



HEARING ITEM

Hearing on Appeals of the California Department of Water Resources' Revised Certification of Consistency with the Delta Plan on Remanded Items for the Delta Conveyance Project (Certification Number C20262)

Summary

The Delta Stewardship Council (Council) will conduct a hearing regarding three appeals of the Department of Water Resources' (DWR) Delta Conveyance Project Revised Certification of Consistency with the Delta Plan on remanded items, certification number C20262 (Revised Certification). 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.

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, the state's comprehensive long-term management plan for the Delta to further the coequal goals¹ (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

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.)

goals 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.)

Prior Certification and Council Findings

DWR previously filed a certification of consistency for the Delta Conveyance Project (DCP) on October 17, 2025 (Certification No. C20257; Prior Certification). That certification was appealed by 10 parties. The Council heard and considered issues raised in those appeals and made the following findings (Decision 20257, p. 2):

- a. There is substantial evidence in the record to support DWR's determination that the following Delta Plan Policies are not applicable to the DCP: DP P1, RR P1, RR P2, RR P3, RR P4 and G P1(c).
- b. Appellants failed to meet their burden, and there is substantial evidence in the record to support DWR's findings of consistency for the following Delta Plan policies: G P1(b)(2), G P1(b)(3), G P1(b)(4), WR P1, ER P1, ER P2, ER P3, and ER P4.
- c. Appellants have shown, in relevant part, that the certification of consistency is not supported by substantial evidence in the record with respect to Delta Plan policies ER P5 and DP P2.

Based on these findings, the Council remanded the matter to DWR on the following:

1. Delta Plan Policy ER P5 to fully consider and avoid or mitigate the potential for DCP facilities to improve habitat conditions for the nonnative invasive golden mussel; and
2. Delta Plan Policy DP P2 to consider and avoid or reduce conflicts between the siting of the Twin Cities Complex (TCC) and Sacramento Area Sewer District's (Sac Sewer) Harvest Water regarding agricultural use, groundwater recharge, and Sandhill Crane habitat when feasible.

Otherwise, the Council denied all appeals.

Revised Certification and Appeals

On July 24, 2026, DWR submitted the Revised Certification to address the specific issues remanded to the Department for reconsideration. (A link to the Certification is provided below.)

- [Certification of Consistency C20262](https://bit.ly/4rUwIV1) (<https://bit.ly/4rUwIV1>)
- [DWR's Detailed Findings for C20262](https://bit.ly/4hxPNcd) (<https://bit.ly/4hxPNcd>)

The Council received three timely² appeals, listed below.

- [Appeal No. C20262-A1](https://bit.ly/47Cu2SG) (<https://bit.ly/47Cu2SG>) – Sacramento Area Sewer District (Sac Sewer) appealing the Revised Certification under DP P2
- [Appeal No. C20262-A2](https://bit.ly/4hO8dV6) (<https://bit.ly/4hO8dV6>) – Twin Cities Group appealing the Revised Certification under DP P2
- [Appeal No. C20262-A3](https://bit.ly/4hDq2Ww) (<https://bit.ly/4hDq2Ww>) – San Joaquin County, Solano County, Yolo County, Central Delta Water Agency, and Local Agencies of the North Delta (San Joaquin County, et. al) appealing the Revised Certification under ER P5 and DP P2

Delta Protection Commission Role

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.) (A link to the Commission's comments on the Revised Certification and appeals is provided below.)

- [Delta Protection Commission Comments](https://bit.ly/47MI3yd) (<https://bit.ly/47MI3yd>) – September 18, 2026

² The appeals were deemed filed on August 24, 2026, pursuant to California Code of Regulations, title 23, section 5022.

Scope of Council Review

When considering appeals of a revised certification submitted in response to a remand, the Council's review is limited to those issues specifically remanded and addressed in the revised certification. Appeals following a remand must be limited to either of the following:

- An alleged failure to address each of the Council's findings on the remanded issues.
- Issues resulting from material changes to the covered action.

