

Testimony of Kim Delfino
on the behalf of Defenders of Wildlife and the California Coastal Protection Network
California Senate Energy, Utilities, and Communications Committee
August 25, 2022

Good morning/afternoon, Chairman and members of the committee.

I have been asked to speak to the issues relating how the Governor's proposal for extending the operation of Diablo Canyon impacts environmental protections.

First, let me do a quick summary of what the environmental and public health concerns are at issue here. Diablo Canyon is an old nuclear powerplant that is currently scheduled to go offline in 2 years and therefore has a lot of deferred maintenance, a very packed spent fuel pool, an embrittled reactor, and it exists close to or next to 4 earthquake fault lines. In addition, according to the State Water Board, every day, roughly 2.5 billion gallons of seawater slosh through Diablo's enormous intake tubes, cooling the hot steam heated by nuclear reactors. The warmed water is then flushed back into the sea, creating significant adverse impacts on ocean ecosystems and animals, including fish, sea lions, turtles, and other creatures, which are killed by the millions. Make no mistake, continuing to operate Diablo Canyon beyond 2025 will have serious impacts on our environment.

Second, I want to walk through how the Governor's proposal overrides existing environmental protections and state agency jurisdictions.

One: The governor's proposal contains multiple CEQA Exemptions, including classifying the continued operations of Diablo Canyon as a ministerial exemption, and exempting all permits, leases, licenses, certifications, concurrence, plans, decisions, approvals or applications to a state agency from CEQA.

And, finally an exemption of the loan agreement between DWR and PG&E from CEQA. Essentially, nothing associated with the extension of Diablo Canyon would be subject to CEQA and its public review and oversight process. While you may hear that agencies have said that they do not believe that there will be any activities that will trigger CEQA so this isn't a big deal, but the reality is that we don't know if

in the future information shows that we need to expand the spent fuel storage area or deferred maintenance on the reactor structure needs to occur. And, if so, this bill would exempt those activities from CEQA. And, yes, it is a big deal for the Legislature to step into the shoes of public trust agencies and pre-determine when CEQA does or does not apply.

Two: The bill is written purposefully to limit the scope of public trust state agency analysis and directs a pre-determined outcome for permits and approvals through a combination of specific findings, and statutory language that directs agencies to adopt the legislative findings. These legislative findings state that continued operations at Diablo Canyon is consistent with environmental law, will not interfere with public trust needs and is consistent with the public trust doctrine, the Coastal Act and the CA Coastal Management Program. This finding when coupled with the statutory directive to the agencies to prioritize the legislative findings in this bill restricts what the agencies can consider as part of their review and directly dictates the agencies' final decisions. This will impact the State Lands Commission, Coastal Commission, and State Water Resources Control Board.

Three: The bill overrides the Coastal Act and the federal Coastal Zone Management Act as well as Coastal Commission jurisdiction. Under the federal Coastal Zone Management Act, there must be federal consistency reviews of federal agency, federally permitted, and federally funded activities. This review is delegated to the Coastal Commission and the Commission's standard of review is the enforceable policies found in Chapter 3 of the Coastal Act. However, the Governor's proposal amends Chapter 3 of the Coastal Act and specifically orders the Coastal Commission to permit the operation of Diablo Canyon powerplant until January 1, 2031. Basically, this is a legislative override of the Coastal Commission's obligations under the federal Coastal Zone Management Act (CZMA). If enacted, this kind of override would be unprecedented.

Four: The governor's proposal overrides and delays compliance with the State Water Board's Once-Through Cooling Policy until 2030 and limits the board's mitigation authority by proscribing mitigation

fees and directly prohibiting the State Board from requiring specific mitigation measures other than the mitigation fee. This prohibition on what the State Board can or cannot consider or require as mitigation is also unprecedented.

Finally: The newest version of the Governor's proposal inexplicably puts the California Public Utilities Commission and not the California Coastal Commission in charge of determining what will be the future use of Diablo Canyon lands after the powerplant closes AND provides no guidelines other than a vague directive that it must determine what is the in the best interest of a variety of parties excluding the general public. It does not make any sense to hand over the decision making of the future of an important part of the coastal zone to an agency that has no natural resource public trust requirements or responsibilities.

Now that I have walked through the various exemptions, overrides, and efforts to restrict environmental standards, let me explain why this is totally unnecessary and should be rejected.

First, there is no legitimate reason to prevent any of the relevant state agencies from doing their jobs in carrying out administering our state and federal environmental laws. There is no requirement that all state permits and approvals must be secured before an application for relicensing is filed with the Nuclear Regulatory Commission. Nor is there a requirement that all permits and approvals must be secured before filing with the Department of Energy for a grant. Instead, all you need is a "pathway" for permitting. There is a pathway here. The pathway is to let the agencies spend the next 2 years doing their job.

Which leads me to my second point as to why it is unnecessary to constrain agency discretion or undermine environmental standards. As I said, the agencies have more than 2 years before 2025. There is plenty of time for them to do their jobs. For example, the Coastal Commission has issued dozens of coastal development permits for California's 3 coastal nuclear plants over the last 40 years, without leveraging closure or interrupting power generation.

Finally, and I cannot emphasize this point enough, unnecessarily overriding our bedrock environmental laws and the jurisdictions of the Coastal Commission, State Water Board, and State Lands Commission sets a terrible precedent. These agencies and laws are in place to ensure that decisions are made to protect people and our natural resources. Indeed, I cannot think of a better example of when we need to use our environmental and public health and safety laws than in the granting of an extension of the operating life of an aging nuclear power plant. Our environmental laws are not a “nice to have” measures; they are “must have” measures. Therefore, I would urge that if the Legislature chooses to move forward with any kind of legislation pertaining to Diablo Canyon – not that I think it is a prudent thing to do -- that it does so in a way that does not undermine bedrock state and federal environmental laws or override agency jurisdiction or discretion.

Thank you.