

December 2024

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



**Delta
Stewardship
Council**

A CALIFORNIA STATE AGENCY

Overview

- Overview of the Delta Reform Act and covered actions process
- Overview of the Certification, appeals, and DPC role
- Relevant timelines and potential next steps

The Council's Covered Actions Authority

2009 Delta Reform Act

- Established the coequal goals
- Established the Council and authorized the Council to develop and implement the Delta Plan
- Granted Council regulatory and appellate authority over covered actions
- A state or local public agency that proposes to undertake a covered action, prior to initiating the implementation of that covered action, must submit a written certification of consistency with the Delta Plan to the Council

Certifications and Appeals Process

2009 Delta Reform Act

Certification of Consistency

- State or local public agency determines if a proposed activity is a covered action based on the Council's regulations
 - That determination is subject to judicial review
- If the agency determines it is a covered action, prior to initiating the implementation of that covered action, the agency must submit a written certification of consistency with detailed findings as to whether the covered action is consistent with the Delta Plan to the Council

Appeals

- Any person who claims 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 goals or implementation of government-sponsored flood control programs to reduce risks to people and property in the Delta, may file an appeal of that certification of consistency
- The appeal must clearly and specifically set forth the basis for the claim, including specific factual allegations, that the covered action is inconsistent with the Delta Plan

Certifications and Appeals Noticed and Listed on Council Website

- <https://coveredactions.deltacouncil.ca.gov>

Substantial Evidence Standard of Review

- Council does not independently review the covered action to determine if it is consistent with Delta Plan
- Council does make a determination based on whether the certification of consistency is supported by substantial evidence in the record before the public agency that filed the certification
- Appellant has the burden to show that the certification of consistency is not supported by substantial evidence in the record

Proposed Geotechnical Activities Description

- Proposed Geotechnical Activities intended “to support the planning and design of the Delta Conveyance Project (DCP).”
- “Located in Sacramento, San Joaquin, Contra Costa, and Alameda Counties, from north of Hood to Bethany Reservoir.”
- “Proposed to collect data to refine the DCP alignment and design.”
- “Consists of 230 soil borings, 15 cone penetration tests (CPTs), and 31 water quality tests.”