Except for issues resulting from material changes to a covered action, an appellant cannot raise new grounds for appeal that were not raised in a prior appeal or reassert grounds that were raised or were rejected by the Council. (Cal. Code Regs., tit. 23, § 5035)

Appeal Process

DWR submitted a “full and complete” certified record for the Certification on August 28, 2026. (Cal. Code Regs., tit. 23, § 5022, subd. (e).) Each appellant was given the opportunity to submit an additional written submission up to 20 pages concerning issues raised in the appellant’s appeal. DWR was given an opportunity to submit a written submission in response of up to 60 pages (combined total of appellants’ briefs). The Delta Protection Commission was given an opportunity to provide a written submission containing written comments up to 20 pages. (Cal. Code Regs., tit. 23, § 5028.) Any party and the Delta Protection Commission may include in its written submission a request to supplement the record pursuant to the Council’s regulations. (Cal. Code Regs., tit. 23, § 5026, subd. (b).)

The Revised Certification, appeals, written submissions and other documents related to this appeal are available at:

<https://deltacouncil.ca.gov/covered-actions/delta-conveyance-project>

and

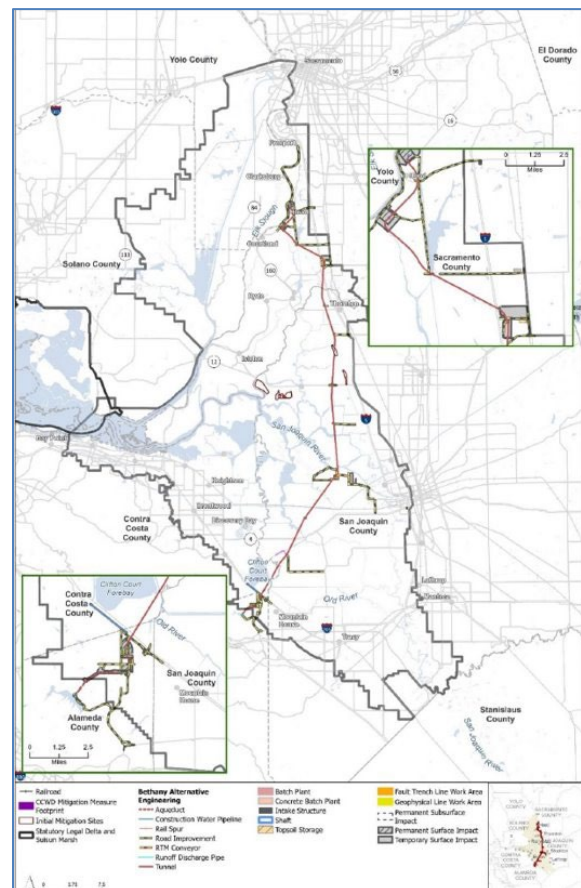
https://coveredactions.deltacouncil.ca.gov/profile_summary.aspx?c=e464804a-a7f9-45ce-8044-72fde47fddc1

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.) At the conclusion of the hearing, the presiding officer may 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 Delta Conveyance Project Description

In the Revised Certification, DWR states that "[t]he [DCP] has not changed in design, nor has any element of the [DCP] changed or been updated such that reconsideration of the finding of consistency with any Delta Plan policy or portion of a policy is necessary other than the two findings remanded to DWR for reconsideration."³ No appellant has identified a change in the DCP.

The Revised 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 (Certification Form 20262, p. 2).



³ See Certification C20262, Attachment 1, p. 3.

The physical footprint of the DCP and the location of construction areas is depicted in Figure 4-1 of the Previous Certification as part of the complete record for Revised Certification C20262 (DCP.AA1.2.00001).

The Revised 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 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 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. (Certification Form 20262, p. 2)

Hearing

Council Chair Julie Lee is the Presiding Officer for the hearing. The Appellants and the Commission⁴ will each have 20 minutes for their presentations, and the Respondent will have 60 minutes (combined total provided to appellants) for its presentation. Following the presentations, the Council will have an opportunity to ask questions of the parties and the Commission. Following the presentations and questions, 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.

Fiscal Information

Not applicable.

Next Steps

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

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⁴ The Commission may make an oral presentation regarding issues raised by an appellant as an expert in matters that may affect the unique cultural, recreational, and agricultural values of the Delta. (Cal. Code Regs., tit. 23, § 5028.)