



North Delta CARES Action Committee



LOCKE
MANAGEMENT
ASSOCIATION



June 12, 2019

Via email

Ms. Karla Nemeth, Director
California Department of Water Resources
1416 9th Street, Room 1115-1
Sacramento, CA 95814

Re: Design and Construction Authority continuing WaterFix project in spite of withdrawal of project approvals

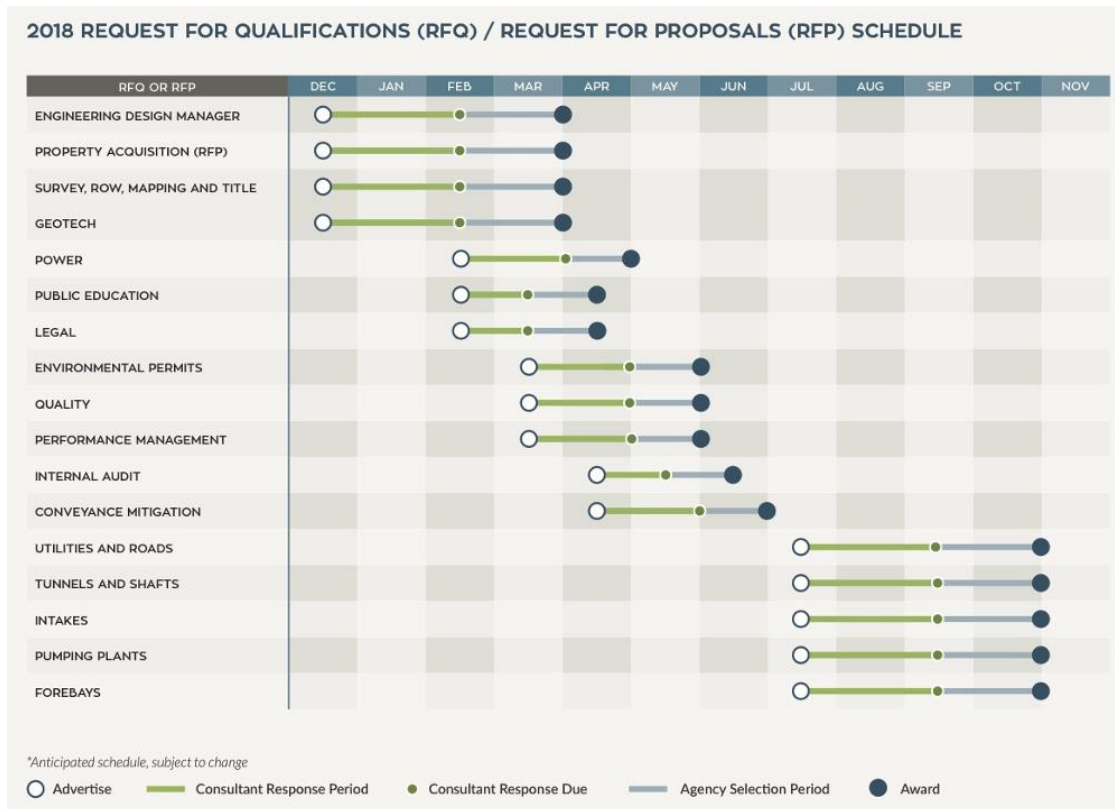
Dear Director Nemeth,

North Delta CARES is a volunteer community organization in the North Delta. The California Delta Chambers & Visitors Bureau is an organization of chambers of commerce, visitor's bureaus, businesses and associate members in the Delta. Locke Management Association is responsible for the maintenance and historical preservation of the Delta legacy town of Locke. Delta Defenders has facilitated Delta community meetings on the WaterFix project impacts.

We thank you and Governor Newsom for the withdrawal of all WaterFix project approvals on May 2, 2019 by the Department of Water Resources (“DWR.”) We also thank you for the promise that the “Newsom administration wants to engage with Delta communities to hear their ideas and concerns.” We look forward to working with you on a new solution that will provide a reliable water supply while meeting the requirements of the Delta Reform Act to reduce reliance on the Delta and to “restore, enhance, and protect the Delta as an evolving place.”

However, we are very concerned about the continuing contract work on design, engineering, and real estate acquisition planning under the October 26, 2018 Amended and Restated Joint Exercise of Powers Agreement between the Department of Water Resources and the Delta Conveyance Design and Construction Joint Powers Authority.¹ (“Joint Exercise of Powers Agreement”) This contract work is based on prior WaterFix project approvals by the Department of Water Resources.

The 2018 WaterFix contract procurement schedule is shown below.



