



# DCA

DELTA CONVEYANCE DESIGN  
& CONSTRUCTION AUTHORITY

STAKEHOLDER ENGAGEMENT  
COMMITTEE (SEC)



# Stakeholder Engagement Committee

June 24, 2020

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# MEETING AGENDA:

- 4. Ralph M. Brown Act Update
  - 5a. DWR Tribal Engagement & Other Updates
  - 5b. Delta-wide Soils Transportation and Balance
  - 5c. Update on DCA Follow-Up Studies in Response to SEC Comments
  - 5d. SEC Questions or Comments on May 27<sup>th</sup> Presentation
  - 5e. Public Comment on Agendized Items
- 6a. SEC Tour Updates
- 6b. July 22<sup>nd</sup> Meeting Topics
- 6c. July 18<sup>th</sup> SEC Report to DCA Board



# Minutes Review



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# Item 4: Brown Act Reminder

Stakeholder Engagement Committee  
June 24, 2020

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# Overview

- Introduction
- Current Brown Act Rules
- Best Practices
- Questions?



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# INTRODUCTION

## *Brown Act*

- Government Code § 54950
- California's open meeting law for local agencies
- Ensures most discussions and deliberations occur in public

## *Basic Rule*

- Meetings of local legislative bodies must be open and public

# INTRODUCTION, contd.

## *Meeting*

- Any gathering of a majority of the members at the same time and place to hear, discuss or deliberate upon any matter under their jurisdiction.
- Majority = 10 members of the SEC, excluding ex officio members
- **NO SERIAL MEETINGS**

# SUSPENSION OF BROWN ACT

- California Emergency Services Act gives Governor authority to suspend State law
- Interest groups requested Governor suspend Brown Act
- Executive Orders suspend the teleconference rule N-29-20 (March 17)
- Applies until state or local health officials are no longer requiring or recommending social distancing



# VIRTUAL PUBLIC MEETINGS

*Executive Order N-29-20*

*Requirements for Teleconference/Electronic Meetings:*

1. Public can “observe and address” board
2. Agenda is timely posted (72 hours for regular meetings)
3. Notice says how public can observe and comment
4. Implement and advertise a procedure for “receiving and swiftly resolving” ADA accommodation requests
5. Make reasonable efforts to adhere to Brown Act as closely as possible to maximize transparency

# BEST PRACTICES - VIRTUAL MEETINGS

- Communications should be through RingCentral
  - Avoid texts, instant messages, etc.
- NO serial meetings
- Muting when not speaking can help with background noise
- Use “raise hand” when wishing to speak
- Use your “video off” thoughtfully

# Questions

Josh Nelson

[joshuanelson@dcdca.org](mailto:joshuanelson@dcdca.org)

916-551-2859 (office)

916-677-7403 (cell)

# ITEM 5a: DWR Tribal Engagement & Other Updates



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# Delta Conveyance Project: Tribal Consultation Update

**Anecita Agustinez**  
Tribal Policy Advisor

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# Overview

1. Tribal Engagement in the Stakeholder Engagement Process
2. Tribal Consultation Policies
3. Assembly Bill 52 (2014) effective July 1, 2016 CEQA Amendment
4. COVID-19 Effects on Consultation Process
5. Resources

# Tribal Engagement in Stakeholder Process

- Tribal Sovereignty
- Ancestral Land
- Public Scoping Comments
- Government to Government communication
  - Lead agencies have responsibility of maintaining confidentiality



# Tribal Consultation Policies

- E.O. B-10-11 (Brown)
- CNRA Tribal Consultation Policy (2012)
- DWR's Tribal Engagement Policy (2016)
- Assembly Bill 52 (2014) effective July 1, 2015
- E.O. N-10-19
- E.O. N-15-19
- E.O. N-54-20



# Tribal Engagement in Delta Conveyance

DWR is lead agency under CEQA for the Delta Conveyance Project

DWR initiated broad pre-AB 52 Tribal outreach and providing technical support to Tribal Engagement Committee for Delta Tribes

DWR held eight public scoping meetings beginning on February 3, 2020 and ending on March 2, 2020. These meeting had significant Tribal public participation.

DWR issued a CEQA Notice of Preparation for Delta Conveyance Project on January 15, 2020, formally beginning AB 52 Tribal engagement.



# AB 52 – CEQA Amendment

## Prerequisites for AB 52 Tribal Consultation

Applies to any project for which a Notice of Preparation, Notice of Mitigated Negative Declaration or Notice of Negative Declaration is filed on or after July 1, 2015.

