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**STATE OF CALIFORNIA**  
**DELTA STEWARDSHIP COUNCIL**

<p><b>Delta Protection Commission</b></p> <hr/> <p><b>Courtland Pear Fair</b></p> <hr/> <p><b>County of Sacramento and Sacramento County Water Agency</b></p> <hr/> <p><b>Steamboat Resort</b></p> <hr/> <p><b>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, Sierra Club California, and Little Manila Rising</b></p> <hr/> <p><b>Sacramento Area Sewer District</b></p> <hr/> <p><b>City of Stockton</b></p> <hr/> <p><b>South Delta Water Agency</b></p> <hr/> <p><b>San Joaquin County, Solano County, Yolo County, Central Delta Water Agency, and Local Agencies of the North Delta</b></p> <hr/> <p><b>DCC Engineering Co., Inc.</b> <b>Appellants,</b> <b>v.</b> <b>California Department of Water Resources,</b> <b>Respondent.</b></p>	<p>(Appeal Nos. C20257-A1, C20257-A2, C20257-A3, C20257-A4, C20257-A5, C20257-A6, C20257-A7, C20257-A8, C20257-A9, C20257-A10)</p> <p><b>In the Matter of the Department of Water Resources' Certification of Consistency for the Delta Conveyance Project</b></p> <p><b>DECISION No. D20257</b></p> <p>BEFORE: Julie Lee, Chair; Gayle Miller, Vice-Chair; Diane Burgis; Susan Eggman; Maria Mehranian; Ann Patterson; Daniel Zingale.</p>
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1 agricultural use, groundwater recharge, and Sandhill Crane habitat when  
2 feasible (see *infra*, p. 107).

3 ***The appeals are all otherwise denied.***

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5 **2. Annual Implementation Report**

6 Although in many cases, Appellants have not met their burden and the  
7 Department’s findings are supported by substantial evidence in the record, several  
8 matters remain of interest to the Council in relation to the implementation of the Delta  
9 Plan and pursuit of the Council’s statutory mission. These matters reflect the Council’s  
10 ongoing commitment to transparency and represent numerous community concerns  
11 that may not be directly addressed by the Council’s regulatory process.

12 Therefore, pursuant to Water Code Section 85210(h)<sup>2</sup>, the Council requests that  
13 the Department submit an annual implementation report to the Council no later than  
14 March 1 of each year, starting March 1, 2028, and present that report to the Council  
15 within 90 days of submission. In the annual report, the Department must address all of  
16 the following:<sup>3</sup>

- 17 1. Matters related to the Delta as an evolving place:
- 18 a. Updates regarding engagement with environmental justice  
19 communities, tribes, and local agencies.
  - 20 b. Updates regarding the Department’s efforts to survey and develop  
21 treatment plans for cultural landscapes.
  - 22 c. Updates on excavated materials, including storage of Reusable  
23 Tunnel Material (“RTM”) and disposal of hazardous materials.
  - 24 d. Updates on construction in the Delta, and efforts to reduce noise  
25 and traffic.
  - 26 e. Updates on implementation of the Community Benefits Program  
27 (“CBP”), including funding available and funding expended.
  - 28 f. Updates on implementation of the Accountability Action Plan,  
29 including the Ombudsman Program.
- 30 2. Matters related to ongoing implementation of the Council’s Delta Adapts  
31 initiative adopted in June 2025:

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<sup>2</sup> Water Code Section 85210(h) enables the Council to “request reports from state, federal, and local government agencies on issues related to the implementation of the Delta Plan.” (Wat. Code § 85210, subsection (h).)

<sup>3</sup> The content of the report may change at the Council’s discretion as the DCP project moves forward. The Department may include other relevant information.

- 1 a. A summary of any modeled changes to DCP operations due to  
2 climate change and sea level rise.
- 3 3. Matters related to ongoing implementation of adaptive management:
- 4 a. Updates on efforts to secure DCP planning and construction funds.
- 5 b. Resource needs and resources secured to support adequate  
6 ongoing implementation of adaptive management.
- 7 c. Updates related to ongoing implementation of the Compensatory  
8 Mitigation Program for Special-Status Species and Aquatic  
9 Resources (“CMP”).
- 10 4. Matters related to Delta flow objectives and water quality:
- 11 a. Progress on the Change in Point of Diversion (“CPOD”) petition  
12 before the State Water Resources Control Board (“SWRCB”), and  
13 any related permits.
- 14 5. Matters related to changes in project design or operation:
- 15 a. Updates on any changes in project design or operations.

16 **B. CERTIFICATION OF CONSISTENCY**

17 **1. Certification for the Delta Conveyance Project**

18 On October 17, 2025, the Department filed a certification of consistency for the  
19 Delta Conveyance Project.<sup>4</sup> ([DCP.AA1.2.00001](#)) The Certification includes a 241-page  
20 document with detailed findings addressing each Delta Plan regulatory policy.  
21 ([DCP.AA1.2.00001](#)). The Certification states that the Department determined that the  
22 DCP is a “covered action” subject to the Delta Plan.<sup>5</sup> ([DCP.AA1.2.00001](#); p. 1; Wat.  
23 Code, § 85057.5.)

24 **2. Description of the Covered Action**

25 The Certification describes the Covered Action as “the construction, operation,  
26 and maintenance of new State Water Project (“SWP”) diversion and conveyance  
27 facilities in the Delta that will be part of the SWP and will be operated in coordination

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<sup>4</sup> The Department submitted a “Form” certification using the fields available through Council’s online covered action portal. The “Form” certification incorporated and cited a separate 241-page document with detailed findings titled “Final Delta Conveyance Project Certification of Consistency with the Delta Plan.” ([DCP.AA1.2.00001](#).) The Certified Record Index for the Project identifies the “Final” certification document, the “Form” certification, the draft administrative record and numerous attachments as the documents comprising the Certification of Consistency. Unless otherwise stated, when referencing the “Certification” the Council refers to the 241-page “Final” certification document. (See [DCP.AA1.2.00001](#).)

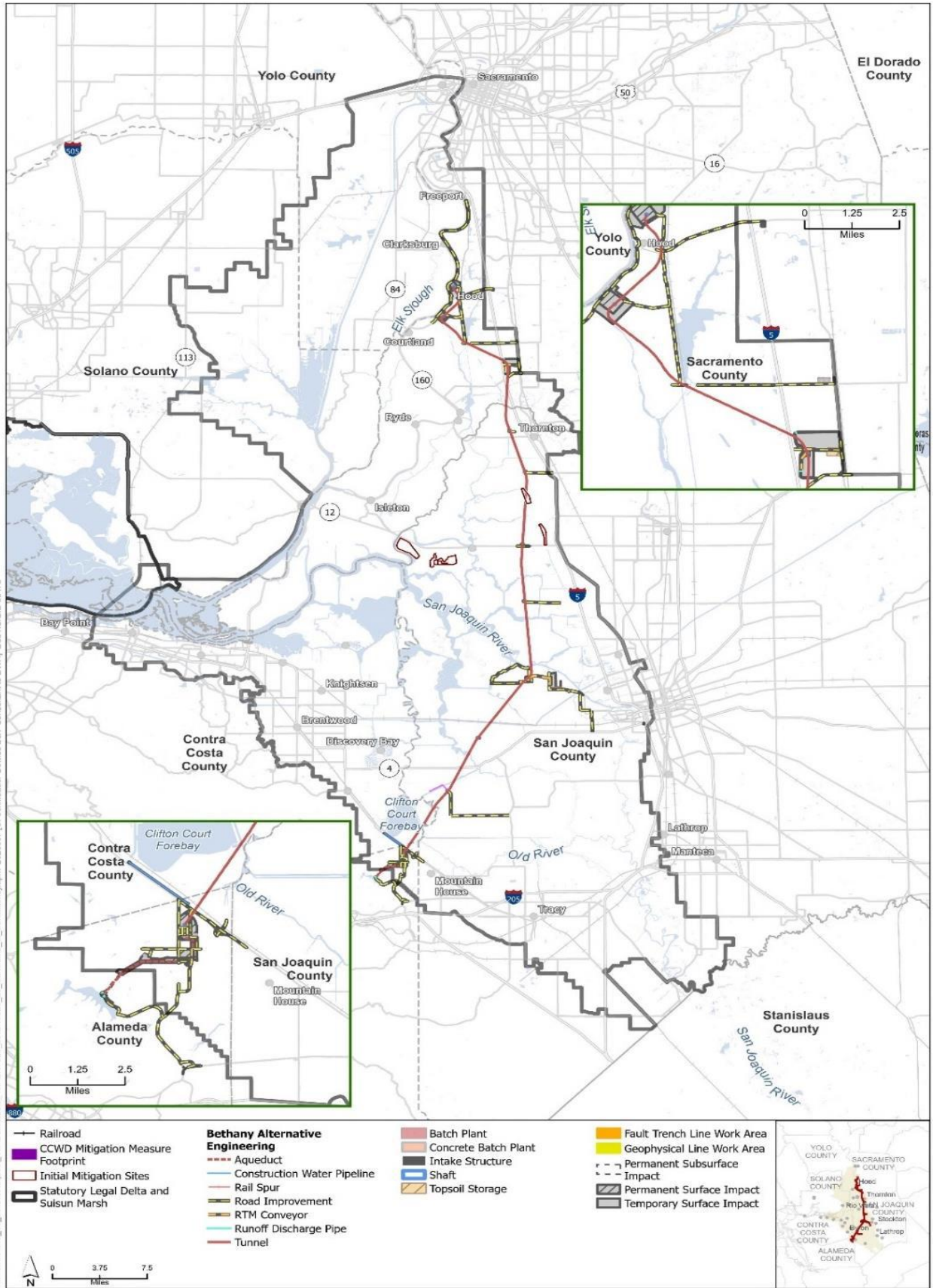
<sup>5</sup> It is not disputed that the Delta Conveyance Project is a covered action.

1 with existing SWP south Delta water diversion facilities” ([DCP.AA1.2.00001](#), p. 15). The  
2 Covered Action includes the following components:

- 3 • Two intake facilities along the Sacramento River in the north Delta near  
4 the community of Hood, with on-bank intake structures that will include  
5 fish screens approved by the state and federal fish and wildlife agencies;
- 6 • A concrete-lined tunnel, and associated vertical tunnel shafts to convey  
7 flow from the intakes about 45 miles to the south of the Bethany Reservoir  
8 Pumping Plant and Surge basin at a location south of the existing SWP  
9 Clifton Court Forebay;
- 10 • A Bethany Reservoir Pumping Plant to lift the water from inside the tunnel  
11 below ground into the Bethany Reservoir Aqueduct for conveyance to the  
12 Bethany Reservoir Discharge structure into the existing Bethany  
13 Reservoir;
- 14 • Other ancillary facilities to support the construction and operation of the  
15 conveyance facilities, including access roads, concrete batch plants, fuel  
16 stations, and power transmission and distribution lines;
- 17 • Efforts to identify geotechnical, hydrogeologic, agronomic, and other field  
18 conditions to guide construction methods and monitoring programs for the  
19 final engineer design and construction (including the 2024-2026 Proposed  
20 Geotechnical Activities);
- 21 • Actions described in the Final Environmental Impact Report (“Final EIR”),  
22 Volume 1, Chapter 3 ([DCP.D1.1.00010](#)) and refinements to those actions  
23 as described in Addendum 1 and Addendum 2 to the Final EIR  
24 ([DCP.D1.2.00001](#); [DCP.D1.2.00004](#)); and
- 25 • Commitments included in the adopted Mitigation Monitoring and Reporting  
26 Program (“MMRP”) ([DCP.C.1.00002](#)); and
- 27 • Commitments included in the CMP described in Final EIR Volume 1,  
28 Appendix 3F ([DCP.D1.1.00017](#)).

29 The physical footprint of the DCP and the location of construction areas are  
30 depicted in Figure 4-1 of the Certification (p. 11) and presented below  
31 ([DCP.AA1.2.00001](#), p.11).

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### 3. Department's Findings of Consistency

A certification of consistency must include detailed findings as to whether the Covered Action is consistent with the Delta Plan's regulatory policies. (Wat. Code, § 85225; *Delta Stewardship Council Cases* (2020) 48 Cal.App.5th 1014,1044; Cal. Code Regs., tit. 23, § 5002, subd. (b)(1).) In the Certification, the Department found that six Delta Plan policies were inapplicable to the project ([DCP.AA1.2.00001](#), p. 1). The Department further found that the Project is consistent with 13 applicable policies. ([DCP.AA1.2.00001](#), p.2). Ultimately, the Department concluded "that the Delta Conveyance Project ("Covered Action") is consistent with the Delta Plan's implementing regulations." ([DCP.AA1.2.00001](#), p. 1). The table below summarizes the Department's findings regarding each Delta Plan regulatory policy.<sup>6</sup>

Policy Number	Short Title	Department's Findings
<b>DP P1</b> (Cal. Code Regs., tit. 23, § 5010.)	Locate New Urban Development Wisely	Does not apply
<b>RR P1</b> (Cal. Code Regs., tit. 23, § 5012.)	Prioritization of State Investment in Delta Levees and Risk Reduction	Does not apply
<b>RR P2</b> (Cal. Code Regs., tit. 23, § 5013.)	Require Flood Protection for Residential Development in Rural Areas	Does not apply
<b>RR P3</b> Cal. Code Regs., tit. 23, § 5014.)	Protect Floodways	Does not apply
<b>RR P4</b> Cal. Code Regs., tit. 23, § 5015.)	Floodplain Protection	Does not apply
<b>G P1(c)</b> (Cal. Code Regs., tit. 23, § 5002, subd. (c).)	Conservation Measures	Does not apply
<b>G P1(b)(2)</b> (Cal. Code Regs., tit. 23, § 5002, subd. (b)(2).)	Mitigation Measures	Applicable and consistent
<b>G P1(b)(3)</b> (Cal. Code Regs., tit. 23, § 5002, subd. (b)(3).)	Best Available Science	Applicable and consistent
<b>G P1(b)(4)</b> Cal. Code Regs., tit. 23, § 5002, subd. (b)(4).)	Adaptive Management	Applicable and consistent
<b>WR P1</b>	Reduce Reliance on the	Applicable and

<sup>6</sup> The Department identified Policy "G P1(b)(1)" as applicable and consistent, however that policy provides an exception to the requirement that covered actions be consistent with all applicable Delta Plan regulatory policies. (Cal. Code Regs., tit. 23, § 5002, subd. (b)(1).) The exception is not applicable here, as the Department has not made an express finding that consistency with a specific Delta Plan regulatory policy is not feasible. (Ibid.)

(Cal. Code Regs., tit. 23, § 5003.)	Delta through Improved Regional Water Self-Reliance	consistent
<b>WR P2</b> (Cal. Code Regs., tit. 23, § 5004.)	Transparency in Water Contracting	Applicable and consistent
<b>ER PA</b> (Cal. Code Regs., tit. 23, § 5005.1.)	Disclose Contributions to Restoring Ecosystem Function and Providing Social Benefits	Applicable and consistent
<b>ER P1</b> (Cal. Code Regs., tit. 23, § 5005.)	Delta Flow Objectives	Applicable and consistent
<b>ER P2</b> (Cal. Code Regs., tit. 23, § 5006.)	Restore Habitats at Appropriate Elevations	Applicable and consistent
<b>ER P3</b> (Cal. Code Regs., tit. 23, § 5007.)	Protect Opportunities to Restore Habitat	Applicable and consistent
<b>ER P4</b> (Cal. Code Regs., tit. 23, § 5008.)	Expand Floodplains and Riparian Habitats in Levee Projects	Applicable and consistent
<b>ER P5</b> (Cal. Code Regs., tit. 23, § 5009.)	Avoid Introductions of and Habitat Improvements for Invasive Nonnative Species	Applicable and consistent
<b>DP P2</b> (Cal. Code Regs., tit. 23, § 5011.)	Respect Local Use When Siting Water or Flood Facilities or Restoring Habitats	Applicable and consistent

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**C. APPEAL PROCESS**

**1. Appeals**

Any person that 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 a government-sponsored flood control program, may file an appeal with the Council challenging a certification of consistency. (Wat. Code, § 85225.10, subd. (a).) The appeal must be filed no later than 30 days after the submission of the certification of consistency. (Wat. Code, § 85225.15.)

Ten separate appeals of the Certification were timely filed on November 17, 2025, by the following parties<sup>7</sup>:

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<b>Appeal No.</b>	<b>Appellant(s)</b>	<b>Short Reference</b>	<b>Policies Appealed</b>
C20257-A1	Delta Protection Commission <sup>8</sup>	Commission	G P1(b)(2), G P1(b)(3), DP P2
C20257-A2	Courtland Pear Fair	Pear Fair	DP P1, DP P2
C20257-A3	County of Sacramento, Sacramento County Water Agency	County of Sacramento	G P1(b)(1), G P1(b)(2), G P1(b)(3), WR P1, ER P1, DP P2
C20257-A4	Steamboat Resort	Steamboat Resort	ER P1, DP P1, DP P2
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, Sierra Club California, Little Manila Rising	SF Baykeeper	G P1(b)(1), G P1(b)(3), WR P1, ER P1, ER P2, ER P3, ER P4, ER P5, DP P2
C20257-A6	Sacramento Area Sewer District	Sac Sewer	G P1(b)(1), G P1(b)(2), G P1(b)(3), WR P1, ER P1, DP P2
C20257-A7	City of Stockton	City of Stockton	G P1(b)(1), G P1(b)(2), G P1(b)(3), WR P1, ER P1, DP P2

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<sup>8</sup> The Council’s regulations allow the Delta Protection Commission to appear as a non-party to provide comments on issues raised by party-appellants as an agency with expertise on matters that may affect the unique cultural, recreational, and agricultural values of the Delta. (Cal. Code Regs., tit. 23, § 5028.) Here, the Commission filed an appeal and is a party-appellant. It was not the intent of the Council to provide the Commission an additional role as a non-party expert agency when the Commission is also a party to the appeals. The Commission may either proceed as an appellant or comment as a non-party agency under section 5028, but not both.

C20257-A8	South Delta Water Agency	SDWA	G P1(b)(1), G P1(b)(2), G P1(b)(3), ER P1, DP P2
C20257-A9	San Joaquin County, Solano County, Yolo County, Central Delta Water Agency, Local Agencies of the North Delta	San Joaquin County	G P1(b)(1), G P1(b)(2), G P1(b)(3), G P1(b)(4), WR P1, ER P1, ER P5, DP P2
C20257-A10	DCC Engineering Co., Inc.	DCC Engineering	DP P2, RR P1, RR P3

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 2 The Council consolidated the appeals pursuant to California Code of  
 3 Regulations, title 23, section 5031. (Notice of Appeals of Certification of Consistency,  
 4 November 18, 2025, p.3.) A Notice of Hearing and Schedule of Written Submissions  
 5 was subsequently issued on November 24, 2025.<sup>9</sup> Appellants filed written submissions  
 6 in support of their appeals on January 2, 2026. The Department filed its written  
 7 submission in response to the appeals on February 9, 2026. The Council held a two-day  
 8 hearing on February 26-27, 2026. The Appellants and the Department attended the  
 9 hearing as required, and the Council took up the matter for consideration.

10 **2. Administrative Record**

11 The Council’s appellate review is limited to the record before the state or local  
 12 public agency that filed the certification. (Wat. Code § 85225.25.) The record before the  
 13 agency is composed of all the documents that the agency relied on or considered in  
 14 making its determination, including public comments received concerning the  
 15 certification or the proposed action’s consistency with Delta Plan regulatory policies. No  
 16 later than five calendar days after the Council posts notice of the appeals received, the  
 17 certifying agency is required to submit to the Council the record that was before the  
 18 agency at the time it made its certification and certify the record as “full and complete.”  
 19 (Cal. Code Regs., tit. 23, § 5022, subd. (e)(1).)

20 The Department certified the administrative record for the Covered Action on  
 21 November 24, 2025. The Council or its executive officer may supplement the record if  
 22 the Council or its executive officer determines that additional information was part of the  
 23 record before the Department but was not included in the record submitted to the  
 24 Council. (Cal. Code Regs, tit. 23, § 5026.) The Council may also take official notice of  
 25 any generally accepted technical or scientific matter within the Council’s jurisdiction, and  
 26 of any fact that may be judicially noticed by the courts of this State. (Cal. Code Regs.,

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<sup>9</sup> Appellants jointly requested an extension of time for the hearing deadlines. (See Letter re: Request for Stipulation to Extend Hearing Deadlines Pursuant to Cal. Code Regs., tit. 23, § 5030, subd. (b)(1).) The Department did not object. Presiding Officer Julie Lee granted Appellants’ request and extended the hearing date and the deadlines for written submissions.

1 tit. 23, § 5032.) The parties may request that the Council supplement the record with  
2 additional documentation or information that was part of the record before the certifying  
3 agency but was not included in the certifying agency’s submission to the Council. (Cal.  
4 Code Regs., tit. 23, § 5026.)

5 The Appellants requested that additional documents be added to the record  
6 because those documents are either: (a) part of the record before the Department but  
7 were not included in the Department’s submission to the Council o, (b) generally  
8 accepted technical or scientific matters within the Council’s jurisdiction and/or facts that  
9 may be judicially noticed by a court. The Council’s rulings on Appellants’ requests are  
10 set forth in Exhibit A attached hereto.

### 11 **3. Council’s Review of Appeals**

12 The Council does not approve or reject certifications of consistency. “Instead,  
13 State or local agencies self-certify Delta Plan consistency, and the Council serves as an  
14 appellate body for those determinations.” (*Delta Stewardship Council Cases, supra*, 48  
15 Cal.App.5th 1014, 1042.) The Delta Plan’s regulatory policies are enforced through “the  
16 Council’s appellate authority and oversight over covered actions.” (*Ibid.*) The Council  
17 denies appeals or remands to the certifying agency for reconsideration. (Wat. Code, §  
18 85225.25.)

19 The Delta Reform Act provides that the appropriate standard of review on appeal  
20 is whether the certification of consistency is supported by substantial evidence<sup>10</sup> in the  
21 record. (Wat. Code, § 85225.25.) Under the substantial evidence standard, the agency’s  
22 findings are presumed to be supported by the administrative record, and it is the  
23 Appellant’s burden to show that they are not. (*Poncio v. Dept. of Resources Recycling &*  
24 *Recovery* (2019) 34 Cal.App.5th 663, 669.) “[I]n light of the record as a whole, it is [the]  
25 Appellant’s burden to demonstrate that the administrative record does not contain  
26 sufficient evidence to support the agency’s decision.” (*State Water Resources Control*  
27 *Bd. Cases* (2006) 136 Cal.App.4th 674, 749.) To do so, the Appellant must address all  
28 the material evidence, not merely evidence supporting its position. (*Delta Stewardship*  
29 *Council Cases, supra*, 48 Cal.App.5th 1014, 1072.) The failure to discuss the record  
30 that supports the agency’s decision forfeits the substantial evidence argument. (*Ibid.*)

31 The Council resolves conflicts in the evidence in the favor of the certifying  
32 agency and makes “all legitimate and reasonable inferences... to support the agency’s  
33 decision.” (*Nassiri v. City of Lafayette* (2024) 103 Cal.App.5th 910, 921.) If substantial  
34 evidence supports the certifying agency’s findings, the Council upholds the  
35 determination, even if other evidence arguably supports a different conclusion. (*Ibid.*)  
36 The Council will uphold an appeal where based on the evidence before it, a reasonable  
37 person could not have reached the certifying agency’s conclusion. (*McAllister v.*  
38 *California Coastal Com.* (2008) 169 Cal.App.4th 912, 921.)

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<sup>10</sup> 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.)

**D. CONSISTENCY ANALYSIS AND DETAILED FINDINGS**

Appellants substantively challenged the Department’s findings of applicability and/or consistency on 10 Delta Plan policies, one of which (G P1 (Cal. Code Regs., tit. 23, § 5002.)), has four subsections.<sup>11</sup> This section presents the Council’s analysis of issues raised on appeal under each challenged Delta Plan regulatory policy and the resulting findings.<sup>12</sup>

**1. Policy G P1(b)(1) (Cal. Code Regs., tit. 23, § 5002 subd. (b)(1)) Detailed Findings to Establish Consistency with the Delta Plan: Coequal Goals**

The Department states that the DCP is consistent with G P1(b)(1) (Cal. Code Regs., tit. 23, § 5002 subd. (b)(1).) ([DCP.AA1.2.00001](#), p. 189). Appellants County of Sacramento, ([Appeal](#), pp. 4, 9), SF Baykeeper, ([Appeal](#), pp. 1-3, 22, 23-25), Sac Sewer, ([Appeal](#), pp. 4, 9), City of Stockton ([Appeal](#), pp. 4,8), SDWA, ([Appeal](#), p. 21), and San Joaquin County, ([Appeal](#), G P1(b)(1) section, pp. 1-5) argue that it is not. For the reasons discussed below, the Council finds that the exception to consistency with a Delta Plan policy is not applicable because the Certification does not: 1) identify any regulatory policy with which the DCP would be inconsistent; or 2) explain why consistency is not feasible, as is required for the policy to apply. Accordingly, the Council finds that the G P1(b)(1) exception does not apply to the DCP. Therefore, the Council **denies the appeals** as follows:

<b>G P1(b)(1) Appeal Issue</b>	<b>Appellants</b>	<b>Decision</b>
Covered action nevertheless not consistent with coequal goals	County of Sacramento, SF Baykeeper, Sac Sewer, City of Stockton, SDWA, San Joaquin County	Denied

**a. Policy Requirements**

G P1, subsection (b)(1), requires that a covered action be consistent with each applicable Delta Plan policy. (Cal. Code Regs., tit. 23, § 5002, subd.(b)(1).) The G P1(b)(1) requirement for consistency with each applicable Delta Plan policy is analyzed on a policy-by-policy basis in the relevant sections below (e.g. WR P1 consistency is analyzed in the WR P1 section).

In addition, subsection (b)(1) recognizes an exception to the consistency requirement in cases where, “based upon the nature of the covered action, full

<sup>11</sup> For clarity of analysis in this Decision, the Council treats the challenges under the four G P1 subdivisions as individual Delta Plan policy challenges (i.e., as if a total of 14, rather than 10, Delta Plan policies are implicated).

<sup>12</sup> Acronyms used throughout this Decision are listed in Exhibit B attached hereto.

1 consistency with all relevant regulatory policies may not be feasible.” In those cases,  
2 “the agency that files the certification of consistency may nevertheless determine that  
3 the covered action is consistent with the Delta Plan because on whole, that action is  
4 consistent with the coequal goals. *That determination must include a clear identification*  
5 *of areas where consistency with relevant regulatory policies is not feasible, an*  
6 *explanation of the reasons why it is not feasible,*<sup>13</sup> *and an explanation of how the*  
7 *covered action nevertheless, on whole, is consistent with the coequal goals.”* (Cal. Code  
8 Regs., tit. 23, § 5002, subd. (b)(1)., emphasis added) This overriding consideration  
9 provision is analyzed in this section.

10 The Department claims that the DCP is consistent with G P1(b)(1). In the first  
11 instance, the Department has determined that the Covered Action is consistent with  
12 every applicable Delta Plan policy ([DCP.AA1.2.00001](#), p. 189). The Certification further  
13 contains findings describing why the Department believes that the DCP, on whole, is  
14 consistent with the coequal goals. (Id. at pp. 189-199.) The Certification states, in  
15 relevant part:

16 [the Department] believes that the approach and substantial  
17 evidence supporting this Certification demonstrate that the covered  
18 action is consistent with all applicable Delta Plan policies. However,  
19 if it is determined by the DSC that substantial evidence does not  
20 support [the Department’s] detailed findings for one or more  
21 policies, [the Department] has also determined, based on  
22 substantial evidence as discussed above, that the [DCP] is  
23 consistent with the Delta Plan pursuant to California Code of  
24 Regulations, title 23, section 5002, subdivision (b)(1).

25 ([DCP.AA1.2.00001](#), p. 199). The Department therefore presents consistency with G  
26 P1(b)(1) as a contingency argument; in the event the Council determines that the DCP  
27 is inconsistent with one or more Delta Plan policies. However, for the overriding  
28 consideration to apply the certifying agency must have complied with the requirements  
29 of G P1(b)(1). Here, the Certification does not identify one or more regulatory policies  
30 that the DCP would be inconsistent with, nor describe why consistency is not feasible  
31 ([DCP.AA1.2.00002](#), p. 60). Accordingly, the Department failed to avail itself of the G  
32 P1(b)(1) Delta Plan policy consistency overriding consideration for any Delta Plan  
33 policy.

34 **b. Appeals and Analysis**

35 Appellants County of Sacramento, SF Baykeeper, Sac Sewer, City of Stockton,  
36 SDWA, and San Joaquin County argue that the Department's findings under G P1(b)(1)  
37 concerning how compliance with Delta Plan regulatory policies advances the coequal  
38 goals are speculative and unsupported, and that the findings downplay recreational  
39 losses and environmental justice issues ([County of Sacramento, Appeal](#), pp. 4-8; [SF](#)

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<sup>13</sup> The Delta Plan defines “feasible” to mean “capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social, and technological factors.” (Cal. Code Reg., tit. 23, § 5001, subd. (p).)

1 [Baykeeper, Appeal](#), p. 22; [Sac Sewer, Appeal](#), pp. 4-7; [City of Stockton, Appeal](#), pp. 4-  
 2 8; [San Joaquin County, Appeal](#), pp. 1-5; [Combined, Writ. Sub.](#), p. 49, 52; [San Joaquin](#)  
 3 [County, Writ. Sub.](#), pp. 14-15). Appellants question the Department’s reliance on willing  
 4 sellers and eminent domain to meet their commitments, criticizing the proposed CBP’s  
 5 lack of demonstrable benefits ([SF Baykeeper, Appeal](#), p. 24; [SF Baykeeper, Writ. Sub.](#),  
 6 pp. 10-11). Appellants further assert that the Department ignores the Delta as a Tribal  
 7 Cultural Landscape, and that claimed water supply benefits are based on unreviewed  
 8 documents, unsupported modeling, and overly optimistic projections ([Sac Sewer,](#)  
 9 [Appeal](#), pp. 5-7; [County of Sacramento, Appeal](#), pp. 6-7; [City of Stockton, Appeal](#), pp. 4-  
 10 5; [SF Baykeeper, Writ. Sub.](#), p. 20).

11 In effect, the Appellants contend that the DCP is not consistent with the coequal  
 12 goals. However, G P1(b)(1) does not establish a distinct coequal goals consistency  
 13 requirement that can be challenged by appellants. Rather, an appellant may contest a  
 14 certification’s finding that the G P1(b)(1) exception applies to excuse consistency with a  
 15 specific Delta Plan policy. Whereas here, the G P1(b)(1) exception has not been  
 16 established, there is no appealable issue as to overall consistency with the coequal  
 17 goals.

18 **c. G P1(b)(1) Conclusion**

19 For the reasons outlined above, the Council finds that the Department failed to  
 20 properly establish the G P1(b)(1) exception and therefore finds that G P1(b)(1) does not  
 21 apply. As a result, the Council **denies the appeals** of County of Sacramento, SF  
 22 Baykeeper, Sac Sewer, City of Stockton, SDWA, and San Joaquin County.

23 **2. Policy G P1(b)(2) (Cal. Code Regs., tit. 23, § 5002 subd. (b)(2).):**  
 24 **Detailed Findings to Establish Consistency with the Delta Plan:**  
 25 **Mitigation Measures**

26 The Department certifies that the DCP is consistent with Delta Plan Policy G  
 27 P1(b)(2). Six Appellants (Commission, County of Sacramento, Sac Sewer, City of  
 28 Stockton, SDWA and San Joaquin County) raise substantive arguments that it is not.  
 29 This analysis considers the Appellants’ arguments that specific DCP mitigation  
 30 measures (“MMs”) are applicable but are not equally or more effective than applicable  
 31 MMs adopted and incorporated into the Delta Plan. For the reasons discussed below,  
 32 the Council finds that that the Appellants have failed to meet their burden, and that there  
 33 is substantial evidence to support the Department’s finding that the Covered Action is  
 34 consistent with G P1(b)(2). Therefore, the Council **denies the appeals** as follows:

<b>G P1(b)(2) Appeal Issue</b>	<b>Appellants</b>	<b>Decision</b>
MM 4-1(a)	SDWA	Denied
MM 4-1(e)	San Joaquin County	Denied
MM 4-2	Sac Sewer, County of Sacramento	Denied

MM 6-2	Commission	Denied
MM 7-1	Commission, County of Sacramento	Denied
MM 10-1	Commission	Denied
MM 10-3	Commission	Denied
MM 18-1	County of Sacramento, Commission	Denied
MM 18-2	San Joaquin County	Denied
MM 20-1	City of Stockton	Denied

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**a. Policy Requirements**

G P1(b)(2) states:

“(b) Certifications of consistency must include detailed findings that address each of the following requirements: ....

