



ACTION ITEM

Consideration and Possible Adoption of a Determination on Appeals of the Department of Water Resources Certification of Consistency Number C20257 for the Delta Conveyance Project (Resolution 2026-03)

Summary

The Council will consider draft findings on appeals of California Department of Water Resources' Certification of Consistency Number C20257 for the Delta Conveyance Project and may approve Resolution 2026-03 (Attachment A to this staff report) adopting findings contained in a Draft Determination (Decision No. D20257) (Attachment 1 to Resolution 2026-03) for the Delta Conveyance Project.

Requested Action

Staff recommend that the Council approve Resolution 2026-03 (Attachment A to this staff report) adopting findings contained in the Draft Decision No. D20257 (Attachment 1 to Resolution 2026-03) on appeals of Certification of Consistency C20257 (Certification) for the Delta Conveyance Project (DCP). In summary, the staff recommendation in the Draft Decision is to:

- remand the DCP to DWR on two issues: 1) nonnative invasive golden mussel under policy ER P5, and 2) land use conflicts with Harvest Water under policy DP P2; and
- deny all other appeal issues.

Background

[Covered Actions and Delta Stewardship Council 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, the state's comprehensive long-term management plan for the Delta to further the Coequal Goals (Wat. Code, §§ 85059, 85300.) The Delta Reform Act further gives the Council appellate authority over covered actions in the Sacramento-San Joaquin River Delta and Suisun Marsh (Delta). (Wat. Code, § 85225.10 et seq.) 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.)

Water Code section 85225.25 requires that “[a]fter a hearing on an appealed action, the Council shall make specific written findings either denying the appeal or remanding the matter to the state or local public agency for reconsideration of the covered action based on the finding that the certification of consistency is not supported by substantial evidence in the record before the state or local public agency that filed the certification.” (Wat. Code, § 85225.25.) The Council held a hearing on the appealed Certification at a public meeting on February 26 and 27, 2026.

At its April 23-24, 2026 meeting, the Delta Stewardship Council (Council) will consider for possible adoption the Draft Decision of recommended findings, prepared by staff at the direction of the presiding officer, on appeals of the DCP

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.)

Certification. The agenda item will include a staff presentation of an overview of the draft decision and public comment on the agenda item.

Certification of Consistency and Appeals²

DWR submitted the Certification to the Council on October 17, 2025. (Please see Attachment B for a table of the DWR's consistency findings.) On November 17, 2025, the Council received 10 timely³ appeals. DWR submitted a "full and complete" certified record for the Certification on November 24, 2025. (Cal. Code Regs., tit. 23, § 5022, subd. (e).)

The Council received appeals from the following parties (please see attachment C to this staff report for the Delta Plan regulatory policies appealed by each appellant):

- [Appeal No. C20257-A1](#) –Delta Protection Commission (Commission)
- [Appeal No. C20257-A2](#) – Courtland Pear Fair (Pear Fair)
- [Appeal No. C20257-A3](#) – County of Sacramento and Sacramento County Water Agency (County of Sacramento)
- [Appeal No. C20257-A4](#) – Steamboat Resort
- [Appeal No. C20257-A5](#) – San Francisco Baykeeper, Winnemem Wintu, Shingle Springs Band of Miwok Indians, Restore the Delta, California Sportfishing Protection Alliance, Center for Biological Diversity, Friends of the River, California Indian Environmental Alliance, and Little Manila Rising. (SF Baykeeper)
- [Appeal No. C20257-A6](#) – Sacramento Area Sewer District (Sac Sewer)
- [Appeal No. C20257-A7](#) – City of Stockton
- [Appeal No. C20257-A8](#) – South Delta Water Agency (SDWA)

² The Certification, appeals, written submittals and other documents related to this appeal are available at: <https://deltacouncil.ca.gov/covered-actions/delta-conveyance-project> and https://coveredactions.deltacouncil.ca.gov/profile_summary.aspx?c=3952a97c8d85-49d6-842a-8926ceec71a8

³ The appeals were deemed filed on November 17, 2025, pursuant to California Code of Regulations, title 23, section 5022.

- [Appeal No. C20257-A9](#) – San Joaquin County, Solano County, Yolo County, Central Delta Water Agency, and Local Agencies of the North Delta (San Joaquin County)
- [Appeal No. C20257-A10](#) – DCC Engineering Co., Inc. (DCC Engineering)

Each appellant was given the opportunity to submit an additional written submittal up to 20 pages concerning issues raised in its respective appeal. DWR was given an opportunity to submit a written submittal in response of up to 200 pages (combined total of appellants' submittals). Parties had the opportunity to include request to supplement the record pursuant to the Council's regulations. (Cal. Code Regs., tit. 23, § 5026, subd. (b).) (Appellants' requests to supplement the record are addressed in [Exhibit A](#) of the Draft Decision.)

At the February 26-27, 2026, hearing, Appellants and DWR made presentations to the Council and responded to questions from Councilmembers. At the conclusion of the hearing, the presiding officer directed staff to prepare a draft decision for the Council's consideration within 60 days of the hearing. (Wat. Code, § 85225.20.)

[Proposed Delta Conveyance Project Description](#)

The Certification states that the DCP consists of the construction, operation and maintenance of new State Water Project (SWP) water diversion and conveyance facilities in the Delta that will be part of the SWP and will be operated in coordination with the existing SWP south Delta water diversion facilities. The physical footprint of the DCP and the location of construction areas is depicted in Figure 4-1 of the Certification (illustrated herein).

