

BOARD OF DIRECTORS MEETING

MINUTES

REGULAR MEETING

Thursday, September 17th, 2020

2:00 PM

(Paragraph numbers coincide with agenda item numbers)

1. CALL TO ORDER

The regular meeting of the Delta Conveyance Design and Construction Authority (DCA) Board of Directors was called to order remotely - Conference Access Information: Phone Number: (916)262-7278 Access Code: 1495769881# <https://meetings.ringcentral.com/j/1495769881>.

2. ROLL CALL

Board members in attendance were Richard Atwater, Tony Estremera, Sarah Palmer, and Steve Blois constituting a quorum of the Board.

DCA staff members in attendance were Kathryn Mallon, Joshua Nelson, Nazli Parvizi, Steve Minassian, and Katano Kasaine. Department of Water Resources (DWR) staff in attendance was Carrie Buckman.

3. PLEDGE OF ALLEGIANCE

President Richard Atwater convened the open session at approximately 2:05 p.m. and led all present in reciting the Pledge of Allegiance.

4. PUBLIC COMMENT

President Atwater opened Public Comment, limiting speaking time to three minutes each.

No public comment request were received for non-agendized items. The DCA did receive a written comment from the Law Offices of Stephen C. Volker and is included as part of the meeting record.

President Atwater closed Public Comment.

5. APPROVAL OF MINUTES: August 20, 2020 Regular Board Meeting

Recommendation: Approve the August 20, 2020 Regular Board Meeting Minutes

Move to Approve Minutes from August 20, 2020 as

Amended: Palmer

Second: Blois

Yeas: Estremera, Palmer, Blois, Atwater

Nays: None

Abstains: None

Recusals: None

Absent: None
Summary: 4 Yeas; 0 Nays; 0 Abstains; 0 Absent. (Motion passed as MO 20-09-01).

6. CONSENT CALENDAR

None.

7. DISCUSSION ITEMS:

a. Consider Passing Resolution to Approve Amendment #4 to the Joint Exercise of Powers Agreement and Determine Approval is Exempt from the California Environmental Quality Act

Recommendation: Pass Resolution to Approve Amendment #4 to the Joint Exercise of Powers Agreement (JEPA) and Determine Approval is Exempt from the California Environmental Quality Act (CEQA)

Mr. Nelson provided an overview of Amendment #4, with the sole change being an increase in the amount of DWR's initial contribution from 33.8M to 48.8M. These funds are being used as temporary funding for the DCA work until more secured funding is obtained.

Ms. Palmer asked to clarify that this amount of additional funds will not change anything that the DCA is doing, only increases amount of money.

Mr. Estremera asked if this included any of the commitments by the member agencies. Mr. Nelson responded no and that this is a contract with DWR and the DCA. The initial contribution is a debt of the DCA.

Ms. Kasaine asked if we are updating the line item budget with this amount. Mr. Nelson clarified that this would not be amended in the budget. This is providing some of the funding for the previously approved fiscal year budget. Ms. Mallon added that our budget remains as approved by the Board at the June meeting. The purpose for the JEPA amendment is to track the funding that we receive.

Ms. Palmer asked if this can be clarified on a table indicating if it is reserved funding or already spent funding. Ms. Mallon commented that this money covers work that has previously been done and additional funding to take the DCA to the end of this calendar year. Mr. Atwater added that this Amendment provides an authorization of transfer of funds from DWR to the DCA and is subject to future reimbursement by the participating State Water Contractors. Ms. Mallon said that we can provide a table in our next monthly report. Due to the DCA doing budgets annually, the monthly report is based on an annual budget, but we can go backwards to May 2019 and show the funding stream.

Mr. Brandon Dawson, Sierra Club California, questioned the necessity and practicality of this project. The Sierra Club is worried about the State growing funds for the Delta Conveyance Project and felt there are other better environmentally beneficial resilient water projects that can also meet the objective. Mr. Dawson requested the Board to consider these other types of projects before approving the 15M increase to the DCA.

Mr. Dan Whaley, Delta Legacy Community, said a letter was recently submitted objecting this item going forward based on the fact that there has not been authorization for an agreement for this reimbursement. DWR has been spending money that has not been appropriated for this. Mr. Whaley requested the Board provide a written response to their letter and suggests that this matter be put on hold for 60 days until it is known that they are on proper legal foundation to do this change.

