



April 5, 2020

Board of Directors
Metropolitan Water District of Southern California
P.O. Box 54153
Los Angeles, CA 90054-0153

Re: Response to December 8, 2020 Comments

Dear Board of Directors:

On behalf of Sierra Club California and our more than 500,000 members and supporters statewide, thousands of whom reside in Metropolitan Water District's (MWD) service area, we are writing regarding the [staff response](#) to our comments made before the December 8 vote on the Delta Tunnel. We have appended to this letter a point-by-point rebuttal to the response.

We will note that the MWD staff responses make it clear that MWD staff did not listen to the content of the comments and provide thoughtful replies. Instead, the written responses simply repeat the original arguments our comments addressed.

The MWD staff response to our comments further demonstrates that the district staff does not seriously consider points of view that do not comport with its opinions and continues to [treat environmental activists with disregard](#). We are certain that our position is backed up by science and the urgent need to modernize MWD's limited water supply approach in the face of climate change.

We would be happy to provide you with additional information and connect you with local Tribal leaders and Delta residents, as well as members of the Stakeholders Engagement Committee, to provide clarity and perspective on the concerns of the project.

Sincerely,

Caty Wagner
Southern California Water Organizer
Sierra Club California

Charming Evelyn
Sierra Club California Water Committee Co-Chair
Angeles Chapter Water Committee Chair

**Sierra Club California Rebuttal to Staff’s March 8, 2021 Response to Public Comments of
December 8, 2020 Board Meeting**

- I. *Public Comment Theme:* Metropolitan should complete Integrated Resources Plan (IRP) process before voting on whether to fund a share of the cost to conduct environmental review and planning for the DCP.

MWD Staff Response: “The IRP update is expected to be complete in late 2021, well before the Board would consider commitments to investing in the DCP, and that update, in combination with the environmental review and planning, will enable the Board to make a fully informed decision.”

Sierra Club CA Rebuttal Response: The IRP has been in the works for over a year now and the draft will not be ready until June 2021 and not adopted until September 2021. This document is supposed to act as a guide to policy making and planning large projects, like the Delta Conveyance. This was a large and expensive decision to make without the IRP.

- II. *Public Comment Theme:* Metropolitan should not invest in studying the DCP during the current economic decline.

MWD Staff Response Rebuttal: “A biennial budget is considered and adopted by Metropolitan’s Board for capital expenditures and for operating and maintenance purposes. During the budget process, all expenditures are reviewed and considered by the Board. The Board also reviews critical financial information, including revenues and financial outlook, prior to adopting a budget. The financial outlook considers existing economic conditions, market variability, and financial policies, among several other factors, to provide analysis by which the Board evaluates the budget for adoption.”

Sierra Club CA Rebuttal: We understand how a budget works. This explanation does not attempt to justify how a pledge of \$168 million could be made on a project that may never come to a fruition during a time of economic crisis, management turnover, and a worldwide pandemic, let alone MWD’s pattern of reduced demand.

- III. *Public Comment Theme:* Recommend investing in local projects that are better for supply reliability, sustainability, more cost-effective, and support local job creation.

MWD Staff Response: “As explained in prior presentations to the Board and various committees, reliable, high-quality SWP supplies are needed to ensure the long-term reliability of Metropolitan’s imported supplies...Metropolitan invested more than \$43 million in conservation, recycling, and groundwater recovery programs in fiscal year 2019/20, bringing its total cumulative investment to \$1.5 billion since 1990.”

Sierra Club CA Rebuttal: As we have explained before, and as has been made clear in the Delta Stewardship Council Vulnerability Assessment Draft- SWP water will not be a long-term reliable supply of water. Climate change is reducing the available snowpack from the Sierra Nevada mountains, and this will only get worse. With tunnel construction not expected to be complete until nearly 2040, the output from the Delta may be negligible. This expensive project could be a waste of money, leaving our children's generations with huge bills and no water. Californians may very well become climate refugees.

The \$43m investment is encouraging, but considering that MWD just pledged \$168m, it is clear that priorities are not in water recycling. \$1.5b in 30 years is negligible compared to the \$16-40 billion that the Delta Conveyance project will cost.

IV. *Public Comment Theme:* The DCP does not increase or stabilize SWP supplies in response to Climate Change.

MWD Staff Response: The DCP is designed to address risks to SWP supplies from climate change, extreme weather, and rising sea-levels that will increasingly impact the Delta. DWR's environmental review will include both quantitative and qualitative analysis of the DCP considering potential of climate change, which will inform any future board action to participate in the project. Preliminary modeling for the DCP indicates a potential reliability benefit for SWP supplies in future climate change and sea level rise scenarios provided to the Board at the September 22, 2020, Bay-Delta Committee meeting, and this very preliminary work will be better informed by the planning effort that Metropolitan is supporting. [See Item 6-a, slide 14](#) .

