



ACTION ITEM

Public Hearing Regarding Appeals of the Department of Water Resources
Certification of Consistency for the 2024-2026 Proposed Geotechnical Activities
(Certification Number C20242)

Summary

The Delta Stewardship Council (Council) will conduct a public hearing regarding four appeals of the Department of Water Resources' (DWR) certification of consistency number C20242 (Certification) for the 2024-2026 Proposed Geotechnical Activities. Following the hearing, the Council may discuss the matter and direct staff to prepare a draft determination to bring to the Council for consideration within 60 days of this hearing.

Requested Action

The Council may direct staff to prepare a draft determination to bring to the Council for consideration within 60 days of this hearing.

Background

Covered Actions and Appellate Authority

The Sacramento-San Joaquin Delta Reform Act of 2009 (Wat. Code, § 85000 et seq.) charges the Council with developing, adopting, and implementing the Delta Plan (Wat. Code, § 85300.) and gives the Council appellate authority over certain actions (covered actions) in the Sacramento-San Joaquin River Delta and Suisun Marsh (Delta). (Wat. Code, § 85225.10.) A state or local agency proposing to undertake a covered action must submit to the Council a written certification of consistency with detailed findings as to whether the covered action is consistent with the Delta Plan. (Wat. Code, §§ 85057.5, 85225.) Any person may file an appeal to the Council claiming that a proposed covered action is inconsistent with the Delta Plan and, as a result of that inconsistency, the action will have a significant adverse impact on

the achievement of one or both of the coequal goals¹ or implementation of government-sponsored flood control programs to reduce risks to people and property in the Delta. (Wat. Code, § 85225.10.) An appeal must be filed no later than 30 days after the submission of a certification of consistency to the Council. (Wat. Code, § 85225.15.)

Certification of Consistency C20242 and Appeals

DWR submitted its Certification for the 2024-2026 Proposed Geotechnical Activities (referred to herein as Proposed Geotechnical Activities) to the Council on October 8, 2024. (The Certification is Attachment A to this staff report.) The Council received timely² appeals from four parties (referred to collectively hereafter as Appellants), listed below. (The appeals are Attachments B through E to this staff report.) A table of the policies appealed by each party is provided in Attachment F.

The Certification and appeals are available at:

https://coveredactions.deltacouncil.ca.gov/profile_summary.aspx?c=456af51a-3643-48bf-8e0e-6007cbe609dc.

- Appeal No. C20242-A1 – San Francisco Baykeeper, Winnemem Wintu, Shingle Springs Band of Miwok Indians, California Indian Environmental Alliance, Friends of the River, Center for Biological Diversity, Save California Salmon, California Sportfishing Protection Alliance, Golden State Salmon Association, and Restore the Delta. (San Francisco Baykeeper et al.) (Attachment B)
- Appeal No. C20242-A2 – South Delta Water Agency (Attachment C)
- Appeal No. C20242-A3 – County of Sacramento, Sacramento County Water Agency, Sacramento Area Sewer District, and City of Stockton (County of

¹ Coequal goals is defined in Water Code section 85054 as the “two goals of providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem.” The coequal goals are required to “be achieved in a manner that protects and enhances the unique cultural, recreational, natural resource, and agricultural values of the Delta as an evolving place.” (Wat. Code § 85054.)

² The appeals were deemed timely filed on November 7, 2024, pursuant to California Code of Regulations, title 23, section 5022.

Sacramento et al.) (Attachment D)

- Appeal No. C20242-A4 – County of San Joaquin, Central Delta Water Agency, and Local Agencies of the North Delta (SJC et al.) (Attachment E)

Role of the Delta Protection Commission

The Delta Protection Commission (Commission) may submit written comments on issues raised by an appellant in an appeal and whether the Certification is supported by substantial evidence in the record. The Commission may also make an oral presentation at the hearing. The Council considers the Commission's comments and presentation as those of an expert in matters that may affect the unique cultural, recreational, and agricultural values of the Delta when preparing, considering, and adopting its findings. (Cal. Code Regs., tit. 23, § 5028.) The letters submitted by the Commission is Attachment G to this staff report.