(2) Covered actions not exempt from CEQA [the California Environmental Quality Act] must include all *applicable* feasible mitigation measures adopted as part of Appendix O and incorporated into the Delta Plan as amended June 23, 2022, which is hereby incorporated by reference... (unless the measure(s) are within the exclusive jurisdiction of an agency other than the agency that files the certification of consistency), or substitute mitigation measures that the agency that files the certification of consistency finds are equally or more effective.” (Emphasis added).

In short, this regulation requires that, for any covered action not exempt from CEQA, the Final EIR must include the applicable MMs adopted as part of Appendix O and incorporated into the Delta Plan as amended June 23, 2022, or substitute MMs that are at least as effective.<sup>14</sup> Because the DCP is not exempt from CEQA, it must comply with this requirement. In its certification of consistency, the Department identifies DCP

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<sup>14</sup> As a threshold matter, G P1(b)(2) uses the term “applicable” to describe the mitigation measures required to be included in a covered action. If a Delta Plan Measure is not factually “applicable” to the specific covered action in question, then G P1(b)(2) does not require it to be included. The Council relies on the EIR for impacts relevant to the G P1(b)(2) analysis. For example, under CEQA, where an environmental analysis concludes that a project has no potential significant impacts, CEQA does not require mitigation measures. (Pub. Res. Code § 21081, subd. (a)(1); Kostka & Zischke, *Practice Under the Cal. Environmental Quality Act* (Cont. Ed. Bar 2018) § 18.3.) Mitigation also is not required if measures are included in the project to reduce significant impacts. (See CEQA Guidelines § 15126.4(a)(1)(A) (Cal. Code Regs., tit. 14, § 15126.4(a)(1)(A)) (distinguishing between mitigation measures and measures proposed to be included in the project).)

1 design features, environmental commitments (“ECs”), and MMs that it states are equally  
2 or more effective than the applicable Delta Plan MMs.<sup>15</sup>

3 **b. Certification**

4 In its Certification, the Department provides a “Mitigation Crosswalk Table”  
5 ([DCP.AA1.2.00020](#)). This table includes each Delta Plan MM that the Department has  
6 deemed applicable, and for each such measure identifies the DCP design features, ECs  
7 and DCP MMs that the Department considers to be equally or more effective and  
8 provides a brief narrative explanation of that finding ([DCP.AA1.2.00020](#)).

9 The Mitigation Crosswalk Table includes material from and references to the  
10 DCP Draft EIR and Final EIR and identifies the substantial evidence the Department  
11 claims supports its G P1(b)(2) finding for each measure ([DCP.AA1.2.00020](#)).

12 **c. Appeals and Analysis**

13 The Council received appeals regarding the Department’s Certification of  
14 Consistency with GP 1(b)(2) from the Commission, County of Sacramento, Sac Sewer,  
15 City of Stockton, SDWA, and San Joaquin County.

16 As discussed in more detail below, Appellants contend both that the Department  
17 failed to include applicable MMs, and that the Department failed to include MMs that are  
18 equally or more effective than applicable Delta Plan measures. The Council does not  
19 opine on the adequacy of mitigation measures under CEQA but considers only whether  
20 the Department’s findings concerning applicable Delta Plan MMs are supported by  
21 substantial evidence in the record. Below, the Council considers each appealed Delta  
22 Plan MM identified in appeals of this policy. MMs are listed in the order they appear in  
23 the Mitigation Crosswalk Table ([DCP.AA1.2.00020](#)).<sup>16</sup>

24 **i. Delta Plan Mitigation Measure 4-1(a)**

25 Appellant SDWA challenges the Certification regarding MM 4-1(a). Delta Plan  
26 MM 4-1(a) requires, in relevant part, that a project “avoid siting project features that  
27 would result in the removal or degradation of sensitive natural communities, including  
28 jurisdictional wetlands and other waters, vernal pools, alkali seasonal wetlands, riparian  
29 habitats, and inland dune scrub.”

30 The Department states in the Certification that the CMP includes measures that  
31 are “the same as, equal to, or more effective than DP MM 4-1 because it would address  
32 impacts on habitat for special-status plant and wildlife species (including fish) as well as

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<sup>15</sup> The Council does not adjudicate the adequacy of a mitigation measure included in an EIR under CEQA. To the extent there may be disagreement as to the validity of a finding in the EIR, that is outside the Council's jurisdiction and should be addressed through the CEQA process or the courts.

<sup>16</sup> Many Delta Plan mitigation measures include multiple components and lengthy text. For each Delta Plan mitigation measure considered here, the Council has paraphrased select, relevant components to concisely frame the discussion. Please see Delta Plan Appendix O for the full text of each Delta Plan mitigation measure ([DCP.AA2.1.00097](#)).

1 natural communities (including wetlands and other waters or “aquatic resources”) that  
2 may result from the construction and operation of the project” ([DCP.AA1.2.00020](#), p. 8).

3 SDWA argues that the Department did not demonstrate in the record that a good  
4 faith attempt was made to site the DCP in a location that was not within jurisdictional  
5 wetlands in the Delta, and that the Department “rejected the recommendations of its  
6 own Internal Technical Review Panel to site the tunnel farther to the East and ignored  
7 their evaluation of the stakeholder/community concerns.” ([SDWA, Appeal](#), p. 32).

8 SDWA states that key wetland areas used by Pacific Flyway waterfowl are  
9 located where the tunnel and shafts are planned, claiming that the DCP will not only  
10 displace surface areas for construction, utilities, access, and RTM disposal, but also  
11 cause significant disturbance and degradation of habitat and hunting values due to  
12 ongoing activities and construction access ([SDWA, Appeal](#), pp. 31-32). In the  
13 Certification’s MM crosswalk table, the Department asserts that the Compensatory  
14 Mitigation Plan (CMP)([DCP.D1.1.00017](#)) is “the same as, equal to, or more effective  
15 than DP MM 4-1 because it would address impacts on habitat for special-status plant  
16 and wildlife species (including fish) as well as natural communities (including wetlands  
17 and other waters or “aquatic resources”) that may result from the construction and  
18 operation of the project”. In the CMP, the Department states that, “the EIR describes  
19 measures to *avoid*, minimize, or mitigate impacts on sensitive resources, including  
20 aquatic resources and special-status species habitat. This includes *siting facilities* under  
21 each alternative to *avoid sensitive resources such as wetlands and suitable habitat* to  
22 the greatest extent feasible” ([DCP.D1.1.00017](#), p. 7, emphasis added).

23 SDWA also contends that the Department did not adopt the Internal Technical  
24 Review Panel's recommendation to situate the tunnel further east and did not address  
25 their assessment of stakeholder and community concerns ([SDWA, Appeal](#), p. 32). In  
26 response to the memo from the Internal Technical Review Panel, the Delta Conveyance  
27 Design and Construction Authority (“DCA”) addressed each recommendation in detail  
28 ([DCP.D3.2.00861](#), Attachment 2, pp. 32-34). Ultimately, the DCA did not concur with  
29 the panel’s comments, particularly those regarding relocating the DCP corridor to the  
30 east.

31 The record establishes that the Department took measures to avoid, minimize, or  
32 mitigate impacts on sensitive resources, including aquatic resources and special-status  
33 species habitat ([DCP.AA1.2.00020](#), p. 8-11). This includes siting facilities to avoid  
34 sensitive resources such as wetlands and suitable habitat where feasible  
35 ([DCP.D1.1.00017](#), p. 8). As a result, the Council finds that SDWA failed to meet its  
36 burden, and that there is substantial evidence in the record to support the Department’s  
37 finding that the DCP is consistent with G P1(b)(2) regarding MM 4-1(a), and the Council  
38 **denies the appeal.**

39 **ii. Delta Plan Mitigation Measure 4-1(e)**

40 San Joaquin County claims there are no equal or more effective MMs included in  
41 the Department’s G P1(b)(2) mitigation crosswalk table or elsewhere in the Certification  
42 that addresses the golden mussel ([San Joaquin County, Appeal](#), p. 3). Delta Plan MM

1 4-1(e) requires any project whose construction or operation could lead to introduction or  
2 facilitation of invasive species establishment to develop and implement an invasive  
3 species management plan, including several prescribed components. The management  
4 plan should be based on best available science, should be developed in consultation  
5 with CDFW and local experts, and should include all the following: eradication methods  
6 (if feasible); management and early detection methods; notification requirements; best  
7 management practices for preconstruction and post-construction periods; and  
8 monitoring, remedial actions, and reporting requirements. Appellant asserts that the  
9 Department did not meet Delta Plan MM 4-1(e) standards in two respects: (1) it did not  
10 apply best available science to an invasive species management plan for golden  
11 mussel, and (2) it failed to include MMs for golden mussel proliferation that could result  
12 from the DCP ([San Joaquin County Appeal](#), p.5, [San Joaquin County, Writ., Sub.](#), p.12,  
13 [DCP.V1.1.00019](#)).

14 A key preliminary matter to consider concerning the timing and specificity  
15 mandated by MM 4-1(e) is whether the Department possessed sufficient information to  
16 incorporate the golden mussel into its MMs at the time it certified the Final EIR. G  
17 P(1)(b)(2) states that all applicable feasible mitigation measures a certifying agency  
18 adopts must be equal or better than the mitigation measures in Delta Plan Appendix O  
19 (Cal. Code sect. 5002(b)(2).) This means that if a project finds a less than significant  
20 impact under CEQA, and no mitigation measure is required, G P(1)(b)(2) does not  
21 require a MM to be included in the Certification.

22 Since the Department certified the Final EIR for the DCP in December 2023  
23 ([DCP.D1.1.00001](#); [DCP.D1.1.00002](#)) and the nonnative invasive golden mussel was  
24 first discovered in the Delta in October 2024 ([DCP.AA2.1.00072](#), p. 4;  
25 [DCP.AA2.1.00069](#)) the Department would have no knowledge of the need for a  
26 mitigation measure for the golden mussel at the time, and therefore no MM is presented  
27 for the golden mussel.

28 In its written submittal, San Joaquin County notes that MM 4-1(e) states that it  
29 applies to any covered action that would cause “facilitation of invasive species  
30 establishment”. Appellant goes on to say the two intakes facing the river would create  
31 approximately 10,000 square feet of new hard substrate ideal for colonization by golden  
32 mussel and the sedimentation basins would create approximately one million square  
33 feet of new substrate for mussel colonization. The tunnel itself would then create  
34 another 8.5 million square feet of hard substrate for mussel colonization  
35 ([DCP.D1.1.00010](#), p. 3-15, [DCP.D1.1.00026](#) p.2-3).

36 In its written submission, the Department affirms its commitment to managing  
37 invasive species using the best available science, especially regarding the golden  
38 mussel. The Department outlines its monitoring and data collection activities, as well as  
39 its prevention, containment, population suppression, and eradication strategies for  
40 zebra and quagga mussels as proof of their commitment to controlling invasive  
41 mollusks. The Department notes its active participation in various multiagency and  
42 statewide initiatives focused on treating invasive nonnative species as new threats  
43 arise—such as the Golden Mussel Task Force mentioned in the State- and Department-  
44 Wide Invasive Species Programs section of the Certification ([Department, Writ. Sub.](#),

1 pp. 136, 163–165; [DCP.AA1.2.00001](#), pp. 159–160). The Department also states that  
2 once the DCP is constructed, it will become part of the SWP and as such must  
3 comply with all applicable programs, plans, and other commitments related to managing  
4 the potential for new introductions of or improved habitat conditions for nonnative  
5 invasive species ([DCP.AA1.2.00001](#), pp. 159–163).

6 While the Department and Appellant provide multiple substantive arguments  
7 regarding compliance with MM 4-1(e), the DCP Final EIR was certified and the DCP  
8 was approved by the Department in December 2023. The golden mussel was first  
9 observed in the Delta in October 2024. As referenced above, the Council relies on the  
10 Final EIR for impacts and applicable mitigation measures for G P1(b)(2) purposes. For  
11 this reason, the Council finds that MM 4-1(e) was not applicable to the DCP regarding  
12 the golden mussel at the time the Department’s mitigation requirements were  
13 established, and therefore, the Council **denies the appeal** under GP 1(b)(2) as to  
14 issues related to mitigation measures concerning the golden mussel.<sup>17</sup> The mitigation  
15 measure requirement of G P1(b)(2) is distinct from the requirements of ER P5. ER P5 is  
16 not limited to the Final EIR.

17 **iii. Delta Plan Mitigation Measure 4-2**

18 Delta Plan MM 4-2 requires, in relevant part, that a covered action should “select  
19 project site(s) that would avoid habitats of special-status species (which may include  
20 foraging, sheltering, migration and rearing habitat in addition to breeding or spawning  
21 habitat), and to the maximum extent practicable, (re)design project elements to avoid  
22 effects on such species” and “when appropriate, relocate special-status plant and  
23 animal species or their habitats from project sites following [state and federal agency]  
24 protocols (e.g., for special-status plant species or elderberry shrubs).”

25 Appellants Sac Sewer and County of Sacramento appeal the Certification and  
26 claim that the Department was required to but has not included Delta Plan MM 4-2(a) or  
27 and MM 4-2(f) (a) or and MM 4-2(f) (a) and MM 4-2(f) or any substitute measure  
28 because MM 4-2(a) and MM 4-2(f) required the Department to select project sites that  
29 avoid sensitive natural communities and habitat, that the DCP will impact Greater and  
30 Lesser Sandhill Crane habitats, and that the DCP will impact Crotch’s bumble bee  
31 habitat.

32 **(a) Special-status species habitat avoidance**

33 Sac Sewer and County of Sacramento argue the Department has not  
34 demonstrated that the DCP included Delta Plan MM 4-2(a) and MM 4-2(f) or any  
35 substitute measure to select project sites that *avoid* sensitive natural communities and  
36 habitat ([Sac Sewer, Appeal](#), p. 9; [County of Sacramento, Appeal](#), p. 11). Specifically,  
37 Appellants argue that MM 4-2(a) and 4-2(f) do not require project proponents to  
38 *ameliorate* impacts to sensitive communities and habitat, but rather that it expressly

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<sup>17</sup> Should the Department complete future CEQA analyses on the DCP that lead to revised certifications of consistency with the Delta Plan, it is the Council’s expectation that such certifications would provide evidence of a management plan for golden mussel.

1 requires proponents to site projects in the first instance to *avoid* these resources ([Sac](#)  
2 [Sewer, Appeal](#), p. 9; Sac County Appeal, p. 11). Appellants claim that because the  
3 Department did not select sites for DPC facilities specifically to avoid sensitive habitat,  
4 the Council cannot find that the DCP incorporates Delta Plan MM 4-2(a) and 4-2(f) or  
5 their equivalent ([Sac Sewer, Appeal](#), p. 10; [County of Sacramento, Appeal](#), p. 12).  
6 Appellants argue that had the intent of MM 4-2(a) and 4-2(f) been to require mitigation  
7 that lessens or avoids certain impacts to sensitive habitat instead of initially siting  
8 projects to avoid impacts, these measures would not both have included specific  
9 language requiring agencies to “select project site(s) that would avoid habitats of  
10 special-status plant species.” ([Sac Sewer, Appeal](#), p. 10; [County of Sacramento,](#)  
11 [Appeal](#), pp. 11-12).

12 However, Appellants do not consider MM 4-2(e), which states “where impacts to  
13 special-status species are unavoidable, compensate for impacts by restoring or  
14 preserving in-kind suitable habitat on-site, or off-site, or by purchasing restoration or  
15 preservation credits (in compliance with the California Endangered Species Act and  
16 federal Endangered Species Act for affected State- or federally-listed species from a  
17 mitigation bank that serves the project site and that is approved by the appropriate  
18 agencies, in consultation with the appropriate regulatory agencies (at ratios that offset  
19 the temporary loss of habitat value).” ([DCP.AA2.1.00097](#)). MM 4-2(e) thereby  
20 addresses requirements for situations where impacts to such species are unavoidable.  
21 Considering this provision, the concern raised by the Appellant does not constitute an  
22 appealable issue under G P1(b)(2) related to Sandhill Crane habitat avoidance.

23 **(i) Sandhill Crane habitat avoidance**

24 Appellants Sac Sewer and County of Sacramento claim that the DCP would  
25 destroy habitat for Greater and Lesser Sandhill Crane, particularly at the (TCC). They  
26 argue that the TCC siting is inconsistent with MM 4-2(a), which requires project siting to  
27 *avoid* habitats of special-status species ([Sac Sewer, Appeal](#), p. 10; [County of](#)  
28 [Sacramento, Appeal](#), p. 11). MM 4-2(a) requires the selection of “project site(s) that  
29 would avoid habitats of special-status species (which may include foraging, sheltering,  
30 migration, and rearing habitat in addition to breeding or spawning habitat), and to the  
31 maximum extent practicable, (re)design project elements to avoid effects on such  
32 species.”

33 The Department’s Certification includes a “Compensatory Mitigation Plan  
34 Adaptive Management Plan” which presents measures CMP-18a “Sandhill Crane  
35 Roosting Habitat” and CMP-18b “Sandhill Crane Foraging Habitat ([DCP.AA1.2.00023](#),  
36 pp. 65-66).” Here, the Department outlines how it will offset the loss of Sandhill Crane  
37 roosting habitat by creating suitable roosting habitat within suitable Greater Sandhill  
38 Crane winter use area, and how it will offset the loss of Sandhill Crane foraging habitat  
39 by protecting suitable foraging habitat within 2 miles of new protected roosting sites  
40 ([DCP.AA1.2.00023](#), pp. 65-66). Additionally, the Department states:

41 “The project’s [MMs] BIO-2a and BIO-2b would avoid and minimize  
42 potential impacts on special status species by avoiding sensitive natural  
43 communities where such species may occur. [MM] BIO-2c is the same as, equal

1 to, or more effective than the DP MM 4-2 strategy to select project site(s) that  
2 would avoid habitats of special-status species. MM BIO-2c would require that  
3 [the Department] will coordinate with electric utilities to design and construct  
4 power transmission and distribution lines and the locations of necessary  
5 appurtenances such as supports and substations to avoid sensitive terrestrial  
6 and aquatic habitats to the maximum extent feasible. In cases where sensitive  
7 habitat cannot be feasibly avoided, disturbance will be minimized to the greatest  
8 degree feasible, and disturbed areas will be returned as near as reasonably and  
9 practically feasible to preconstruction conditions by reestablishing surface  
10 conditions through carefully grading and reconstructing features”  
11 ([DCP.AA1.2.00020](#), p. 12).

12 The CMP further documents how the Department conducted analyses to assess  
13 impacts on Sandhill Crane and then proposed [MMs] to compensate for those impacts  
14 at the I-5 Ponds near SLNWR and Woodbridge to “extend connectivity between  
15 occupied sites” ([DCP.D1.1.00017](#), p. 17).

16 To support their claim, Appellants cite to water rights hearing expert testimony  
17 that supports the argument that the DCP would destroy Sandhill Crane habitat  
18 ([DCP.V2.17.00005](#), [Sac Sewer, Appeal](#), p. 9, [County of Sacramento, Appeal](#), p. 11).  
19 Sac Sewer also points to the ECs and MMs in the Department’s mitigation crosswalk  
20 table ([DCP.AA1.2.00020](#), pp. 11-12), arguing that the Department’s efforts to “reduce,  
21 avoid, or minimize construction and operation impacts on special-status species” and  
22 natural communities is inconsistent MM 4-2(a), which it claims requires agencies to site  
23 projects to avoid these resources entirely ([DCP.AA1.2.00020](#), pp. 11-12). In their  
24 combined written submittal, Appellants argue that the Department’s identified MMs are  
25 inadequate and that there is evidence in the record to support this claim ([Combined,](#)  
26 [Writ. Sub.](#), p. 11). They state the Department’s MM BIO-2a, MM BIO-2b, and MM BIO-  
27 2c are inadequate because the siting of the DCP, in particular the TCC, would result in  
28 damage to Greater Sandhill Cranes (Sandhill Cranes) because their habitat isn’t  
29 avoided ([Combined, Writ. Sub.](#), pp. 11-12).

30 As stated previously, Appellants assert that the DCP does not include mitigation  
31 equivalent to Delta Plan MM 4-2(a), on the grounds that the TCC was not sited to avoid  
32 special-status species, specifically Lesser and Greater Sandhill Cranes. However, MM  
33 4-2(e) provides requirements to be undertaken in situations where impacts to such  
34 species are unavoidable. Considering this provision, the concern raised by the  
35 Appellant does not constitute an appealable issue under G P1(b)(2) related to Sandhill  
36 Crane habitat avoidance.

37 **(ii) Crotch’s bumble bee habitat avoidance**

38 County of Sacramento claims that the DCP would destroy habitat for Crotch’s  
39 bumble bee, particularly at the site of the proposed TCC ([County of Sacramento,](#)  
40 [Appeal](#), p. 12). Appellant argues that the TCC siting is inconsistent with MM 4-2(a) and  
41 MM 4-2(f), which require project siting to avoid habitats of special-status species, such  
42 as the Crotch’s bumble bee ([County of Sacramento, Appeal](#), p. 11).

1 The Department’s Certification includes a “Compensatory Mitigation Plan  
2 Adaptive Management Plan” which presents measure CMP-29 “Crotch’s Bumble Bee  
3 Habitat.” Here, the Department outlines how it will “offset the loss of Crotch’s bumble  
4 bee habitat through the creation or enhancement of suitable habitat, land preservation  
5 through site protection instruments, the purchase of credits through a (Department of  
6 Fish and Wildlife) [“CDFW”]-approved mitigation bank, or the creation of a non-bank site  
7 approved by CDFW” ([DCP.AA1.2.00023](#), p. 78). Final EIR Appendix 3F, “Compensatory  
8 Mitigation Plan for Special-Status Species and Aquatic Resources,” includes mitigation  
9 sites for Crotch’s bumble bee with a 1:1 ratio at Bouldin Island and the I-5 Ponds  
10 ([DCP.D1.1.00017](#), p. 4), and covers the use of Mitigation Credits and Site Protection  
11 Instruments.

12 County of Sacramento asserts that the DCP does not include mitigation  
13 equivalent to Delta Plan MM 4-2(a), on the grounds that the TCC was not sited to avoid  
14 special-status species, specifically Crotch’s bumble bee. However, as stated above, MM  
15 4-2(e) provides requirements to be undertaken in situations where impacts to such  
16 species are unavoidable. Considering this provision, the concern raised by the  
17 Appellant does not constitute an appealable issue under G P1(b)(2) related to Crotch’s  
18 bumble bee habitat avoidance.

19 **(b) Mitigation Measure 4-2 Conclusion**

20 Appellants Sac Sewer and County of Sacramento argue that MM 4-2(a) and 4-  
21 2(f) require the siting of the DCP, and in particular the TCC, to avoid special-status  
22 species habitat, and claim the project is inconsistent with GP1(b)(2). However, they  
23 overlook MM 4-2(e), which addresses mitigation requirements when impacts cannot be  
24 avoided. Therefore, the Council finds that Sac Sewer and County of Sacramento have  
25 failed to meet their burden, and that there is substantial evidence in the record to  
26 support the Department’s finding that the DCP is consistent with G P1(b)(2) for MM 4-2,  
27 and the Council ***denies the appeals***.

28 **iv. Delta Plan Mitigation Measure 6-2**

29 Delta Plan MM 6-2 requires compensation for the loss or reduction in  
30 environmental values due to a conflict with an adopted plan or policy by implementing  
31 the following or equally effective measures: (a) “Recording a deed restriction that  
32 ensures permanent conservation and mitigation on other property of equal or greater  
33 environmental mitigation value; (b) Creating a buffer or barrier between uses; (c)  
34 Redesigning the project or selecting an alternate location that avoids or mitigates the  
35 impact; and/or (d) Restoring disturbed land to conditions to provide equal or greater  
36 environmental value to the land affected by the covered action” ([DCP.AA2.1.00097](#), pp.  
37 56-57).

38 The Commission argues that the Department has not identified “quantifiable and  
39 achievable measures to avoid or mitigate for known and unknown farmland losses  
40 resulting from the DCP that are equal or more effective than” what is described in Delta  
41 Plan MM 6-2 ([Commission, Attachment D](#), p. 4). The Department’s DCP MM AG-1  
42 requires that farmland will be preserved at a 1:1 ratio “to the extent feasible,” but the

1 Commission argues this is vague and lacks necessary implementation detail  
2 ([Commission, Attachment D](#), p. 5). The Commission further argues that although the  
3 Department’s CBP funds could be used to purchase agricultural conservation  
4 easements and other land-based mitigation, this amount is insufficient, and this is only  
5 possible with community-driven support ([Commission, Attachment D](#), p. 5).

6 In the Certification’s mitigation crosswalk table, the Department identifies project  
7 design features, the CMP, and DCP MM AG-1 and MM BIO-45a as equivalent to Delta  
8 Plan MM 6-2 ([DCP.AA1.2.00020](#), p. 24). DCP MM AG-1 would “mitigate the loss of  
9 permanently converted Important Farmland at an acreage ratio of at least 1:1”  
10 ([DCP.AA1.2.00020](#), p. 25). MM AG-1 states “[t]o the extent feasible, any rights to land  
11 acquired for the purpose of mitigation of agricultural land conversion will be of equal or  
12 better farmland quality than the land that was permanently converted”  
13 ([DCP.D1.1.00133](#), p. 39). The 1:1 acreage ratio will be achieved through “a combination  
14 of acquisition and dedication of agricultural land, acquisition of development rights or  
15 conservation easements to permanently protect agricultural land, or payment of in-lieu  
16 fees to fully fund the acquisition and maintenance of such real property interests by a  
17 third party” ([DCP.AA1.2.00020](#), p. 25).

18 Delta Plan MM 6-2 pertains to the loss of environmental values resulting from  
19 conflicts with adopted land use plans, or policies. The record contains substantial  
20 evidence supporting the Department’s conclusion that the DCP’s design features and  
21 proposed agricultural mitigation measures are consistent with, equivalent to, or more  
22 effective than the mitigation requirements outlined in Delta Plan MM 6-2. The  
23 Department additionally analyzed the measures of 6-2 under AG-1([DCP.AA1.2.00020](#),  
24 pp., 7-11, 24-25). The Commission argues that AG-1 is not equivalent to the Council’s  
25 Appendix O MM 7-1 and MM 6-2, but is too generic to determine any implementation  
26 detail such as whether easements would be acquired within Delta counties, whether  
27 sufficient comparable farmland is available or achievable and how they would be paid  
28 for. The Commission further states, that it is not specified how these protections will be  
29 monitored, enforced or evaluated over time ([Commission, Appeal](#), p., 5). The  
30 Commission’s arguments do not reference any specific land use plan that the project  
31 allegedly conflicts with, nor does the Commission identify any record evidence  
32 indicating that the Department’s measures are not equivalent to Delta Plan MM 6-2. The  
33 record contains substantial evidence supporting the Department’s conclusion that the  
34 DCP’s design features and proposed agricultural MMs are consistent with, equivalent  
35 to, or more effective than the mitigation requirements outlined in Delta Plan MM 6-2.  
36 The Commission has not shown that the Certification is not supported by substantial  
37 evidence in the record that the DCP is consistent with G P1(b)(2) regarding Delta Plan  
38 MM 6-2. Therefore, the Council ***denies the appeal***.

39 **v. Delta Plan Mitigation Measure 7-1**

40 Delta Plan MM 7-1 requires covered actions to undertake certain activities to  
41 minimize specific identified environmental impacts to Farmlands, lands zoned for  
42 agriculture, and lands subject to a Williamson Act contract, including conversion to  
43 nonagricultural uses. The Commission and County of Sacramento contend that the

1 MMs proposed by the Department are not equal or more effective than Delta Plan MM  
2 7-1. The relevant provisions of MM 7-1 are discussed below in more detail as they  
3 pertain to each issue presented.

4 Appellants argue that the proposed MMs for farmland loss are inadequate  
5 because they are not specific, enforceable, or project-level, and that the mitigation  
6 components in the optional Agricultural Land Stewardship (“ALS”) Strategy are  
7 speculative ([Commission, Attachment D](#), p. 5-7). Appellants allege that during the DCP  
8 planning process, agricultural land was preferred for launch site locations, and that  
9 temporary conversions of agricultural land are effectively permanent. Appellants further  
10 claim that the DCP fails to adequately assess the impacts of fragmentation and does  
11 not provide sufficient buffer areas between agricultural lands and project facilities  
12 ([Commission, Attachment D](#), p.6, [Sac County, Appeal](#), p.10). The Council considers  
13 each issue below.

14 **(a) Farmland was prioritized for facility siting (MM 7-**  
15 **1(a) and MM 7-1(b))**

16 Delta Plan MM 7-1 (a) and (b) require that project design avoid loss, to the  
17 greatest extent feasible, of: i) highest value agricultural land (MM 7-1(a)); and ii) land  
18 protected by agricultural zoning or a Williamson Act contract, to the greatest extent  
19 feasible (MM 7-1(b)) ([DCP.AA2.1.00097](#), p. 56).

20 In its Certification, the Department states that “[DCP’s] design features, ECs, and  
21 [MM]s related to mitigating for the loss of existing agricultural land, siting the project to  
22 avoid agricultural land to the extent possible, and use of buffers and weed management  
23 to reduce the impact on existing agricultural operation are meant to reduce, minimize, or  
24 avoid effects on agricultural land, as analyzed in Chapter 15, Agricultural Resources  
25 ([DCP.AA1.1.00020](#) p. 24-25). The Department concludes that project design features  
26 and [MM]s are the same as, equal to, or more effective than Delta Plan MM 7-1) to  
27 avoid, minimize and reduce effects related to conversion of Farmland to nonagricultural  
28 use” ([DCP.AA1.2.00018](#), p. 24). Specific to Delta Plan MM 7-1(a) and (b) the  
29 Department refers to project design features to reduce impacts to existing agricultural  
30 land ([DCP.AA1.2.00018](#), pp. 24-25). The Department refers to the following evidence in  
31 the record to support its consistency with GP1(b)(2) for Delta Plan MM 7-1(a) and (b):  
32 DCP Certification of Consistency with the Delta Plan ([DCP.AA1.2.00001](#)); G P1(b)(2),  
33 Attachment 1 [DCP.AA1.2.00018](#); Delta Plan and DCP Mitigation Crosswalk Table  
34 ([DCP.AA1.2.00020](#)); DCP Final EIR Ch. 15 ([DCP.D1.1.00133](#)); Final EIR, Appendix  
35 15B ([DCP.D1.1.00135](#)).

36 The Commission claims that during the DCP planning process, agricultural land  
37 was ranked as preferable to other land use types for launch site locations, claiming that  
38 agricultural land was prioritized for siting because “tunnel launch shaft location criteria  
39 first excluded lands for wildlife refuges or preserves and lands managed for flood  
40 management and associated habitat” (Commission, Attachment D, pp. 2-3)  
41 ([DCP.D1.1.00135](#), p. 10). The Appellant refers to the following evidence in the record to  
42 support its appeal for Delta Plan MM 7-1: Delta Protection Commission (DPC). Letter on  
43 Delta Conveyance Project Draft EIR, DPC, December 14, 2022, pp. 6-7

1 ([DCP.D2.3.00388](#)); Delta Plan Ecosystem Amendment Mitigation Monitoring and  
2 Reporting Program ([DCP.AA2.1.00097](#)); DCP Final EIR, Ch. 15 ([DCP.D1.1.00133](#));  
3 Final EIR Appendix 15B ([DCP.D1.1.00135](#)); DCP CER (Final Draft) ([DCP.D4.3.00001](#));  
4 DCP Map Book ([DCP.D4.3.00056](#)); G P1(b)(2), Attachment 1 [DCP.AA1.2.00018](#): Delta  
5 Plan and DCP Mitigation Crosswalk Table ([DCP.AA1.2.00020](#)); DCP Certification of  
6 Consistency with the Delta Plan ([DCP.AA1.2.00001](#)); FINAL EIR, Vol 2, Ch 2, Table 4-2  
7 comments 409-22- 409-23 ([DCP.D1.1.00241](#), [DCP.D1.1.00224](#)); DCP Final EIR  
8 Chapter 3 ([DCP.D1.1.00010](#)).