A Tribe that is traditionally and culturally affiliated to the geographic area where a project is located must have requested that the lead agency in question provide notification to the Tribe of projects in the Tribe's area of traditional and cultural affiliation.



# Tribal Cultural Resources Under AB 52

## Tribal Cultural Resources (TCRs):

- A site, feature, place, cultural landscape, sacred place or object with cultural value to a “California Native American tribe,” that is either on, or eligible for inclusion in, the California Historic Register or a local historic register, or is a resource that the lead agency, at its discretion and supported by substantial evidence, determines should be treated as a Tribal Cultural Resource. PRC § 21074(a)(1-2)

## Tribes:

- In the Native American Heritage Commission (NAHC) “contact list.”  
PRC § 21073

# Tribal Consultation

Pursuant to AB52 and State consultation policies, DWR mailed a formal **AB52 Notification for the Delta Conveyance Project** on January 15, 2020.

Tribes who were not on the DWR AB 52 consultation list at the time of the release of the NOP were also mailed a Notification of the Delta Conveyance Project on the same date, and consistent with CNRA policy and DWR policy, informing them they are able to submit information regarding significance of any Tribal Cultural Resources, or any appropriate mitigation measures through the general CEQA process



# Tribes Currently in Consultation

## AB 52:

- Lone Band of Miwok Indians
- North Valley Yokuts
- Shingle Springs Band of Miwok Indians
- United Auburn Indian Community
- Wilton Rancheria
- Winnemem Wintu
- Wintu Tribe of Northern California
- Yocha Dehe Wintun Nation

## DWR's Tribal Engagement Policy:

- Buena Vista Rancheria of Me-Wuk Indians
- Rincon Band of Luiseño Indians
- Viejas Band of Kumeyaay Indians
- Yurok Tribe



# Tribal Informational Meetings

## Pre-AB52 Meetings

- September 11, 2019
- November 12, 2019

## Tribal Engagement Committee Meetings

- January 22, 2020
- February 25, 2020
- Monthly meetings continuing amongst Tribes

## DWR will schedule quarterly Informational Update Meetings for Tribes

- Anticipate regional meetings throughout CA



# COVID-19

Formal requests for pauses in consultation due to COVID-19:

- Lone Band of Miwok Indians
- Rincon Band of Luiseño Indians
- Shingle Springs Band of Miwok Indians
- United Auburn Indian Community
- Yocha Dehe Wintun Nation

Other Tribes who notified DWR of temporary closures due to COVID-19:

- Hoopa Valley Tribe
- Karuk Tribe
- Wilton Rancheria



# Questions

Thank you

Anecita Agustinez

[Tribalpolicyadvisor@water.ca.gov](mailto:Tribalpolicyadvisor@water.ca.gov)



# Resources

- Executive Order B-10-11 (2011)
- <http://gov.ca.gov/news.php?id=17223>
- CNRA Tribal Consultation Policy (2012)
- [http://resources.ca.gov/docs/Final Tribal Policy.pdf](http://resources.ca.gov/docs/Final_Tribal_Policy.pdf)
- DWR Tribal Policy (2016)
- <https://water.ca.gov/About/Tribal-Policy>
- Native American Heritage Commission
- [www.nahc.ca.gov](http://www.nahc.ca.gov)
- Protecting Cultural Resources
- <http://nahc.ca.gov/wp-content/uploads/2017/03/Protecting-CA-NA-Sites-During-Drought-Wild-Land-Fire-and-Flood-Emergencies.pdf>



# Resources

- Local Government and Tribal Intergovernmental Consultation SB 18 (2005)
- [SB 18 \(Chapter 905, Statutes of 2004\)](#)
- Delta Conveyance Tribal Engagement Website
- <https://water.ca.gov/Programs/State-Water-Project/Delta-Conveyance/Tribal-Engagement>
- AB 52 CEQA Amendment
- [https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill\\_id=201320140AB52#:~:text=AB%2052%2C%20Gatto.,Americans%3A%20California%20Environmental%20Quality%20Act.&text=CEQA%20requires%20the%20lead%20agency,comment%20on%20a%20proposed%20project.](https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201320140AB52#:~:text=AB%2052%2C%20Gatto.,Americans%3A%20California%20Environmental%20Quality%20Act.&text=CEQA%20requires%20the%20lead%20agency,comment%20on%20a%20proposed%20project.)