Ms. Osha Meserve, Local Agencies of the North Delta, commented that there is confusion on what this money is for and why it is being allocated at this time. Ms. Meserve felt that a decision should not be made yet by the Board and questioned whether DWR is authorized to provide these funds to the DCA. Ms. Meserve requested that this JEPA not be amended and disagreed that it is exempt from CEQA.

Move to Pass Resolution Adopting Amendment #4 to the Joint Exercise of Powers Agreement and Determine Approval is Exempt from the California Environmental Quality Act

as Noted: Palmer
 Second: Blois
 Yeas: Estremera, Atwater, Palmer, Blois
 Nays: None
 Abstains: None
 Recusals: None
 Absent: None
 Summary: 4 Yeas; 0 Nays; 0 Abstains; 0 Absent. (Motion passed as Resolution 20-09).

b. Consider Passing Resolution to Expand the DCA Delta Stakeholder Engagement Committee (SEC) and Appoint an Ex Officio Member to the Committee

Recommendation: Pass Resolution to Expand the DCA Delta Stakeholder Engagement Committee and Appoint an Ex Officio Member to the Committee

Ms. Parvizi spoke about the many challenges the community of Hood faces and felt it was very important that their community was represented in the SEC. Ms. Parvizi mentioned a recent meeting the DCA had in Hood and was surprised by the amount of misinformation and lack of information folks from this community had about this project. Ms. Parvizi recommended to the Board that we add another public representative to the SEC, targeting someone from Hood, and add Chief David Welch as an Ex Officio member in the area of emergency services. The SEC application will be posted and stay open for a couple weeks before coming to the Board again with the applications, whether it be at the next Board meeting or a special Board meeting.

Ms. Palmer emphasized the importance of the work that has been done with meeting with the stakeholders of Hood. Ms. Palmer agreed for the need to have a Hood member directly involved and having a first responder on the committee.

Mr. Atwater expressed his agreement with Ms. Parvizi’s statements. New information and dialog are a part of the SEC.

Mr. Jim Wallace, SEC member, endorsed this amendment. Mr. Wallace spoke to Hood being the most physically impacted group on this project and having a member represent this town is critical as well as having a first responder on the committee.

Move to Pass Resolution to Expand the DCA Delta Stakeholder Engagement Committee and Appoint an Ex Officio Member to the Committee

as Noted: Palmer
 Second: Estremera
 Yeas: Estremera, Atwater, Palmer, Blois
 Nays: None
 Abstains: None
 Recusals: None
 Absent: None
 Summary: 4 Yeas; 0 Nays; 0 Abstains; 0 Absent. (Motion passed as Resolution 20-10).

c. September DCA Monthly Report

Ms. Mallon highlighted the rollout of the DCA’s new Project Management Information System (PMIS). The engineering team are busy finalizing the documentation for the East and Central alignment alternatives to be delivered to DWR. Ms. Mallon referenced the budget remaining at 34M, consistent with the approved budget.

d. DCA Leadership Spotlight – Steve Minassian, Chief Engineer

Ms. Mallon introduced Steve Minassian, the DCA Chief Engineer. Mr. Minassian’s educational background includes a BS and MS in Civil Engineering. Mr. Minassian has worked for Parsons for the past 10 years and was the Division Manager in Abu Dhabi. He has national and international experience in tunnel design, construction, and construction management as well as Heavy Civil projects. Mr. Minassian has worked on large infrastructure projects including NYCDEP Rondout Bypass tunnel, Maliakos Kleidi Motorway tunnel, Lake Mead Intake 3, Dubai Sewer tunnels, Port of Miami tunnel, and NBC Providence CSO tunnel. Mr. Minassian’s role is to provide technical and management help to Ms. Mallon and the engineering design manager (EDM) team and wears many hats on this project.

Mr. Atwater commended Mr. Minassian for his impressive resume and looks forward to working with him in the future.

e. Stakeholder Engagement Committee Update

Ms. Parvizi summarized the last SEC meeting including a one-hour member open forum. Overall objective of the forum was to discuss what the DCA could be doing better and future discussion topics. The various ways the members have been doing outreach was discussed. Restricted conversation topics were brought up by members. The upcoming soil investigation was discussed as well as a presentation by Phil Ryan, EDM, going over the ways public comments have been implemented into the project to reduce effects. An overview of the Bethany Alternative was provided and will be a part of conversations for the SEC meetings going forward. Ms. Parvizi referenced the virtual tours that are located on our new website which will be live within the next

week. Ms. Parvizi noted that the next three (3) SEC meetings may have some schedule changes due to the upcoming holidays.