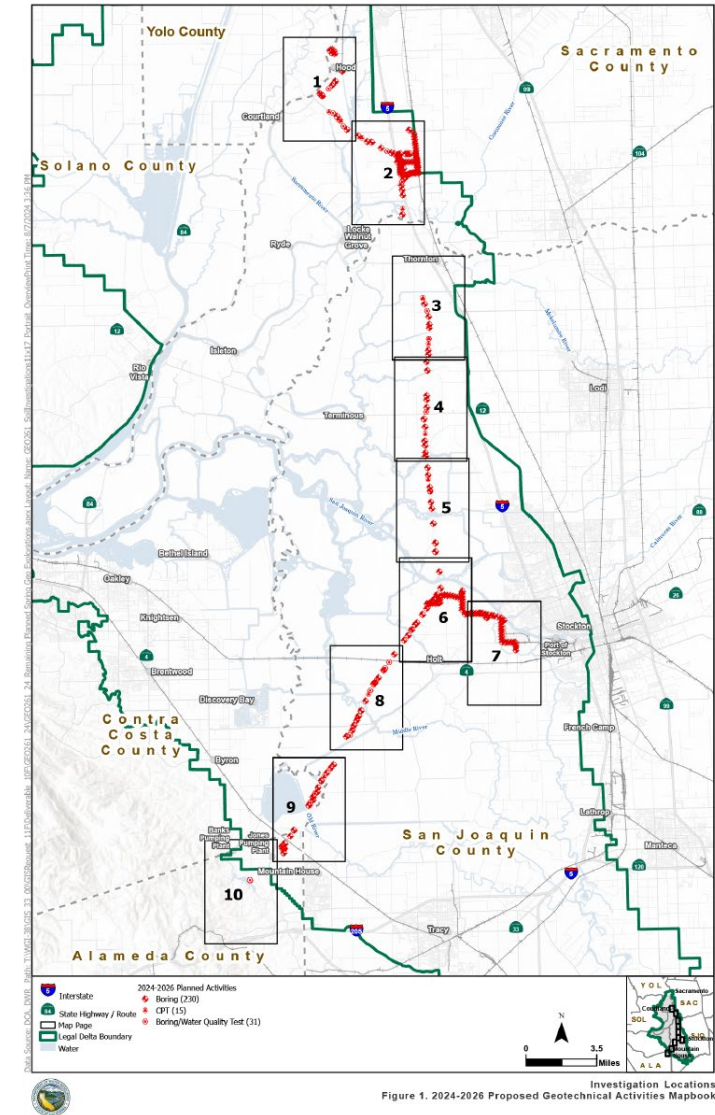


Figure 1. 2024-2026 Proposed Geotechnical Activities Mapbook

Proposed Geotechnical Activities Description Continued

- “Continued planning and design will assist DWR when submitting a certification of consistency for the future implementation of the Delta Conveyance Project.”
- “DWR understands the activities to be preliminary investigations related to the DCP’s planning and design, which DWR understands to be separate from the DCP’s implementation.”

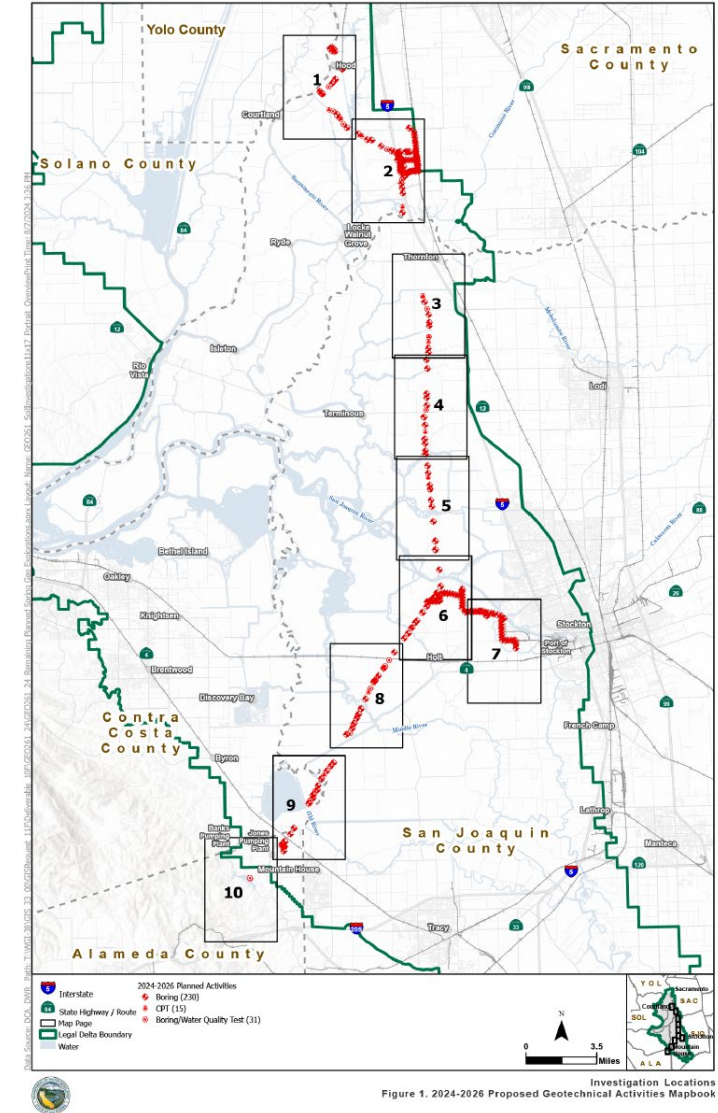


Figure 1. 2024-2026 Proposed Geotechnical Activities Mapbook

Certification Summary

Date Filed

October 8, 2024

Delta Plan Policies

The Department's finding in the certification for each Delta Plan policy is summarized in this table