The Certification states that the covered action includes the following:

- Two intake facilities along the Sacramento River in the north Delta near the community of Hood with on-bank intake structures that will include fish screens approved by state and federal fish and wildlife agencies.
- A concrete-lined tunnel, and associated vertical tunnel shafts, to convey flow from the intakes about 45 miles to the south to the Bethany Reservoir

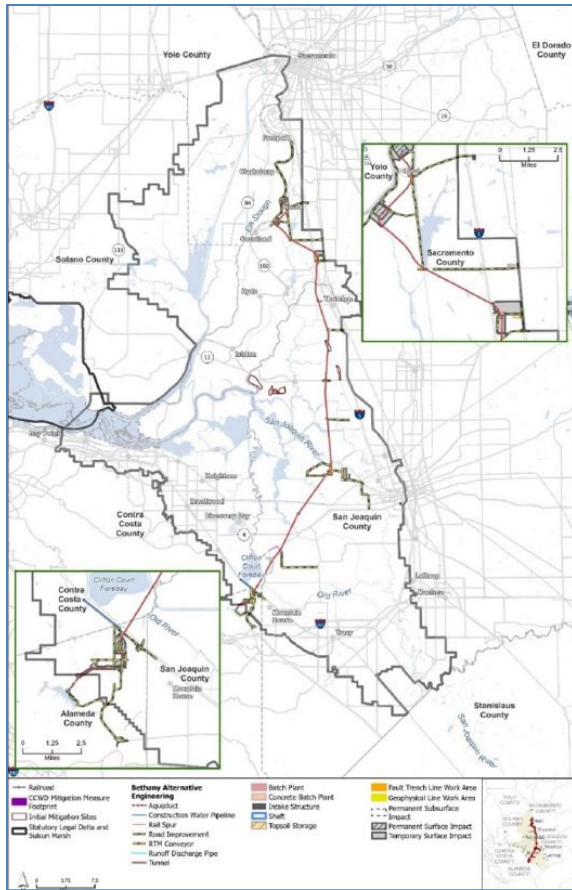


Figure 4 - 1

engineering design and construction (including the 2024–2026 Proposed Geotechnical Activities).

- Actions described in the DCP Final Environmental Impact Report and addendums, and commitments included in the adopted DCP Mitigation Monitoring and Reporting Program and the DCP Compensatory Mitigation Plan for Special-Status Species and Aquatic Resources.

The Council's Review of Appeals

The Council does not approve or reject certifications of consistency. "Instead, State or local agencies self-certify Delta Plan consistency, and the Council serves as an appellate body for those determinations." (*Delta Stewardship Council Cases, supra*, 48 Cal.App.5th 1014, 1042.) The Delta Plan's regulatory policies are enforced through "the Council's appellate authority and oversight over covered actions."

Pumping Plant and Surge Basin at a location south of the existing SWP Clifton Court Forebay.

- A Bethany Reservoir Pumping Plant to lift the water from inside the tunnel below ground into the Bethany Reservoir Aqueduct for conveyance to the Bethany Reservoir Discharge Structure and into the existing Bethany Reservoir.

- Other ancillary facilities to support construction and operation of the conveyance facilities, including access roads, concrete batch plants, fuel stations, and power transmission and distribution lines.

- Efforts to identify geotechnical, hydrogeologic, agronomic, and other field conditions that will guide appropriate construction methods and monitoring programs for final

(*Ibid.*) The Council denies appeals or remands to the certifying agency for reconsideration. (Wat. Code, § 85225.25.)

The Delta Reform Act provides that the appropriate standard of review on appeal is whether the certification of consistency is supported by substantial evidence⁴ in the record. (Wat. Code, § 85225.25.) Under the substantial evidence standard, the agency's findings are presumed to be supported by the administrative record, and it is the Appellant's burden to show that they are not. (*Poncio v. Dept. of Resources Recycling & Recovery*(2019) 34 Cal.App.5th 663, 669.)

Summary of Proposed Decision

The following issues are ***remanded to DWR*** for reconsideration:

- **ER P5** (Cal. Code Regs. tit. 23, § 5009.): Avoid Introduction of and Habitat Improvements for Invasive Nonnative Species, to fully consider and avoid or mitigate the potential for DCP facilities to improve habitat conditions for the nonnative invasive golden mussel.
- **DP P2** (Cal. Code Regs. tit. 23, § 5011.): Respect Local Land Use When Siting Water or Flood Facilities or Restoring Habitats, to consider and avoid or reduce conflicts between the siting of the Twin Cities Complex and Sac Sewer's Harvest Water regarding agricultural use, groundwater recharge, and Sandhill Crane habitat, or to find that it is infeasible to do so.

All other appeals are ***denied***.

Fiscal Information

Not applicable.

⁴ Substantial evidence means evidence that is "reasonable in nature, credible, and of solid value." (*Desmond v. County of Contra Costa* (1993) 21 Cal.App.4th 330, 335.)

List of Attachments

Attachment A: Resolution 2026-03 and Attachment 1 to the Resolution (Draft Decision No. 20257)

Attachment B: Table of DWR Consistency Findings

Attachment C: Table of Appealed Policies

Contact

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A recording of the presentation will be available on the Delta Council's YouTube page at <https://www.youtube.com/@DeltaCouncil>.