1 Available at <https://www.dcdca.org/#docs>.

Contracts for the following services appear to have been executed by the Delta Conveyance Design and Construction Authority. (“DCA”)

Engineering Design Manager	Jacobs Engineering, \$93 million
Geotechnical services	Fugro, \$75 million
Survey, Right of Way Mapping, and Title	
Property Acquisition Planning	
Power	SMUD, \$44 million
Program Management	Parsons Transportation, \$40 million

The total for the contracts listed above is \$292 million.

Further, as shown by the Executive Director’s report at the May 16, 2019 DCA Board meeting, the DCA is continuing to direct that the contractors execute task orders under the contracts. As explained below, the DCA is also reportedly continuing to invoice DWR for the work under the WaterFix project budget and schedule.

The WaterFix was a project that Delta residents strongly opposed, and that now has no underlying approvals or environmental review. Allowing the Delta Conveyance Design and Construction Authority (“DCA”) to continue preliminary design, survey and right of way mapping, and real estate acquisition planning based on the withdrawn WaterFix project specifications is wholly unacceptable to our communities. To our knowledge, DWR has no approved plans or specifications for the new Delta conveyance. And if the WaterFix project specifications are being used as the basis for the design of the new Delta conveyance under DWR’s authority, it is predecisional and will prejudice the new Delta conveyance CEQA process.

We are therefore writing to respectfully request that you address the issues with the contracts executed under the October 26, 2018 Amended and Restated Joint Exercise of Powers Agreement. We specifically request that you direct the Delta Conveyance Office to do the following:

1. Request that the Design and Construction Authority withdraw the resolution adopting the WaterFix CEQA documents for actions pursuant to the Joint Exercise of Powers Agreement.
2. Explicitly withdraw DWR approval of the WaterFix project engineering and design specifications, budget, and schedule.

3. Explicitly withdraw DWR approval of the WaterFix project real estate acquisition plan.
4. Explicitly withdraw DWR's authorization to commence work on the WaterFix project.
5. Disclose all invoices submitted by the DCA for the WaterFix project since the Governor's announcement on February 12, 2019.
6. Determine whether invoices for work done on the WaterFix project since approval of the project was withdrawn on May 2, 2019 are appropriate for reimbursement.
7. Disclose the scope of work and schedule on all contracts executed under the Joint Exercise of Powers Agreement that are being continued under DWR's authority.

Details on each of our requests, with citations to the Joint Exercise of Powers Agreement, are attached as Exhibit 1. Thank you for your consideration of our requests, and please call if there are any questions.

Sincerely,



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cc:

Gary Lippner, Deputy Director, Delta Conveyance, Department of Water Resources

Kathryn Mallon, Executive Director, Delta Conveyance Design and Construction Authority

Governor Gavin Newsom

The Honorable Wade Crowfoot, Secretary of Natural Resources

Thomas Gibson, Deputy Secretary and Special Counsel for Water, Natural Resources Agency

Michael Roberts, Special Assistant for Delta Restoration, Natural Resources Agency

Delta Counties Coalition

City of Stockton

Central Delta Water Agency

South Delta Water Agency

Local Agencies of the North Delta

Save the California Delta Alliance

Hood Community Council

Courtland Town Association

EXHIBIT 1

Detailed requests to DWR re: Joint Exercise of Powers Agreement

1. Request that the Delta Conveyance Design and Construction Authority withdraw the resolution adopting the Waterfix CEQA determination for actions pursuant to the Joint Exercise of Powers Agreement.

On May 17, 2018, the DCA passed Resolution R-18-1 “Adopting the CEQA Determination for Actions Pursuant to Joint Exercise of Powers Agreement with the Department Of Water Resources.”² The DCA, as a responsible agency under CEQA, determined that “[t]he Board has considered the Lead Agency’s certified Final EIR and Addendum in evaluating the project’s environmental impacts and has determined that this environmental documentation is adequate for use by the Authority when making discretionary actions on the project. “

Resolution R-18-1 also adopted the July 21, 2017 WaterFix findings of fact, statement of overriding considerations, and mitigation, monitoring and reporting program, which are still displayed on the DCA website.

It is not be appropriate for the DCA to rely on rescinded California Environmental Quality Act documents and findings for discretionary actions executed under the Joint Exercise of Powers Agreement. We therefore respectfully request that DWR direct the Delta Conveyance Office to request that the DCA withdraw Resolution R-18-1 at the next DCA Board meeting.

2. Explicitly withdraw DWR approval of WaterFix project engineering and design specifications, budget, and schedule.

The Joint Exercise of Powers Agreement lists WaterFix project specifications in clause 2(a.) The specifications are based on the project approved by the WaterFix Notice of Determination (“NOD”) filed on July 21, 2017. The Delta Conveyance Office may have also issued other approvals of WaterFix project specifications based on the NOD.³ We respectfully request that DWR direct the Delta Conveyance Office to notify the DCA that all of DWR’s approvals of

² Resolution R-18 is available at <https://www.dcdca.org/pdf/Agenda%20Item%207a%20Materials.pdf>.