Delta Plan Policies	Not Applicable
G P1(b)(1) – Coequal Goals	X
G P1(b)(2) – Mitigation Measures	X
G P1(b)(3) – Best Available Science	X
G P1(b)(4) – Adaptive Management	X
WR P1 - Reduce Reliance	X
WR P2 - Transparency in Water Contracting	X
ER P1 - Delta Flow Objectives	X
ER P2 - Restore Habitats at Appropriate Elevations	X
ER P3 – Protect Opportunities to Restore Habitat	X
ER P4 – Expand Floodplains and Riparian Habitat in Levee Projects	X
ER P5 - Avoid Invasive Nonnative Species	X
DP P1 – Locate New Urban Development Wisely	X
DP P2 - Respect Local Land Use	X
RR P1 - Prioritization of Levee Investments	X
RR P2 – Require Flood Protection in Residential and Rural Areas	X
RR P3 – Protect Floodplain	X
RR P4 – Floodplain Protection	X

Appeals

The Council received appeals on November 7, 2024, from four parties:

- 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.**)
- C20242-A2 – South Delta Water Agency (**SDWA**)
- C20242-A3 – County of Sacramento, Sacramento County Water Agency, Sacramento Area Sewer District, and City of Stockton (**County of Sacramento et al.**)
- C20242-A4 – County of San Joaquin, Central Delta Water Agency, and Local Agencies of the North Delta (**San Joaquin County et al.**)

Certification and appeals are available on Council's covered actions website

Appeals Summary

Appealed Policies (Short Title)	Appealed By			
	San Francisco Baykeeper et al.	South Delta Water Agency	County of Sacramento et al.	SJC et al.
G P1(b)(1) – Coequal Goals	X	X	X	X
G P1(b)(2) – Mitigation Measures	X	X	X	X
G P1(b)(3) – Best Available Science	X	X	--	--
G P1(b)(4) – Adaptive Management	X	--	--	--
WR P1 - Reduce Reliance	X	--	--	--
WR P2 - Transparency in Water Contracting	X	--	--	--
ER P1 - Delta Flow Objectives	X	--	--	--
ER P2 - Restore Habitats at Appropriate Elevations	X	--	--	--
ER P3 - Protect Opportunities to Restore Habitats	X	--	--	--
ER P4 - Expand Floodplains and Riparian Habitats	X	--	--	--
ER P5 - Avoid Invasive Nonnative Species	X	X	--	--

Appeals Summary Continued

Appealed Policies (Short Title)	Appealed By			
	San Francisco Baykeeper et al.	South Delta Water Agency	County of Sacramento et al.	SJC et al.
DP P1 – Locate New Urban Development Wisely	X	--	--	--
DP P2 - Respect Local Land Use	X	X	X	X
RR P1 - Prioritization of Levee Investments	X	--	--	--
RR P2 – Require Flood Protection	X	--	--	--
RR P3 – Protect Floodways	X	--	--	--
RR P4 – Floodplain Protection	X	--	--	--

Delta Protection Commission

Role in the Appeals Process

- The Commission may provide a written submission on issues raised in the appeals according to the schedule provided in the “Notice of Hearing and Schedule of Written Submissions” issued during the appeal process
- The Commission also has an opportunity to present at the hearing on issues raised in the appeals
- The Council considers the comments and presentation submitted by the Commission regarding issues raised by an appellant as those of an expert in matters that may affect the unique cultural, recreational, and agricultural values of the Delta

Relevant Timeline and Potential Next Steps

- *October 8, 2024* – Certification of Consistency filed
- *November 7, 2024* – Appeals filed
- Hearing must be held within 60 days
- The Council must issue a decision within 60 days of the hearing.
- After today's hearing, staff may be directed to prepare a draft determination for the Council's consideration within 60 days of the hearing.

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