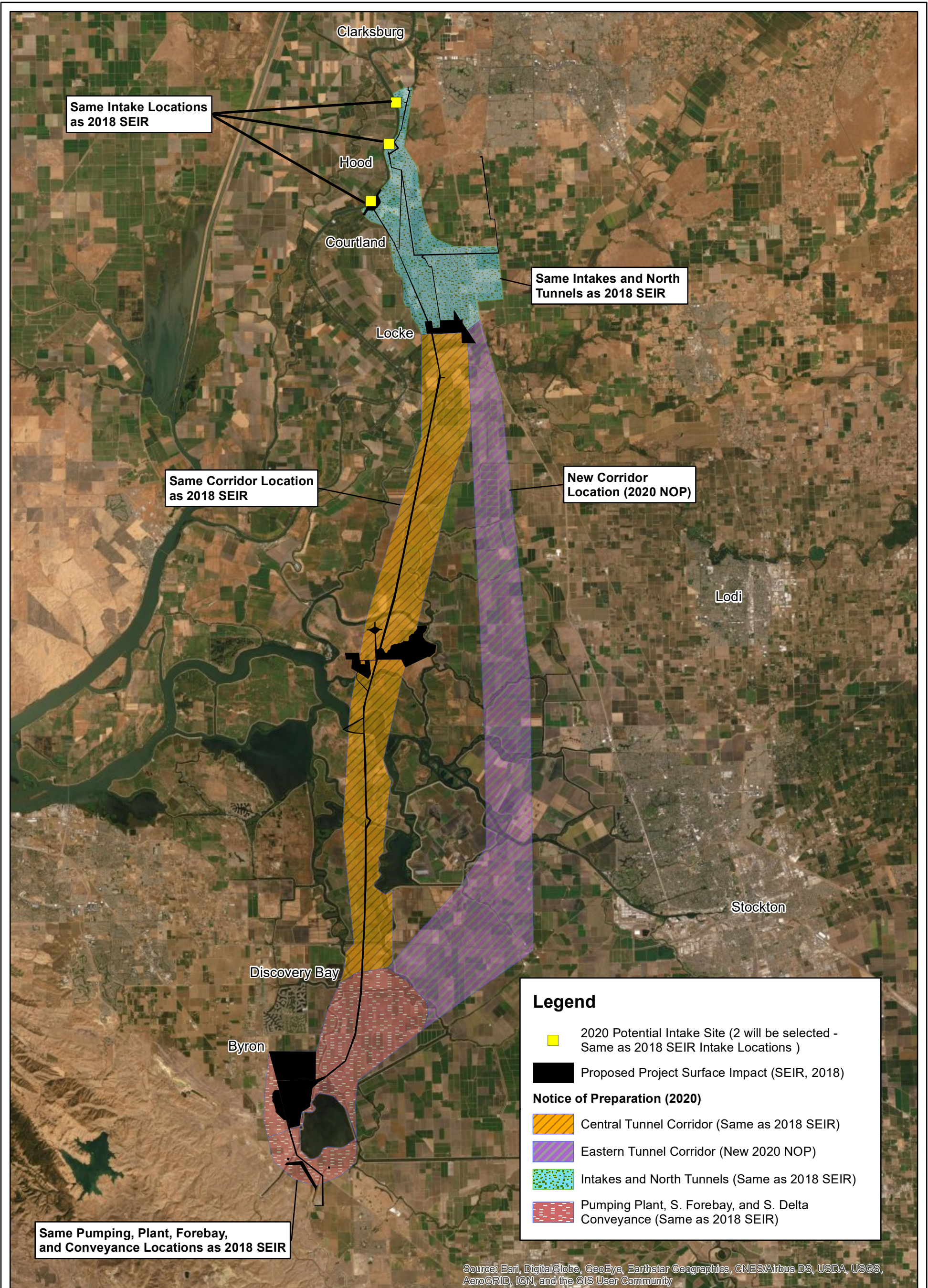
Chuck Winn  
Supervisor, San Joaquin  
County

cc: Secretary Wade Crowfoot, Natural Resources Agency



# **EXHIBIT 1**





Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community

Date: 1/27/20  
 The proposed WaterFix is a DWR project.  
 Source: Adapted from Notice of Preparation of Environmental Impact Report for the Delta Conveyance Project (1/15/20) and Figure 3 of the Supplemental EIR (2018)  
 \*All locations are approximate.

### Conceptual Comparison of California WaterFix Two Tunnel Project (2018) to Delta Conveyance Project Single Tunnel Project (2020)