³ Clause 2(a) of the October 23, 2018 Amended and Restated Joint Exercise of Powers Agreement requires that “The Authority shall at all times maintain a list of the then operative Specifications as well as the Specifications themselves.”

the WaterFix project specifications are rescinded, and that DWR's authority may no longer be exercised in further developing that project.

The Joint Exercise of Powers Agreement includes the budget and schedule for the WaterFix project, attached as Exhibit B.⁴ The budget and schedule are no longer relevant. We respectfully request that DWR direct the Delta Conveyance Office to notify the DCA that all of DWR's approvals of the WaterFix project budget and schedule are rescinded, and that the budget and schedule may no longer be used in issuing contracts under DWR's authority.

3. Explicitly withdraw DWR approval of the WaterFix project real estate acquisition plan.

The Joint Exercise of Powers Agreement includes the real estate acquisition plan for the WaterFix project in Exhibit D.⁵ We respectfully request that DWR direct the Delta Conveyance Office to notify the DCA that all of DWR's approvals of the WaterFix project real estate acquisition plan are rescinded, that DWR's authority may no longer be exercised in planning for real estate acquisition for that project.

4. Explicitly withdraw DWR's authorization to commence work on the WaterFix project.

We respectfully request that DWR also direct the Delta Conveyance Office to notify the DCA that DWR's authorization to commence work on the WaterFix project, required under clause 4 of the Joint Exercise of Powers Agreement, is rescinded.

5. Identify and disclose all work done under task orders for the WaterFix project since the Governor's announcement on February 12, 2019.

The DCA has been continuing to use the contracts executed under the Joint Exercise of Powers Agreement to do engineering and geotechnical design work

⁴ Exhibit B to the October 26, 2018 Amended and Restated Joint Exercise of Powers Agreement between the Department of Water Resources and the Delta Conveyance Design and Construction Joint Powers Authority is available at <https://www.dcdca.org/pdf/JEPAExhibitB.pdf>

⁵ Exhibit D to the October 26, 2018 Amended and Restated Joint Exercise of Powers Agreement between the Department of Water Resources and the Delta Conveyance Design and Construction Joint Powers Authority is available at <https://www.dcdca.org/pdf/JEPAExhibitD.pdf>

on the WaterFix project, and the DCA is continuing to review and submit invoices for the work to the Delta Conveyance Office.⁶ The work is being invoiced under clause (10) of the Joint Exercise of Powers Agreement, which states:

Each invoice must identify this Contract by the DWR Number and the applicable phase of work specified in Exhibit B and include receipts for materials, supplies and work accomplished by the Authority and its contractors. Billings must be in accordance with the cost breakdown in Exhibit B.

Exhibit B to the Joint Exercise of Powers Agreement is the Budget and Schedule for the WaterFix project.

In the interest of transparency, we respectfully request that DWR direct the DCO to disclose all invoices submitted by the DCA since the Governor announced that he did “not support the WaterFix project as currently configured” in the State of the State Address on February 12, 2019. We will separately submit a Public Records Act request to the DCO for the invoices.

6. Determine whether invoices for work done on the WaterFix project since approval of the project was withdrawn on May 2, 2019 are appropriate for reimbursement.

Exhibit F to the Joint Exercise of Powers Agreement, Standard Clauses, states in clause (8)⁷

The Authority's obligation to pay its subcontractor is an independent obligation from the State's obligation to make payments to the Authority. As a result, the State shall have no obligation to pay or enforce the payment of any moneys to any subcontractor the Authority.

We respectfully request that DWR determine whether invoices for work done on the WaterFix project after the Waterfix project approvals were withdrawn

⁶ Delta Conveyance Design and Construction Authority Board of Directors, *May 16, 2019 Meeting Materials*. Available at <https://www.dcdca.org/pdf/2019-05-16-DCABODPacketVF.pdf>.

⁷ Exhibit F to the October 26, 2018 Amended and Restated Joint Exercise of Powers Agreement between the Department of Water Resources and the Delta Conveyance Design and Construction Joint Powers Authority is available at <https://www.dcdca.org/pdf/JEPAExhibitE.pdf>.

on May 2, 2019 are appropriate for DWR to pay, and publish the determination on DWR's Delta conveyance website.

6. Disclose the scope of work and schedule on all contracts executed under the Joint Exercise of Powers Agreement that are being continued under DWR's authority.

In the interest of transparency, for each of the contracts executed under the Joint Exercise of Powers Agreement that are being continued under DWR's authority, we respectfully request that DWR disclose the scope of work and schedule for the contract on the Delta Conveyance website.