9 The Department identifies changes to DCP design features as one of several  
10 strategies undertaken to comply with Delta Plan MM 7-1. The Certification notes that  
11 “the initial siting and design process for the project minimized the extent farmland would  
12 be permanently converted as a result of project buildout, as described in [Final EIR]  
13 Appendix 15B” ([DCP.AA1.2.00020](#), pp. 24-25). Final EIR Appendix 15B describes a  
14 process in which the Department identified sites for project alternatives based on size  
15 and avoidance of categorically excluded areas: “wildlife refuges or preserves and lands  
16 managed for flood management and associated habitat” ([DCP.D1.1.00135](#), p. 10).  
17 Following these initial steps, the Department then applied project siting criteria centered  
18 on construction feasibility, geotechnical conditions, property and land use, and existing  
19 infrastructure, including criteria related to agricultural resources such as: number of  
20 landowners affected, farmland designations, existing water supply wells, and existing  
21 structures ([DCP.D1.1.00135](#), pp. 10-11). As described by the Department, sites that  
22 affected fewer landowners and sites that were not on Important Farmland<sup>18</sup> or under  
23 Williamson Act contracts or in Farmland Security Zones scored higher (more favorably)  
24 in the ranking scheme ([DCP.D1.1.00135](#), pp. 10-11). The Bethany Reservoir Alignment  
25 applied this siting criteria when identifying facility locations, specifically launch,  
26 maintenance, and reception shafts, which require larger construction footprints and for  
27 which agricultural resources played a key role in siting ([DCP.D1.1.00135](#), pp. 10-11;  
28 [DCP.D4.1.00101](#), p. 1). For these reasons, the Council finds that evidence in the record  
29 supports that the Department’s project siting criteria incorporated agricultural resource  
30 criteria and ranked alternative land types more favorably, avoiding Important Farmland  
31 and lands under Williamson Act contracts or Farmland Security Zones, consistent with  
32 DP MM 7-1. Therefore, the Council finds that the Commission failed to meet its burden,  
33 and that there is substantial evidence in the record to support the Department’s finding  
34 that the DCP is consistent with G P1(b)(2) for MM 7-1(a) and MM 7-1(b).

35 **(b) Inadequate and speculative mitigation for**  
36 **farmland loss (MM 7-1(c))**

37 Delta Plan MM 7-1(c) states that farmland must be preserved in perpetuity  
38 “through acquisition of an agricultural conservation easement, or contributing funds to a  
39 land trust or other entity qualified to preserve farmland in perpetuity (at a minimum  
40 target ratio of 1:1, depending on the nature of the conversion and the characteristics of  
41 the farmland to be converted, to compensate for permanent loss)” ([Appendix O](#), [Delta

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<sup>18</sup> Defined in the Final EIR as Prime Farmland, Farmland of Statewide Importance, Unique Farmland, and Farmland of Local Importance.

1 Plan Ecosystem Amendment Mitigation Monitoring and Reporting Program], pp.15-17  
2 (Cal. Code Regs., tit. 23, app.O.); [DCP.AA2.1.00097](#), p. 56).

3 In its Certification, the Department states that the “[DCP’s] design features,  
4 Environmental Commitments, and [MMs] related to mitigating for the loss of existing  
5 agricultural land, siting the project to avoid agricultural land to the extent possible, and  
6 use of buffers and weed management to reduce the impact on existing agricultural  
7 operation are meant to reduce, minimize, or avoid effects on agricultural land, as  
8 analyzed in Chapter 15, Agricultural Resources. The project design features and [MMs]  
9 are the same as, equal to, or more effective than Delta Plan MM 7-1 to avoid, minimize  
10 and reduce effects related to conversion of Farmland to nonagricultural use”  
11 ([DCP.AA1.2.00020](#), p. 24). Specific to Delta Plan MM 7-1(c), the Department identifies  
12 DCP MM AG-1 for preservation of Farmland to offset the loss of permanently converted  
13 Farmland ([DCP.AA1.2.00020](#), p. 24). The Department refers to the following evidence  
14 in the record to support its consistency with GP1(b)(2) Delta Plan MM 7-1(c): DCP  
15 Certification of Consistency with the Delta Plan ([DCP.AA1.2.00001](#)); G P1(b)(2),  
16 Attachment 1: Delta Plan and DCP Mitigation Crosswalk Table ([DCP.AA1.2.00020](#));  
17 Final EIR Ch. 15 ([DCP.D1.1.00133](#)).

18 The Commission argues that the Department’s mitigation for farmland loss is  
19 inadequate because: “mitigation presented in the Final EIR largely restates existing  
20 regulatory requirements rather than providing specific, enforceable, project-level  
21 actions” ([Commission, Attachment D](#), p. 5). Although DCP MM AG-1 states that  
22 farmland will be preserved at a 1:1 ratio, the Commission argues this requirement is  
23 vague and lacks necessary implementation detail such as where easements would be  
24 acquired, whether comparable farmland is available, whether funds or land trusts are  
25 available, how mitigation lands will be selected, and how permanent protections will be  
26 verified and monitored ([Commission, Attachment D](#), p. 5) ([DCP.D1.1.00133](#), p. 39).  
27 Further, the Commission asserts that the Department will defer several mitigation  
28 components described in the Agricultural Lands Strategy (ALS), making them  
29 speculative ([Commission Attachment D](#), p. 6-7.) ([DCP.D1.1.00135](#), pp. 1-15). The  
30 Commission states that “there is no funding encumbered to implement agricultural  
31 conservation easements or other land-based mitigation” and suggest that the proposed  
32 CBP has been identified for this purpose “if there is community-driven support” but that  
33 the amount allocated for that program is insufficient (Commission Attachment D p. 5)  
34 ([DCP.D1.1.00135](#), p. 14). No further evidence is identified to demonstrate that funds are  
35 insufficient for this purpose.<sup>19</sup>

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<sup>19</sup> The Commission further argues that the record lacks substantial evidence demonstrating that additional mitigation measures are infeasible (Commission, Writ. Sub., p. 13). The Commission argues that “[the Department] did not evaluate higher or geographically targeted mitigation ratios for losses of Prime and Important Farmland within affected Delta subregions” and that identified ALS Strategies are voluntary and non-binding and not equal or more effective than the Delta Plan (Commission, Writ. Sub., pp. 13-14). The Commission further states that “the record does not demonstrate that [the Department] evaluated additional design modifications, construction sequencing changes, or consolidation of staging areas to reduce the acreage or duration of farmland disturbance” (Commission, Writ. Sub., p. 14). These actions are not required by Delta Plan MM 7-1 and therefore are not considered herein.

1 The Appellant refers to the following evidence in the record to support its appeal:  
2 Delta Protection Commission (DPC). Letter on Delta Conveyance Project Draft EIR,  
3 DPC, December 14, 2022, 6-7; Delta Plan Ecosystem Amendment Mitigation Monitoring  
4 and Reporting Program ([DCP.AA2.1.00097](#)); DCP Final EIR Ch. 15 ([DCP.D1.1.00133](#));  
5 Final EIR Appendix 15B ([DCP.D1.1.00135](#)); DCP Concept Engineering Report (“CER”)  
6 (Final Draft) ([DCP.D4.3.00001](#)); DCP Map Book ([DCP.D4.3.00056](#)); G P1(b)(2),  
7 Attachment 1: Delta Plan and DCP Mitigation Crosswalk Table ([DCP.AA1.2.00020](#));  
8 DCP Certification of Consistency with the Delta Plan ([DCP.AA1.2.00001](#)); Final EIR Vol  
9 2, Ch 2, Table 4-2 comments 409-22- 409-23 ([DCP.D1.1.00241](#), [DCP.D1.1.00224](#));  
10 DCP Final EIR Chapter 3 ([DCP.D1.1.00010](#)).

11 The Department states that DCP MM AG-1 “is the same as, equal to, or more  
12 effective than this measure because ...[it]... includes a requirement to mitigate the loss  
13 of permanently converted Important Farmland at an acreage ratio of at least 1:1”  
14 ([DCP.AA1.2.00020](#), p. 25). DCP MM AG-1 further states that “[t]o the extent feasible,  
15 any rights to land acquired for the purpose of mitigation of agricultural land conversion  
16 will be of equal or better farmland quality than the land that was permanently converted”  
17 ([DCP.D1.1.00133](#), p. 39) and that the 1:1 mitigation ratio will be achieved through “a  
18 combination of acquisition and dedication of agricultural land, acquisition of  
19 development rights or conservation easements to permanently protect agricultural land,  
20 or payment of in-lieu fees to fully fund the acquisition and maintenance of such real  
21 property interests by a third party” ([DCP.AA1.2.00020](#), p. 25).<sup>20</sup> Under DCP MM AG-1  
22 the Department also notes that it will “consider an optional approach of funding farm  
23 improvements to enhance the productivity of the lower-quality farmland”  
24 ([DCP.D1.1.00133](#), p. 39).

25 Regarding the CBP, Final EIR Appendix 15B states that “although there is no  
26 specific funding encumbered for ALS implementation under the project for those  
27 regionally focused measures that would benefit Delta agriculture more broadly, if there  
28 is community-driven support for individual strategies, there is a possibility that funding  
29 could be provided under the planned [CBP’s] Delta Community Fund”  
30 ([DCP.D1.1.00135](#), p. 14). The Department acknowledges that the fund will be “guided  
31 by a forthcoming community-driven framework” and as such, funding may not be  
32 specifically allocated to agricultural strategies ([DCP.D1.1.00135](#), p. 14). These  
33 strategies are not identified in the Certification MMs Crosswalk as measures that are the  
34 same as, equal to, or more effective than Delta Plan MM 7-1 and are considered  
35 additional to the mandatory agricultural MMs identified in the Final EIR.

36 Under G P1(b)(2), the Council considers only whether applicable covered action  
37 MMs are consistent with the Delta Plan and whether substantial evidence supports the  
38 Department’s findings that each measure is equally or more effective than a  
39 corresponding Delta Plan MM. The Council does not consider the adequacy, feasibility,

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<sup>20</sup> Regarding implementation of AG-1, the Department specifies that “any agricultural conservation easements acquired pursuant to this mitigation strategy will be held by a qualified organization that has the legal and technical ability to hold and administer agricultural conservation easements for the purpose of conserving and maintaining lands in agricultural production” ([DCP.D1.1.00133](#), p. 39) and preserved agricultural lands will be in the Delta Counties (Sacramento, San Joaquin, Contra Costa, Alameda, Solano, and Yolo) ([DCP.D1.1.00133](#), p. 39).

1 or enforcement of mitigation for purposes of CEQA. For these reasons, the Council  
2 finds that evidence in the record demonstrates that DCP MM AG-1 is the same as,  
3 equal to, or more effective than DP MM 7-1(c). The Council finds that the Commission  
4 failed to meet its burden, and that there is substantial evidence in the record to support  
5 the Department's finding that the DCP is consistent with G P1(b)(2) for MM 7-1(c).

6 **(c) Agricultural land conversion will not be temporary**  
7 **(MM 7-1(c))**

8 Delta Plan MM 7-1(c) requires projects that will result in permanent conversion of  
9 farmland to preserve other farmland in perpetuity at a minimum target ratio of 1:1,  
10 depending on the nature of the conversion and the characteristics of the converted  
11 farmland ([DCP.AA2.1.00097](#), p. 56). The Commission argues that agricultural  
12 conversions described as temporary will be in fact permanent and therefore should be  
13 mitigated at a 1:1 ratio as required by MM 7-1(c) ([Commission, Brief](#), p. 15).

14 In its Certification, the Department states:

15 [DCP's] design features, ECs, and [MMs] related to mitigating for the loss of  
16 existing agricultural land, siting the project to avoid agricultural land to the extent  
17 possible, and use of buffers and weed management to reduce the impact on  
18 existing agricultural operation are meant to reduce, minimize, or avoid effects on  
19 agricultural land, as analyzed in Chapter 15, Agricultural Resources. The project  
20 design features and [MMs] are the same as, equal to, or more effective than  
21 Delta Plan [MM] 7-1 to avoid, minimize and reduce effects related to conversion  
22 of Farmland to nonagricultural use ([DCP.AA1.2.00018](#), p. 24).

23 Specific to Delta Plan MM 7-1(c) the Department identifies MM AG-1 for  
24 preservation of Farmland to offset the loss of permanently converted Farmland  
25 ([DCP.AA1.2.00018](#), p. 24). The Department refers to the following evidence in the  
26 record to support its consistency with GP1(b)(2) for Delta Plan MM 7-1(c): DCP  
27 Certification of Consistency with the Delta Plan ([DCP.AA1.2.00001](#)); G P1(b)(2),  
28 Attachment 1 ([DCP.AA1.2.00018](#)); Delta Plan and DCP Mitigation Crosswalk Table  
29 ([DCP.AA1.2.00020](#)); Final EIR, Ch. 15 ([DCP.D1.1.00133](#)).

30 The Commission alleges that agricultural land conversions will not be temporary  
31 because 13 years of construction does not meet the Final EIR definition of "temporary"  
32 and sites will be "fallow so many years and will be affected by soil modifiers and other  
33 effects from the use of the property as to be of questionable agricultural value," thus  
34 affecting the acreage of converted permanent farmland ([Commission, Attachment D](#), p.  
35 3-4). The Commission states: "[the EIR] defines 'temporary' impacts as those lasting no  
36 more than two years, yet [the Department] did not classify construction impacts  
37 extending up to approximately 13 years as permanent or near-permanent conversion for  
38 purposes of impact assessment and mitigation" ([Commission, Writ. Sub.](#), p. 15). The  
39 Commission argues that "while Appendix 15B suggests that temporarily disturbed lands  
40 could be returned to agricultural use, [the Department] did not require binding  
41 restoration standards, soil replacement criteria, or monitoring to ensure agricultural  
42 viability following construction" ([Commission, Writ. Sub.](#), p.14).

1 The Appellant refers to the following evidence in the record to support its appeal  
2 for Delta Plan MM 7-1: Delta Protection Commission Letter on Delta Conveyance  
3 Project Draft EIR, DPC, December 14, 2022, 6-7; Delta Plan Ecosystem Amendment  
4 Mitigation Monitoring and Reporting Program ([DCP.AA2.1.00097](#)); DCP Final EIR, Ch.  
5 15 ([DCP.D1.1.00133](#)); Final EIR, Appendix 15B ([DCP.D1.1.00135](#)); DCP CER (Final  
6 Draft) ([DCP.D4.3.00001](#)); DCP Map Book ([DCP.D4.3.00056](#)); G P1(b)(2), Attachment 1  
7 ([DCP.AA1.2.00018](#)); Delta Plan and DCP Mitigation Crosswalk Table  
8 ([DCP.AA1.2.00020](#)); DCP Certification of Consistency with the Delta Plan  
9 ([DCP.AA1.2.00001](#)); FINAL EIR Vol 2, Ch 2, Table 4-2 comments 409-22 – 409-23  
10 ([DCP.D1.1.00241](#), [DCP.D1.1.00224](#)); DCP Final EIR, Chapter 3 ([DCP.D1.1.00010](#)).

11 In Chapter 15 of the DCP Final EIR, temporary impacts are defined as “areas of  
12 the construction footprint where farmland conversion would only last through the period  
13 of active construction at a given site and is expected to be a short-term effect (i.e.,  
14 generally the conversion not extending beyond 2 years at a given location)”  
15 ([DCP.D1.1.00133](#), p. 26). Temporary impacts the Department refers to in its Final EIR  
16 include short-term activities including: “various field investigations conducted during the  
17 preconstruction and construction phases... excavation and installation of some of the  
18 utility infrastructure, specifically power transmission and SCADA lines... once the  
19 installation process for these buried utilities lines is complete, the excavations would be  
20 subsequently backfilled to pre-project contours to allow potential agricultural use to  
21 resume” ([DCP.D1.1.00133](#), p. 26). The Department will conduct agronomic testing to  
22 identify impacts and appropriate remediation options for affected areas  
23 ([DCP.D1.1.00133](#), p. 26). The primary goal of land reclamation efforts will be to “restore  
24 the soil quality and condition” and actions taken will vary by site and soil base, and are  
25 detailed in the Preliminary Site Reclamation Plan in CER App. I1 ([DCP.D4.3.00044](#), p.  
26 4).

27 The Department refers to permanent impacts as those where land cannot be  
28 returned to farmland because it will contain facilities that make it unsuitable for crops.  
29 Permanent impacts also include “some traditionally ‘temporary’ impacts... where there  
30 is uncertainty whether the farmland would be returned to productive farmland” for  
31 example, where soil compaction would degrade agricultural production value  
32 ([DCP.D1.1.00133](#), pp. 25-26). The Department states: “some of the areas within the  
33 footprint construction where no permanent physical structures are planned as part of  
34 construction buildout (e.g., staging areas), and areas where any built features are by  
35 design “temporary” and thereby removed... are also considered to be permanent  
36 impacts on farmland ([DCP.D1.1.00133](#), p. 30. The Department acknowledges in its  
37 Final EIR that “since there is no guarantee that any potential damage to those previous  
38 farmland areas could be ameliorated to a minimal level, for the purpose of this analysis  
39 they are considered to be permanently converted farmland” ([DCP.D1.1.00133](#), p.  
40 30). These areas are cataloged as permanent impacts because the potential peat soil  
41 compaction may hinder its ability to be returned to productive farmland, or the areas are  
42 too small and isolated from other active farmland under the same ownership to be  
43 farmed economically” ([DCP.D1.1.00133](#), p. 30).

1 As such, record evidence demonstrates that the Department conservatively  
2 estimated acres of farmland permanently converted for preservation in perpetuity  
3 consistent with requirements of Delta Plan MM 7-1(c). The Council finds that the  
4 Commission failed to meet its burden, and that there is substantial evidence in the  
5 record to support the Department's finding that the DCP is consistent with G P1(b)(2) for  
6 MM 7-1(c).

7 **(d) Fragmentation effects are ignored (MM 7-1(e))**

8 Delta Plan MM 7-1(e) requires designing project features to minimize  
9 fragmentation or isolation of farmland, and requires remaining non-project areas to be of  
10 a size sufficient to allow viable farming operations and classification as farmland  
11 ([DCP.AA2.1.00097](#), p. 56). This can be accomplished by “acquiring easements, making  
12 lot line adjustments, and merging affected land parcels into units suitable for continued  
13 commercial agricultural management” ([Appendix O](#), [Delta Plan Ecosystem Amendment  
14 Mitigation Monitoring and Reporting Program], pp.15-17 (Cal. Code Regs., tit. 23,  
15 app.O.)), [DCP.AA2.1.00097](#), p. 56).

16 In its Certification of Consistency the Department states that “[DCP’s] design  
17 features, ECs, and [MMs] related to mitigating for the loss of existing agricultural land,  
18 siting the project to avoid agricultural land to the extent possible, and use of buffers and  
19 weed management to reduce the impact on existing agricultural operation are meant to  
20 reduce, minimize, or avoid effects on agricultural land, as analyzed in Chapter 15,  
21 Agricultural Resources. The project design features and MMs are the same as, equal to,  
22 or more effective than Delta Plan [MM] 7-1 to avoid, minimize and reduce effects related  
23 to conversion of Farmland to nonagricultural use” ([DCP.AA1.2.00018](#), p. 24) Specific to  
24 Delta Plan MM 7-1(e) the Department identifies: DCP Certification of Consistency with  
25 the Delta Plan ([DCP.AA1.2.00001](#)); G P1(b)(2), Attachment 1 ([DCP.AA1.2.00018](#)):  
26 Delta Plan and DCP Mitigation Crosswalk Table ([DCP.AA1.2.00020](#)).

27 The Commission argues that effects of fragmentation on agriculture are not  
28 adequately described, and that the Certification thus “does not assess their implications  
29 for long-term agricultural use potential” ([Commission, Attachment D](#), p. 6.). The  
30 Commission claims there is no detail on how fragmentation was avoided through DCP  
31 design modifications or assessed for long-term impacts on agricultural viability  
32 ([Commission, Attachment D](#), p.6.). The Commission argues “[the Department] did not  
33 quantify fragmentation, establish viability thresholds, or analyze how bisected parcels  
34 and remnant fields affect long-term farm operations” ([Commission, Writ. Sub.](#), p. 15).<sup>21</sup>  
35 The Appellant refers to the following evidence in the record to support its appeal for  
36 Delta Plan MM 7-1: Delta Protection Commission (DPC). Letter on Delta Conveyance

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<sup>21</sup> The Commission prepared maps in Attachment A, which are not part of the record, that it claims depict “locations where construction and permanent facilities would break up formerly contiguous farmland into smaller or irregular pieces” that are “unlikely to remain viable for commercial production” ([Commission, Attachment D](#), p. 6.). Commission “staff review of [the] project footprint datasets further indicates that fragmentation impacts are substantial and largely undisclosed, including isolated agricultural remnants, narrow and irregular parcels, and lands severed from infrastructure access” (Commission, Writ. Sub., p. 15). No further evidence outside of the extra-record analysis conducted by Commission is provided to substantiate this claim.

1 Project Draft EIR, DPC, December 14, 2022, pp. 6-7; Delta Plan Ecosystem  
2 Amendment Mitigation Monitoring and Reporting Program ([DCP.AA1.2.00097](#)); DCP  
3 Final EIR Ch. 15 ([DCP.D1.1.00133](#)); Final EIR Appendix 15B ([DCP.D1.1.00135](#)); DCP  
4 CER (Final Draft) ([DCP.D4.3.00001](#)); DCP Map Book ([DCP.D4.3.00056](#)); G P1(b)(2)  
5 Attachment 1([DCP.AA1.2.00018](#)); Delta Plan and DCP Mitigation Crosswalk Table  
6 ([DCP.AA1.2.00020](#)); DCP Certification of Consistency with the Delta Plan  
7 ([DCP.AA1.2.00001](#)); Final EIR Vol 2, Ch 2, Table 4-2 comments 409-22 – 409-23  
8 ([DCP.D1.1.00241](#), [DCP.D1.1.00224](#)); DCP Final EIR Chapter 3 ([DCP.D1.1.00010](#)).

9 In the DCP Final EIR, the Department details a remnant farmland area analysis  
10 used to identify portions of Important Farmland parcels bisected by construction that  
11 could be indirectly converted from farmland if they are too small in size  
12 ([DCP.D1.1.00133](#), p. 24). Using information from the Sacramento, San Joaquin, and  
13 Contra Costa County general plans, the Department determined that “20 contiguous  
14 acres under the same property ownership was the minimum agricultural property size  
15 adequate to support general commercial agriculture” ([DCP.D1.1.00133](#), p. 24). The  
16 Department then completed a GIS analysis to identify places where remnant farmland  
17 areas were less than 20 contiguous acres ([DCP.D1.1.00133](#), pp. 24-25). These  
18 remnant farmland areas were included in reported acreages of permanently impacted  
19 farmland, assuming they are indirectly converted ([DCP.D1.1.00133](#), p.1). The Final EIR  
20 states that the Bethany Reservoir Alignment would convert an estimated 250 acres of  
21 remnant farmland areas, the lowest of all alternatives considered ([DCP.D1.1.00133](#),  
22 p.38) and DCP MM AG-1 would mitigate this indirect conversion  
23 ([DCP.D1.1.00133](#) p.37-38). The Department notes that some of this land could remain  
24 in agricultural production, depending on landowner interest, noting that high-value  
25 specialty crops (e.g., orchards, vineyards) commonly grown in the Delta are often grown  
26 on fewer than 20 contiguous acres ([DCP.D1.1.00133](#), p.37).

27 The Department also points to project design features and ALS strategies that  
28 demonstrate compliance with Delta Plan MM 7-1(e) ([DCP.AA1.2.00020](#), pp. 24-25).  
29 Final EIR Appendix 15B details the implementation of ALS strategies E1.3.1 and E1.1.  
30 Here, the Department states: “Of the numerous measures that have been taken to  
31 minimize the extent of agricultural land that would be taken out of production and  
32 prevent fragmentation of active farmlands, the most important was the adoption of  
33 tunnel conveyance in lieu of surface conveyance (i.e., canal). As described in Final EIR  
34 Appendix 3A, two alternatives using either lined or unlined canals instead of the tunnel  
35 were initially considered (“Dual Conveyance East Canal” and “Dual Conveyance West  
36 Canal”), but eliminated from further consideration during the alternatives screening  
37 process because canals would have surface impacts that would result in greater  
38 impacts on agricultural operations...” ([DCP.D1.1.00135](#), p. 8). “A canal would have  
39 greater impacts on land use, agricultural operations, and multiple other resources than  
40 the proposed project, which would include a tunnel that would be constructed  
41 underground with tunnel shafts every 4 to 6 miles.” ([DCP.D1.1.00011](#), p. 37).

42 Evidence in the record supports that the Department conducted an analysis of  
43 fragmentation using quantifiable metrics and thresholds and details how fragmentation  
44 was avoided through design modifications. The Council finds that the Commission has

1 failed to meet its burden to show that the Department did not assess the implications of  
2 fragmentation on long-term agricultural use potential and that there is substantial  
3 evidence in the record to support the Department’s finding that the DCP is consistent  
4 with G P1(b)(2) for MM 7-1(c).

5 **(e) Agricultural buffers (MM 7-1(h))**

6 Delta Plan MM 7-1(h) requires “buffer areas between projects and adjacent  
7 agricultural land that are sufficient to protect and maintain land capability and  
8 agricultural operation flexibility” ([DCP.AA2.1.00097](#), p. 57). It requires buffer designs to  
9 protect the feasibility of ongoing agricultural operations and reduce the effects of  
10 construction- or operation-related activities on adjacent or nearby properties. The width  
11 of the buffer is to be determined on a project-by-project basis to account for variations in  
12 prevailing winds, crop types, agricultural practices, ecological restoration or  
13 infrastructure ([DCP.AA2.1.00097](#), p. 57). MM 7-1 identifies several examples of  
14 suitable buffers for this purpose but does not prescribe use of a particular type of buffer  
15 ([DCP.AA2.1.00097](#), p. 57).

16 The Department refers to the following evidence in the record to support its  
17 consistency with GP1(b)(2) Delta Plan MM 7-1(h): Delta Conveyance Project  
18 Certification of Consistency with the Delta Plan ([DCP.AA1.2.00001](#), pp. 117-119); G  
19 P1(b)(2), Attachment 1: Delta Plan and Delta Conveyance Project Mitigation Crosswalk  
20 Table ([DCP.AA1.2.00020](#) pp. 24–26); Final EIR Ch. 15, Agricultural Resources  
21 ([DCP.D1.1.00133](#)); Final EIR Ch. 13 Terrestrial Biological Resources  
22 ([DCP.D1.1.00112](#)); Final EIR Ch. 20 Transportation ([DCP.D1.1.00168](#)); Final EIR  
23 Appendix 3B ([DCP.D1.1.00012](#)); Final EIR, Appendix 3F Compensatory Mitigation Plan  
24 ([DCP.D1.1.00017](#)); Agricultural and Land Stewardship Framework and Strategies (ALS)  
25 ([DCP.D3.1.03889](#)); Attachment. 3F.1, 31 Compensatory Mitigation Design Parameters  
26 ([DCP.D1.1.00018](#)).

27 Appellant County of Sacramento argues that no MM equivalent to MM 7-1(h) is  
28 offered for DCP operation activities ([County of Sacramento, Appeal](#), pp. 9-10).  
29 Appellants specifically argue that fencing is not an acceptable buffer option, that no  
30 evidence is provided to demonstrate why certain facilities are set back from the  
31 fenceline, and DCP construction activities will impact ongoing agricultural operations  
32 due to inadequate buffers ([County of Sacramento, Appeal](#), pp. 9-10).

33 Appellants contend that fencing is not a buffer option identified in Delta Plan MM  
34 7-1(h) and that the measure specifically provides that buffer widths be determined on a  
35 project-by-project basis, which is not discussed in the Certification ([DCP.AA1.2.00020](#),  
36 pp. 25-26; [County of Sacramento, Appeal](#), p.10). Appellants argue that the Department  
37 does not provide evidence for how or why certain facilities are setback from the  
38 fenceline and others are not, and that a fence would not protect agricultural lands from  
39 dust or noise: “a fence would not ensure that dust from tunnel muck piles does not  
40 adversely affect agricultural activities on adjacent properties, including grazing livestock  
41 or dust sensitive crops, nor would it shield adjacent agricultural operations from  
42 operational noise that may negatively impact livestock or farm workers” ([County of](#)  
43 [Sacramento, Appeal](#), p. 10).

1 County of Sacramento point to water right hearing testimony to suggest that  
2 construction-related impacts to ongoing agricultural operations could have been avoided  
3 through adequate use of buffers ([DCP.V2.5.00028](#), p. 6) (Sac County Appeal, p.10).  
4 County of Sacramento cite testimony from Chrisandra J. Flores that describes how “the  
5 heavy volume of construction traffic’ on roadways ‘not designed to accommodate’ such  
6 traffic volume will significantly impact ongoing agricultural operations by disrupting ‘the  
7 efficient transport of farm workers, supplies, and harvested crops,’ thereby ‘increasing  
8 operational costs’” ([DCP.V2.5.00028](#), p. 6; [County of Sacramento, Appeal](#), p. 10).  
9 County of Sacramento also point to Ms. Flores’ statements regarding pesticide  
10 application: “agricultural ‘[p]est control efforts will also be hindered, limiting growers’  
11 ability to manage infestations effectively and on schedule’ because of DCP construction,  
12 ultimately concluding that DCP ‘mitigation ... does not sufficiently address [these]  
13 impacts to agriculture’” ([DCP.V2.5.00028](#), p. 6; [County of Sacramento, Appeal](#), p. 10).

14 The Appellant refers to the following evidence in the record to support its appeal  
15 for Delta Plan MM 7-1: G P1(b)(2), Attachment 1([DCP.AA1.2.00018](#)): Delta Plan and  
16 Delta Conveyance Project Mitigation Crosswalk Table ([DCP.AA1.2.00020](#), pp. 24–26;  
17 [DCP.AA2.1.00097](#); Chrisandra J. Flores testimony ([DCP.V2.5.00028](#), pp. 6-7)).  
18 Regarding fencing, the Department states: “As shown in [the GIS Mapbook, in CER](#)  
19 [Volume 3](#), most facilities are set back from the fence line, thus creating a buffer”  
20 ([DCP.AA1.2.00020](#), p. 25). The Department also indicates that “the fencing around  
21 major facilities, as described in [Final EIR] Chapter 3, Description of the Proposed  
22 Project and Alternatives, Section 3.4.12, Fencing and Lighting, would also act as a  
23 buffer between project facilities and adjacent farmland” ([DCP.AA1.2.00020](#), p. 25). In its  
24 written submittal, the Department argues that “while 7-1(h) states that ‘buffers can  
25 function as drainage swales, trails, roads, linear parkways or other uses compatible with  
26 ongoing agricultural operations,’ it does not limit buffers to only the uses listed  
27 ([Department, Writ. Sub.](#), p. 118). The Department does not address how buffers have  
28 been determined to account for “variations in prevailing winds, crop types, agricultural  
29 practices, ecological restoration or infrastructure” ([DCP.AA2.1.00097](#), p. 57).