Appeal Process

DWR submitted a "full and complete" certified record for the Certification on November 13, 2024. (Cal. Code Regs., tit. 23, § 5022, subd. (e).) Each Appellant and the Commission were given the opportunity to submit a brief up to 15 pages concerning issues raised in its respective appeal. DWR was given an opportunity to submit a brief up to 60 pages. Any party and the DPC may include in their brief a request to supplement the record pursuant to the Council's regulations. (Cal. Code Regs., tit. 23, §5026, subd. (b).) The briefs and other documents related to this appeal are available at:

https://coveredactions.deltacouncil.ca.gov/profile_summary.aspx?c=456af51a-3643-48bf-8e0e-6007cbe609dc.

The Council is required to hold a hearing on an appeal within 60 calendar days of the effective date of the filing of the appeal unless the Council, or by delegation the executive officer, has determined that the issue raised on appeal is not within the Council's jurisdiction or does not raise an appealable issue. (Wat. Code, § 85225.20; 23 Cal. Code Regs § 5030.) The Council is then required to make specific written findings within 60 days of the hearing. (Wat. Code, § 85225.25.)

Following the hearing, the Council may discuss the matter and direct staff to prepare a draft determination to bring to the Council for consideration within 60 days of this hearing. (Wat. Code, § 85225.20.)

Proposed Geotechnical Activities Description

The Certification states that the Proposed Geotechnical Activities are intended “to support the planning and design of the Delta Conveyance Project” (Certification C20242, page 1-1.) and would be “located in Sacramento, San Joaquin, Contra Costa, and Alameda Counties, from north of the town of Hood in the north to Bethany Reservoir in the south.” (Certification C20242, page 3-1.)

The Certification describes the Proposed Geotechnical Activities as follows:

The 2024–2026 Proposed Geotechnical Activities are proposed to collect valuable data to refine the Delta Conveyance Project alignment and Delta Conveyance Project design. The 2024–2026 Proposed Geotechnical Activities consist of soil borings, cone penetration tests (CPTs), and water quality tests...These investigations are expected to yield important data about soil properties and water quality. This data, in turn, will inform the planning and design of the Delta Conveyance Project. Continued planning and design efforts will assist DWR in identifying and applying the applicable provisions of the Delta Plan when submitting a certification of consistency for the future implementation of the Delta Conveyance Project. (Certification C20242, page 1-1.)

The Certification also states:

DWR did not originally plan to submit a certification of consistency for these 2024–2026 Proposed Geotechnical Activities. DWR does not understand the 2024–2026 Proposed Geotechnical Activities to constitute ‘initiating the implementation of’ the Delta Conveyance Project. Rather, DWR understands the 2024–2026 Proposed Geotechnical Activities to be preliminary investigations related to the Delta Conveyance Project’s planning and design, which DWR understands to be separate from the Delta Conveyance Project’s implementation. (Certification C20242 page 1-3.)

Public Hearing

Council Chair Lee will preside over the hearing. After the hearing opens, Council staff will provide a brief overview of the certification and appeals process. Following the staff presentation, the Appellants and Delta Protection Commission will each have 15 minutes to present, and DWR will have 60 minutes to present. Following the presentations, the Council may discuss the matter and members of the public will have an opportunity to comment. The Council may direct staff to prepare a draft determination to bring to the Council for consideration within 60 days of this hearing.

Fiscal Information

Not applicable.

Next Steps

The Council will make a determination on the appeals within 60 days of this hearing.

List of Attachments

Attachment A: Certification of Consistency C20242 by DWR for the 2024-2026 Proposed Geotechnical Activities.

Attachment B: Appeal C20242-A1 (Baykeeper et al.)

Attachment C: Appeal C20242-A2 (South Delta Water Agency)

Attachment D: Appeal C20242-A3 (County of Sacramento et al.)

Attachment E: Appeal C20242-A4 (County of San Joaquin et al.)

Attachment F: Table of Appeals by Policy

Attachment G: Letters from the Delta Protection Commission

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