Sierra Club CA Rebuttal: The conveyance itself may be designed to withstand earthquakes, but that is a moot point, and thus a sunk cost, if the water pipelines moving hundreds of miles south are at risk, which they are. The water could spill out at many points along the way in an earthquake. This slide does not explain how MWD staff came to the conclusion that there would be any water savings. Perhaps the EIR will find water reliability, but there is no indication that it will and water reliability should have been demonstrated strongly before investing \$168 million into planning.

The tunnel actually increases long-term vulnerability to sea level rise. The intakes are not far enough north to work with high sea level rise -- somewhere between 1.5 and 2.0 meters there will start to be significant salinity intrusion. The problem is that with sea level rise accelerating, DWR will not have enough time to construct new intakes further north.

As far as conservation, MWD was planning that all new conservation would go towards meeting increased demand from population growth. Projections have changed radically -- there was almost no population growth in the state for the last 3 years.

V. *Public Comment Theme:* The DCP will harm the Delta and is bad for the environment.

MWD Staff Response: DWR will disclose and analyze any potentially significant environmental impacts to the Delta, and it will study potentially feasible project alternatives and propose feasible mitigation to address such impacts. If there are significant and unavoidable impacts, DWR will be required to adopt a Statement of Overriding Considerations before approving the project. If DWR

approves the project, Metropolitan's Board will consider the Final Environmental Impact Report (EIR), as well as DWR's Findings, Statement of Overriding Considerations, and Mitigation Monitoring and Reporting Program before it takes any action to approve participation.

Sierra Club CA Rebuttal: DWR is not studying a true "no tunnel" alternative- i.e., no tunnel but other improvements to infrastructure- so the agency is not truly studying alternatives to address such impacts, and thus these impacts are not unavoidable. Acknowledging that MWD would read the reports on environmental impacts is not any guarantee that harm would not be done; that is merely acknowledging that the risks would be known but potentially outweighed by other factors. Again, acknowledging that disadvantaged communities may be impacted is not committing to any form of action that will prevent this.

DWR has staff working with the Tribes, which the Tribes have outlined as problematic at best, considering the closest meeting to the affected reservations was a three hour drive during the scoping period in early 2020, and no effort is made to address their lack of broadband services. What steps has MWD taken to communicate with the impacted Tribes? In the January 2021 Bay-Delta Committee meeting, MWD Bay-Delta Initiatives Policy Manager Nina Hawk could not name even one Tribe affected by the Delta Conveyance project. As the people who will be most impacted by the project, who will likely engage in years of litigation, there should be some effort to reach out to them. We would be happy to put you in touch with Tribal leadership.

The Stakeholder Engagement Committee's Community Benefits Program has been dismissed by many in the Delta region as a bandaid. Several members of the committee have left as a response to the proposal. While it may provide some benefits to the region's cultural and historical programs, it does not benefit the region's environment or economy. We will send you more information about the flaws of this proposal.

VI. *Public Comment Theme:* Water quality (such as salinity, and pollution concentration, etc.) and flow (influx of Sacramento River and outflow) will be adversely impacted by the DCP.

MWD Staff Response: The EIR will analyze impacts associated with the DCP and project alternatives, so it is premature to conclude that the DCP will have significant adverse impacts on water quality. The State Water Resources Control Board identifies beneficial uses in the Delta and larger watershed. Those uses, such as municipal, agricultural, recreation, and public trust resources, are protected by state and federal water quality standards. Additionally, the project cannot harm other legal uses of water. This means that flow cannot be altered to cause injury to other water rights holders. The DCP will be required to comply with all applicable water quality standards in the Delta, among them standards to protect agriculture and public trust resources.

Sierra Club CA Rebuttal: It is premature not to conclude that the DCP would not have significant impacts on water quality. Reducing freshwater flow to a brackish region would obviously increase saltwater. The DCP, if compliant with current applicable water quality standards to other water rights holders (including the environment), would not be able to produce enough water to both protect public resources and supply the water that MWD hopes to receive. This project will be a waste of ratepayer funds.