30 In addition to fencing, the Department describes two other forms of buffers: non-  
31 disturbance buffers applied during construction and species-specific buffers applied  
32 during construction and operation of the project. The Department states: “The project  
33 would establish non-disturbance buffers during construction as described in Chapter 13,  
34 Terrestrial Biological Resources, and EC-14, which is the same as, equal to, or more  
35 effective than DP MM 7-1” ([DCP.AA1.2.00020](#), p. 25). Additional details regarding non-  
36 disturbance buffers is provided in Chapter 13 of the Final EIR. Buffer distances vary by  
37 species and conservation status, and their extent will be established by qualified wildlife  
38 biologist(s) ([DCP.D1.1.00112](#)). EC-14: Construction Best Management Practices for  
39 Biological Resources also states that non-disturbance buffers will be “established and  
40 maintained as necessary” during construction to protect special-status species  
41 ([DCP.D1.1.00012](#), p. 26).

42 In its written submission, the Department notes that these species-specific  
43 measures and the CMP “include ‘good neighbor’ policies derived from the [ALS]  
44 Framework and Strategies ([DCP.D3.1.03889](#), pp. 8, 31–39) that include the creation of

1 buffer zones between habitat preserves and farmland, which will help to reduce or  
2 eliminate exposure to pests and disease on neighboring lands, prevent overspray of  
3 chemicals onto habitat lands, and assist with a successful transition between different  
4 land uses” ([Department, Writ. Sub.](#), p. 118). The use of “good neighbor” policies to  
5 create buffer zones between habitat and farmland is documented in the CMP  
6 ([DCP.D1.1.00017](#), p. 3F-13).

7 Appendix 3F, Compensatory Mitigation Plan for Special-Status Species and  
8 Aquatic Resources, discusses the creation of buffer zones between habitat preserves  
9 and farmland. Per Attachment 3F.1, Compensatory Mitigation Design Parameters,  
10 related to habitat restoration for fish and aquatic resources (CMP-23), the Department  
11 details “constructing dykes, relocating water diversion infrastructure or other activities as  
12 necessary to maintain agricultural activity in lands adjacent to tidal habitat restoration”  
13 ([DCP.D1.1.00018](#), p. 13). Related to Swainson’s hawk foraging habitat (CMP-19b),  
14 habitat will be protected by “establishing 20- to 30-foot-wide hedgerows along field  
15 borders and roadsides at a minimum rate of 400 linear feet per 100 acres of protected  
16 cultivated lands” ([DCP.D1.1.00018](#), p. 9). The Department points to the following  
17 species-specific buffers for compliance with MM 7-1(h) ([DCP.D1.1.00112](#)).

- 18 • MM BIO-14: Requires a buffer of 250 feet between construction activities and  
19 vernal pool fairy shrimp critical habitat.
- 20 • MM BIO-18: Requires an avoidance area of at least 165 feet around elderberry  
21 shrubs.
- 22 • MM BIO-21: Requires a non-disturbance buffer of 50 feet around Crotch’s  
23 bumble bee nests as identified until the nest is no longer active or until project  
24 activities in the area are completed.

25  
26 MM 7-1(h) identifies several examples of suitable buffers between project  
27 facilities and agricultural lands (e.g., drainage swales, trails, roads, linear parkways), but  
28 does not prescribe use of a specific type of buffer to be used on a case by case basis  
29 ([DCP.AA2.1.00097](#), p. 57). For this reason, the Council finds that County of  
30 Sacramento has failed to meet its burden and that there is substantial evidence in the  
31 record to support the Department’s finding that it has established mitigation  
32 requirements for agricultural buffers the same as or better than that required by DP MM  
33 7-1(h).

34 **(f) Mitigation Measure 7-1 Conclusion**

35 The Council finds that the Commission and County of Sacramento have failed to  
36 meet their burden, and that there is substantial evidence in the record to support the  
37 Department’s finding that the DCP is consistent with G P1(b)(2) regarding Delta Plan  
38 MM 7-1. Therefore, the Council **denies the appeals** regarding all issues appealed  
39 under Delta Plan MM 7-1.

40 **vi. Delta Plan Mitigation Measure 10-1**

41 Delta Plan MM 10-1 requires certifying agencies for covered actions to consult  
42 with California Native American tribes, conduct surveys for tribal cultural,

1 archaeological, submerged cultural, and landscape resources, and avoid and protect  
2 these resources ([Appendix O](#), [Delta Plan Ecosystem Amendment Mitigation Monitoring  
3 and Reporting Program], pp.15-17 (Cal. Code Regs., tit. 23, app.O.)). It also includes  
4 provisions for coordinating with the California Native American Heritage Commission  
5 (“NAHC”), State Historic Preservation Officer (“SHPO”), and State Lands Commission  
6 (“SLC”) ([Appendix O](#), [Delta Plan Ecosystem Amendment Mitigation Monitoring and  
7 Reporting Program], pp.15-17 (Cal. Code Regs., tit. 23, app.O.)). The Commission  
8 contends that the MMs proposed by the Department are not equal or more effective  
9 than Delta Plan MM 10-1.

10 The Commission argues that the DCP does not include adequate mitigation for  
11 impacts to the Delta as a cultural landscape ([Commission, Attachment C](#), p. 2). The  
12 Commission also argues that the DCP will “compromise all or portions of resources in  
13 the affected area and potentially disqualify them for consideration by the California  
14 Register of Historical Resources (“CRHR”) and the National Register of Historic Places  
15 (“NRHP”) (Commission, Attachment C, p. 4). Further, the Commission argues that  
16 assurances for future mitigations, plans, and funding are vague and that cultural  
17 resource mitigations are left up to the Section 106 process ([Commission, Attachment C](#),  
18 p. 5). Finally, the Commission argues that the Department did not coordinate with  
19 cultural and local community organizations, suggesting that potential impacts to  
20 resources could have been avoided through project design and construction planning  
21 ([Commission, Attachment C](#), p. 6).

22 **(a) Cultural landscape investigation, avoidance, and**  
23 **protection (MM 10-1(c) and MM 10-1(d))**

24 Delta Plan MM 10-1(c) and 10-1(d) include requirements to survey for cultural  
25 landscape resources before ground-disturbing activities begin ([Appendix O](#), [Delta Plan  
26 Ecosystem Amendment Mitigation Monitoring and Reporting Program], p.16 (Cal. Code  
27 Regs., tit. 23, app.O.)). Delta Plan MM 10-1(e) requires that certifying agencies  
28 implement strategies to avoid or protect cultural landscapes and other cultural resource  
29 types ([Appendix O](#), [Delta Plan Ecosystem Amendment Mitigation Monitoring and  
30 Reporting Program], p.16 (Cal. Code Regs., tit. 23, app.O.)). The Commission argues  
31 that the MMs defined in the Certification do not include adequate mitigation for impacts  
32 to the Delta as a cultural landscape ([Commission, Attachment C](#), p. 2). The Commission  
33 argues that the Final EIR analysis “focuses on a limited set of properties, sites, and  
34 districts, but fails to adequately assess the cultural values of the Delta in a larger  
35 context” ([Commission, Attachment C](#), p. 4).<sup>22</sup>

36 The Commission states that the Department’s measures “only discuss future  
37 documentation of cultural landscapes that will be harmed by the DCP and fail to  
38 consider and adopt [MMs] to avoid or protect these resources as required in Delta Plan  
39 Mitigation Measure 10-1(e)” ([Commission, Attachment C](#), p. 4). The Commission further

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<sup>22</sup> Final EIR Chapter 32 defines a cultural landscape as “‘a geographic area, including both cultural and natural resources and the wildlife or domestic animals therein, associated with a historic event, activity, or person or exhibiting other cultural or aesthetic values’ (Birnbaum and Peters 1996:4)” ([DCP.D1.1.00205](#), p.17).

1 argues that the Department only surveyed two islands as cultural landscapes, whereas  
2 Delta Plan MM 10-1 requires that projects survey and evaluate landscape resources  
3 and cultural landscapes prior to the start of ground-disturbing activities (Commission,  
4 Writ. Sub., p. 16). In its written submission, the Commission points to language in the  
5 Final EIR indicating that Bouldin Island and Staten Island were considered potential  
6 cultural landscapes and other islands including Mandeville, Venice, Lower Roberts or  
7 King “could be evaluated as cultural landscapes...[but] this level of analysis was outside  
8 of the scope of this project” ([DCP.D1.1.00164](#), pp. 15-16; Commission, Writ. Sub., p.  
9 16). The Commission argues the Department did not demonstrate why these areas  
10 were not evaluated as cultural landscapes and supply their DEIS comments as  
11 evidence that this issue was raised with the Department  
12 ([DCP.AA5.1.00002](#); Commission, Writ. Sub., p. 16). The Commission states: “[The  
13 Department] has not assessed these areas or provided an explanation for why these  
14 areas are not being assessed. Therefore, the record does not provide substantial  
15 evidence to support [the Department’s] claim of consistency with G P1(b)(2) as it relates  
16 to cultural resources” (Commission, Writ. Sub., p. 17).

17 The Department developed a DCP Historical Resources Survey and Evaluation  
18 Report (“HRSER”) which was “completed following an extensive inventory and survey  
19 (desktop and field) of historic built-environment resources within the study area”  
20 ([DCP.AA1.2.00020](#), p. 38). In its written submission, the Department notes that contrary  
21 to the Appellant’s claims that the Department did not take a holistic approach to  
22 evaluating landscape impacts, resources addressed in the HRSER include “the Bouldin  
23 Island Rural Historic Landscape, Bacon Island Rural Historic District, Staten Island  
24 Rural Historic Landscape, and several other multi-county districts and resources, some  
25 of which were determined to be eligible resources and then assessed in [the] Final EIR”  
26 ([Department, Writ. Sub.](#), p. 128). As documented in Final EIR Appendix 19A, islands  
27 evaluated “were identified as potential rural historic districts or landscapes because the  
28 whole of each island was included within the [area of impact for built-environment  
29 resources], fieldwork demonstrated that these islands retained sufficient landscape  
30 features for evaluation, and access to each island was readily available”  
31 ([DCP.D1.1.00164](#), p. 15).

32 The Department has identified in its environmental documents and its written  
33 submission that further surveying will be completed for the project through  
34 implementation of DCP MM CUL-2 and the expansion of the HRSER. The Department  
35 describes it “will have access to all property needed to finalize the inventory and  
36 evaluation, and [the Department] will ensure that all areas of impacts will be surveyed...  
37 in a manner consistent with the 2021 survey” ([DCP.D1.1.00162](#), p. 51). The 2021  
38 survey referred to here informed the development of the HRSER, which was “prepared  
39 to identify built-environment historical resources within the project study area” and  
40 included identification of cultural landscapes ([DCP.D2.1.00105](#), p. 1). Per DCP MM  
41 CUL-2, “all surveys must be led or supervised by architectural historians that meet the  
42 Secretary of the Department of the Interior’s professional qualification standards. Newly  
43 identified resources must be mapped and described on DPR 523-series forms and  
44 evaluated for CRHR- and NRHP eligibility. The resource evaluations will be summarized

1 in an inventory report and, if applicable, a Landscape Treatment Plan will be prepared”  
2 ([DCP.D1.1.00162](#), pp. 19-51).

3 Specific to Delta Plan MM 10-1, the Department points to DCP MM CUL-3a  
4 which “outlines the method and procedures for conducting preconstruction  
5 investigations and surveys to accurately map archaeological resources in the study  
6 area” and requires preparation of an Archaeological Resources Management Plan  
7 (“ARMP”) ([DCP.AA1.2.00020](#), p. 36). Per DCP MM CUL-3a, “[the Department] will  
8 prepare an ARMP that will outline a range of interventions from avoidance and  
9 minimization of impacts to mitigation for the loss of the physical resource. The ARMP  
10 will also include a Post-Review Discovery Procedure to identify actions that must be  
11 followed in the event cultural materials are discovered at any time during project  
12 construction, operations, or maintenance. Upon their discovery, materials will be  
13 assessed by qualified archaeologists prior to further ground-disturbing activities, and  
14 treatment options will be applied prior to resumption of construction activity”  
15 ([DCP.AA1.2.00020](#), p. 36). The ARMP will include an Archaeological Treatment  
16 Procedure that “provides a range of treatment options for archaeological resources  
17 identified as part of implementing the [plan] or previously identified as NRHP/CRHR  
18 eligible” which may include but are not limited to ([DCP.D1.1.00162](#), p. 56): installation of  
19 exclusionary fencing, site capping, data recovery, and public interpretation and  
20 education.

21 The Department also refers to DCP MM CUL-1b as equivalent to Delta Plan MM  
22 10-1 requirements to avoid and protect cultural landscapes ([DCP.AA1.2.00020](#), p. 39).  
23 The Department states “as applicable for cultural landscape historic districts, DCP MM  
24 CUL-1b requires preparation of a Landscape Treatment Plan to document the history  
25 and significance of the NRHP-eligible landscape identified in the [HRSER] and provide  
26 treatment recommendations” ([DCP.AA1.2.00020](#), p. 39).<sup>23</sup> The CUL-1b Landscape  
27 Treatment Plan will “follow guidance published by the National Park Service (1998) and  
28 will serve to document the history and significance of the landscape and provide  
29 treatment recommendations that conform with the Secretary of the Interior’s Standards”  
30 ([DCP.D1.1.00162](#), p. 47). The Secretary of the Interior’s Standards for the Treatment of  
31 Historic Properties, Guidelines for the Treatment of Cultural Landscapes (Secretary’s  
32 Standards) generally recommend preservation, rehabilitation, restoration, and  
33 reconstruction of cultural landscapes ([DCP.D3.1.04828](#), p. 13). The Department does  
34 not list specific strategies to avoid or protect cultural landscapes under DCP MM CUL-  
35 1b, but the Secretary’s Standards are generally consistent with Delta Plan MM 10-1(e).

36 For these reasons, the Council finds that evidence in the record supports that the  
37 Department will comply with Delta Plan MM 10-1(c) and MM 10-1(d) requirements to  
38 survey cultural landscapes prior to construction. Evidence in the record also supports  
39 that the Department will develop treatment plans for cultural landscapes consistent with  
40 Delta Plan MM 10-1(e). The Commission has failed to show there is not substantial  
41 evidence in the record to support the Department’s finding that its MMs are the same

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<sup>23</sup> The CRHR and NRHP use the same criteria ([DCP.D1.1.00162](#)).

1 as, equal to, or more effective than Delta Plan MM 10-1(c), MM 10-1(d), and MM 10-  
2 1(e), concerning cultural landscape investigation, avoidance, and protection.

3 **(b) CRHR and NRHP eligible resources (MM 10-1(d)**  
4 **and MM 10-1(e)**

5 Delta Plan MM 10-1(d) and 10-1(e) require investigation and protection of CRHR-  
6 and NRHP-eligible resources ([Appendix O](#), [Delta Plan Ecosystem Amendment  
7 Mitigation Monitoring and Reporting Program], p.16 (Cal. Code Regs., tit. 23, app.O.)).  
8 The Commission argues the DCP will “compromise all or portions of resources in the  
9 affected area and potentially disqualify them for consideration by the CRHR and the  
10 NRHP ([Commission, Attachment C](#), p. 4). Evidence is not provided demonstrating how  
11 the DCP would disqualify resources for consideration by the CRHR and NRHP. The  
12 Commission suggests that DCP MMs are noncommittal and only focus on future  
13 documentation rather than the requirements of the Delta Plan to implement specific  
14 strategies to avoid or protect these resources.

15 DCP MM CUL-1a states that the Department will “redesign or modify relevant  
16 facilities, construction activities, or both to avoid destruction of or damage to a built-  
17 environment historical resource or its setting, to the extent feasible, and if avoidance is  
18 not feasible, minimize the destruction or damage to the greatest extent feasible”  
19 ([DCP.D1.1.00162](#), p. 45). DCP MM CUL-1b “requires preparation of a built-environment  
20 treatment plan (BETP) for each built-environment historical resource affected by the  
21 project” ([DCP.AA1.2.00020](#), p. 39). The Department describes: “as appropriate for each  
22 individual resource, the BETP will require one or more of the following: building-specific  
23 Historic Structure Reports and preconstruction condition assessments; stabilization  
24 plans the same as, equal to, or more effective than the [Secretary’s Standards] and  
25 National Park Service guidance; redesign of project facilities to avoid destruction or  
26 damage to a built-environment historical resource (where feasible); or identification of  
27 protective treatment” ([DCP.AA1.2.00020](#), p. 39).

28 The Department also refers to DCP MM CUL-3a, which “outlines the method and  
29 procedures for conducting preconstruction investigations and surveys to accurately map  
30 archaeological resources in the study area” and requires preparation of an ARMP  
31 ([DCP.AA1.2.00020](#), p. 36). As required by DCP MM CUL-3a, the ARMP will guide  
32 resource-specific treatments, including “avoiding, minimizing, and mitigating known or  
33 potential project impacts on archaeological resources. The first step in each procedure  
34 will be to implement feasible avoidance of archaeological resources.” ([DCP.D1.1.00162](#),  
35 p. 55). The ARMP will include an Archaeological Treatment Procedure that “provides a  
36 range of treatment options for archaeological resources identified as part of  
37 implementing the [plan] or previously identified as NRHP/CRHR eligible” including but  
38 not limited to ([DCP.D1.1.00162](#), p. 56): installation of exclusionary fencing, site capping,  
39 data recovery, and public interpretation and education.

40 Furthermore, DCP MM CUL-2 describes future surveying requirements for  
41 potentially CRHR- and NRHP-eligible resources: “all surveys must be led or supervised  
42 by architectural historians that meet the Secretary of the Department of the Interior’s  
43 professional qualification standards. Newly identified resources must be mapped and

1 described on DPR 523-series forms and evaluated for CRHR and NRHP eligibility. The  
2 resource evaluations will be summarized in an inventory report and, if applicable, a  
3 Landscape Treatment Plan will be prepared” ([DCP.D1.1.00162](#), p. 19-51).

4 For compliance with Delta Plan MM 10-1(e) specifically, the Department points to  
5 DCP MM TCR-1a which requires preconstruction identification and avoidance of Tribal  
6 archaeological resources and the Tribal Cultural Landscape (“TCL”), in coordination  
7 with tribes ([DCP.AA1.2.00020](#), p. 36). Per TCR-1a, the Department will construct the  
8 DCP in a manner that avoids physically disturbing character-defining features of the  
9 Delta TCL and minimizes physical disturbances to the greatest extent feasible  
10 ([DCP.D1.1.00205](#), p. 46). The Department also points to DCP MM TCR-1b, which  
11 requires the Department to prepare a “Tribal Cultural Resources Management Plan  
12 (TCRMP) to guide continued Tribal consultation and establish project-specific  
13 procedures for avoiding, minimizing, and mitigating project impacts on known or  
14 potential Tribal cultural resources” ([DCP.AA1.2.00020](#), p. 36). Per TCR-1b, the  
15 Department will implement a TCRMP that will include resource-specific treatments to  
16 conduct prior and post construction ([DCP.D1.1.00205](#), p. 47). Lastly, the Department  
17 points to DCP MM TCR-1c and MM TCR-1d which describe the steps it will take to  
18 support Tribal stewardship and access to ceremonial practices ([DCP.AA1.2.00020](#), p.  
19 35).

20 For these reasons, the Council finds that evidence in the record supports that the  
21 Department will comply with Delta Plan MM 10-1(d) and MM 10-1(e) requirements to  
22 investigate and protect CRHR- and NRHP-eligible resources. The Commission has  
23 failed to show there is no substantial evidence in the record to support the Department’s  
24 finding that the MMs for the DCP are the same as, equal to, or more effective than Delta  
25 Plan MM 10-1(d) and MM 10-1(e) regarding CRHR and NRHP eligible resources.

26 **(c) Mitigation for cultural resource impacts deferred**  
27 **to the Section 106 process with unspecified**  
28 **funding (MM 10-1(c), MM 10-1(d), and MM 10-1(e))**

29 Delta Plan MM 10-1(c), MM 10-1(d), and MM 10-1(e) require investigation and  
30 protection of archaeological, tribal cultural, and landscape resources ([Appendix O](#),  
31 [Delta Plan Ecosystem Amendment Mitigation Monitoring and Reporting Program], p.16  
32 (Cal. Code Regs., tit. 23, app.O.)). The Commission argues that cultural resource  
33 mitigations are left up to the National Historic Preservation Act Section 106 process and  
34 future funding is not identified ([Commission, Attachment C](#), p. 5). The Commission  
35 states: “[The Department] is not proposing defined funding sources for mitigating direct  
36 or indirect impacts to cultural resources, leaving final disposition of properties and  
37 landscapes potentially eligible for the California and National Registers to the National  
38 Historic Preservation Act (NHPA) Section 106 process” ([Commission, Attachment C](#), p.  
39 5). The Commission points to the NHPA Section 106 Programmatic Agreement  
40 between the US Army Corps of Engineers (USACE), the Department, and the SHPO  
41 and suggest it “does not identify any clear standards for future mitigation development”  
42 ([DCP.AA5.1.00015;Commission, Attachment C](#), p. 5). The Commission argues the  
43 Department’s mitigation scheme “without a clear commitment to defined mitigation with

1 identified funding, is simply insufficient to mitigate for the DCP’s extensive and adverse  
2 impacts on the Delta cultural landscape” and is “not equally or more effective than Delta  
3 Plan MM 10-1(c), (d), and (e)” ([Commission, Attachment C](#), pp. 5-6).

4 Regarding the Section 106 process, the Department states that the USACE is  
5 “consulting with the [SHPO], federally recognized Tribes, and other consulting parties to  
6 develop a Programmatic Agreement” that will “set forth procedures for identification of  
7 historic properties, assessment of effects, and resolution of adverse effects on  
8 resources eligible for listing under the NRHP” ([DCP.AA1.2.00020](#), p. 35). The  
9 Department notes that MMs described will “fully mitigate the project impacts on cultural  
10 and Tribal cultural resources, and therefore mitigation is not dependent on the federal  
11 processes” ([DCP.AA1.2.00020](#), p. 35). The Department does not claim that the Section  
12 106 process is a measure that is the same as, equal to, or more effective than MM 10-  
13 1(c), MM 10-1(d), and MM 10-1(e). While the Section 106 process is relevant to Delta  
14 Plan MM 10-1(f), the Department points to four different measures for compliance with  
15 Delta Plan MM 10-1(c), MM 10-1(d), and MM 10-1(e) ([DCP.AA1.2.00020](#), pp. 35-37).

16 Regarding funding availability, the Council considers only whether adopted,  
17 covered action MMs are consistent with the Delta Plan and whether substantial  
18 evidence supports the Department’s findings that each measure is equally or more  
19 effective than the applicable Delta Plan MM. In its written submission, the Department  
20 notes that the “MMRP is an enforceable condition of project approval” ([DCP.B.1.00001](#),  
21 p. 2; [DCP.C.1.00002](#), pp. 1–2, and also Pub. Resources Code, § 30 21081.6(b))  
22 ([Department, Writ. Sub.](#), p. 130). While the MMRP is an enforceable condition of project  
23 approval, the Council does not consider the adequacy, feasibility, or enforcement of  
24 mitigation for purposes of CEQA or under Delta Plan policy G P1(b)(2).

25 For these reasons, the Council finds that the Commission has failed to show that  
26 evidence in the record establishes that the Department claims the Section 106 process  
27 as a corresponding DCP MM for Delta Plan MM 10-1(c), MM 10-1(d), and MM 10-1(e).  
28 The council finds that the Commission has failed to meet its burden and that evidence in  
29 the record supports the Department’s finding that its MMs are the same as, equal to, or  
30 more effective than Delta Plan MM 10-1(c), MM 10-1(d), and MM 10-1(e) regarding the  
31 issues of mitigation for cultural resource impacts being deferred to the Section 106  
32 process with unspecified funding.

33 **(d) Coordination with the Commission and local**  
34 **community organizations**

35 The Commission claims: “[The Department] did not initiate meaningful dialogue  
36 early on with the Commission and local community organizations...about potential  
37 mitigation for cultural resources impacts. Instead, this is left to the Section 106 process,  
38 which does not address issues that may be outside the Area of Potential Effect”  
39 ([Commission, Attachment C](#), p. 6). The Commission argues: “The lack of coordination  
40 with cultural organization representatives coupled with a future undefined process (the  
41 Section 106 process) and funding to mitigate impacts to cultural resources will have a  
42 significant adverse impact on the Delta” ([Commission, Attachment C](#), p. 6).

1 Although Delta Plan MM 10-1 includes numerous requirements related to  
2 consultation or coordination with California Native American Tribes, qualified  
3 archaeologists, the NAHC, and the SLC, there is no requirement to coordinate with the  
4 Commission and/or local community organizations regarding cultural resources.  
5 ([Appendix O](#), [Delta Plan Ecosystem Amendment Mitigation Monitoring and Reporting  
6 Program], pp.15-17 (Cal. Code Regs., tit. 23, app.O.)). Therefore, the Commission fails  
7 to raise an appealable issue related to the requirements of Delta Plan MM 10-1.

8 **(e) Mitigation Measure 10-1 Conclusion**

9 Based on the above, the Council finds that the Commission has failed to meet its  
10 burden, and that there is substantial evidence in the record to support the Department's  
11 finding that the DCP is consistent with G P1(b)(2) regarding Delta Plan MM 10-1.  
12 Therefore, the Council **denies the appeal**.

13 **vii. Delta Plan Mitigation Measure 10-3**

14 Delta Plan MM 10-3 requires certifying agencies for covered actions to inventory  
15 and evaluate historic resources and cultural landscapes, avoid historic resources,  
16 document resources per Historic American Building Survey/Historic American  
17 Engineering Record standards, and comply with other federal standards including  
18 Secretary of the Interior guidance ([Appendix O](#), [Delta Plan Ecosystem Amendment  
19 Mitigation Monitoring and Reporting Program], pp.18-19 (Cal. Code Regs., tit. 23,  
20 app.O.)). The Commission contends that the MMs proposed by the Department are not  
21 equal or more effective than Delta Plan MM 10-3.

22 **(a) Cultural landscape investigation, avoidance, and**  
23 **protection (MM 10-3(a) and MM 10-3(f))**

24 Delta Plan MM 10-3(a) requires certifying agencies to inventory and evaluate  
25 cultural landscapes, among other resource types, to determine if they are eligible for  
26 listing in the CRHR ([Appendix O](#), [Delta Plan Ecosystem Amendment Mitigation  
27 Monitoring and Reporting Program], p.18 (Cal. Code Regs., tit. 23, app.O.)). Delta Plan  
28 MM 10-3(f) requires compliance with the Secretary of the Interior's Guidance for the  
29 Treatment of Cultural Landscapes ([Appendix O](#), [Delta Plan Ecosystem Amendment  
30 Mitigation Monitoring and Reporting Program], p.19 (Cal. Code Regs., tit. 23, app.O.)).  
31 The Commission argues that the mitigation measures defined in the Certification do not  
32 include adequate mitigation for impacts to the Delta as a cultural landscape  
33 ([Commission Attachment C](#), p.2). They argue that the Department only surveyed two  
34 islands as cultural landscapes, whereas Delta Plan MM 10-3 requires that projects  
35 survey and evaluate cultural landscapes for listing in the CRHR ([Commission Writ. Sub.](#)  
36 p.16).

37 In its brief, the Commission points to language in the project Final EIR indicating  
38 that Bouldin Island and Staten Island were considered potential cultural landscapes and  
39 other islands including Mandeville, Venice, Lower Roberts or King "could be evaluated  
40 as cultural landscapes...[but] this level of analysis was outside of the scope of this  
41 project" ([DCP.D1.1.00164](#), pp.15-16; [Commission Writ. Sub.](#), p.16). The Commission

1 argues the Department did not demonstrate why these areas were not evaluated as  
2 cultural landscapes and supply their Draft EIR comments as evidence that this issue  
3 was raised with the Department ([DCP.AA5.1.00002](#); [Commission Writ. Sub.](#) p.16). The  
4 Commission states: “[The Department] has not assessed these areas or provided an  
5 explanation for why these areas are not being assessed. Therefore, the record does not  
6 provide substantial evidence to support [the Department’s] claim of consistency with G  
7 P1(b)(2) as it relates to cultural resources” ([Commission Writ. Sub.](#) p.17).

8 The Commission further argues that the DCP’s MMs should use the “cultural  
9 landscape contextual approach,” citing the Secretary of the Interior’s Standards for the  
10 Treatment of Historic Properties ([DCP.D3.1.04065](#); [Commission, Appeal Attachment C](#),  
11 p. 4). The Standards for the Treatment of Historic Properties includes the Guidelines for  
12 the Treatment of Cultural Landscapes ([DCP.D3.1.04065](#)), which the Commission used  
13 in its Draft Survey of Cultural Resources of the Sacramento-San Joaquin Delta in the  
14 Delta Conveyance Project Area ([DCP.D3.2.00417](#)).<sup>24</sup>

15 The Department has identified in its environmental documents and its written  
16 submission that further surveying will be completed for the project through DCP MM  
17 CUL-2 and the expansion of the HRSER. The Department describes: “[the Department]  
18 will have access to all property needed to finalize the inventory and evaluation, and [the  
19 Department] will ensure that all areas of impacts will be surveyed... in a manner  
20 consistent with the 2021 survey” ([DCP.D1.1.00162](#), p. 51). The 2021 survey referred to  
21 here informed the development of the HRSER, which was “prepared to identify built-  
22 environment historical resources within the project study area” and included  
23 identification of cultural landscapes ([DCP.D2.1.00105](#), p. 1). Per DCP MM CUL-2, “all  
24 surveys must be led or supervised by architectural historians that meet the Secretary of  
25 the Department of the Interior’s professional qualification standards. Newly identified  
26 resources must be mapped and described on DPR 523-series forms and evaluated for  
27 CRHR- and NRHP eligibility. The resource evaluations will be summarized in an  
28 inventory report and, if applicable, a Landscape Treatment Plan will be prepared”  
29 ([DCP.D1.1.00162](#), p. 19-51).

30 The Department points to DCP MM CUL-1b for compliance with Delta Plan MM  
31 10-3(f). The Landscape Treatment Plan applicable for rural cultural landscape historic  
32 districts under CUL-1b will “follow guidance published by the National Park Service  
33 (1998) and will serve to document the history and significance of the landscape and  
34 provide treatment recommendations that conform with the Secretary of the Interior’s

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<sup>24</sup> In its written submittal, the Commission points to its comments on the Draft EIR and DEIS suggesting the DCP adhere to National Park Service Standards for the protection of cultural landscapes, which is not in the record (Preservation Brief 36: Protecting Cultural Landscapes: Planning, Treatment and Management of Historic Landscapes) (Commission Writ. Sub., p. 17). The Commission notes the Department’s Draft EIR Appendix 19A “reiterates these steps but fails to systematically apply them to the Delta districts and properties potentially eligible for listing in the National Register that the project will affect” (Commission, Writ. Sub., p. 17). As Delta Plan MM 10-3 does not require compliance with the National Park Service Preservation Brief 36, this issue is not analyzed here.

1 Standards” including the Guidelines for the Treatment of Cultural Landscapes  
2 ([DCP.D1.1.00162](#), p. 47).

3 For these reasons, the Council finds that evidence in the record supports that the  
4 Department will comply with Delta Plan MM 10-3(a) requirements to survey cultural  
5 landscapes prior to construction. Evidence in the record also supports that the  
6 Department will develop treatment plans for rural cultural landscape historic districts  
7 consistent with Delta Plan MM 10-3(f). The Council finds that Commission has failed to  
8 meet its burden and that substantial evidence in the record supports the Department’s  
9 finding that its MMs are the same as, equal to, or more effective than Delta Plan MM 10-  
10 3 regarding rural cultural landscape investigation, avoidance, and protection.

