



ENVIRONMENTAL LAW FOUNDATION



June 3, 2023

The Honorable Gavin Newsom
Governor, State of California
State Capitol
Sacramento, CA 95814

The Honorable Mike McGuire
The Honorable Ben Allen
The Honorable Josh Becker
The Honorable Anna Caballero
The Honorable Monique Limon
The Honorable Dave Min
The Honorable Nancy Skinner

The Honorable Rebecca Bauer-Kahan
The Honorable Steve Bennett
The Honorable Laura Friedman
The Honorable Eduardo Garcia
The Honorable Gregg Hart
The Honorable Luz Rivas
The Honorable Phil Ting
The Honorable Carlos Villapudua

California State Senate
Sacramento, CA 95814

California State Assembly
Sacramento, CA 95814

Re: Sweeping Trailer Bill Package Warrants Full Legislative Review and Substantial Changes to Ensure Equity and Meaningful Environmental Protections

Dear Governor Newsom, Senators, and Assemblymembers,

In the most recent release of a package of proposed infrastructure trailer bills, the Administration has continued the practice of proposing the budget process as a means of short-circuiting the regular legislative process for new significant policy proposals. This practice excludes the public and stakeholders and avoids open and transparent deliberation of important and complicated policies. Several current proposed trailer bills include legal and policy issues that should be moved through the legislative process, including holding hearings and public votes in both houses, and not as part of the budget. We thank the Senate and Assembly Budget committees for rejecting this package for budget consideration.

The Administration has justified these infrastructure trailer bill proposals by citing the need to secure federal funds and build infrastructure expeditiously. However, these specific proposals do not need to be enacted by July – instead of January 2024 – to secure federal funding or ensure rapid construction. Moreover, the proposed trailer bills below will significantly change – and not for the better – judicial review, environmental permitting, imperiled species protections, water law, and community engagement among other important laws and policies.

The following proposed bills should be moved through the regular legislative process and must be substantially amended to address serious flaws described briefly below:

- **Administrative Record Trailer Bill:** This proposal is aimed at making it prohibitively expensive and difficult to ensure compliance with California environmental review requirements by raising the cost to assemble an administrative record, making judicial remedy something only the rich can afford and thereby creating an inequitable process. The proposal also would cherry-pick what information can go into an administrative record, excluding any evidence of concerns raised by scientists and others within agencies.
- **Judicial Review Trailer Bill:** This proposal reduces application of environmental review to a large category of major, complex infrastructure projects, and creates a CEQA carve-out for an unlimited number of poorly defined water-related projects, including the controversial Delta Conveyance, and specific transportation projects, without including any of the previous protections and guardrails found within AB 900/SB 7.
- **Fully Protected Species Trailer Bill:** This proposal would substantially change and reduce protections for the statutorily created fully protected species list, which include such iconic species as sea otters, sandhill cranes, California condors, desert bighorn sheep and golden eagles. The proposal would also create a CEQA exemption for decisions on future changes to listings of the 37 fully protected species, thus eliminating public review and participation in these listing decisions.
- **Delta Reform Act Trailer Bill:** This proposal would change the current threshold from a majority vote to a majority of the quorum, which would allow for controversial items to be passed with less than a majority of Commission members. It also changes the statute of limitations. Given the importance of the Delta Reform Act, changes to this law should be discussed fully and allow for the input by tribes and Delta communities.
- **Design Build Trailer Bill:** This proposal is specifically designed to circumvent the existing statutory prohibition on the use of design-build by the Department of Water Resources for the Delta Conveyance project.
- **Direct Contracting Public-Private Partnership Authority I-15 Wildlife Crossings Trailer Bill:** This proposal raises several concerns and questions around why this trailer bill is necessary and its failure to codify essential provisions, currently non-binding, that are outlined in the recent state agreement to construct three wildlife crossings over the proposed Brightline West High Speed Rail project to mitigate the permanent and complete blockage of critical wildlife movement areas.
- **Flood/Drought Trailer Bill:** This proposal would fundamentally undermine existing law to benefit large water rights holders, enabling them to increase water diversions, hoard water underground and sell at a profit in future droughts, increasing the privatization of California's groundwater basins and harming California's rivers and the environment. The proposal also fails to adequately

ensure water quality can be protected from recharge projects on contaminated soil, putting drinking water quality at risk. Further, the proposal lacks adequate planning and environmental safeguards for how to manage flood flows and instead includes provisions that simply waive all the rules.

- **Western Joshua Tree Trailer Bill:** This proposal would undermine the California Endangered Species Act and allow of the destruction of hundreds of thousands of acres of Western Joshua tree woodlands but would result in the protection of only hundreds of acres of habitat, setting a disastrously low mitigation standard for an imperiled species.

We agree that California needs to move forward expeditiously to address our climate needs. We also agree that we can – and should – make changes in how we build projects to provide clean energy, clean transportation, and a sustainable and reliable water supply. However, the infrastructure proposals noted above are missing important policies that should also be examined and discussed such as improved planning and siting of projects, more robust upstream community engagement, increased investments in permit staffing at agencies, and more coordinated and efficient approvals of transmission and other key infrastructure needs that are essential to our climate resilient future.

Therefore, we strongly urge you to move the above-identified trailer bill proposals through the regular legislative policy process in both houses, allowing for ample public review and comment, full discussion of solutions, and transparent consideration of amendments to address the serious issues raised above.

Sincerely,

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