# Executive Order B-10-11

- California recognizes Tribal sovereignty
- Every state agency under Executive Branch control shall encourage **communication** and **consultation** with California Tribes
- Respective of Federally AND non-federally recognized Tribes
- The Executive will engage with Tribes on a “Government-to-Government” basis



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# Executive Order N-10-19

Orders the California Natural Resources Agency, the California Environmental Protection Agency, and the California Department of Food and Agriculture

- Prepare a water resilience portfolio and reassess priorities
- Shall list inventory and assess (2.f) current planning to modernize conveyance through the Bay Delta with a single tunnel project

The Water Resilience Portfolio shall embody the following principles:

- (3.g) Strengthen partnerships with local, federal and tribal governments, water agencies and irrigation districts and other stakeholders
- (4.) These agencies shall conduct extensive outreach to inform this process, including to other state agencies, sovereign tribes, federal and local government, local water agencies, agricultural groups, environmental justice and environmental conservation organizations, local and statewide business leaders, academic experts and other stakeholders



# Executive Order N-15-19

## The State of California

- Recognizes and acknowledges the century of prejudicial policies against California Native Americans
- Commends and honors California Native Americans... for stewarding and protecting this land we now share
- Apologizes on behalf of the citizens of the State of California to all California Native Americans for the many instances of violence, maltreatment and neglect inflicted on Tribes
- Reaffirms and incorporates by reference and principles outlined in E.O. B-10-11, which requires the Administration to engage in government-to-government consultation with California Native American Tribes regarding policies that may affect Tribal communities.
- Establish the Truth and Healing Council.



# Executive Order N-54-20

- Effective April 22, 2020
- This Executive Order suspended the time requirements for Tribes to request AB 52 consultation and for agencies to respond to Tribes that have requested consultation for 60 days from the date of the Executive Order
- The Executive Order does not require a pause if consultation has already begun
- Notifications for the Delta Conveyance Project proceeded the effective date



June  
2020

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JUNE 24, 2020

# Delta Conveyance Project: *Environmental Review Update*

**Carrie Buckman**

Environmental Program  
Manager

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# Current Activities

- **Draft Scoping Summary Report:** draft report will capture scoping-related information including comments received and scoping meeting transcripts (July)
- **Section 404/Section 10 Application:** DWR submitted Department of the Army permit application pursuant to Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act
- **Draft Environmental Impact Report:** work continues on initial steps for development of the EIR
- **Soil Investigation IS/MND:** DWR is working to address comments and complete environmental process

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# National Environmental Policy Act

- No federal project proponent
- Regulatory agency will be the NEPA lead
- Need to formally engage the Corps to allow federal agencies to determine the NEPA lead
  - Flood management: requires initiation letter from the local sponsor to initiate the Section 408 process
  - Wetlands and waters: Section 404 application
- DWR has now formally engaged the Corps and is expecting the identification of the NEPA lead soon

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# Section 404 Application

- Application includes a project description, an assessment of impacts to wetlands and waters, and avoidance and minimization measures.
- Timing: DWR submitted the application now to initiate selection of NEPA lead agency. No permit will be issued until after CEQA, NEPA, and other permitting are complete.
- Project description: the 404 application includes only one alignment because the Corps would not consider an application with multiple options. This does not constitute a decision; no decision will be made until after environmental process is complete.

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# Ways to Stay Informed



[water.ca.gov](http://water.ca.gov)

- Programs
  - State Water Project
    - Delta Conveyance



Project Hotline

866.924.9955



Twitter

@CA\_DWR



Project Email

[DeltaConveyance@water.ca.gov](mailto:DeltaConveyance@water.ca.gov)





# ITEM 5d: SEC Questions or Comments on May 27<sup>th</sup> Presentation



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# ITEM 5e: Public Comment on Item 5



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# ITEM 6a: SEC Tour Updates



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# ITEM 6b: July 22nd SEC Meeting Topics

*(subject to change)*

- Scoping Update (DWR)
- Rehabilitation of construction impacted land
- Final temporary and permanent boundaries
  - Intakes Update



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# ITEM 6c: July 18th SEC Report to DCA Board



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# ITEM 7: Non-Agendized SEC Questions or Comments



# ITEM 8: Public Comment --- Non-Agendized Items



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# NEXT SEC MEETING

DATE: July 22, 2020

TIME: 3-6 PM

TOPICS\*: 3-6 PM

- Scoping Update (DWR)
- Rehabilitation of construction impacted land
- Final temporary and permanent boundaries
- Intakes Update

*\*subject to change*



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