11 **(b) CRHR and NRHP eligible resources (MM 10-3(a))**

12 Delta Plan MM 10-3(a) requires project proponents to inventory and evaluate  
13 resources for listing in the CRHR and identify measures to avoid significant historic  
14 resources that could be eligible for NRHP or CRHR listing ([Appendix O](#), [Delta Plan  
15 Ecosystem Amendment Mitigation Monitoring and Reporting Program], p. 18 (Cal. Code  
16 Regs., tit. 23, app.O.)). The Commission argues the project will “compromise all or  
17 portions of resources in the affected area and potentially disqualify them for  
18 consideration by the CRHR and the NRHP ([Commission, Appeal Attachment C](#), p. 4).  
19 Further evidence is not provided to demonstrate how the project will disqualify  
20 resources for consideration by the CRHR and NRHP. For compliance with Delta Plan  
21 MM 10-3, the Department refers to DCP MM CUL-1a, CUL-1b, and CUL-2. The  
22 Commission suggests that the Department’s measures are noncommittal and only focus  
23 on future documentation rather than the requirements of the Delta Plan to implement  
24 specific strategies to avoid or protect these resources ([Commission, Appeal Attachment](#)  
25 [C](#), p.4).

26 DCP MM CUL-1a states that the Department will “redesign or modify relevant  
27 facilities, construction activities, or both to avoid destruction of or damage to a built-  
28 environment historical resource or its setting, to the extent feasible, and if avoidance is  
29 not feasible, minimize the destruction or damage to the greatest extent feasible”  
30 ([DCP.D1.1.00162](#), p. 45). DCP MM CUL-1b “requires preparation of a [BETP] for each  
31 built-environment historical resource affected by the project” ([DCP.AA1.1.00020](#), p. 39).  
32 The Department describes: “as appropriate for each individual resource, the BETP will  
33 require one or more of the following: building-specific Historic Structure Reports and  
34 preconstruction condition assessments; stabilization plans the same as, equal to, or  
35 more effective than the Secretary of the Interior’s Standards and National Park Service  
36 guidance; redesign of project facilities to avoid destruction or damage to a built-  
37 environment historical resource (where feasible); or identification of protective  
38 treatment” ([DCP.AA1.1.00020](#), p. 39). Under DCP MM CUL-2, the Department will  
39 survey and inventory additional areas that were previously inaccessible and ensure that  
40 built environment historic resources are identified and BETPs created for each pursuant  
41 to DCP MM CUL-1b ([DCP.D1.1.00162](#), p. 51). DCP MM CUL-2 describes future  
42 surveying requirements for potentially CRHR and NRHP eligible resources: “all surveys  
43 must be led or supervised by architectural historians that meet the Secretary of the

1 Department of the Interior’s professional qualification standards. Newly identified  
2 resources must be mapped and described on DPR 523-series forms and evaluated for  
3 CRHR- and NRHP eligibility. The resource evaluations will be summarized in an  
4 inventory report and, if applicable, a Landscape Treatment Plan will be prepared”  
5 ([DCP.D1.1.00162](#), p. 19-51).

6 The Council finds that evidence in the record supports that the Department will  
7 comply with Delta Plan MM 10-3(a) requirements regarding CRHR- and NRHP-eligible  
8 resources. The Council finds that the Commission has failed to meet its burden and that  
9 substantial evidence in the record supports the Department’s finding that its MMs are  
10 the same as, equal to, or more effective than Delta Plan MM 10-3 regarding this issue.

11 **(c) Mitigation for cultural resource impacts deferred**  
12 **to Section 106 process with unspecified funding**  
13 **(MM 10-3(a) and MM 10-3(f))**

14 The Commission argues that cultural resource mitigations are left up to the  
15 Section 106 process and future funding is not identified ([Commission, Appeal](#)  
16 [Attachment C](#), p.5). They state: “[The Department] is not proposing defined funding  
17 sources for mitigating direct or indirect impacts to cultural resources, leaving final  
18 disposition of properties and landscapes potentially eligible for the California and  
19 National Registers to the [NHPA] Section 106 process” ([Commission, Appeal](#)  
20 [Attachment C](#), p. 5). The Commission points to the NHPA Section 106 Programmatic  
21 Agreement between the [USACE], the Department, and the SHPO and suggest it “does  
22 not identify any clear standards for future mitigation development” ([DCP.AA5.1.00015](#);  
23 [Commission, Appeal Attachment C](#), p. 5). They argue the Department’s mitigation  
24 scheme “without a clear commitment to defined mitigation with identified funding, is  
25 simply insufficient to mitigate for the DCP’s extensive and adverse impacts on the Delta  
26 cultural landscape” and is “not equally or more effective than Delta Plan MM... 10-3(a)  
27 and (f)” ([Commission, Attachment C](#), pp. 5-6).

28 The Department points to DCP MMs CUL-1a, CUL-1b, and CUL-2 as the same  
29 as, equal to, or more effective than Delta Plan MM 10-3.<sup>25</sup> ([DCP.AA1.2.00020](#), pp. 38-  
30 40). Regarding the Section 106 process, the Department states that the USACE is  
31 “consulting with the [SHPO], federally recognized Tribes, and other consulting parties to  
32 develop a Programmatic Agreement” that will “set forth procedures for identification of  
33 historic properties, assessment of effects, and resolution of adverse effects on  
34 resources eligible for listing under the NRHP” ([DCP.AA1.1.00020](#), p. 35). The  
35 Department notes that mitigation measures described will “fully mitigate the project  
36 impacts on cultural and Tribal cultural resources, and therefore mitigation is not  
37 dependent on the federal processes” ([DCP.AA1.1.00020](#), p. 35). The Department does  
38 not claim that the Section 106 process is a measure the same as, equal to, or more  
39 effective than Delta Plan MMs 10-3(a) and 10-3(f).

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<sup>25</sup> Requirements of these DCP mitigation measures are summarized under Delta Plan MM 10-1 analysis above.



1 **viii. Delta Plan Mitigation Measure 18-1**

2 Delta Plan MM 18-1 requires projects to be sited in areas that will not impair,  
3 degrade, or eliminate recreational facilities and opportunities, where feasible ([Appendix](#)  
4 [O](#), [Delta Plan Ecosystem Amendment Mitigation Monitoring and Reporting Program],  
5 p.31 (Cal. Code Regs., tit. 23, app.O.)). If not feasible, MM 18-1 requires projects to be  
6 designed such that recreational facilities and access to recreational opportunities will be  
7 avoided or minimally affected, and that when project construction is completed, any  
8 affected facilities and opportunities be restored to pre-construction conditions. Where  
9 impacts are unavoidable, “new permanent or replacement facilities shall be constructed  
10 that are similar in type and capacity”, and access restored, if feasible ([Appendix O](#),  
11 [Delta Plan Ecosystem Amendment Mitigation Monitoring and Reporting Program], p.31  
12 (Cal. Code Regs., tit. 23, app.O.)).

13 **(a) Cosumnes River Preserve and Stone Lakes**  
14 **National Wildlife Refuge recreation**

15 Appellant County of Sacramento argues that MM 18-1(a) is not met and  
16 specifically claims the DCP was not sited to avoid impairment or degradation of specific  
17 recreational facilities and opportunities at the Cosumnes River Preserve (“CRP”) and  
18 SLNWR (“SLNWR”). Appellant states that the mitigation crosswalk tables does not  
19 address mitigation for these two recreation sites ([DCP.AA1.2.00020](#), pp. 58-59), and  
20 citing to a “DWR Tunnel Impacts on the California Delta” map provided by Contra Costa  
21 County at the CPOD water rights hearing as evidence ([DCP.V2.4.00009](#)). Appellant  
22 claims that the DCP will cause irreparable recreation impacts to CRP and SLNWR due  
23 to proximity ([County of Sacramento, Appeal](#), p.12).

24 The Department describes that DCP impacts on recreation were determined  
25 using geospatial analysis employing CEQA Appendix G Guidelines thresholds of  
26 significance evaluating whether the project causes: (1) increased use of neighboring  
27 facilities such that substantial physical deterioration would occur; or (2) required  
28 construction or expansion of recreational facilities that might have an adverse effect on  
29 the environment ([DCP.D1.1.00149](#), pp. 16-19). The Department also considered  
30 impacts to the quality of recreation opportunities in section 17.3.3.5 of the Final EIR  
31 ([DCP.D1.1.00154](#)). Generally, the Department concluded that most recreational impacts  
32 would be limited to the first six years of construction at the Bethany Reservoir, are not  
33 likely to displace recreationists to other recreation sites and include long-term aesthetic  
34 impacts from project facilities that will be visible to recreators ([DCP.AA1.2.00020](#), p. 58).

35 Regarding the two sites in question, the Department does not establish MMs  
36 specific to the CRP or SLNWR in the G P1(b)(2) crosswalk table ([DCP.AA1.2.00020](#), p.  
37 58) but does include them in their analysis of recreation impacts ([DCP.D1.1.00149](#);  
38 [DCP.D1.1.00154](#)). The Department states that “effects on developed and dispersed  
39 recreation areas were assessed by identifying recreation use areas that fall within the  
40 surface construction footprint and in areas potentially affected by operations to evaluate  
41 whether developed and dispersed recreation sites or facilities would be physically  
42 altered by construction or affected such that users might be displaced.”  
43 ([DCP.D1.1.00149](#), pp. 16-18). The Department includes CRP and Stones Lakes

1 National Wildlife Refuge as the existing developed recreation areas nearest to proposed  
2 project features ([DCP.D1.1.00149](#), Table 16-1, Figures 16-1, 16-2). The Department  
3 states that construction and permanent use of a haul road for the intakes would be  
4 located just outside the western perimeter of SLNWR ([DCP.D1.1.00154](#), pp. 17-74).  
5 The Department finds that recreation impacts will be minimal because there will be a  
6 12- to 20-foot-high embankment between the refuge and haul route ([DCP.D1.1.00154](#),  
7 pp. 17-74). Lastly, the Department's written submission cites the Final EIR  
8 ([DCP.D1.1.00149](#)) analysis on potential impacts to the CRP and its finding that impacts,  
9 with ECs and best management practices (EC-18, MMA ES-1a, MM AES-1b, and MM  
10 NOI-1), will be less-than-significant.

11 For these reasons, the Council finds that County of Sacramento has failed to  
12 meet its burden and that evidence in the record supports the Department's finding that  
13 impacts to the CRP and Stone Lakes National Wildlife Refuge would be less-than-  
14 significant and that mitigation is not required. As a result, MM 18-1(a) is not applicable  
15 to the DCP and County of Sacramento has failed to raise an appealable issue.

16 **(b) Construction impacts on Turner Cut and Tiki**  
17 **Lagoon Resorts**

18 The Commission argues that long-term construction on Lower Roberts Island will  
19 affect recreation uses at the Turner Cut and Tiki Lagoon Resorts ([DCP.D1.1.00149](#), p.  
20 27) as well as William Cove Marina, which it states is likely to experience disruptions  
21 from construction noise and use of a rail spur and road from the Port of Stockton  
22 ([Commission, Attachment E](#), p. 2.). The Commission asserts the only mitigations  
23 proposed for recreation are future, site-specific traffic management plans that will place  
24 a burden on local public works and emergency responders ([DCP.D1.1.00168](#), pp. 40-  
25 44; [Commission, Attachment E](#), p. 2.).

26 The Department states that construction of the DCP's access shafts would  
27 disrupt Delta tourism, and specifically considered effects on tourism at Windmill Cove  
28 and Tiki Lagoon Marinas, were considered ([DCP.D1.000154](#), pp. 17-72). In response,  
29 the Department includes EC-18 (*Minimize Construction-Related Disturbances to Delta*  
30 *Community Events and Festivals*) and MM AES-1a, TRANS-1, and NOI-1 to minimize  
31 effects on tourism activities, and finds that because construction activities will not  
32 generally occur on weekends, and because most tourism activities also occur on  
33 weekends, effects on tourism will be minimal. ([DCP.D1.000154](#), pp. 17-72;  
34 [DCP.AA1.2.00020](#), p. 59; citing Appendix 3B, [DCP.D1.1.00012](#)).

35 The Council finds that the Commission has failed to meet its burden and that  
36 there is substantial evidence in the record to support the Department's finding that  
37 impacts to Turner Cut and Tiki Lagoon Resorts would be less-than-significant and that  
38 mitigation is not required. As a result, MM 18-1(a) is not applicable to the DCP and the  
39 Commission has failed to raise an appealable issue.

1 (c) Mitigation Measure 18-1 Conclusion

2 As discussed above, the Department identifies the CRP and SLNWR as existing  
3 developed recreation areas nearest to proposed project features and finds construction  
4 impacts at these sites to be less than significant. The Department mitigates recreation  
5 impacts from construction and permanent use of a haul road at the western perimeter of  
6 SLNWR with an embankment between the refuge and haul route ([DCP.D1.1.00154](#)).  
7 Additionally, the Department provides evidence establishing that impacts to recreational  
8 opportunities at Lower Roberts Island, adjacent to Turner Cut and Tiki Lagoon Resorts  
9 and Marinas, were considered and mitigated to support their determination that it  
10 minimized and mitigated for the effects on recreation. The Council finds that County of  
11 Sacramento and the Commission have failed to meet their burden, and that there is  
12 substantial evidence in the record to support the Department's finding that the DCP is  
13 consistent with G P1(b)(2) regarding Delta Plan MM 18-1. The Council therefore **denies**  
14 **the appeals**.

15 ix. Delta Plan Mitigation Measure 18-2

16 Delta Plan MM 18-2 requires covered actions that create "substantial temporary  
17 or permanent impairment, degradation, or elimination of recreational facilities" to: (1)  
18 coordinate with impacted providers to direct impacted users to under-utilized facilities,  
19 (2) provide additional operations and maintenance of existing facilities to prevent their  
20 deterioration, (3) document the condition of facilities and rehabilitate any that become  
21 degraded to their pre-construction condition, and (4) where impacts to existing facilities  
22 are unavoidable, to restore affected facilities to their pre-construction condition after  
23 construction is complete. "If this is not feasible, new permanent or replacement facilities  
24 shall be constructed that are similar in type and capacity" ([Appendix O](#), [Delta Plan  
25 Ecosystem Amendment Mitigation Monitoring and Reporting Program], p.31 (Cal. Code  
26 Regs., tit. 23, app.O.)).

27 San Joaquin County appeals the Department's findings regarding Delta Plan MM  
28 18-2 on the following grounds: (1) temporary and permanent impacts to recreation uses  
29 were not considered, (2) impacts to upland recreation were not considered, and (3) the  
30 Department failed to coordinate with and direct impacted recreators to alternative sites.

31 (a) Temporary and permanent impacts to recreation  
32 uses

33 San Joaquin County argues that the Department fails to meet the standards set  
34 forth in MM 18-2, stating "there is no analysis in the record of temporary or permanent  
35 impacts, because there is virtually no relevant data on both formal and informal  
36 recreational uses in the project area." Appellant then emphasizes that "temporary" is  
37 defined as "no longer than 2 years" ([DCP.D1.1.00133](#), pp. 15-26), which is shorter than  
38 the expected project construction duration of a decade or more.<sup>26</sup>

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<sup>26</sup> The Final EIR page that San Joaquin County mentions regarding temporary impacts of two years is related to agriculture, not tourism or recreation ([DCP.D1.1.00133](#)).

1 The Department presents analysis of recreation usage at developed and informal  
2 recreation sites in Chapter 16 of the Final EIR ([DCP.D1.1.00149](#)). In the San Joaquin  
3 County written submittal ([San Joaquin County, Writ. Sub.](#), p. 5), Appellant cites Chapter  
4 3, Project Description of the Final EIR ([DCP.D1.1.0010](#), pp. 3-131) that says it is a 13-  
5 year construction project. In Chapter 16, Recreation, of the Final EIR, The Department  
6 discusses the five- to six-year impacts on recreation during construction at the Bethany  
7 Reservoir ([DCP.D1.1.00149](#), p.16-28).

8 San Joaquin County claims lack of relevant data for analysis of temporary and  
9 permanent recreation impacts in the project area ([San Joaquin County, Appeal](#), p. 3;  
10 [San Joaquin County, Writ. Sub.](#), p. 5). Regarding the issue of adequate consideration  
11 and mitigation for temporary and permanent impacts to recreation, the Department  
12 analyzed recreation usage at developed and informal recreation sites in Chapter 16 of  
13 the Final EIR and concluded that construction activities would not result in substantial  
14 temporary or permanent impairment, degradation, or elimination of recreational facilities  
15 ([DCP.D1.1.00149](#), pp. 16-23- 16-25). The Department finds that the discharge facility at  
16 Bethany Reservoir would remove recreation access to portions of the shoreline during  
17 construction at the Bethany Reservoir, but that there is adequate capacity for  
18 recreationists to use other portions of the Bethany Reservoir State Recreation Area.

19 Therefore, the Council finds that San Joaquin County has failed to meet its  
20 burden and record evidence supports the Department's finding that the DCP ECs and  
21 MMs are the same as, equal to, or more effective than the mitigation elements required  
22 for Delta Plan MM 18-2 regarding temporary and permanent impacts to recreation uses.

23 **(b) Impacts to upland recreation**

24 San Joaquin County also argues that the Department only considers impacts at  
25 the intake sites and not throughout the entire project area ([San Joaquin County, Writ.](#)  
26 [Sub.](#), p. 5), citing the mitigation crosswalk table ([DCP.AA1.2.00020](#), p. 59). Appellant  
27 specifically mentions that the Department does not claim any impacts to upland  
28 recreation (beyond waterside and in-water recreation) such as birdwatching ([San](#)  
29 [Joaquin County, Writ. Sub.](#), p. 5). Upon examination, while the mitigation crosswalk  
30 table focuses on intakes and discharge facilities (e.g., Bethany Reservoir), the ECs and  
31 MMs described for recreation appear to cover the entire project area  
32 ([DCP.AA1.2.00020](#)) and the Department considers other site impacts in their Final EIR,  
33 including birdwatching ([DCP.D1.00149](#), see Table 16-8; [DCP.D1.00154](#)).

34 Therefore, the Council finds that San Joaquin County has failed to meet its  
35 burden and record evidence supports the Department's finding that the DCP ECs and  
36 MMs are the same as, equal to, or more effective than the mitigation elements required  
37 for Delta Plan MM 18-2 regarding impacts to upland recreation or other non-water  
38 activities such as birdwatching.

39 **(c) Alternative recreation sites**

40 San Joaquin County argues that the Department fails to meet Delta Plan MM 18-  
41 2 requirements to coordinate with and direct impacted recreators to alternative

1 recreation sites ([San Joaquin County, Writ. Sub.](#), p. 5), citing the mitigation crosswalk  
2 table and Final EIR Chapter 16 ([DCP.AA1.2.00020](#); [DCP.D1.1.00149](#)). Though not  
3 included in the crosswalk table or Final EIR Chapter 16, the Department describes EC-  
4 16 in the Final EIR, which requires coordination with local stakeholders (e.g., marina  
5 operators, city and county parks departments) to provide notification of construction and  
6 maintenance activities in waterways and require posting of information for any in-water  
7 activities ([DCP.D1.1.00012](#), p. 3B-32) including at Bethany Reservoir ([DCP.D1.1.00154](#),  
8 pp. 17-79). The Department also finds that impacts from construction on recreational  
9 activities would be minimized with implementation of EC-18, by ensuring community  
10 coordination through the Ombudsman to ensure avoidance of community events and  
11 festivals;, and MM AES-1a, MM TRANS-1, and MM NOI-1 to minimize effects on  
12 tourism activities when recreationalists are in close proximity to construction sites  
13 ([DCP.D1.1.00154](#), pp. 17-79).

14 Therefore, the Council finds that San Joaquin County has failed to meet its  
15 burden and record evidence supports the Department’s findings that the DCP ECs and  
16 MMs are the same as, equal to, or more effective than the mitigation elements required  
17 for Delta Plan MM 18-2 regarding coordinating with and directing impacted recreators to  
18 alternative recreation sites.

19 **(d) Mitigation Measure 18-2 Conclusion**

20 As noted above, the Council finds that San Joaquin County has failed to meet its  
21 burden, and that there is substantial evidence in the record to support the Department’s  
22 finding that the DCP is consistent with G P1(b)(2) regarding Delta Plan MM 18-2. The  
23 Council therefore ***denies the appeals***.

24 **x. Delta Plan Mitigation Measure 20-1**

25 Delta Plan MM 20-1 requires that projects restrict the disposal of construction  
26 debris and other solid waste at local landfills when those facilities have limited capacity  
27 ([Appendix O](#), [Delta Plan Ecosystem Amendment Mitigation Monitoring and Reporting  
28 Program], p.35 (Cal. Code Regs., tit. 23, app.O.)). All construction debris is required to  
29 be disposed of at landfills and disposal facilities appropriately licensed for the specific  
30 types of waste involved. In cases where such facilities are not located near construction  
31 sites, projects must include an analysis of solid waste transportation. Furthermore, this  
32 measure mandates that construction contractors develop comprehensive construction  
33 debris management plans, including provisions for reuse or recycling of debris.

34 City of Stockton alleges that the Department is obligated to include MM 20-1 to  
35 ensure that there are no solid waste impacts, or in case a portion of the Reusable  
36 Tunnel Material (“RTM”) is hazardous or unusable. Appellant states that it is unclear  
37 how much of the RTM will be hazardous, and the Department indicates that all RTM  
38 that does not “meet the requirements for safe reuse would be transported to a disposal  
39 location...” ([DCP.AA1.2.00020](#) p. 50).

40 The Department contends that MM 20-1 is unnecessary due to project design  
41 features and EC-13: Best Management Practices to Reduce GHG Emissions. The

1 Department finds that MM 20-1 is not applicable because the DCP “would not result in a  
2 significant impact related to exceeding the capacity of local landfills or causing conflicts  
3 with regulations related to solid waste,” that DCP design features and EC-13 are equal  
4 to or more effective than MM 20-1, and that the design features and ECs related to  
5 construction waste are meant to reduce the use and need for landfills during  
6 construction. RTM generated from the DCP will “be reused offsite and not hauled to  
7 landfills unless the materials are hazardous” ([DCP.AA1.2.00020](#), p. 64). According to  
8 the Department, approximately 1%-5% of the RTM would be unsuitable for reuse and  
9 this material would be hauled to a certified landfill for proper disposal ([DCP.D1.1.00172](#),  
10 pp. 44-45).

11 For these reasons, evidence in the record supports that the Department  
12 conducted an analysis of solid waste disposal impacts of the DCP, determined that  
13 those impacts would be less-than-significant, and found that mitigation was not  
14 required. As a result, MM 20-1 is not applicable to the DCP. The Council finds that City  
15 of Stockton has failed to meet its burden, and that there is substantial evidence in the  
16 record to support the Department’s finding that the DCP is consistent with G P1(b)(2)  
17 regarding Delta Plan MM 20-1. Therefore, the Council **denies the appeal**.

18 **d. G P1(b)(2) Conclusion**

19 The Department has made findings that the DCP is consistent with G P1(b)(2).  
20 Appellants SDWA, Sac Sewer, County of Sacramento, the Commission, San Joaquin  
21 County, and City of Stockton argue that the DCP is inconsistent with Policy G P1(b)(2).  
22 In support for its findings, the Department has identified DCP MMs that it finds are  
23 applicable. For the applicable measures, the Department has cited evidence in the  
24 record as support that its DCP MMs, or equivalent actions, are equally or more effective  
25 than corresponding Delta Plan MMs. Appellants SDWA, Sac Sewer, County of  
26 Sacramento, the Commission, San Joaquin County, and City of Stockton argue that the  
27 DCP is inconsistent with Policy G P1(b)(2).

28 For the reasons described above, the Council finds that Appellants have failed to  
29 meet their burden, and that there is substantial evidence in the record to support the  
30 Department’s finding that the DCP is consistent with G P1(b)(2). Therefore, the Council  
31 **denies all appeals** related to G P1(b)(2).

32 **3. Policy G P1(b)(3) (Cal. Code Regs., tit. 23, § 5002 subd. (b)(3)):**  
33 **Detailed Findings to Establish Consistency with the Delta Plan: Best**  
34 **Available Science**

35 The Department certifies that the DCP is consistent with Delta Plan Policy G  
36 P1(b)(3). Seven Appellants raise substantive arguments that it is not. For the reasons  
37 discussed below, the Council finds that Appellants have failed to meet their burden, and  
38 that there is substantial evidence in the record to support the Department’s finding that  
39 the DCP is consistent with G P1(b)(3). Accordingly, the Council **denies all appeals**  
40 regarding G P1(b)(3) as follows:

<b>G P1(b)(3) Appeal Issue</b>	<b>Appellants</b>	<b>Decision</b>
Golden mussel proliferation	San Joaquin County	Denied
Climate change modeling	County of Sacramento, Sac Sewer, City of Stockton, SF Baykeeper	Denied
Impacts on Sac Sewer’s Harvest Wate	Sac Sewer	Denied
Recreational use methodology	Commission, San Joaquin County	Denied
Traffic and transportation analysis	County of Sacramento	Denied
Noise analysis	County of Sacramento	Denied
Water supply and quality analysis	County of Sacramento, SF Baykeeper	Denied
Groundwater analysis	Sac Sewer	Denied
Reverse flows	Sac Sewer	Denied
Residence time and cyanobacteria harmful algal bloom (“CHAB”) proliferation	Sac Sewer, City of Stockton	Denied
Seismicity	Commission, County of Sacramento, Sac Sewer, City of Stockton	Denied
Tribal engagement and traditional knowledge	SF Baykeeper	Denied
Delta Independent Science Board comments	San Joaquin County	Denied

1 **a. Policy Requirements**

2 G P1(b)(3) requires “as relevant to the purpose and nature of the project, all  
3 covered actions must document use of best available science.” Best available science is  
4 defined in the Delta Plan as the best scientific information and data for informing  
5 management and policy decisions (Cal. Code Regs, tit. 23, § 5001, subd. (f).). Best  
6 available science for proposed covered actions must be consistent with the guidelines  
7 and criteria found in California Code of Regulations, title 23, appendix 1A ([Appendix 1A,](#)  
8 [Best Available Science, Delta Plan](#)), which lists six criteria for best available science:  
9 relevance, inclusiveness, objectivity, transparency and openness, timeliness, and peer  
10 review ([Appendix 1A, Best Available Science, Delta Plan](#)).

1                                   **b.      Certification**

2           The Department states that the DCP is consistent with Delta Plan Policy G P1  
3 (b)(3) and that best available science was applied at overall, resource-specific, and  
4 issue-specific levels of management and policy decisions for the DCP. With respect to  
5 the purpose and nature of the DCP, the Department explains that best available science  
6 is specific to the decision being made and the time frame available for that decision.  
7 ([DCP.AA1.2.00021](#), p. 1-1.) Here, “the specific decisions being made by [the  
8 Department] that are under consideration by DSC for meeting best available science  
9 consistency requirements are DWR’s management and policy decisions linked to the  
10 development of the design and operations for the project.” ([DCP.AA1.2.00021](#), pp. 1-1-  
11 1-2). The DCP is described in the Certification as consisting of “the construction,  
12 operation and maintenance of new SWP water diversion and conveyance facilities in  
13 the Delta that will be part of the SWP and will be operated in coordination with the  
14 existing SWP south Delta water diversion facilities.” ([DCP.AA1.2.00001](#), p. 15).

15           The Certification describes how development of the DCP and analysis of  
16 environmental impacts as required under CEQA involved a range of data, models,  
17 literature, and analyses spanning numerous scientific and engineering disciplines. The  
18 Department describes the Delta Plan’s best available science requirement as generally  
19 aligned to that of CEQA (specifically citing CEQA Guidelines, Cal. Code Regs., tit.14, §  
20 15151) and thus references the Final EIR and its development as evidence that best  
21 available science was used in the DCP’s analyses and decision-making. Data, models,  
22 literature, and analyses for the Covered Action have been subjected to scientific, legal,  
23 and regulatory review processes. Impact analyses were subject to reviewers spanning  
24 the public, experts in scientific disciplines, and expert staff at regulatory agencies. The  
25 Department also states that it continues to use best available science to inform its  
26 decisions, such as for permitting and adaptive management processes occurring after  
27 the Final EIR’s completion.

28           Additional details describing the Department’s approach to determining  
29 consistency are provided in the Certification’s G P1 (b)(3), Attachment 1. There, the  
30 Department describes in multiple ways how the DCP relates to each of the six criteria  
31 for best available science defined in Delta Plan Appendix 1A. First, the Department  
32 describes its approach to determining overall consistency of the Covered Action using a  
33 criterion-by-criterion approach ([DCP.AA1.2.00021](#), Ch. 3). Each best available science  
34 criterion is defined and then individually addressed with respect to how the Department  
35 approached management and decision-making for the Covered Action.

36           Next, the Department specifically addresses best available science criteria on a  
37 resource- or issue-specific basis for 17 topics identified as deserving additional attention  
38 in terms of how literature, models, or data used in the analyses are consistent with G P1  
39 (b)(3) ([DCP.AA1.2.00021](#), Ch. 4). Examples of these specific resources and issues are  
40 hydrologic modeling, surface water and water supply, flood protection, groundwater,  
41 and water quality. Throughout this chapter, the Department cites substantial evidence in  
42 the record set forth in the Final EIR or the DCP CER. This chapter also includes  
43 descriptions of how new information relevant to best available science has been or will

1 be addressed with respect to each resource or issue, if it has already become available  
2 after the Final EIR was finalized or as it might become available in the future.

3 The Department also describes resource analyses and issues for the Covered  
4 Action that involved information or methods not explicitly covered in the Delta Plan's  
5 criteria for best available science, such as social science, Traditional Knowledge, and  
6 other factors. For example, a social science-based framework and Traditional  
7 Knowledge were used to inform the Covered Action's Tribal cultural resource  
8 assessments.

9 **c. Appeals and Analysis**

10 The Council received appeals regarding the Department's Certification of  
11 Consistency with GP 1(b)(3) from the Commission, County of Sacramento, SF  
12 Baykeeper, Sac Sewer, City of Stockton, SDWA, and San Joaquin County. Each of the  
13 issues raised in these appeals is briefly described below, with an analysis of the issue  
14 related to consistency of the DCP with G P1(b)(3). The appeal issues are grouped by  
15 topic area.

16 **i. Golden mussel proliferation**

17 In its appeal, San Joaquin County argues that the Department failed to use the  
18 best available science by not including any scientific information regarding golden  
19 mussel and only referring to them in passing under ER P5 (San Joaquin County,  
20 Appeal, p. 4), and specifically asserts that this claim is related to the Delta Plan best  
21 available science criteria of inclusiveness, objectivity, and timeliness  
22 ([DCP.AA1.2.00001](#), pp. 159-160). Appellant lists ways that the DCP may interact with  
23 golden mussel that would require the use of best available science including: (1)  
24 exacerbating conditions for colonization through water quality, temperature, and other  
25 changes; (2) providing new substrate for colonization, (3) effects of chemicals used to  
26 control golden mussels, and (4) changes in water chemistry as a result of golden  
27 mussel management.<sup>27</sup> Appellant states that the Department fails to include any  
28 mitigation, monitoring, or adaptive management to address golden mussels and  
29 therefore has not considered how to protect Delta values including the coequal  
30 goals. Appellant specifies that the Department fails to document use of best available  
31 science related to the criteria for *inclusivity* because readily available information is not  
32 included, for *timeliness* because the Department has failed to incorporate new  
33 information available since the Final EIR was finalized, and for *objectivity* because the

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<sup>27</sup> San Joaquin County cites a paper by Yang 2024 that highlights the impact human activities have on accelerating golden mussel expansion, particularly water diversion projects. San Joaquin County also cites a presentation by Mauro Rebelo from January 2025 about the threat of golden mussels and the ability of artificial substrate to amplify their spread. Neither of these references have been admitted to the record.

1 recognized standards of the scientific method are not met (San Joaquin County, Appeal  
2 Memo, p. 8).<sup>28</sup>

3         However, GP 1(b)(3) requires the use of best available science “as to the  
4 purpose and nature” of the Project and not all potential concerns related to the project.  
5 As discussed above, the purpose and nature of the DCP is the construction, operation  
6 and maintenance of new SWP water diversion and conveyance facilities in the Delta.  
7 Although the golden mussel represents a legitimate concern, it is not part of the purpose  
8 and nature of this project, and appellants have not shown otherwise. Thus, G P1(b)(3)  
9 does not apply to the golden mussel issue here. Fully considering and avoiding or  
10 mitigating against golden mussel is an ER P5 issue that is addressed under that policy.  
11 The Council therefore finds that San Joaquin County failed to raise an appealable issue  
12 with respect to golden mussel proliferation under G P1(b)(3).