8. STAFF REPORTS AND ANNOUNCEMENTS:

a. General Counsel's Report

A written report was provided in the Board package. Mr. Nelson mentioned Gov. Newsom's most recent update regarding COVID-19 restrictions and ensures the DCA is in compliance with all of the local health orders.

b. Treasurer's Report

A written report was provided in the Board package. Ms. Kasaine noted as of September 8th, the DCA has a cash balance of 717K. Attachment 2 includes Budget versus Actuals by Appropriation through August 2020. Ms. Kasiane stated that the auditor financials will be brought to the Board in the next two months.

c. DWR Environmental Manager's Report

A written report was provided in the Board package. Ms. Buckman updated the Board about the continued work on the Environmental Impact Report (EIR) to satisfy CEQA requirements. DWR has updated their schedule releasing a public draft of the EIR in early-2022 and a final in mid-2023. The United States Army Corps of Engineers (USACE) has issued a Notice of Intent (NOI) that they are going to be the NEPA lead agency and develop an environmental impact statement. The USACE are accepting scoping comments through October 20th. Ms. Buckman spoke about the soil investigation activities coming up including holdovers from prior efforts. Additionally, DWR is working with the DCA to start some of the field work associated with the Initial Study/Mitigated Negative Declaration for Soil Investigations document. DWR and the DCA are working to obtain encroachments permits and permissions to access land and will begin work in the field in the next 2 months. DWR is developing a series of deep dive videos to show more information on soil investigations and a general video about state water operations. Lastly, DWR is working on a survey on how low income, minority, and underserved communities use resources in the Delta which will help address potential impacts and benefits to those communities in the EIR.

d. Verbal Reports

Ms. Palmer has been attending the guide book workshops for the Agricultural Water Management Plan (AWMP) and noted public comments to this document are due September 21st. Ms. Palmer also attended the Tribal engagement meeting with Shingles Springs and commented on the useful information provided by DWR and the DCA.

9. FUTURE AGENDA ITEMS:

None.

10. ADJOURNMENT:

President Atwater adjourned the meeting at 3:05p.m., remotely - Conference Access Information:
Phone Number: (916)262-7278 Access Code: 1495769881#
<https://meetings.ringcentral.com/j/1495769881>.

September 2020 Board Meeting Public Comment Request

Full Name	Email Address	How will you join the meeting?	Select the agenda item(s) you are requesting to comment on
Brandon Dawson	brandon.dawson@sierraclub.org	By Phone	Item 7A - Consider Passing Resolution to Approve Amendment #4 to the Joint Exercise of Powers Agreement;
Dan Whaley	whaley500@yahoo.com	By Phone	Item 7A - Consider Passing Resolution to Approve Amendment #4 to the Joint Exercise of Powers Agreement;
Osha Meserve	osha@semlawyers.com	By Computer	Item 7A - Consider Passing Resolution to Approve Amendment #4 to the Joint Exercise of Powers Agreement;Item 8C - DWR Environmental Manager's Report;
Jim Wallace	jimwallace@sbcglobal.net	By Computer	Item 7B - Consider Passing Resolution to Expand the DCA Delta Stakeholder Engagement Committee;

Stephan C. Volker
 Alexis E. Krieg (Of Counsel)
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10.662.01

September 15, 2020

VIA EMAIL

KathrynMallon@dcdca.org
 Kathryn Mallon, Executive Director
 and Members of the Board
 Delta Conveyance Design
 and Construction Authority

**Re: Delta Conveyance Design and Construction Authority September 17, 2020
 Meeting Item No.7a**

Ms. Mallon and Members of the Board of Directors:

On behalf of North Coast Rivers Alliance, Winnemem Wintu Tribe, Institute for Fisheries Resources, Pacific Coast Federation of Fishermen's Associations, and San Francisco Crab Boat Owners Association we submit the following letter on Item No. 7a of the September 17, 2020 Meeting Agenda. Please include this correspondence in the public record for this matter.

