



November 6, 2025

To: Delta Stewardship Council

engage@deltacouncil.ca.gov; coveredactions@deltacouncil.ca.gov

Dear Chair Lee:

We, San Francisco Baykeeper and Restore the Delta, write regarding Covered Action No. C20257 for the Delta Conveyance Project (DCP) submitted by the Department of Water Resources (DWR), and regarding letters submitted by Delta Public Agencies about the DCP consistency determination on October 13 and October 27, 2025.

The Delta Public Agencies' letters explain the necessity and propriety of the Delta Stewardship Council exercising its discretion to set appropriate deadlines and schedules related to the Consistency Determination and any appeals of it. (*See* Delta Public Agencies 10/27/2025 Letter at p. 5, fns. 7-11.) We join in that request. The Council's regulations require that the hearing on an appeal be conducted in the manner "most suitable to ensure fundamental fairness to all parties concerned" that "secur[es] all relevant information and material necessary" and that allows a decision "without *unreasonable* delay." (23 C.C.R. § 5027(b).)

Given the scope of the Covered Action and size of the record, the schedule described below is necessary to provide fairness and due process, would allow all parties and the Council to access and review the relevant information, and is imminently reasonable. Any other approach betrays these requirements, as well as other aspects of California law and the Council's own findings regarding Tribal and Environmental Justice in the Delta.

First, the Council's Covered Actions Portal identifies the upload date for DWR's "Certification of Consistency for Covered Action C202257 [sic] Delta Conveyance Project" as October 20, 2025. It lists the "Linked Index" to the Record as uploaded on October 31, 2025. That "linked index" provided by DWR is 243 pages long, with roughly 85 file names and links per page. Many of these file names are unhelpfully non-descript, even when paired with the spreadsheet DWR has provided. As of October 27, 2025, when the Delta Public Agencies submitted their letter, there were 13,360 documents identified as part of the record that had been submitted to the DSC. By October 31, that had increased dramatically, and as of today's letter, the Portal now contains 21,785 documents. It appears most of these additional 8,425 documents were uploaded on October 29.

Yet the Council has identified the initial submission by DWR, made on Friday, October 17, 2025, as the relevant date and set the deadline for appeals on Monday, November 17, 2025. Thus, of the 30 calendar days the Council and DWR have chosen to provide, 10 are weekends, 1 is a federal holiday, 6 are hearing or site visit days in the DCP's water rights proceedings, and 14 of them occurred before DWR had completed uploading documents that it relied upon in reaching its conclusion that the DCP is consistent with the Delta Plan.

The Council should deem the Consistency Determination to have been submitted on either October 29 or 31, 2025 and clarify the deadline for appeals.

Second, the communities and people in the Delta most impacted by the proposed Covered Action consist of lower-income communities, minority communities, communities with a significant proportion of people for whom English is not a first language, California Tribes, and environmental justice communities. (*See generally* Testimony of Dr. John Finn, DTEC-060, [DCP.V2.14.00058](#).) As Dr. Finn described, the disproportionate impacts on Indigenous and Hispanic/Latino communities is so severe that it is nearly impossible for it to have been accidental. (*Id.* at p. 9 ¶ 13 [“the odds of these racial/ethnic patterns happening by chance are statistically indistinguishable from zero.”].)

The procedural unfairness described by the Delta Public Agencies that exists in the Council’s current schedule and DWR’s submissions exacerbates and furthers these disproportionate impacts. This is inconsistent with California law. California Government Code section 11135 prohibits discrimination based on race, ethnicity, and group identity by state agencies in state programs or activities. The Council must take action to avoid, rather than further, the disproportionate consequences and burdens on Hispanic/Latino and Indigenous communities caused by the Covered Action and the procedural unfairness and lack of process that will occur if it does not substantially expand the time allowed for parties and the public to address their concerns with the failure of the Covered Action to be consistent with the Delta Plan. Such a result is also required by Executive Order B-10-11 and by the meaningful Tribal consultation principles contained in California law.