13   **ii.         Climate change modeling**

14         In their appeals on G P1(b)(3), County of Sacramento, Sac Sewer, City of  
15 Stockton, and SF Baykeeper argue that the Department failed to use the best available  
16 science concerning various aspects of the climate change modeling used to forecast the  
17 impacts of DCP operations. ([Sac County Appeal Memo](#), pp. 14-17; [Sac Sewer Appeal](#)  
18 [Memo](#), pp. 26-28; [Stockton Appeal Memo](#), pp.10-19). Specific concerns include input  
19 data used for modeling ([DCP.V2.12.00002](#), pp. 5-6), time periods used for modeling  
20 ([DCP.V2.12.00002](#), pp. 10; 12-15; 20-21), the ability of climate models to predict  
21 observed conditions ([DCP.V2.32.00020](#); [DCP.V2.32.00021](#); [DCP.V2.32.00023](#);  
22 [DCP.V2.32.00026](#)), and accounting for inherent uncertainty ([Stockton Appeal](#), p.28).  
23 Appellants make arguments regarding modeling the effects of climate change on the  
24 DCP during its operational life; this is directly connected to the Department’s stated  
25 purpose of the DCP as a water conveyance project ([Sac County Appeal](#), pp. 19-20; [Sac](#)  
26 [Sewer Appeal](#), pp.16-17; [Stockton Appeal](#), pp.16; [DCP.V2.12.00002](#), pp. 21; 24; 29;  
27 31).

28         In the Certification, the Department states that the DCP is consistent with Delta  
29 Plan Policy G P1 (b)(3) because “development of the covered action and the analysis of  
30 its environmental impacts as required under CEQA relied on a wide range of relevant  
31 data, literature, and tools, including hydrologic, groundwater, aquatic resource, and  
32 terrestrial biological resource models specific to the Sacramento–San Joaquin Delta  
33 and a vast array of Delta specific information and data” ([DCP.AA1.2.00001](#), p. 171). As  
34 evidence, the Department cites the data, models, literature, and methods described in  
35 the Final EIR ([DCP.AA1.2.00001](#)). The Final EIR analyses are based on a 2040  
36 modeling timeframe, although the Department did include 2070 modeling timeframe  
37 results in an Appendix to the Final EIR ([DCP.D1.1.00029](#)).

38         The Department also states that new information related to best available  
39 science since the Final EIR was completed, as described in G P1 (b)(3) Attachment 1

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<sup>28</sup> San Joaquin County states that the DCP will create “9.5 million square feet of new durable substrates” for golden mussel habitat, citing a Department video from October 23, 2025, after the certification of consistency was submitted.

1 DCP Best Available Science Consistency Analysis ([DCP.AA1.2.00021](#)). Specifically, the  
2 Department describes this new information as “both information and data developed or  
3 made available between the time of the Final EIR analyses and preparation of this  
4 Certification, such as updated modeling with refined project operational criteria using  
5 CalSim 3 and DSM2” ([DCP.AA1.2.00001](#), p. 171).

6 In the Certification G P1 (b)(3) Attachment, the six best available science criteria  
7 as defined in Appendix 1A of the Delta Plan are discussed in the context of hydrologic  
8 and other water-related modeling and sea level rise and modeling ([DCP.AA1.2.00021](#)).  
9 Both sections focus on how the six best available science criteria apply to the models  
10 and/or analyses used to develop the Final EIR ([DCP.AA1.2.00021](#)).

11 Separately in the Certification G P1 (b)(3) Attachment, the Department provides  
12 a summary of “new information relevant to [best available science]” and states “major  
13 advancements in climate change analysis were made for the 2023 SWP Delivery  
14 Capability Report and 2025 SWP Adaptation Strategy” after the Final EIR was  
15 completed ([DCP.AA1.2.00021](#), pp. 4-76). Specifically, these documents utilize a “new  
16 ‘adjusted historical hydrology’ dataset that accounts for climate changes that have  
17 already begun to occur and are observable today.” ([DCP.AA1.2.00021](#), pp. 4-76).  
18 Additional modeling runs were conducted for the 2023 SWP Delivery Capability Report  
19 and 2025 SWP Adaptation Plan, and modeling timeframes were extended to 2085 for  
20 the 2023 SWP Delivery Capability Report Strategy ([DCP.AA1.2.00021](#), p. 4.8). The  
21 Department states “these changes went through independent peer review prior to  
22 implementation” ([DCP.AA1.2.00021](#), pp. 4-76). In Section 4.2.7 of the Certification G P1  
23 (b)(3) Attachment, the Department describes numerous updates included in this new  
24 modeling, including updated regulations, bathymetry, and other model improvements,  
25 but states “newly available information described in this section did not change the  
26 analysis or impact determinations that were stated in the Final EIR” ([DCP.AA1.2.00021](#),  
27 pp. 4-8). In a footnote of Section 4.18 of the Certification G P1 (b)(3) Attachment, the  
28 Department states the SWP Adaptation Strategy Scenario Sensitivity Analysis “contains  
29 an analysis of the potential for the updated approach to affect the type and magnitude of  
30 impacts disclosed in the Final EIR. The analysis does not identify any substantial  
31 changes in potential effects on resources from the project as compared to those  
32 discussed in the Final EIR” ([DCP.AA1.2.00021](#), pp. 4-77).

33 Section 3.6 of the Certification’s G P1 (b)(3) Attachment generally discusses the  
34 DCP’s approach to addressing uncertainty in the context of the transparency and  
35 openness criterion. The Department cites evidence in the Final EIR for how  
36 uncertainties related to the DCP’s design, construction, and operation are accounted for  
37 in the Certification ([DCP.AA1.2.00021](#), pp. 3-9 - 3-11). All references to the record in  
38 Section 3.6 are to various portions of the Final EIR.

39 **(a) Input data used for modeling**

40 Appellants SF Baykeeper and Sac Sewer claim that the climate and sea level  
41 rise data used were based on unrepresentative and 2020 baseline conditions,  
42 respectively ([DCP.V2.12.00002](#), pp. 20). Appellants County of Sacramento, Sac Sewer,  
43 and City of Stockton claim that the new baseline data chosen by the Department for its

1 modeling does not consider extreme events or changes in evapotranspiration  
2 ([DCP.V2.12.00002](#), pp. 24).

3 Appellants contend that the data the Department used for its modeling does not  
4 accurately reflect the conditions the DCP will encounter throughout its operational life.  
5 ([DCP.V2.32.00010](#); [DCP.V2.18.00006](#) pp. 14; [DCP.V2.12.00005](#) pp. 34). According to  
6 Dr. Paulsen’s water rights hearing testimony, this modeling was based on data from  
7 1922–2015 via CalSim 3 hydrological modeling, and some of the periods included—  
8 such as 1905–1923 and 1978–1999—were among the wettest on record in western  
9 North America ([DCP.V2.32.00010](#)). As a result, the analyses are said to be skewed  
10 toward wetter scenarios, which Appellants argue do not represent recent decades or  
11 likely future climate patterns ([DCP.V3.3.00060](#)). Additionally, after the Final EIR for the  
12 DCP was released, the Department updated its modeling by focusing on data from  
13 1992–2021, a period considered more representative, per Dr. Paulsen’s water rights  
14 hearing testimony ([DCP.V2.12.00002](#) pp. 24). Appellants further note that scenarios  
15 relied on climate and sea level rise data from 2020, rather than projections for when the  
16 DCP would operate (2040 and beyond), a choice that could affect factors like salinity,  
17 water quality, and residence time in the Delta ([DCP.V2.12.00002](#), pp. 20).

18 Other Appellant concerns center around how the Department modeled salinity  
19 intrusion in the Delta. Dr. Swanson’s water rights hearing testimony identifies that the  
20 Department relied on historical data from a 689-day span between February 10, 2009,  
21 and December 31, 2010—a timeframe which included no critically dry years and is  
22 therefore considered unrepresentative of future conditions ([DCP.V2.12.00002](#), pp. 20).  
23 Appellants argue that the adjusted hydrological baseline did not account for changes in  
24 evapotranspiration or for the frequency of extreme events such as drought, atmospheric  
25 rivers, and wildfires, all of which influence Delta inflows. Dr. Paulsen’s testimony  
26 emphasizes that ignoring shifts in evapotranspiration leaves out a key cause of  
27 reservoir decline and surface water loss ([DCP.V2.12.00002](#), pp. 61). Karla Nemeth,  
28 Director of the Department, explained at the Council’s hearing on the appeals that  
29 warmer temperatures create new demands on water supplies by boosting evaporation  
30 and soil absorption; even if precipitation volumes remain steady, Northern California can  
31 expect less runoff into rivers, streams, and reservoirs, impacting water available for  
32 communities, the economy, and the environment ([DCP.V2.12.00005](#), pp. 40).

33 However, appellants do not address the specific G P1(b)(3) findings in the  
34 Certification with respect to the best available science criteria or the record evidence  
35 that supports the findings. ([County of Sacramento, Appeal](#) Memo, p. 14-20; [Sac Sewer,](#)  
36 [Appeal Memo, p. 10-27](#), [City of Stockton, Appeal](#) Memo, pp. 10-19; [SF Baykeeper,](#)  
37 [Appeal](#) Memo, pp. 14-20).

38 In its Certification, the Department provides the following information regarding  
39 the selection of hydrologic conditions and sea level rise for input data: “Hydrologic  
40 inputs for CalSim 3 have been updated using CMIP6-based datasets, which were  
41 developed for modeling purposes in [the Department’s] 2023 SWP Delivery Capability  
42 Report and the [Department’s] Climate Action Plan, Phase III: SWP Adaptation  
43 Strategy. The revised climate change hydrology incorporated into this modeling utilizes  
44 the most current earth system models from the Intergovernmental Panel on Climate

1 Change (“IPCC”), advanced downscaling methods, updated sea level rise projections  
2 from the National Oceanic and Atmospheric Administration (“NOAA”) and guidance from  
3 the California Ocean Protection Council (“OPC”), enhanced technical tools, and an  
4 improved approach to scenario selection and development.” ([DCP.AA1.2.00021](#), p. 4.8).

5 With respect to sea level rise data, the Department notes: “Recent guidance from  
6 the [California Natural Resources Agency] and OPC (2024) concludes that the H++  
7 scenario is not considered scientifically plausible and advises that the High Scenario is  
8 now regarded as the most appropriate scenario for critical infrastructure evaluation.  
9 While the H++ scenario was previously used in the EIR analysis and represents a more  
10 risk-averse approach than the newly recommended High Scenario, the project design  
11 therefore meets or exceeds the sea level and climate change conditions outlined in the  
12 latest guidance ([DCP.AA1.2.00021](#), p. 4.8). Based on substantial evidence in the  
13 record, [the Department] has determined that the climate variables examined in its  
14 analysis, while conservative, continue to be relevant and reliable.” ([DCP.AA1.2.00021](#),  
15 p. 4.8).

16 As noted above, the Department cites record evidence describing how hydrologic  
17 or sea level rise inputs were updated and provides evidence supporting the selection of  
18 these inputs. Appellants disagree with the Department’s approach and point to their own  
19 expert. A disagreement among experts does not establish a lack of substantial  
20 evidence in the record. This is particularly true whereas here that Appellants *do not*  
21 *address the Certification’s findings of consistency with respect to the best available*  
22 *science criteria and fail to address the evidence in support of the Department’s findings.*  
23 (See e.g. [County of Sacramento, et al., Appeal, Memo](#), pp. 14-20; [DCP.AA1.2.00021](#)).  
24 Under the substantial evidence standard, the Council does not reweigh the evidence  
25 and must “indulge all presumptions and resolve all conflicts in favor of the [certifying  
26 agency’s] decision.” *Poncio v. Dept. of Resources Recycling & Recovery, supra*, 34  
27 Cal.App.5th 663, 669. Moreover, the failure to discuss the record that supports the  
28 agency’s decision forfeits the substantial evidence argument. (*Delta Stewardship*  
29 *Council Cases, supra*, 48 Cal.App.5th 1014, 1072.). Therefore, the Council finds that  
30 Appellants have failed to meet their burden, and that there is substantial evidence in the  
31 record to support the Department’s finding that the DCP is consistent with G P1(b)(3) as  
32 to issues related to input data used for modeling.

33 **(b) Time periods for which modeling was conducted**

34 Appellants Sacramento County, Sac Sewer, SF Baykeeper, and City of Stockton  
35 claim that operations and impacts of the DCP are not presented to describe conditions  
36 after 2040 and/or 2070 (Sac County Appeal of DCP Cert of Consistency pp. 38, Sac  
37 Sewer Appeal of DCP Cert of Consistency pp. 37, Stockton Appeal of DCP Cert of  
38 Consistency pp. 27). Appellants assert that the Final EIR bases its assessments solely  
39 on modeling results for the year 2040, without extending analysis to later periods when  
40 the DCP will likely be in operation (Sac County Appeal of DCP Cert of Consistency pp.  
41 15, Sac Sewer Appeal of DCP Cert of Consistency pp. 11, Stockton Appeal of DCP Cert  
42 of Consistency pp. 17). While they acknowledge that the Department did model future  
43 conditions for 2070 and incorporated these into some operational and environmental

1 assessments, they argue that additional evaluations—such as water availability studies  
2 for other long-term infrastructure projects and benefit-cost analyses for the DCP—were  
3 conducted for periods beyond 2070 but were not included in the Final EIR  
4 ([DCP.V2.18.00006](#), pp. 17). This omission, according to Appellants, amounts to a  
5 failure to fully account for the climate conditions, including sea level rise and saltwater  
6 intrusion, that the DCP would encounter throughout its operational life, as highlighted in  
7 CPOD water rights hearing testimony from Dr. Swanson ([DCP.V2.18.00006](#)).

8 Furthermore, Appellants maintain that a comprehensive analysis should consider  
9 a range of plausible future climate scenarios over the entire project lifespan to  
10 accurately reflect evolving system conditions ([DCP.V2.18.00006](#), pp. 18). They contend  
11 that by not modeling the likely conditions the DCP would face in 2070 and beyond, nor  
12 projecting how the infrastructure would operate under those scenarios, the Department  
13 falls short of managing the Delta’s water resources for the long term and ensuring a  
14 reliable water supply as climate change intensifies. This, they argue, is inconsistent with  
15 statutory mandates to responsibly oversee water resources in the Delta amid ongoing  
16 and future climate challenges.

17 According to the Certification, “Given the cumulative uncertainties related to  
18 climate change, socioeconomic conditions, water demand, and regulatory changes,  
19 which are too complex to reasonably anticipate, conducting analyses beyond 2070  
20 would not provide information beneficial to the public or decision-makers; therefore,  
21 such analyses were not considered” ([DCP.AA1.2.00021](#), pp. 4-76). The Department  
22 further clarifies that, “Because the project will remain operational well into the future,  
23 [the Department] has also included a comparison of climate conditions for a more  
24 extended timeframe (i.e., the 2070s) ([DCP.AA1.2.00021](#), pp. 4-75). These analyses aim  
25 to inform readers as to whether the nature and scale of impacts identified for 2040  
26 would differ under a potential 2070 scenario ([DCP.AA1.2.00021](#), pp. 4-75). It is  
27 acknowledged that the set of assumptions used to define the 2070 scenario (2070  
28 Median scenario) represents only one possible outcome for that year.”  
29 ([DCP.AA1.2.00021](#), pp. 4-75 - 4-76).

30 The Department prepared a “CalSim 3 Results for 2070 technical memorandum,”  
31 a document indicating that these modeling exercises “showed more frequent  
32 occurrence of SWP and Central Valley Project (“CVP”) reservoirs at dead storage and  
33 additional drawdown of groundwater storage compared to existing conditions and 2040  
34 scenarios presented in the DCP EIR” ([DCP.V2.18.00006](#)).

35 Supplementary modeling was performed for both the 2023 SWP Delivery  
36 Capability Report and the 2025 SWP Adaptation Strategy ([DCP.AA1.2.00021](#), p. 4.8),  
37 extending the modeling timeframes to 2085 for the 2023 SWP Delivery Capability  
38 Report. Additionally, a footnote in the Certification states: “The [SWP] Adaptation  
39 Strategy Scenario Sensitivity Analysis includes an assessment of the potential for the  
40 updated approach to affect the nature and scale of impacts described in the Final EIR  
41 ([DCP.AA1.2.00021](#), pp. 4-77). The analysis does not identify any significant changes in  
42 the potential effects on resources from the project when compared to those outlined in  
43 the Final EIR.” ([DCP.AA1.2.00021](#), pp. 4-77).

1 As described above, the Department emphasizes modeling as it pertains to the  
2 Final EIR in the Certification (e.g., 2040 and 2070) and also cites record evidence for  
3 modeling conducted for time periods beyond those cited by the Appellants (e.g., 2023  
4 SWP Delivery Capability Report includes modeling outputs for extended time periods  
5 (2085)) ([DCP.AA2.1.00103](#)). Thus, the Council finds that Appellants have failed to meet  
6 their burden, and that there is substantial evidence in the record to support the  
7 Department's finding that the DCP is consistent with G P1(b)(3) as to issues related to  
8 time periods for which modeling was conducted.

9 **(c) Climate models and scenarios used for DCP**  
10 **operations**

11 Appellant SF Baykeeper claims that the Department inappropriately used climate  
12 scenarios that fail to predict tropical warming patterns to model project operations. ([SF](#)  
13 [Baykeeper, Appeal Memo](#), pp. 17-18; [SF Baykeeper, Writ. Sub.](#), pp. 18-19). Appellant  
14 contends that the climate models used by the Department—specifically CMIP5 and  
15 CMIP6—are inadequate for predicting important climate trends affecting California's  
16 water system ([SF Baykeeper Appeal Memo](#), pp. 17-18; [SF Baykeeper, Writ. Sub.](#), pp.  
17 18-19). Appellant argues these models fail to capture observed patterns of tropical  
18 warming in the Pacific Ocean and related changes in atmospheric rivers and the Pacific  
19 jet stream, all of which have significant implications for water resources  
20 ([DCP.V2.32.00020](#); [DCP.V2.32.00021](#); [DCP.V2.32.00023](#); [DCP.V2.32.00026](#)).  
21 Appellant references studies documenting a poleward shift in atmospheric rivers during  
22 the Northern Hemisphere's winter months, pushing these weather systems toward the  
23 North Pacific near Alaska and away from California (SF Baykeeper Appeal Memo, pp.  
24 17-18). This shift, Appellant asserts, may have contributed to the megadrought  
25 experienced in California from 2000 to 2022 by reducing overall precipitation in the  
26 state. According to Appellant, the CMIP5 and CMIP6 global climate models relied upon  
27 by the Department did not predict these observed trends, raising concerns about the  
28 reliability of the modeling approach for forecasting future conditions and impacts on the  
29 state's water supply ([DCP.V2.32.00026](#)).

30 The Department supports its modeling choices for the project by referencing  
31 Final EIR Appendix 5A, which justifies the selected models and directs readers to the  
32 record for additional information about the models used or developed  
33 ([DCP.D1.1.00033](#)). Specifically, this appendix offers a comprehensive overview of the  
34 seven modeling tools utilized to inform various resource sections within the Final EIR,  
35 including chapters on flood protection, water quality, and fish and aquatic resources  
36 ([DCP.AA1.2.00021](#), p. 4-1). The Department emphasizes that CalSim was selected as  
37 the most appropriate model for hydrology modeling based on best available science  
38 criteria, as detailed in section 4.2 of the Certification attachment for G P1(b)(3)  
39 ([DCP.AA1.2.00021](#), pp. 4-1 - 4-10). Additionally, the Department acknowledges the  
40 existence of forthcoming updates to climate models, such as CMIP7, but clarifies that  
41 these are not yet available for use ([DCP.AA1.2.00021](#), pp. 4-77).

42 As discussed above, the Department cites record evidence describing which  
43 models were used and provides evidence that these models represent the best

1 available scientific approaches for conducting these analyses (e.g., CalSim, CMIP6  
2 models). In summary, this matter reflects a divergence in expert opinion, with deference  
3 afforded to the Department and its determinations under the substantial evidence  
4 standard. In addition, appellants failed to fully address the findings and record evidence  
5 in the Certification concerning the best available science criteria. Therefore, the Council  
6 finds that Appellants have failed to meet their burden, and that there is substantial  
7 evidence in the record to support the Department’s finding that the DCP is consistent  
8 with G P1(b)(3) as to issues related to climate models and scenarios used for DCP  
9 operations.

10 **(d) Climate change modeling does not account for**  
11 **uncertainty**

12 Appellant SF Baykeeper contends that the Department has not adequately  
13 addressed uncertainty in its climate modeling for the DCP and has failed to leverage all  
14 available information and data, thereby falling short of the “best available science”  
15 standard required by the Delta Reform Act and Delta Plan ([SF Baykeeper, Appeal](#)  
16 Memo, p. 19). Appellant argues that the Department’s analysis obscures the possibility  
17 that climate change could significantly diminish the effectiveness of the DCP, noting that  
18 initial operations projected for 2045 are likely to occur under drier conditions than those  
19 predominantly used in model simulations ([SF Baykeeper, Appeal](#) Memo, p. 18, citing  
20 [DCP.D1.1.00203](#)). Furthermore, Appellant claims that the DCP’s water supply  
21 performance and environmental impacts are expected to worsen in the future, with  
22 higher water exports during crucial ecological periods in winter and spring, but overall  
23 reduced exports in 2045 and beyond ([SF Baykeeper, Appeal](#) Memo, p. 19, citing  
24 [DCP.D1.1.00203](#)).

25 The Department primarily references evidence from the Final EIR to explain how  
26 uncertainties related to the project’s design, construction, and operation are addressed  
27 in the Certification ([DCP.AA1.2.00021](#), Section 3.6 – Uncertainty, pp. 3-9 - 3-11). The  
28 Certification begins with a general statement acknowledging that relevant uncertainties  
29 were identified in the Final EIR ([DCP.AA1.2.00021](#), Section 3.6 – Uncertainty, pp. 3-9 -  
30 3-11). Additionally, the Department points to the Compensatory Mitigation Plan and  
31 Operations, Adaptive Management, and Monitoring Plan as general evidence  
32 supporting how uncertainty is considered throughout the DCP’s lifecycle  
33 ([DCP.AA1.2.00021](#), Section 3.18 -- Adaptive Management and Monitoring Program).  
34 The Department finds that substantial evidence regarding uncertainty is reflected in the  
35 Final EIR’s impact conclusions and in the effectiveness of proposed MMs  
36 ([DCP.AA1.2.00021](#), pp. 3-9).

37 Furthermore, the Department generally cites adaptive management as a central  
38 process for accounting for uncertainty ([DCP.AA1.2.00021](#), pp. 3-9). The Certification  
39 refers to the resources provided in the Final EIR as evidence of uncertainty and points  
40 to supporting documentation, including Final EIR Vol 1, Chapter 4, Appendix 30A  
41 (CalSim results)([DCP.D1.1.00203](#)), and the 2040 Appendices ([DCP.AA1.2.00021](#), pp.  
42 3-10 - 3-11). These references collectively demonstrate the Department’s approach to  
43 incorporating and documenting uncertainty within its analyses and project planning.

1 With respect to transparency and openness for hydrologic modeling, the  
2 Certification cites to the Final EIR Vol. 1, App. 5A, Section B ([DCP.D1.1.00040](#)), which  
3 discusses that CalSim 3 is the “best available tool” for performing analyses for  
4 environmental review of programs and projects ([DCP.AA1.2.00021](#), p. 4-4). The  
5 Department additionally acknowledges “New Information Relevant to Best Available  
6 Science” related to Hydrologic and Other Water-Related Modeling in Section 4.2.7  
7 ([DCP.AA1.2.00021](#), p. 4-8). In a footnote, the Department states “The [SWP] Adaptation  
8 Strategy Scenario Sensitivity Analysis contains an analysis of the potential for the  
9 updated approach to affect the type and magnitude of impacts disclosed in the Final  
10 EIR. The analysis does not identify any substantial changes in potential effects on  
11 resources from the project as compared to those discussed in the Final EIR”  
12 ([DCP.AA1.2.00021](#), p. 4-77).

13 In conclusion, the Certification describes how the Department recognizes the  
14 influence of climate change on SWP deliveries. Appellant SF Baykeeper fails to  
15 consider all record evidence presented by the Department regarding this issue and  
16 does not address the Department’s findings regarding hydrology and climate change  
17 modeling related to defined Delta Plan best available science criteria. (*Delta*  
18 *Stewardship Council Cases, supra*, 48 Cal.App.5th 1014, 1072.) As a result, the Council  
19 finds that SF Baykeeper has failed to meet its burden, and that there is substantial  
20 evidence in the record to support the Department’s finding that the DCP is consistent  
21 with G P1(b)(3) as to issues related to accounting for uncertainty in climate change  
22 modeling.

23 **iii. Impacts on Sac Sewer’s Harvest Water**

24 In its appeal, Sac Sewer argues that the Department failed to use best available  
25 science to assess groundwater recharge impacts to Harvest Water<sup>29</sup> and specifically  
26 asserts that this claim is related to the Delta Plan best available science criteria of  
27 inclusiveness. Appellant argues that the Department failed to assess changes to  
28 groundwater recharge that may impact Harvest Water’s ability to meet its obligation to  
29 raise groundwater to “within ten feet below ground surface or shallower within 15 years  
30 of the start” of the program ([Sac Sewer, Appeal](#), p. 24). Appellant states that the Delta  
31 Groundwater Model (“DeltaGW Model”) used in the Final EIR to describe these impacts  
32 does not provide sufficient information to discern how the DCP will affect this  
33 groundwater goal ([Sac Sewer, Appeal](#), p. 24).

34 Appellants claim that the Department’s proposed TCC “will utilize an existing  
35 farm area within Harvest Water’s service area for a DCP launch shaft, the storage of  
36 [RTM], and related construction activities” ([Sac Sewer, Appeal](#), p. 23). Appellants argue

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<sup>29</sup> Harvest Water is described by Sac Sewer as “a recycled water program that will support agricultural irrigation while creating, protecting and enhancing critical wildlife habitat and contributing to groundwater sustainability efforts by serving as a foundational project and management action to support the Sustainable Groundwater Management Act for the South American and Consumnes groundwater subbasins.” ([Sac Sewer, Appeal](#), p. 18)

1 that the TCC will affect the Harvest Water service area temporarily during the  
2 construction phase and permanently during operations, resulting in a permanently  
3 reduced pasture area of 222 acres for irrigated agriculture and a permanent 1,081 acre-  
4 foot per year loss in irrigation demand ([Sac Sewer, Appeal](#), pp. 24-25). Furthermore,  
5 Appellants argue that the DCP will divert flows from the Sacramento River and act as a  
6 barrier to flow between the river and aquifer, which will further reduce recharge to the  
7 groundwater system ([Sac Sewer, Appeal](#), pp. 24-25).

8 In the Certification, the Department states that substantial evidence in the record  
9 supports its determination that the DCP groundwater analysis is consistent with G  
10 P1(b)(3). The DeltaGW Model, an integrated surface water and groundwater model,  
11 was the primary tool used in the quantitative groundwater analysis of existing 2020  
12 conditions ([DCP.AA1.2.00021](#), p. 14). After evaluating the available options, the  
13 Department determined that no readily available groundwater model could be used for  
14 groundwater impact analysis of the project and that development of a completely new  
15 groundwater model was not feasible within the project schedule ([DCP.AA1.2.00021](#), p.  
16 16). Instead, several other options based on updates and revisions to existing models,  
17 such as CVHM-D/CVHM or C2VSim-FG, were considered ([G P1 \(b\)\(3\) Attachment 1, p.](#)  
18 [17](#)). The DeltaGW Model, a new model based on C2VSim-FG, was developed for the  
19 evaluation of groundwater conditions ([DCP.AA1.2.00021](#), p. 17). The Department also  
20 notes that while it is theoretically possible that a more sensitive or complex model could  
21 have been developed, this increased accuracy would not alter the conclusions  
22 regarding the environmental impacts ([DCP.AA1.2.00021](#), p. 20).

23 For these reasons, the Council finds that evidence in the record demonstrates  
24 that the Department appropriately used best available models and information for its  
25 groundwater analysis in a manner consistent with the inclusiveness criterion of thorough  
26 review or relevant information, for best available science. In addition, G P1(b)(3) does  
27 not require the documentation of best available science for a review of impacts to  
28 Harvest Water. As explained above, best available science must be documented with  
29 respect to the nature or purpose of the Covered Action and not with respect to potential  
30 impacts to another program. Therefore, the Council finds that Appellant Sac Sewer has  
31 failed to meet its burden, and that there is substantial evidence in the record to support  
32 the Department's finding that the DCP is consistent with G P1(b)(3) as to issues raised  
33 by Sac Sewer concerning impacts on Harvest Water.

34 **iv. Recreational use methodology**

35 Appellants the Commission and San Joaquin County argue that there is not  
36 substantial evidence in the record to support the conclusion that the DCP does not  
37 significantly impact recreation. Specifically, Appellants contend that DCP recreational  
38 analysis does not meet best available science requirements due to inadequate data  
39 collection methods compared to data collected for other resources, and a lack of site-  
40 specific and project-specific MMs for recreational impacts. ([Commission, Attachment F](#),  
41 p. 1; [San Joaquin County et al., Appeal, BAS Memo](#), p. 8.) Appellants contend that the  
42 Certification is not inclusive because it did not incorporate suggestions of the  
43 Commission on recreational uses; not timely because the Department did not collect

1 additional data following the COVID-19 pandemic; and not objective, because the  
2 Department focused only on roads serving recreational areas. ([San Joaquin County et](#)  
3 [al., Appeal, BAS Memo](#), p.10.)

4 The Commission argues that the Department didn't engage enough with  
5 recreation providers, especially considering how much recreation means to the Delta's  
6 economy and the scale of the DCP. ([Commission, Attachment F](#), p. 2.) The Commission  
7 points out that only eight recreation providers were interviewed, none from Contra Costa  
8 or Alameda counties, and just one marina operator was included. ([Commission,](#)  
9 [Attachment F](#), p. 2.) Additionally, the Commission notes that the field reconnaissance  
10 was described as "limited" and done over two days in February. ([Commission,](#)  
11 [Attachment F](#), p. 2.) Site-specific DCP features would affect recreational facilities and  
12 use areas, including intake structures, geotechnical investigations, the Bethany  
13 Complex, RTM areas, shaft sites, levee improvements, access roads, transmission  
14 lines, concrete batch plants, fuel stations, and CMP mitigation sites. ([Commission,](#)  
15 [Attachment F](#), p. 2.) For instance, long-term levee construction at Lower Roberts Island  
16 will impact Turner Cut and Tiki Lagoon Resorts, and Windmill Cove Marina would also  
17 face disruptions ([Commission, Attachment F](#), p. 3). The Commission emphasizes that  
18 too few recreational interviews were conducted (eight total) and not enough site  
19 reconnaissance was performed, with just two days spent across 25 sites.  
20 ([DCP.D1.1.00152](#).) The Commission also claims that the Department's reasoning,  
21 stating that the COVID-19 pandemic affected their ability to collect additional user  
22 observations is speculative and unsupported by data.<sup>30</sup>([DCP.D1.1.00149](#).)

23 In its Certification, the Department finds that the sources and methods used in  
24 the recreation analysis are consistent with best available science. ([DCP.AA1.2.00001](#),  
25 p. 169.) The Department's research was "based on site reconnaissance surveys and  
26 supplemented with interviews of recreation providers or managers in the recreation  
27 business, which provided more information about observed dispersed recreation use  
28 patterns in the project area" ([DCP.AA1.2.00001](#), p. 4-55, referencing [DCP.D1.1.00150](#)).  
29 The Department selected interviewees "based on the interviewees' area of  
30 management responsibility or oversight and knowledge about representative recreation  
31 activities, particularly dispersed activity locations that are represented less frequently in  
32 existing documentation; recommendations and availability were also factors in the  
33 selection. In addition, several interviews with recreation managers were conducted to  
34 verify reported trends and obtain more recent site-specific information for some  
35 locations that would be proximate to construction activities" ([DCP.AA1.2.00001](#), pp. 4-  
36 55, [DCP.D1.1.00151](#)).