The Delta Conveyance Design and Construction Authority ("DCDCA") proposes an amendment to the Joint Exercise of Powers Agreement ("JEPA") with the Department of Water Resources ("DWR") increasing DWR's initial contribution to \$48.8 million (an additional \$15 million over the increase approved in August 2020). The DCDCA's proposed resolution states that this action is not subject to the California Environmental Quality Act, Public Resources Code section 21000 et seq. ("CEQA"),

because the approval does not constitute a "project" subject to CEQA and will not result in a direct or reasonably foreseeable indirect physical change in the environment. (State CEQA Guidelines, § 15060, subd. (c)(2)-(3); see also Pub. Resources Code, § 21065; State CE[Q]A Guidelines, § 15378.) The approval of the Amendment is further not a "project" subject to CEQA because it relates to government fiscal activities and does not commit the DCA to any activity that may result in a potentially significant physical impact on the environment. (State CEQA Guidelines, § 15378, subd. (b)(4).) Alternatively, the approval of the

Amendment is exempt from CEQA as it relates to information collection activities and feasibility and planning studies. (State CEQA Guidelines, §§ 15306, 15262.).

Item 7a Attachment 1: Draft Resolution.

But this amendment to the JEPA directly commits the DCDCA – and DWR – to a definite course of action, and thus constitutes an approval subject to CEQA. CEQA Guidelines § 15352; *Save Tara v. City of West Hollywood* (2008) 45 Cal.4th 116, 134-135. DWR and the DCDCA have signaled their intention to undertake the Delta Conveyance Project no matter the results of DWR’s upcoming CEQA review. DWR and the DCDCA have selected the locations of the Project’s intakes, and the main remaining decision appears to be a choice between two potential routes. Thus, this vote is more than a simple funding decision or a decision to fund potential investigations for a future project and instead constitutes funding of a definite course of action. By treating it as exempt from CEQA, both DWR and the DCDCA are improperly allowing bureaucratic momentum to build behind the Project to the point where DWR’s future CEQA review will be nothing more than a post-hoc rationalization for decisions that have already been made. This violates CEQA. *Save Tara*, 45 Cal.4th at 130; *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 394.

DWR and the DCDCA also must comply with the Sacramento-San Joaquin Delta Reform Act, Water Code section 85000 et seq. (“Delta Reform Act”), and the Public Trust Doctrine. The Delta Reform Act requires agencies to determine whether their actions are consistent with the Delta Plan adopted by the Delta Stewardship Council, and the Act’s coequal goals. Here, the Delta Conveyance Project inherently conflicts with the requirements of the Delta Plan and the coequal goals because it enables *increased* – not reduced – reliance upon the Delta as the source of water for south-of-Delta users. It will remove freshwater flows from where they are most needed to allow for ecosystem and species recovery. The intake locations conflict with the best available science regarding climate change and sea level rise, and the Project’s construction will create irreversible harms to the Delta communities in which the Project is to be built.

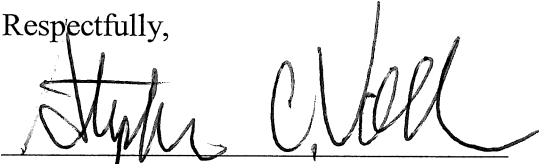
The DCDCA and DWR must consider and protect public trust resources, but have failed to do so here. The diversion of freshwater flows from the Delta will harm public trust resources. “[A] public trust use is not any use that may confer a public benefit, but rather a use that facilitates public access, public enjoyment, or public use of trust land.” *San Francisco Baykeeper, Inc. v. State Lands Com.* (2018) 29 Cal.App.5th 562, 570. Agencies tasked with protecting public trust resources have affirmative statutory and constitutional “duties to take the trust into account and protect public trust uses whenever feasible,” based on a fair and fully informed balancing of the impacts of these alternatives on public trust resources. *Id.* at 571. Although compliance with CEQA “may assist an agency in complying with its duties under the public trust doctrine . . . [,] CEQA review of a project does not necessarily or automatically satisfy the agency’s affirmative duties to take the trust into account and protect public trust uses whenever feasible.” *Id.*

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For the reasons stated above, the DCDCA and DWR must comply with applicable law and halt the improper bureaucratic momentum pushing this ill-conceived Project toward its seemingly preordained – absent compliance with law as requested in this letter – fruition.

Thank you for considering our comments.

Respectfully,



Stephan C. Volker
Attorney for Petitioners and Plaintiffs
Winnemem Wintu Tribe, North Coast Rivers
Alliance, Pacific Coast Federation of Fishermen's
Associations, Institute for Fisheries Resources, San
Francisco Crab Boat Owners Association,
California Sportfishing Protection Alliance

cc:
Karla Nemeth, Director
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