This Council has recognized the need for appropriate time for Tribes, environmental justice communities, and the public to participate in its processes. In describing actions that other agencies (like DWR) should take when interacting with communities in the Delta, the Stewardship Council explained that agencies should “make it easy to participate early and often,” and “be respectful of people’s time by giving them enough time to review materials or proposals (i.e. longer public comment periods).” (Delta Stewardship Council, [Tribal and Environmental Justice in the Sacramento-San Joaquin Delta](#), April 24, 2025, at pp. 22-23.) DWR failed to do so in connection with publication of the Draft Covered Action. DWR was required to provide *at least* ten days of time for public comment. But rather than following the Council’s guidance and providing “enough time” to review the extensive draft certification of consistency, it provided the bare minimum. (*See also* Delta Public Agency Letter, October 27, 2025, at 3, fn.4.)

The same report also provided “Council-Specific Recommendations.” (Delta Stewardship Council, Tribal and Environmental Justice Report, at p. 25.) The Report recommended that the Council “**Practice Consistent Outreach.** Compile a database of CBOs/nongovernmental organizations (NGOs) from environmental justice communities and adopt an agency-wide practice of consistently and appropriately conducting outreach. (R, P).” (*Id.* at p. 27.) The Report also recommended the Council should “**Seek Early Tribal Engagement.** Engage early and often with tribes, both before Council initiatives and activities begin and throughout their development, by providing ample advance notice of opportunities for consultation and engagement. (R, P).” (*Id.* at p. 28.) Neither occurred in connection with the Delta Conveyance Project.

Indeed, it appears that the Council has not conducted *any* outreach about DWR’s consistency determination to NGOs or Tribes in the Delta, including those that participated in appeals of DWR’s

2024-2026 Geotechnical Activities Consistency Determination for the DCP just last year. (*See, e.g.*, C-20242-A1 [Appeal by Shingle Springs Band of Miwok Indians, Winnemem Wintu Tribe, California Indian Environmental Alliance, Restore the Delta, San Francisco Baykeeper, Save California Salmon, Golden State Salmon Association, Friends of the River, California Sportfishing Protection Alliance, and Center for Biological Diversity].) To our knowledge, the Tribes and organizations who participated in that appeal have received no outreach or engagement from the Delta Stewardship Council in connection with the DCP.

Instead, the primary (and apparently only) outreach or engagement conducted by the Delta Stewardship Council in connection with the DCP and the Delta Plan was with DWR in the form of “early consultation” which has been occurring since 2018. DWR’s failure to provide adequate time for public review, and the Council’s failure to meet its own recommendations would be confounded by proceeding on the timeframe being contemplated by the Council and preferred by DWR. Given that the Council has had seven years of time to understand and help DWR come to a determination of consistency, providing more than the bare minimum time to the public to participate is necessary.

We request that the Council:

- (a) Identify the date of complete submission of the Certification of Consistency as either October 29 or October 31, 2025 – the date on which DWR completed uploading the material it identified as relevant and properly before it when it made its certification of consistency, and clarify the date on which appeals are due as a result;
- (b) Provide notice after appeals are filed that allows for no less than 90 days for submission of written materials and supporting documents in connection with those appeals; and,
- (c) Sets at least two hearing dates on this matter to occur no earlier than 60 days after submission of all written materials and supporting documents in connection with the appeals.

This schedule would allow for better informed arguments, more complete analysis of record materials, and assist the Council in ensuring “fundamental fairness to all parties,” “securing all relevant and necessary information,” and rendering a determination about the consistency of the covered action with the Delta Plan “without unreasonable delay.” (23 C.C.R. § 5027(b).)

Respectfully submitted,



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Restore the Delta

cc: Kathryn Marquez, DWR (DCP_Consistency@water.ca.gov)