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<sup>30</sup> The written submission concludes by discussing the Council's remand decision for the Lookout Slough Tidal Restoration and Flood Improvement Project, which required the Department to collect more recreational data including recreational vehicle counts from motion-activated cameras over the course of three months. The Commission claims that the Department's "ability to properly gather [best available science] data to assess recreation impacts for another covered action in the same time frame as it was declining to do so for DCP demonstrates that DCP's recreation impacts are not based on [best available science]" ([Commission Writ. Sub., p. 20](#)).

1 In its written submission, the Department asserts that “there is no requirement for  
2 data collection in each resource area to be as comprehensive as in other resource  
3 areas, and certainly not for different covered actions” ([Department, Writ. Sub.](#), p. 104).  
4 The Department supports this position with evidence from the Delta Plan: “Best  
5 available science is specific to the decision being made and the time frame available for  
6 making that decision” ([DCP.AA2.1.00105](#), p. 35). Furthermore, best available science  
7 does not obligate a certifying agency to generate new data, and the Appellant does not  
8 identify any additional data that it believes [the Department] should have used (See *San*  
9 *Luis & Delta-Mendota Water Authority v. Locke* (9<sup>th</sup> Cir. 2014) 776 F.3d 971, at p. 995;  
10 see e.g. *Clover Valley Foundation v. City of Rocklin* (2011) 197 Cal.App.4th 200, 245),  
11 [“CEQA does not require a lead agency to conduct every recommended test and  
12 perform all recommended research to evaluate the impacts of a proposed project. The  
13 fact that additional studies might be helpful does not mean that they are required.”]  
14 ([Department, Writ. Sub.](#), p. 104).

15 GP 1(b)(3) requires covered actions to demonstrate the use of best available  
16 science “relevant to the purpose and nature of the project.” In this case, the appeal  
17 arguments raised by the Commission regarding best available science for recreational  
18 impacts do not relate to the nature or purpose of the DCP—that is, to modernize and  
19 improve the reliability of SWP water deliveries. Therefore, Council therefore finds that  
20 San Joaquin County failed to raise an appealable issue with respect to recreational use  
21 under G P1(b)(3).

## 22 v. Traffic and transportation analysis

23 In its appeal, County of Sacramento argues that the Department failed to use the  
24 best available science to support its findings regarding traffic and transportation  
25 impacts, and specifically asserts that this claim is related to the Delta Plan best  
26 available science criteria of relevance and inclusiveness. Appellant contends that the  
27 Department failed to use the best available science when evaluating roadway issues,  
28 saying that the Department “does not consider the physical characteristics of Delta  
29 roadways in determining the Level of Service [“LOS”] during Project construction.”  
30 ([DCP.V2.5.00031](#), [DCP.D1.1.00168](#), [DCP.D1.1.00169](#).) Appellant further states that the  
31 Final EIR only takes into account visible pavement conditions on the surface  
32 ([DCP.V2.5.00031](#), p. 3) ([Sacramento County, Appeal](#), p. 28), and that the Department  
33 did not analyze physical characteristics or truck loading impacts of “6,500 daily vehicle  
34 trips to withstand this traffic” ([DCP.D1.1.00168](#), p. 20A-35). Appellant also contends  
35 that the Final EIR only looks at specific segments of roadway and fails to consider  
36 impacts to other segments of roadways that are likely to be impacted by ongoing  
37 construction traffic, stating “These roadways are currently low volume, narrow roadways  
38 in poor condition that are not structurally able to accommodate truck traffic.” ([County of](#)  
39 [Sacramento, Appeal](#), p. 28)

40 The Department replies in its written submittal that the methods and data used to  
41 determine transportation impacts through vehicle miles traveled (“VMT”) and roadway  
42 LOS analysis are consistent with G P1 (b)(3), stating that “although transportation  
43 impacts under CEQA focus on vehicle miles traveled calculations that do not evaluate

1 truck trips for construction, [the Department] conducted additional analysis to consider  
2 the effects of construction-related traffic on roadways (including levee roads) and made  
3 design decisions to avoid those effects" ([Department, Writ. Sub.](#), p. 92). Regarding the  
4 intersections included in the analysis, the Department states that "the LOS analysis  
5 used hourly roadway traffic volumes from 6:00 a.m. to 7:00 p.m. for 120 roadway  
6 segments as well as the AM and PM peak hour turning movement counts for 44 study  
7 intersections identified through the scoping process as having the potential to be  
8 affected during the construction of the project" ([DCP.AA1.2.00021](#), pp. 4-61). The  
9 Department contends it determined the intersections during the NOP scoping process  
10 with Caltrans and local city and county agencies ([DCP.AA1.2.00021](#), pp. 4-62).

11 GP 1(b)(3) requires covered actions to demonstrate the use of best available  
12 science "relevant to the purpose and nature of the project." In this case, the appeal  
13 arguments raised by the County of Sacramento concerning traffic and transportation do  
14 not relate to the nature or purpose of the DCP—that is, to modernize and improve the  
15 reliability of SWP water deliveries. Therefore, the Council finds that the County of  
16 Sacramento failed to raise an appealable issue with respect to traffic and transport  
17 analysis under G P1(b)(3).

18 **vi. Noise analysis**

19 In its appeal, County of Sacramento argues that the Department failed to use  
20 best available science to support its findings regarding noise impacts during DCP  
21 construction and specifically asserts that this claim is related to the Delta Plan best  
22 available science criteria of relevance and inclusiveness. Appellant argues that the  
23 Department has not adequately considered several issues: how prolonged construction  
24 noise, especially from pile driving, will "transform the soundscape" ([County of  
25 Sacramento, Appeal](#), p. 20); the noise level thresholds, with claims that no reduction  
26 measures are implemented before these limits are exceeded; whether noise mitigation  
27 strategies were assessed to reduce overall noise and vibration; and the potential health  
28 risks posed by construction noise and vibrations ([County of Sacramento, Appeal](#), p. 20-  
29 21).

30 As described in its best available science consistency analysis, the Department  
31 claims there is strong evidence supporting its findings that the DCP noise analysis  
32 methods meet the requirements of G P1(b)(3) ([DCP.AA1.2.00021](#), pp. 4-68 – 4-71). The  
33 analysis was tailored to the DCP location and considered different sources of noise,  
34 including pile driving, traffic, and vibrations from tunnel boring machines. The  
35 Department also states that their modeling was conservative, assuming heavy  
36 equipment would be used at full capacity, and that further studies are planned to  
37 monitor sound levels before construction begins. ([DCP.AA1.2.00021](#), p. 4-69)  
38 Regarding how long noise will last and acceptable limits, the Department's written  
39 submission notes that, depending on how close facilities are to sensitive areas, daytime  
40 noise could exceed criteria anywhere from one week up to fourteen years, though not  
41 continuously. The Department adds that these periods of excessive noise will be  
42 nonconsecutive, and with mitigation—if property owners take part in MM NOI-1:  
43 Develop and Implement a Noise Control Plan—the impacts can be reduced.

1 ([Department, Writ. Sub.](#), p. 90). If a property owner does not elect to participate in the  
2 sound insulation program, the impact will remain significant and  
3 unavoidable” ([Department, Writ. Sub.](#), p. 90). On noise mitigation, the Department says,  
4 “these measures include a sound insulation program, implementing best noise control  
5 measures, and installing sound barriers at work areas. The sound insulation program  
6 (which will offer improvements such as installation of dual pane windows, new or  
7 improved exterior doors, and new HVAC systems to impacted property owners) as well  
8 as other commitments to affected property owners described in MM NOI-1 that, if  
9 accepted, will reduce noise impacts to a less-than-significant level, will begin prior to  
10 construction and will be based on updated modeling” ([Department, Writ. Sub.](#), pp. 93-  
11 94).

12 GP 1(b)(3) requires covered actions to demonstrate the use of best available  
13 science “relevant to the purpose and nature of the project.” In this case, the appeal  
14 arguments raised by the County of Sacramento concerning noise analysis do not relate  
15 to the nature or purpose of the DCP—that is, to modernize and improve the reliability of  
16 SWP water deliveries. Therefore, the Council finds that the County of Sacramento failed  
17 to raise an appealable issue with respect to noise analysis under G P 1(b)(3).

18 **vii. Water supply and quality analysis**

19 Appellants County of Sacramento and SF Baykeeper claim that the Department  
20 fails to document use of best available science as it relates to water supply and water  
21 quality analyses. Specifically, Appellants argue that the Department fails to adequately  
22 consider impacts to water supply for the Town of Hood, that the Department’s analysis  
23 of water demand is based on arbitrary and inflated estimates of population growth in  
24 SWP delivery areas, and that the Department’s analysis of water quality ignores  
25 scientific evidence that existing Delta flows based on Decision 1641 (“D-1641”) are  
26 inadequate to protect, enhance, and restore the Delta’s ecosystem.

27 County of Sacramento contends that the Department insufficiently evaluates the  
28 potential impacts on water supply, specifically regarding risks to the Town of Hood’s (a  
29 Delta legacy community) sole source of water for a Delta legacy community. While  
30 Appellant notes that the DCP Final EIR acknowledges “localized impacts [during project  
31 construction and maintenance] could affect water wells near the project sites”  
32 ([DCP.V3.3.00131](#), p. 8-1:26-33), it maintains that the Department fails to offer a  
33 quantitative assessment of effects on groundwater levels and quality. Instead, the  
34 Department references post-impact MMs rather than identifying specific wells at risk  
35 and implementing preventative strategies ([DCP.V2.29.00012](#), p. 5). As an alternative,  
36 the Appellant suggests that mitigation could be achieved by installing a pipeline  
37 between the SCWA South Service Area and the Hood Service Area ([DCP.V2.29.00001](#),  
38 p. 7). Fundamentally, the Appellant’s position is that the Department’s analytical  
39 methodology obscures possible adverse effects of the DCP on local groundwater  
40 resources. This concern primarily addresses the adequacy of the Final EIR and does  
41 not pertain to the documentation of best available science relative to the purpose and  
42 nature of the DCP; therefore, the Council will not consider it further.

1 SF Baykeeper alleges that the Department’s evaluation of how much the Delta is  
2 relied upon for water supply does not use the best available science ([SF Baykeeper,](#)  
3 [Appeal](#), p. 14). Appellant incorporates its argument about insufficient scientific  
4 standards into their appeal of WR P1, asserting that the Department’s assumptions  
5 regarding future water demand conflict with a California Department of Finance report  
6 on projected urban population changes. However, the Appellant does not clarify which  
7 specific aspects of best available science lack documentation. Furthermore, their  
8 claim—that estimates of population growth in urban water management plans are not  
9 based on best available science—does not pertain to the project’s nature or purpose, so  
10 the Council does not address it further.

11 SF Baykeeper argues that the Department’s water quality analysis overlooks  
12 scientific evidence showing that the current Delta flows under D-1641 are not sufficient  
13 to protect, enhance, and restore the Delta’s ecosystem. Appellant further asserts that  
14 the Department exaggerates its compliance with D-1614 flow requirements by  
15 frequently submitting Temporary Urgency Change Petitions (“TUCPs”) when it fails to  
16 meet those standards. However, whether D-1641 is adequate for ecosystem protection  
17 or whether the Department is adhering to the regulation does not pertain to  
18 documenting the best available science in relation to the nature and purpose of this  
19 project.

20 G P1(b)(3) requires covered actions to demonstrate the use of best available  
21 science “relevant to the purpose and nature of the project.” It does not require a distinct  
22 G P1(b)(3) finding with respect to every potential impact. Project environmental impacts  
23 are a concern under CEQA. Insofar as appellants challenge the findings under WR P1,  
24 those findings are not a G P1(b)(3) issue. the Council therefore finds that Appellants  
25 failed to raise an appealable issue with respect to water supply and quality analysis  
26 under G P1(b)(3)

27 **viii. Reverse flows**

28 Appellant Sac Sewer argues that record evidence indicates potential for  
29 increased reverse flow events at Freeport, caused or exacerbated by the DCP, to  
30 conflict with its EchoWater program ([Sac Sewer, Appeal](#), p. 17). Sac Sewer owns and  
31 operates EchoWater, a wastewater treatment facility subject to requirements under its  
32 National Pollutant Discharge Elimination System permit, which prohibits Sac Sewer  
33 from discharging effluent when the ratio of river flow to effluent flow falls below a certain  
34 threshold ([DCP.V2.27.00010](#), p. 5). Appellant cites CPOD water rights hearing  
35 testimony by Sac Sewer’s expert in Delta hydrodynamics, Dr. Susan Paulsen, who  
36 states that the Department’s DSM2 model runs indicate reverse flows at Sac Sewer’s  
37 discharge location will increase in number, duration, and severity because of future  
38 climate change and would likely increase further due to DCP operations. Appellant  
39 asserts that the Department’s analysis of reverse flow conditions during the period of  
40 DCP operation is insufficient ([DCP.V2.27.00013](#), p. 4). Additionally, Dr. Paulsen notes  
41 that the Department has not evaluated whether DCP operations under the ITP,  
42 combined with future sea level rise, would worsen reverse flows in the Sacramento  
43 River during future conditions ([DCP.V2.27.00013](#), p. 8).

1            Sac Sewer contends that the Department must evaluate DCP operations under  
2 ITP and climate conditions anticipated for 2040 and beyond. It further argues that the  
3 Department should propose modifications to DCP operations when such operations  
4 would worsen reverse flows in the Sacramento River, to determine if the DCP will  
5 significantly and adversely impact EchoWater ([Sac Sewer, Appeal](#), p. 18). In its written  
6 submittal, Sac Sewer reiterates its argument and notes that the Department’s evidence  
7 does not meet best available science standards for inclusiveness, objectivity,  
8 transparency and openness, timeliness, and peer review ([Sac Sewer, Appeal](#), p. 21,  
9 [Combined, Writ. Sub.](#), pp. 45-46). However, Appellant does not specify how each  
10 standard is unmet.

11            The Department indicates that the scientific basis for evaluating water quality  
12 impacts in the Final EIR was established using proven hydrologic and hydrodynamic  
13 models. The Department states that these models have been utilized for decades to  
14 assess state and federal water supply projects in the Central Valley and are  
15 supplemented by peer-reviewed literature relating to the Delta’s physical and chemical  
16 processes, as well as agency-led technical studies ([DCP.AA1.2.00021](#)). As outlined in  
17 Section 5.3.2.2 of Final EIR Chapter 5, Surface Water ([DCP.D1.1.00032](#)), the  
18 assessment of potential changes in reverse flows incorporated an analysis of the  
19 frequency and duration of such events within the Sacramento River. The Department  
20 asserts that these findings demonstrated that implementation of the DCP would not  
21 produce conditions significantly different from baseline levels. Furthermore, Final EIR  
22 Chapter 5 notes that upstream hydrologic changes are more likely attributed to  
23 upstream influences. According to the Department, suggestions that a new model run  
24 was necessary do not demonstrate that the Certification lacks support from the best  
25 available science. Additional information regarding reverse flows is presented in Section  
26 3.1.2.2, EchoWater Facilities, which the Department claims further addresses and  
27 refutes the claim that DCP operations would increase the occurrence or duration of  
28 reverse flow events in the Sacramento River ([Department, Writ. Sub.](#), p. 97).

29            In summary, Sac Sewer argues that the Department’s DSM2 model runs indicate  
30 that reverse flows at Sac Sewer’s discharge location will increase in number, duration,  
31 and severity because of future climate change, and would likely increase further due to  
32 DCP operations. Appellant contends that analysis of reverse flow conditions during DCP  
33 operation is insufficient. The Department responds that its modeling shows the  
34 frequency of reverse flows may increase slightly, but the impact is neither lengthy nor  
35 severe, and that there is no increase in frequency of stronger reverse flows due to  
36 project operations. The Department cites evidence that it appropriately used available  
37 models and other information. Appellant failed to establish that the evidence could not  
38 support the Department’s findings with respect to the best available science criteria. For  
39 these reasons, the Council finds that Sac Sewer has failed to meet its burden, and that  
40 there is substantial evidence in the record to support the Department’s finding that the  
41 DCP is consistent with G P1(b)(3) regarding analysis of reverse flows.

**ix. Residence time and CHAB proliferation**

1  
2 In their appeals, Sac Sewer and City of Stockton argue that the Department  
3 incorrectly evaluates water residence time, asserting that the chosen method fails to  
4 account for tidal sloshing, relies on arbitrary sub-regions within the Delta which result in  
5 unreliable residence time estimates, and does not consider that water may pass through  
6 multiple sub-regions.<sup>31</sup> They further contend that the approach is inconsistent with the  
7 Department's prior evaluations of residence time and underestimates the potential  
8 frequency and severity of CHABs ([DCP.V2.12.00002](#), p. 25). Appellants allege that a  
9 proper evaluation of water residence time would demonstrate that Delta residence time  
10 would increase under both future climate conditions and implementation of the DCP,  
11 thereby increasing the potential frequency and severity of CHABs ([DCP.V2.12.00002](#), p.  
12 27–28). Appellants also contend that higher water temperatures associated with climate  
13 change would further increase the likelihood of CHAB formation ([DCP.V2.12.00002](#), p.  
14 25).

15 The Department finds that uncertainty is addressed in its modeling, and that the  
16 current scientific understanding of CHABs in the Delta is continually evolving and some  
17 uncertainty is unavoidable ([DCP.D1.1.00064](#), p. 9-156). In its best available science  
18 consistency analysis ([DCP.AA1.2.00021](#)) and Final EIR, the Department states that the  
19 assessment of potential project impacts on CHABs relied on scientific information  
20 germane to the Delta ecosystem, with relevant literature from other regions used where  
21 appropriate ([DCP.D1.1.00065](#)). The CHABs impact analysis evaluated project effects  
22 on five environmental factors identified in the scientific literature as influencing  
23 cyanobacteria dominance in the Delta: water temperature, water velocity and mixing,  
24 water residence time, nutrients, and water clarity ([DCP.D1.1.00072](#)).

25 The Department relied on output from DSM2, a calibrated one-dimensional  
26 Delta-specific hydrodynamic and water quality model, to assess changes in water  
27 temperature, velocity, source water fractions, and residence time associated with  
28 project operations ([DCP.D1.1.00033](#), [DCP.D1.1.00065](#)). Residence time was quantified  
29 using the DSM2 QUAL module across 12 channel reaches and three open water  
30 bodies, including locations known to experience recurring CHAB  
31 events ([DCP.D1.1.00064](#), pp. 9-43, 9-124- 9-125). These analyses show that the DCP  
32 may result in a small increase in residence times in some open water areas of the  
33 central portion of the Delta, in areas that already experience relatively long residence  
34 times because use of the north Delta diversions would result in reduced south Delta  
35 pumping under a few circumstances (Final EIR, Ch. 9, [DCP.D1.1.00064](#), p. 9-176). In  
36 the northern, southern, western, or eastern portions of the Delta, residence times would  
37 be minimally affected by the DCP relative to existing conditions. Modeled residence  
38 time at the Stockton waterfront generally shows a decrease or no change in June  
39 through November ([DCP.D1.1.00064](#), p. 9-165). Occasionally, the modeling shows a  
40 small increase (i.e., up to 7 hours) in residence time, but never an increase of 10  
41 percent or greater. Although a decrease in residence time was modeled at the Stockton

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<sup>31</sup> While not stated, this appears to be an allegation of inconsistency with the inclusiveness, relevance, and transparency criteria of best available science.

1 waterfront, the Department finds that there is unlikely to be any change in the density or  
2 extent of Microcystis and other cyanobacteria at this location because it would not be of  
3 sufficient magnitude to change Microcystis dynamics (i.e., growth rates, accumulation,  
4 or aggregation) ([DCP.D1.1.00064](#), p. 9-166).

5 The Department acknowledges limitations of DSM2 for modeling residence time  
6 in open water bodies, noting that the model assumes uniform mixing and does  
7 not represent localized hydrodynamic variability or spatial differences within open water  
8 areas. ([DCP.D1.1.00064](#), p. 99) The Department states that, despite these limitations,  
9 DSM2 residence time outputs provide a comparative, planning-level indication of  
10 whether project operations would increase or decrease residence time under different  
11 scenarios, and cites Delta Water Supply Project and Regional Wastewater Control  
12 Facility in Sec. 3.1.3.1 ([Department, Writ. Sub.](#), p. 44) as evidence for appropriately  
13 using best available science to assess and analyze the DCP's impact on CHABs, and  
14 therefore this represents application of the best available scientific method for CHABs  
15 analysis ([DCP.D1.1.00064](#), pp. 99, 167).

16 Additionally, the Department cites the October 2024 publication Cyanobacteria  
17 Harmful Algal Bloom Monitoring Strategy for the Sacramento–San Joaquin  
18 Delta ([DCP.D3.2.00250](#)), developed by an interagency team, as information relevant to  
19 CHAB monitoring and coordination in the Delta. According to the Department, although  
20 background information and citations related to CHABs were updated to reflect newer  
21 references, the introduction of this information did not result in changes to the CHAB  
22 analysis or impact determinations presented in the Final EIR ([DCP.D1.1.00064](#), pp. 92,  
23 99, 167). The Department also notes that additional information related to CHABs may  
24 be generated through future monitoring and modeling efforts conducted under EC-15  
25 and through water quality evaluation studies required by ITP conditions of approval,  
26 including studies related to CHABs ([DCP.D1.1.00012](#)).

27 In conclusion, Appellants argue that the Department incorrectly evaluates  
28 residence time and underestimates CHAB impacts, and that a correct evaluation would  
29 show that Delta residence time would increase under both future climate conditions and  
30 the DCP, thereby increasing the potential frequency and severity of CHABs. The  
31 Department finds that uncertainty is addressed and that the current scientific  
32 understanding of CHABs in the Delta is continually evolving and some uncertainty is  
33 unavoidable. This matter reflects a divergence in expert opinion, with deference being  
34 afforded to the Department and its determinations under the substantial evidence  
35 standard. Moreover, Appellant failed to establish that the record evidence could not  
36 support the Department's findings with respect to the best available science criteria.  
37 Therefore, the Council finds that Appellants Sac Sewer and City of Stockton have failed  
38 to meet their burden, and that there is substantial evidence in the record to support the  
39 Department's finding that the DCP is consistent with G P1(b)(3) as to issues related to  
40 residence time and CHAB proliferation.

41 **x. Seismicity**

42 In their appeals, the Commission, County of Sacramento, Sac Sewer, and City of  
43 Stockton argue that the Department failed to document the use the best available

1 science to support its findings regarding seismic risk as it pertains to the DCP, and  
2 specifically assert that this claim is related to the Delta Plan best available science  
3 criteria of relevance, transparency, and timeliness. They contend that methods  
4 documented in the Final EIR do not use best available science, as evidenced in a  
5 comment letter by the Delta Independent Science Board (“Delta ISB”), as the Final EIR  
6 overstates seismic risks in the Delta ([DCP.AA5.1.00001](#)). A United States Geological  
7 Survey (“USGS”) report used in the Final EIR ([DCP.D3.1.00929](#)) relies on a “30-year  
8 probability of magnitude 6.7 or greater in the San Francisco Bay Area”  
9 ([DCP.AA5.1.00001](#), pp. 6-10) which allegedly amplifies risk in the Delta. Appellants  
10 further argue that the Department relies on seismic risk from blind thrusts in the Delta,  
11 which are too distant to have an impact. Lastly, Appellants contend that the Department  
12 refers to the outdated USGS report in the Final EIR but does not describe how large the  
13 earthquakes causing seismic hazards might be, and that “the information in the Final  
14 EIR is confusing and not well documented” ([Commission, Appeal](#), p. 7).

15 In its Certification, the Department states that best available science was used to  
16 analyze geologic and seismic impacts, as detailed in the Final EIR Chapter 10  
17 ([DCP.D1.1.00099](#)). Regarding Appellants’ claim that the Department did not meet the  
18 best available science relevance criteria, the Department contends that it used a  
19 mixture of Delta-specific information from the Delta Risk Management Study (“DRMS”)  
20 ([DCP.D3.1.00877](#)), the Seismic Hazard Analysis Update ([DCP.D3.1.00921](#)), and a  
21 USGS study ([DCP.D3.1.00929](#)). The DRMS study “was prepared specifically to address  
22 water-related issues in the Delta and is the only Delta-wide seismic study available...”  
23 ([DCP.AA1.2.00021](#), p. 4-26), the Seismic Hazard Analysis update “...used most recent  
24 seismic source and ground motion predictive models updated from the DRMS study  
25 ([DCP.D3.1.00921](#), Lettis Consultants International 2021), and the USGS study used  
26 “regional data in combination with Delta-specific data” to “provide a well-rounded, robust  
27 analysis of the seismic conditions.” The DRMS study “was prepared specifically to  
28 address water-related issues in the Delta and is the only Delta-wide seismic study  
29 available...” ([DCP.AA1.2.00021](#), p. 4-26), the Seismic Hazard Analysis update “...used  
30 most recent seismic source and ground motion predictive models updated from the  
31 DRMS study, and the USGS study used “regional data in combination with Delta-  
32 specific data” to “provide a well-rounded, robust analysis of the seismic conditions.”  
33 (CTE.)

34 To the matter of timeliness, the Department finds that its seismic data were  
35 “sufficient for adequate analyses and applicable to the relevant timeframe”  
36 ([DCP.AA1.2.00021](#), p. 4-28). However, “where geotechnical investigation data were  
37 limited near the potential intake locations and along the tunnel alignments, geotechnical  
38 conditions were extrapolated for the project features in the CER”  
39 ([DCP.AA1.2.00021](#), p.4-28). Specifically, “[t]he Seismic Hazards Analyses  
40 ([DCP.D3.1.00921](#)) used an updated version of the source model in the DRMS study  
41 ([DCP.D3.1.00934](#); [DCP.AA2.10.00030](#)). As appropriate, the geometry of some of the  
42 fault sources and other parameters—such as seismogenic crustal thickness and slip  
43 rate—were modified from the DRMS model to incorporate new data and interpretations,  
44 some of which are included in the more recent Uniform California Earthquake Rupture  
45 Forecast 3. In addition, potentially active local faults, such as West Tracy and Midland

1 faults, were characterized and incorporated based on best available fault data  
2 developed since the DRMS model. The updated model in the Seismic Hazards  
3 Analyses study was used to estimate the maximum considered earthquake for the  
4 project facilities.” ([DCP.AA1.2.00021](#), p.4-28).

5 To address the assertion that it failed to meet the inclusiveness criteria of best  
6 available science, the Department contends that “the Seismic Hazards Analyses study  
7 included site-specific seismic hazard analyses performed at 12 sites along the central  
8 and eastern alignments ..., using both probabilistic seismic hazard analyses and  
9 deterministic seismic hazard analyses .... Six of the 12 sites are located along the  
10 proposed project alignment, between the intakes and Lower Roberts Island, and  
11 a seventh site at the southern edge of the Clifton Court Forebay is approximately 1 mile  
12 from the Bethany Complex. The study also incorporated earlier seismic hazard  
13 evaluation data from the report prepared for the Seismic Hazard Analyses of the  
14 Metropolitan Water District Emergency Freshwater Pathway project, which is  
15 also located in the Delta” ([DCP.D3.1.00934](#); [DCP.AA2.10.00030](#)).

16 The Department has pointed to substantial evidence in the record to demonstrate  
17 that it used best available science on seismic risk considering the relevance, timeliness,  
18 and inclusiveness criteria, including the DRMS study, Seismic Hazard update, and the  
19 USGS study. Therefore, the Council finds that the Commission, County of Sacramento,  
20 Sac Sewer, and City of Stockton have failed to meet their burden, and that there is  
21 substantial evidence in the record to support the Department’s finding that the DCP is  
22 consistent with G P1(b)(3) as to issues related to seismicity.

23 **xi. Tribal Engagement and Traditional Knowledge**

24 In its appeal, SF Baykeeper argues that the Department failed to use the best  
25 available science “because it did not analyze nor incorporate tribal input in its analysis  
26 of local uses or impacts on the Delta as an evolving place,” and suggests that this claim  
27 is related to the Delta Plan best available science criteria of inclusiveness ([SF  
28 Baykeeper, Appeal](#), p. 14). Appellant argues that because the Delta Plan recognizes  
29 Traditional Knowledge as a source of best available science for decision-making, the  
30 Department did not use the best available science because it did not “meaningfully  
31 consult with Tribes...about impacts to Tribal Cultural Resources or to the Delta as a  
32 Tribal Cultural Landscape” ([SF Baykeeper, Appeal](#), p. 14). Central to this argument is  
33 how “meaningful” is defined, and whether Tribes need to concur with the evidence as  
34 recommended in the Council’s comments on the Draft EIR ([DCP.D1.1.00241](#), Comment  
35 No. 507).<sup>32</sup>

36 The Department argues that “substantial evidence in the record supports the  
37 determination that the Department implemented fair and consistent procedures  
38 regarding Tribal input on Tribal cultural resources that had the potential to be affected

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<sup>32</sup> Per the Council’s Draft EIR comments: “the Draft EIR does not report whether Tribes concur with the presentation of impacts to Tribal cultural resources, particularly the decision to recognize and assess impacts to the [TCL]. The [Delta Stewardship] Council defers to Tribes on this matter” ([DCP.D1.1.00241](#), Comment No. 507).

1 by the project” ([DCP.AA1.2.00021](#), p. 5-2). The Department sent project notification  
2 letters to 121 Tribes to consult on the project’s environmental review and government-  
3 to-government consultation with 13 Tribes that responded to invitations (Final EIR  
4 Volume 1, Chapter 32, Tribal Cultural Resources, (Section 32.1.2.1, Consultation and  
5 Engagement with Tribes, and Appendix 32A, [DCP.D1.1.00205](#), Tribal Consultation and  
6 Engagement Log, [DCP.D1.1.00206](#)). Then “during CEQA consultation, [the  
7 Department] conducted more than 150 government-to-government consultation  
8 meetings and facilitated 29 days of Tribal surveys at accessible parcels”  
9 ([DCP.AA1.2.00021](#), p. 5-2). The Department’s written submission adds that  
10 consideration of Tribal cultural resources has been conducted since before the 2020  
11 NOP ([DCP.E.1.00001](#)). The Department adds that planning for avoidance of these  
12 resources is well described ([DCP.X2.1.00017](#)) and that Traditional Knowledge is  
13 incorporated as part of the adaptive management process ([DCP.AA1.2.00022](#);  
14 [DCP.AA1.2.00023](#); [DCP.AA1.2.00024](#); [DCP.AA1.2.00025](#); [DCP.AA1.2.00026](#)).

15 While the Delta Plan definition of best available science recognizes the value of  
16 Traditional Knowledge and the Council encourages its inclusion in decision-making  
17 processes, G P1(b)(3) does not specifically require that Traditional Knowledge be  
18 incorporated or set a standard for meaningful consultation with tribes that must occur  
19 beyond compliance with existing laws and regulations. As a threshold matter, appeals  
20 under G P1(b)(3) must be “relevant to the purpose and nature of the project.” In this  
21 case, the concerns raised by SF Baykeeper regarding Tribal engagement and  
22 Traditional Knowledge do not directly relate to the nature or purpose of the DCP as  
23 required by G P1(b)(3). Therefore, the Council finds that Appellants failed to raise an  
24 appealable issue with respect to Tribal engagement and Traditional Knowledge under G  
25 P1(b)(3).

26 **xii. Delta Independent Science Board comments**

27 In its appeal, San Joaquin County argues that the Department did not address  
28 comments from the Delta ISB in its Certification and therefore failed to document use of  
29 best available science. Appellant states that the Delta ISB was established in the Delta  
30 Reform Act and that “[c]omments, findings, and recommendations from [the Delta ISB]  
31 are expected to increase scientific credibility, improve research clarity advance the  
32 debate about Delta issues, and seek better connectivity between science, management,  
33 and policy.” (San Joaquin County, Appeal, p. 2) Appellant refers to the Delta ISB’s  
34 comments on the Draft EIR regarding methodologies and modeling for climate change,  
35 ecology analysis, and impacts to fish and terrestrial species, in addition to other topics.  
36 Appellant also states that the Delta ISB found that the Final EIR did not substantially  
37 change in response to their comments on the Draft EIR. However, Delta ISB did not  
38 address the Department’s specific findings in the Certification concerning the best  
39 available science criteria or all the record evidence<sup>33</sup>

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<sup>33</sup> The Delta ISB comments preceded the Certification and could not have addressed the Department’s subsequent findings concerning the best available science criteria.