VII. *Public Comment Theme:* DWR should study additional alternatives.

MWD Staff Response: DWR solicited comments on the DCP during an extended scoping process in 2020. Consistent with CEQA, DWR conducted a screening analysis to determine which alternatives should be carried forward for detailed analysis in the EIR. Under CEQA, the lead agency must study a reasonable range of potentially feasible alternatives that would achieve the proposed project's fundamental goal and most of its objectives while avoiding or substantially lessening potentially significant impacts. Alternatives that would not achieve the fundamental goal and alternatives that would not avoid or substantially lessen significant impacts need not be carried forward for analysis in an EIR.

Sierra Club CA Rebuttal: We submitted comments during the scoping process. A "no project" alternative was dismissed and leaves only alternatives that will severely impact the environment and local communities.

VIII. *Public Comment Theme:* Agriculture should reduce usage/should not be subsidized

MWD Staff Response: Metropolitan's long-standing policies regarding new Delta conveyance include a commitment to the "beneficiaries pay" principle. Any future commitment to participate in the DCP would be directly proportional to the benefits received, so Metropolitan's investment would not subsidize any other water contractors.

Sierra Club CA Rebuttal: With the recent amendments made to the State Water Contract and Water Management Tool Articles 21, 56 and 57, it is possible that contractors may exploit their water allowances to sell water to other agricultural districts, thus working around the beneficiaries pay principle.

IX. *Public Comment Theme:* Concerns about the impacts on communities already experiencing poor air quality and depressed local economies.

MWD Staff Response: DWR is engaging with vulnerable populations as part of its ongoing environmental analysis to determine baseline conditions and potential project-related impacts and benefits for the Delta's diverse communities. DWR will continue this engagement with disadvantaged communities in all phases of the project - from planning and environmental review through the project's design and construction, as well as post-construction period.

Sierra Club CA Rebuttal: The people who called in to comment on this vote have already taken the survey. Again, promises to engage does not equate to taking any action to guarantee protections for vulnerable communities or the environment.

X. *Public Comment Theme:* Concerns about impacts to Native American Tribes and their engagement related to the project.

MWD Staff Response: DWR has initiated tribal engagement, including formal tribal consultation under AB 52, consistent with state policy and law.

Sierra Club CA Rebuttal: It is apparent that MWD has not engaged with Tribes in any significant way, so we have attached a letter from the Shingle Springs Band of Miwok Indians that was submitted during the scoping period, as just one indicator of some of their concerns. We urge you to reach out and have these conversations directly with the people who will be most impacted by the board's decisions. See Attachment A.

- XI. *Public Comment Theme:* Ensure best available science. Postpone vote until DCA analyzes performance of North Delta Intake locations.

MWD Staff Rebuttal: DWR will be required to demonstrate that its analysis is based on best available science to show consistency with one of the Delta Plan policies in a written certification of consistency that must be submitted to the Delta Stewardship Council before DWR can initiate construction. In addition, both the federal and state Endangered Species Acts require reliance on the best available science in the incidental take permitting process that will apply to the new intakes. The North Delta Intake locations were studied extensively in the Bay Delta Conservation Plan/California WaterFix (BDCP/CWF) environmental review and planning process by multidisciplinary teams of engineers, technical consultants, and state and federal fish agency biologists as reported in the BDCP/CWF Final EIR, Appendix 3F- Intake Location Analysis. Under DWR direction, the DCA conducted additional analysis of potential locations and screen designs, the results of which have been reported to the DCA's Stakeholder Engagement Attachment 1 2 Committee (SEC) on Jan. 22, 2020.

Sierra Club CA Rebuttal: Decision 1275 in 1967 granted DWR the right to divert up to 10,350 cfs at the SWP Delta pumping plant, later named the Banks Pumping Plant after Harvey Banks. Decision 1275 assumed augmentation of flows on the Sacramento River by 900,000 AF/year from the Dos Rios dam on the Eel River. The Dos Rios dam was never built. Decision 1641 in 2000 granted DWR and the Bureau of Reclamation unlimited rights of diversion at each other's pumping plants in the Delta, limited only by required outflows under the Bay-Delta Water Quality Control Plan and required bypass flows under the Biological Opinions written for the Endangered Species Act.

The D-1641 permit terms (D-1641, p. 115) states:

The third stage is use of the JPOD for any authorized purpose under the permits, up to the physical capacity of the pumping plants

The Conceptual Engineering Report for the twin tunnel assumed that the JPOD extended to the North Delta intakes, and that DWR and Reclamation had the right to take arbitrarily high flows at the North Delta intakes, limited only by required outflows under the Bay-Delta Water Quality Control Plan and the Biological Opinions.