

# 2024-2026 Proposed Geotechnical Activities (C20242)

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# Delta Conveyance Project: 2024-2026 Proposed Geotechnical Activities

- This subset will **NOT** include:
  - work on levees,
  - overwater activities,
  - activities that involve trenching (i.e., “test trenches”),
  - or permanent facilities (including monuments).
- The data from this subset of geotechnical activities identified in the Final EIR will inform planning and design and support future decisions and approvals by DWR and other agencies, including funding decisions.



# Soil Borings



- **Work area:** approximately 0.022 acres, or 10 feet by 100 feet
- **Depth:** 15-250 feet
- **Diameter:** 5-8 inches
- **Duration:** average 9 days, max 11 days (WQ 3-5 days)
- Drilling fluids and cuttings are contained in recirculation tanks and drums and disposed of at an appropriate landfill.



## Cone Penetration Tests (CPTs)

- **Work area:** approximately 0.022 acres, or 10 feet by 100 feet
- **Depth:** 200-250 feet
- **Diameter:** 2-3 inches
- **Duration:** average 2 days, max 4 days



## Sealing boreholes and CPT holes

- Boreholes and CPTs sealed in accordance with the requirements of CA DWR Bulletin 74-81/74-90, by inserting a pipe and filling with a cement-bentonite grout from the bottom up.
- Explorations in agricultural fields are grouted to 5 ft below the ground surface then backfilled with topsoil.
- Cement-bentonite grout when hardened is similar in texture to the native subsurface material that it would replace (lacks the aggregate materials (sand and gravel) found in concrete).
  - Would not interfere with or damage farm machinery (including machinery for the installation of and use of irrigation systems).
  - Provides borehole stability and prevents groundwater contamination.
- Daily Field Inspection Summary:

**Summary of Activities:** Completed grouting today, site cleanup, and drum removal. Grouting consisted of 16 bags of cement and approximately 65 gallons of water. Total grout was about 105 gallons. The upper 5 feet was backfilled and compacted with native material. A Total of 16 drums were picked up by Costera and removed from the site. Area was restored to initial site conditions as best as practical.



# Sealing boreholes and CPT holes





## Procedural Arguments

- The Certification for the 2024-2026 Proposed Geotechnical Activities is not inconsistent with the trial court's ruling.
  - The question before the court was if DWR was required to file a Certification before conducting the geotechnical activities.
  - DWR filed the Certification to comply with the ruling.
- The Delta Reform Act (DRA) and California Environmental Quality Act are separate statutory schemes that require DWR to prepare different documents for different purposes.
  - The DRA does not require the proposed action evaluated in a Certification to mirror the project as defined in an agency's CEQA document.
- Certification of the 2024-2026 Proposed Geotechnical Activities is consistent with the Delta Reform Act.
  - The activities allow DWR to collect data to inform future approvals and funding decisions required by DWR and responsible agencies before DWR may implement the Delta Conveyance Project.
  - This type of information collection enhances the DSC's and the public's interest in robust decision-making and does not diminish the future certification and administrative appeal process to which the Delta Conveyance Project will be subjected.



# Substantial Evidence

<sup>1</sup> Cal. Code Regs, tit. 23, §§ 5029(d), 5034(a)

<sup>2</sup> DSC's Determination Regarding Appeal of the Certification of Consistency by San Joaquin Area Flood Control Agency for Smith Canal Gate Project (March 21, 2019), p. 6

<sup>3</sup> *Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 512

<sup>4</sup> *Akella v. Regents of University of California* (2021) 61 Cal.App.5th 801, 814

- An appellant has the burden to show that a Certification is not supported by substantial evidence in the record.<sup>1</sup>
- Substantial evidence means enough relevant information and reasonable inferences that a fair argument can be made to support DWR's conclusions, even though other conclusions may also be reached.<sup>2</sup>
- Under the Substantial Evidence standard the DSC does not weigh conflicting evidence and determine who has the better argument.<sup>3</sup>
- Under the Substantial Evidence standard, DSC should:
  - Consider all relevant evidence in the administrative record and view that evidence in the light most favorable to DWR's findings, drawing all inferences in support of those findings; and
  - Uphold DWR's findings unless no reasonable person could reach the conclusion reached by DWR based on the entire record.<sup>4</sup>





# Certification

## COEQUAL GOALS

- Activities will not have a significant impact on the achievement of the coequal goals.

## DELTA PLAN POLICY ER P5

- Activities do not have a reasonable probability to introduce, or improve the habitat for, nonnative invasive species.

## DELTA PLAN POLICY DP P2

- Activities do not involve the siting of water management facilities.
- If the DP P2 did apply
  - Activities sited to avoid conflicts with existing uses.
  - The Harvest Water Program was not an existing use at the time of the certification and a specific conflict was not identified.
- General allegations regarding potential impacts do not satisfy appellants' burden to establish that substantial evidence does not support DWR's findings under DP P2.



# Certification

## GP 1 MITIGATION MEASURES

- Appeals on G P1 (b) (2) that do not reference specific Delta Plan mitigation measures should be dismissed.
- Delta Plan Mitigation Measures 7-1 and 7-2 are not applicable.
- Activities include mitigation measures that are equal to or more effective than Delta Plan Mitigation Measure 4-2.

## GP 1 BEST AVAILABLE SCIENCE

- Substantial evidence demonstrates that the 2024-2026 Proposed Geotechnical Activities use best available science.

## CONCLUSION

- Appellants have not demonstrated that the certification is not supported by substantial evidence.