1 The Department points out that Appellant raises issues related to the Final EIR  
2 rather than appealing findings presented in the Certification and disregards the “New  
3 Information Relevant to Best Available Science” sections provided in the Certification  
4 section on best available science. The Department further finds that “[t]he comments  
5 made by the [Delta ISB] on the Final EIR largely were duplicative of comments made by  
6 the [Delta ISB] on the Draft EIR that were addressed in the Final EIR in responses to  
7 Letter 32 ([DCP.D1.1.00241](#), pp. 1–2), Letter 60 ([DCP.D1.1.00241](#), pp. 2–3), and Letter  
8 534 ([DCP.D1.1.00242](#), pp. 1–492). Additionally, [the Department] considered the [Delta  
9 ISB’s] Sep. 20, 2024, letter, including the cited references in the letter, while preparing  
10 its best available science analysis for G P1(b)(3) Att.1.”

11 The Department has established in the record that it considered the comments  
12 made by the Delta ISB. The Delta ISB comments concerned the EIR and not the  
13 Department’s findings in the Certification concerning the best available science criteria.  
14 Appellant does not specifically address the Department’s Certification findings or record  
15 evidence. The appeal on this issue is therefore insufficient. For these reasons, the  
16 Council finds that San Joaquin County has failed to meet its burden, and that there is  
17 substantial evidence in the record to support the Department’s finding that the DCP is  
18 consistent with G P1(b)(3) as to issues related to addressing Delta Independent  
19 Science Board comments.

20 **d. G P1(b)(3) Conclusion**

21 The Council is not a fact finder and does not independently decide whether a  
22 particular piece of evidence in the EIR constituted the best possible science. Rather,  
23 the Council determines whether in light of all the relevant evidence the Department’s  
24 findings in the Certification concerning best available science are supported by  
25 substantial evidence in the record. Here, the Department made findings with respect to  
26 best available science and addressed the criteria of relevance, inclusiveness,  
27 objectivity, transparency and openness, timeliness and peer review on resource-by-  
28 resource approach. ([DCP.AA1.2.00001](#), pp. 169-171; [DCP.AA1.2.00021](#).) The  
29 Department further cited supporting evidence in the record. ([DCP.AA1.2.00021](#), pp. 7-1  
30 – 7-32.) The Council finds in light of the record and for all the reasons described above,  
31 Appellants have failed to meet their burden, and that there is substantial evidence in the  
32 record to support the Department’s finding that the DCP is consistent with G P1(b)(3).

33 **4. Policy G P1(b)(4) (Cal. Code Regs., tit. 23, § 5002 subd. (b)(4)):**  
34 **Detailed Findings to Establish Consistency with the Delta Plan:**  
35 **Adaptive Management**

36 The Department certifies that the DCP is consistent with Delta Plan Policy G  
37 P1(b)(4). San Joaquin County raises a substantive argument that it is not. For the  
38 reasons discussed below, the Council finds that Appellant has failed to meet its burden,  
39 and that there is substantial evidence in the record to support the Department’s finding  
40 that the DCP is consistent with G P1(b)(4) as to the issue of documenting access to  
41 adequate resources for adaptive management. Accordingly, the Council **denies the**  
42 **appeal** as follows:

G P1(b)(4) Appeal Issue	Appellants	Decision
Documentation of access to adequate resources for adaptive management	San Joaquin County	Denied

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**a. Policy Requirements**

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G P1(b)(4) requires that ecosystem restoration and water management covered actions must include adequate provisions, appropriate to the scope of the covered action, to assure continued implementation of adaptive management. This requirement shall be satisfied through both of the following:

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(A) An adaptive management plan that describes the approach to be taken consistent with the adaptive management framework in Appendix 1B; and

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(B) Documentation of access to adequate resources and delineated authority by the entity responsible for the implementation of the proposed adaptive management process. (Cal. Code Regs., tit. 23, § 5002 subd. (b)(4).)

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Delta Plan Appendix 1B describes the three-phase, nine-step Adaptive Management Framework used by the Council for reviewing covered actions involving ecosystem restoration and water management. Ecosystem and water management covered actions should include an adaptive management plan that considers all nine steps of the framework, but the steps need not be rigidly included or implemented in the order described in the framework. (Cal. Code Regs., tit. 23, app. 1B., p. 1B-1.)

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**b. Certification**

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In the Certification, the Department determines that its approach to adaptive management is consistent with G P1 (b)(4)(A) because the Covered Action’s adaptive management processes described in each of five adaptive management plans are consistent with the three phases and nine steps outlined in Appendix 1B of the Delta Plan ([DCP.AA1.2.00001](#), p. 172); and because the Department has adequate resources and delineated authority to implement its management process ([DCP.AA1.2.00001](#), p. 188). The Department submitted as evidence supporting these determinations five management and monitoring plans ([DCP.AA1.2.00001](#), p. 6):

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- a North Delta Diversion Operations Adaptive Management and Monitoring Plan ([DCP.AA1.2.00022](#)),
- a Compensatory Mitigation Plan Adaptive Management Plan ([DCP.AA1.2.00023](#)),
- a Habitat Connectivity Adaptive Management Plan ([DCP.AA1.2.00024](#)),
- a Groundwater Monitoring Adaptive Management Plan ([DCP.AA1.2.00025](#)) and
- a Sediment Monitoring, Modeling, and Reintroduction Adaptive Management Plan ([DCP.AA1.2.00026](#)).



1 estimate for the DCP is much lower than the actual expected expense ([San Joaquin](#)  
 2 [County, Appeal](#) Form, p. 4; [San Joaquin County, Writ. Sub.](#), pp. 8-9). According to the  
 3 Appellant, independent cost benchmarking indicates that the true cost of the DCP will  
 4 likely fall between \$27 and \$33 billion ([DCP.V2.7.00015](#), pp. 3-4). The Appellant also  
 5 claims that the Department lacks both a Financial Plan and a Feasibility Assessment for  
 6 the DCP ([San Joaquin County, Appeal](#), p. 4) and states that the Department "must  
 7 provide a good faith estimate of the cost of adaptive management and documentation of  
 8 adequate funding to comply with this regulatory policy" ([San Joaquin County, Writ. Sub.](#),  
 9 p. 9). The Appellant goes on to argue that the Department's finding of consistency is  
 10 unsupported by substantial evidence, noting that it "has provided no information  
 11 regarding the estimated cost of adaptive management or the sources of funding that  
 12 would demonstrate documentation of access to adequate resources."([San Joaquin](#)  
 13 [County, Writ. Sub.](#), p. 9)

14 In response the Department reiterates the Certification language pointing to the  
 15 legal requirement for the SWP "to collect revenue sufficient to reimburse DWR for all  
 16 costs incurred in the construction, maintenance, and operation of the SWP" and that the  
 17 DCP MMRP which DWR adopted as an enforceable condition of approval of the DCP,  
 18 requires adaptive management ([Department, Writ. Sub.](#), pp. 168-169).

19 **d. G P1(b)(4) Conclusion**

20 In summary, as described in the Department's Certification and supported by  
 21 evidence in the record, the Department is legally obligated to collect sufficient revenue  
 22 to reimburse all expenses related to the construction, maintenance, and operation of the  
 23 SWP, including those associated with adaptive management efforts. (See, e.g. Wat.  
 24 Code, § 85089.) The Certification and record further establish that these requirements  
 25 apply uniformly to both new and existing SWP facilities, encompassing the costs of  
 26 constructing, operating, and maintaining the Covered Action, including adaptive  
 27 management. Therefore, the Council finds that San Joaquin County has failed to meet  
 28 its burden, and that there is substantial evidence in the record to support the  
 29 Department's finding that the DCP is consistent with G P1(b)(4) as to the issue of  
 30 documenting access to adequate resources for adaptive management and the Council  
 31 **denies the appeal.**

32 **5. Policy WR P1 (Cal. Code Regs., tit. 23, § 5003): Reduce Reliance on**  
 33 **the Delta Through Improved Regional Water Self-Reliance**

34 The Department certifies that the DCP is consistent with Delta Plan Policy WR  
 35 P1. Six Appellants raise substantive arguments that it is not. For the reasons discussed  
 36 below, the Council finds that Appellants have failed to meet their burden and that there  
 37 is substantial evidence to support the Department's finding that the DCP is consistent  
 38 with WR P1. Accordingly, the Council **denies the appeals** as follows:

WR P1 Appeal Issue	Appellants	Finding/Decision
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Compliance with WR P1 subsection (a)(1)	County of Sacramento, SF Baykeeper, Sac Sewer, City of Stockton, SDWA, San Joaquin County	One or more water suppliers that would receive water from the DCP failed to adequately contribute to reduced reliance on the Delta and improved regional self-reliance
Compliance with WR P1 subsection (a)(2)	County of Sacramento, SF Baykeeper, Sac Sewer, City of Stockton, SDWA, San Joaquin County	The failure of one or more water suppliers that would receive water from the DCP to adequately contribute to reduced reliance on the Delta and improved regional self-reliance has not significantly caused the need for the DCP
Compliance with WR P1 subsection (a)(3)	County of Sacramento, SF Baykeeper, Sac Sewer, City of Stockton, San Joaquin County	The Department concedes that subsection (a)(3) applies
WR P1 conclusion	County of Sacramento, SF Baykeeper, Sac Sewer, City of Stockton, San Joaquin County	Denied

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**a. Policy Requirements**

WR P1 states:

“(a) Water shall not be exported from, transferred through, or used in the Delta if all of the following apply:

(1) One or more water suppliers that would receive water as a result of the export, transfer, or use have failed to adequately contribute to reduced reliance on the Delta and improved regional self-reliance consistent with all of the requirements listed in paragraph (1) of subsection (c);

(2) That failure has significantly caused the need for the export, transfer, or use; and

(3) The export, transfer, or use would have a significant adverse environmental impact in the Delta.

1 (b) For purposes of Water Code section 85057.5(a)(3) and section 5001(j)(1)(E)  
2 of this Chapter, this policy covers a proposed action to export water from, transfer water  
3 through, or use water in the Delta, but does not cover any such action unless one or  
4 more water suppliers<sup>34</sup> would receive water as a result of the proposed action.

5 (c)(1) Water suppliers that have done all of the following are contributing to  
6 reduced reliance on the Delta and improved regional self-reliance and are therefore  
7 consistent with this policy:

8 (A) Completed a current Urban or Agricultural Water Management Plan  
9 which has been reviewed by the California Department of Water Resources for  
10 compliance with the applicable requirements of Water Code Division 6, Parts  
11 2.55, 2.6, and 2.8;

12 (B) Identified, evaluated, and commenced implementation, consistent with  
13 the implementation schedule set forth in the Plan, of all programs and projects  
14 included in the Plan that are locally cost effective and technically feasible which  
15 reduce reliance on the Delta; and

16 (C) Included in the Plan, commencing in 2015, the expected outcome for  
17 measurable reduction in Delta reliance and improvement in regional self-reliance.  
18 The expected outcome for measurable reduction in Delta reliance and  
19 improvement in regional self-reliance shall be reported in the Plan as the  
20 reduction in the amount of water used, or in the percentage of water used, from  
21 the Delta watershed. For the purposes of reporting, water efficiency is considered  
22 a new source of water supply, consistent with Water Code section 1011(a).

23 (c)(2) Programs and projects that reduce reliance could include, but are not  
24 limited to, improvements in water use efficiency, water recycling, stormwater capture  
25 and use, advanced water technologies, conjunctive use projects, local and regional  
26 water supply and storage projects, and improved regional coordination of local and  
27 regional water supply efforts.” (Cal. Code Regs., tit. 23, § 5003).

## 28 **b. Certification**

29 In the Certification, the Department determines that the DCP is consistent with  
30 WR P1.<sup>35</sup> ([DCP.AA1.2.00001](#), p. 44.) The Certification states that the SWP contractors  
31 are the “water suppliers” for the DCP. ([DCP.AA1.2.00001](#), p. 53.) Nonetheless, the  
32 Department “exercised its discretion” to identify 274 potential south of Delta water  
33 suppliers that have received water from the SWP in its analysis ([DCP.AA1.2.00001](#)). Of

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<sup>34</sup> “Water supplier” is defined in the Council’s regulations to include “urban water suppliers” and “agricultural water suppliers”. (Cal. Code Regs., tit. 23, § 5001, subds. (aaa), (yy), (c).) Both urban and agricultural water suppliers are defined to distribute a minimum amount of water to end users, irrigated acres, or for municipal purposes, respectively. (See Cal. Code Regs., tit. 23, § 5001, subds. (yy), (c).)

<sup>35</sup> The Department defines the Covered Action as “the construction, operation, and maintenance of new SWP water diversion and conveyance facilities in the Delta that would be operated in coordination with existing SWP facilities.”

1 these 274 water suppliers, the Certification states that 17 were subsequently excluded  
2 because they were covered by another supplier’s water management plan or did not  
3 meet the definition of “water supplier,” resulting in a total of 257 water suppliers – 247  
4 urban suppliers and 10 agricultural suppliers ([DCP.AA1.2.00001](#), p. 59). According to  
5 the Certification, eight of 257 water suppliers were unable to provide the necessary  
6 documentation to demonstrate reduced reliance in the manner required by WR P1  
7 subsections (a)(1) and (c)(1) ([DCP.AA1.2.00001](#), p. 68). Because one or more water  
8 supplier failed to demonstrate reduced reliance in the manner set forth in WR P1  
9 subsection (c)(1), the Certification concedes that WR P1(a)(1) applies  
10 ([DCP.AA1.2.00001](#)).

11 With respect to WR P1 subdivision (a)(2), the Certification finds that the potential  
12 failure of some water suppliers to demonstrate reduced reliance in the manner set forth  
13 in WR P1 subsection (c)(1) has not significantly caused the need for the DCP and  
14 therefore subsection (a)(2) does not apply. (Id., p. 68.) Specifically, the Department  
15 states that “the [DCP] is needed to protect against future water supply losses caused by  
16 climate change–driven weather extremes, sea level rise, and earthquakes, and  
17 compared to the demonstrated reduced reliance and improved regional self-reliance,  
18 even the theoretical maximum failure to reduce reliance is not significant.”  
19 ([DCP.AA1.2.00001](#), p. 70; see also WR P1 attachment 2 – [DCP.AA1.2.00010](#)).  
20 According to the Certification, a conservative estimate of the maximum potential failure  
21 to demonstrate reduced reliance totaled 40,198 acre-feet<sup>36</sup> of water, which constitutes  
22 approximately 1% of the total SWP contract amounts evaluated (3.99 million acre-feet)  
23 ([DCP.AA1.2.00001](#), p. 69). In addition, the Certification explains that the regional-level  
24 analysis shows a total of 520,000 acre-feet of reduced reliance in 2030 plus 1.2 million  
25 acre-feet of improved regional self-reliance for a total 1.7 million acre-feet of regional-  
26 level reduced reliance on the Delta ([DCP.AA1.2.00001](#)). Therefore, the Certification  
27 finds that the Covered Action is consistent with WR P1 ([DCP.AA1.2.00001](#), p. 71).

28 The Certification does not evaluate significant environmental impacts on the  
29 Delta as required by WR P1 subsection (a)(3) because the Department finds that WR  
30 P1 subsection (a)(2) does not apply.

31 **c. Appeals and Analysis**

32 Delta Plan Policy WR P1 states that water shall not be exported, transferred  
33 through, or used in the Delta if all three parts of subsection (a) apply. (§ 5003,  
34 subd.(a).) The County of Sacramento, SF Baykeeper, Sac Sewer, City of Stockton,  
35 SDWA, and San Joaquin County appealed the Certification’s consistency with WR P1.  
36 The appeals are analyzed in light of the requirements of subsection (a).

37 **i. Compliance with WR P1 subsection (a)(1)**

38 For WR P1, subsection (a)(1) to apply, “[o]ne or more water suppliers that would  
39 receive water as a result of the export, transfer, or use must have failed to adequately

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<sup>36</sup> The 40,198 acre-feet reflects the total maximum amount of water supplies that the eight water suppliers could receive through the SWP.

1 contribute to reduced reliance on the Delta and improved regional self-reliance  
2 consistent with all of the requirements listed in paragraph (1) of subsection (c).” (Cal.  
3 Code Regs., tit. 23, § 5003, subd. (a)(1)). To show an adequate contribution to reduced  
4 reliance, a certification of consistency must comply with the requirements set forth in  
5 subsection (c)(1). Thus, a water supplier must complete an urban or agricultural water  
6 management plan that includes the expected outcome for measurable reduction in  
7 Delta reliance and improvement in regional self-reliance. (Cal. Code Regs., tit. 23, §  
8 5003, subds. (c)(1)(A) and (C).) This expected outcome should be reported as the  
9 reduction in the amount of water used, or in the percentage of water used, from the  
10 Delta watershed. (Cal. Code Regs., tit. 23, § 5003, subd. (c)(1)(C).)

11 In its Certification, the Department admits that one or more water suppliers failed  
12 to demonstrate reduced reliance in the manner outlined in WR P1. The Department  
13 contends that reduced reliance on the Delta and improved regional self-reliance are  
14 “two sides of the same coin,” meaning a water supplier can reduce reliance on the Delta  
15 **or** show improved regional self-reliance to meet the requirements of WR P1  
16 ([DCP.AA1.2.00001](#), p. 54). The Department states that the types of actions that reduce  
17 reliance are the same as those that improve regional self-reliance, and that the statutory  
18 reduced reliance/improved regional self-reliance policy includes overlapping measures  
19 to achieve both policies ([DCP.AA1.2.00001](#), pp. 54-55).

20 As discussed above, the Department analyzed water management plans from  
21 257 water suppliers that would receive water from the DCP, finding that eight were  
22 unable to document reduced reliance or improved regional self-reliance. The  
23 Department asserts that it is infeasible for many suppliers that are one or more levels  
24 removed from a State Water Contractor supplier to quantify reduced reliance in terms of  
25 supplies from the Delta watershed due to the blending of supplies from different sources  
26 that vary by month ([DCP.AA1.2.00009](#), p. 12). The Department also argues that it may  
27 be infeasible to quantify an individual water supplier's demands on the regional or  
28 wholesale water supplier in a way that accurately reflects their individual contributions to  
29 reduced reliance on the Delta ([DCP.AA2.1.00043](#), pp. A.11-2 – A.11-3). The  
30 Department concludes that it is not feasible for a water supplier that makes investments  
31 in regional projects and programs to quantify its individual contributions to reduced  
32 reliance and reflect them properly in its demands.

33 Appellants County of Sacramento, SF Baykeeper, Sac Sewer, City of Stockton,  
34 SDWA, and San Joaquin County claim that the effect of water suppliers' failure to  
35 demonstrate reduced reliance on the Delta is understated, because under WR P1,  
36 reduced reliance and improved regional self-reliance are independent and distinct  
37 requirements, and both must be satisfied by every water supplier receiving water from  
38 the DCP. Furthermore, Appellants claim that the Department did not demonstrate that  
39 water suppliers commenced implementation of every program included in water  
40 management plans that were locally cost-effective and technically feasible, as required  
41 by WR P1. Appellants argue that the Department's additional diversion from the Delta  
42 does not decrease reliance and is inconsistent with the Delta Plan and Policy WR P1  
43 ([County of Sacramento, Appeal](#), pp. 30- 37; [SF Baykeeper, Appeal](#), pp. 4-8; [Sac Sewer,](#)

1 [Appeal](#), pp. 30-37; [City of Stockton, Writ. Sub.](#), pp. 19-26, [SDWA, Appeal](#), pp. 5-10, [San](#)  
2 [Joaquin County, Appeal](#), [DCP.AA1.2.00009](#), pp. 2-8).

3 WR P1 subsection (c)(1)(C) states “The expected outcome for measurable  
4 reduction in Delta reliance and improvement in regional self-reliance shall be reported in  
5 the Plan as the reduction in the amount of water used, or in the percentage of water  
6 used, from the Delta watershed.” WR P1 does not require a net reduction in Delta  
7 exports. Water suppliers can show reduced reliance on the Delta through a reduction in  
8 the percentage of water used from the Delta watershed. (Ibid.) An increase in exports  
9 therefore does not necessarily indicate an increased reliance on the Delta where there  
10 is an accompanying decrease in the percentage of total Delta water supplies used.  
11 (See Wat. Code § 85021.) In any event, there is no evidence in the record that there  
12 will be a new or increased export beyond the contract amounts for the SWP through the  
13 DCP.<sup>37</sup>

14 To the extent that Appellants claim that reduced reliance and improved regional  
15 self-reliance are independent and distinct requirements under WR P1, that is not  
16 accurate. (See 23 Cal. Code Regs., 23 § 5003, subd. (c)(1)(3)). Rather for the purpose  
17 of WR P1, a water management plan should reflect the expected outcome for  
18 measurable reduction in Delta reliance *and* improvement in regional self-reliance as  
19 either: 1) the reduction in the amount of water used from the Delta watershed, or 2) the  
20 percentage of water used from the Delta watershed. (Ibid.) WR P1 does not require a  
21 separate reporting metric for improved regional self-reliance. (Ibid.) Of course, to report  
22 a reduction of water used from the Delta watershed a water supplier must be able to  
23 quantify that amount. As the Department explains, that quantification is not feasible for  
24 lower-level suppliers for various reasons. (See e.g. [DCP.AA2.3.00419](#), pp. 7-8 “Yorba  
25 Linda Water District, Appendix J: Reduced Delta Reliance Reporting – Addendum to  
26 2015 UWMP.”)

27 Here, 63 of the 257 suppliers evaluated by the Department demonstrated  
28 reduced Delta reliance in the manner set forth in WR P1 (c)(1) ([DCP.AA1.2.00001](#), p.  
29 71). For example, water supplier Metropolitan Water District showed a year 2010  
30 baseline quantity of Delta water supplies of 1,492,000 acre-feet of water  
31 ([DCP.AA1.2.00009](#), Table A-21, p. 49). That quantity of Delta water supplies is  
32 projected to decrease to 1,182,000 acre-feet by the year 2030 ([DCP.AA1.2.00009](#),  
33 Table A-21, p. 49). From 2010 to 2030, the amount of Delta water supplies as a  
34 percentage of the total water demand would decrease from 27% to 24%  
35 ([DCP.AA1.2.00009](#), Table A-21, p. 49).

36 An additional 186 of the 257 water suppliers demonstrated increased regional  
37 self-reliance, but not in a manner that quantified a reduction in the amount of water used  
38 from the Delta watershed as required by WR P1 subsection (c)(1)(C)  
39 ([DCP.AA1.2.00009](#), Table A2-4, p. 52). These 186 water suppliers reported: 1) the total  
40 quantity of water supplies contributing to regional self-reliance as a specific acre-feet

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<sup>37</sup> A future increase in the amount of water transferred beyond that covered by existing SWP contracts would be a potential new transfer requiring its own certification of consistency as a covered action.

1 amount; and 2) the water supplies contributing to regional self-reliance as a percent of  
2 total demand ([DCP.AA1.2.00009](#), Table A2-4, p. 52). As an example, the City of  
3 Anaheim reported a 2010 baseline quantity of 47,934 acre-feet of water contributing to  
4 regional self-reliance that is projected to increase to 71,919 acre-feet by 2030  
5 ([DCP.AA1.2.00009](#), Table A2-4, p. 52). As a percentage of total demand, Anaheim’s  
6 water supply from regional self-reliance is 65% for the 2010 baseline, increasing to 87%  
7 by 2030 ([DCP.AA1.2.00009](#), Table A2-4, p. 52).

8 The Certification contends that only eight water suppliers entirely failed to  
9 demonstrate reduced reliance under WR P1 ([DCP.AA1.2.00001](#), p. 68). Three of the  
10 water suppliers did not complete a 2020 urban water management plan.  
11 ([DCP.AA1.2.00001](#), p. 68). Two water suppliers completed a 2020 urban water  
12 management plan but did not demonstrate reduced Delta reliance or improved regional  
13 self-reliance. (Ibid.) And three agricultural water suppliers provided narrative findings  
14 that did not quantify reduced reliance per WR P1 ([DCP.AA1.2.00001](#), p. 68).

15 Ultimately for the purpose of subdivision (a)(1), whether it is eight or 194 water  
16 suppliers that failed to report reduced reliance in the manner set forth in WR P1,  
17 subsection (c)(1)(C), the Department has admitted, and the record establishes, that  
18 subsection (a)(1) applies because one or more water suppliers that would receive water  
19 from the DCP failed to adequately contribute to reduced reliance on the Delta and  
20 improved regional self-reliance.

21 **ii. Compliance with WR P1 subsection (a)(2)**

22 WR P1, subsection (a)(2) applies if the water suppliers’ failure to reduce Delta  
23 reliance in the manner set forth in subsection (c)(1) (i.e. water management plan that  
24 reports reduction in Delta water supply) *significantly caused* the need for the DCP. (Cal  
25 Code Regs., tit. 23, § 5003, subd.(a)(2).)

26 In its Certification, the Department finds that the water suppliers’ failure did not  
27 cause the need for the Covered Action ([DCP.AA1.2.00001](#), p. 71). Rather, the  
28 Certification states that “[the Department] ... approved the [DCP] to address the  
29 reduced reliability of SWP exports caused by the increasingly restrictive operational  
30 criteria imposed on the operations of existing infrastructure, and to address multiple  
31 risks to reliable, high- quality water supplies presented by subsidence, seismic risks,  
32 climate change, and sea level rise.” ([DCP.AA1.2.00001](#), p. 70). In effect, the  
33 Department points to a longstanding and statutorily recognized need for new and  
34 improved infrastructure including “Delta conveyance facilities.” (Id. at p.28-29, Wat.  
35 Code, § 85004(b)). To support its finding, the Department includes an analysis titled  
36 “Project Need and Historical Background” and cites numerous documents as supporting  
37 evidence ([DCP.AA1.2.00010](#), pp. 40-46).

38 The Department further finds that the failure of eight water suppliers to  
39 demonstrate reduced reliance (described above under subsection (a)(1)) has not  
40 significantly caused the need for the DCP. The Department conservatively estimates  
41 that the maximum potential failure to demonstrate reduced reliance for the eight subject  
42 suppliers is 40,198 acre-feet ([DCP.AA1.2.00001](#), p. 69), which it finds is insignificant in

1 comparison to the 3.99 million acre-feet of total SWP water supplies, and compared to  
2 the regional totals of reduced Delta reliance and improved regional self-reliance  
3 (estimated to be 1.7 million acre-feet), and therefore the failure of the eight water  
4 suppliers does not significantly cause the need for the DCP ([DCP.AA1.2.00001](#), p. 46).  
5 The Department's quantitative estimates are based on evidence in the record  
6 ([DCP.AA1.2.00001](#), pp. 45; [DCP.AA1.2.00009](#), pp. 65-106; [DCP.AA2.3.00001](#)).

7 County of Sacramento, SF Baykeeper, Sac Sewer, City of Stockton, SDWA, and  
8 San Joaquin County challenge these findings. Appellants claim: 1) that the record  
9 shows that 194 water suppliers (over 75% of the 257 water suppliers) failed to  
10 demonstrate reduced reliance; 2) that the need for the DCP is overstated,<sup>38</sup> and 3) that  
11 the Department incorrectly concludes that the failure to decrease demand on the Delta  
12 has not significantly caused the need for the DCP ([DCP.AA1.2.00001](#), p. 71).<sup>39</sup>

13 Appellants focus their various arguments on the premise that the Department  
14 failed to correctly calculate the number of water suppliers that failed to meet the  
15 reporting requirements of WR P1 subsection (a)(1). However, the technical failure of a  
16 water supplier to quantify a specific reduction of Delta water supply in an urban water  
17 management plan does not automatically establish that the water supplier caused the  
18 need for this Covered Action. There must be evidence in the record that the water  
19 supplier's failure to show reduced Delta reliance significantly caused the need for the  
20 export or transfer at issue in the Covered Action. Here, appellants entirely fail to  
21 connect the need for the DCP to the failure of any of the 186 water suppliers to quantify  
22 a reduction in Delta water supplies. For example, there is no evidence to establish that:  
23 1) the DCP will export a specific amount of water through the Delta to the City of  
24 Anaheim (one of the 186 water suppliers that only showed improved regional self-  
25 reliance), and 2) the DCP's export of water is necessary because of the City of  
26 Anaheim's failure to quantify reduced Delta reliance. In fact, the record shows a steady  
27 increase in City of Anaheim's regional water supplies as a percentage of total service  
28 area water demands, with a corresponding decrease in imported water  
29 ([DCP.AA2.3.00053](#), Appendix K, pp. 255-276). Whether the City of Anaheim's water is  
30 sourced from Colorado River supplies or the SWP, the City's total amount of imported  
31 water is projected to be reduced in 2030 by 11,264 acre-feet (from 65% to 87% of total  
32 demand).<sup>40</sup> ([DCP.AA2.3.00053](#), Figure 6-1, p. 49). This evidence undermines the claim

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<sup>38</sup> Appellants argue that the Department did not accurately address climate change, overstated the seismic risk, and overestimated population growth ([DCP.AA5.1.00001](#), pp. 4-5, [DCP.V2.9.00004](#) p.14, [DCP.V2.7.00001](#)). These arguments do not address the evidence in the record that the Department cited or establish that one or more water suppliers' failure to reduce reliance on the Delta and improve regional self-reliance "significantly caused" the need for the Covered Action.

<sup>39</sup> Appellants also argue that the conditions of WR P1 subsection (a)(2) are met because the Department's alleged additional diversions from the Delta would not reduce reliance and is inconsistent with the Delta Plan Policy WR P1. For WR P1(a)(2) to apply, Appellants must identify an appealable issue and cite evidence demonstrating that specific water suppliers' failure to reduce reliance on the Delta and improve regional self-reliance "significantly caused" the need for the Covered Action.

<sup>40</sup> City of Anaheim's 2020 Urban Water Management Plan explains that it is infeasible to account for specific supplies from the Delta watershed because it receives imported water from both the State Water Project and Colorado River Aqueduct through Metropolitan Water District. ([DCP.AA2.3.00053](#), p. 269.)

1 that the failure to report a specific reduction in Delta water supplies necessarily means  
2 that the water supplier significantly caused the need for the Covered Action.

3 Appellants argue that the failure of the eight water suppliers that admittedly did  
4 not show reduced Delta reliance is potentially significant. Appellants cite to Department  
5 engineer Amardeep Singh’s testimony in the Change in Point of Diversion (“CPOD”)  
6 water rights hearing ([DCP.V1.2.00049](#), p. 14), stating that in approximately 75 percent  
7 of years, exports from the DCP’s proposed North Delta intakes would be approximately  
8 250,000 acre-feet, and 500,000 acre-feet in 50 percent of years. Appellants speculate,  
9 without citing to evidence in the record, that all 40,198 acre-feet of water representing  
10 the maximum potential failure to reduce reliance would move through the North Delta  
11 intakes every year. The Department points out that Appellants’ comparison does not  
12 consider Table A allocations or the actual quantity that would be exported through the  
13 North Delta intakes ([Department, Writ. Sub.](#), p. 151). Moreover, there is no evidence to  
14 support Appellants’ contention that the entire quantity of 40,198 acre-feet would move  
15 through the North Delta intakes every year. Ultimately, the record supports the  
16 Department’s finding that the failure of one or more water suppliers that would receive  
17 water from the DCP to adequately contribute to reduced reliance on the Delta and  
18 improved regional self-reliance has not significantly caused the need for the DCP.

19 **iii. Compliance with WR P1 subsection (a)(3)**

20 WR P1, subdivision (a)(3), applies if “[t]he export, transfer, or use would have a  
21 significant adverse environmental impact in the Delta.”

22 In its Certification, the Department states that evaluation under subsection (a)(3)  
23 is not necessary because subsection (a)(2) does not apply ([DCP.AA1.2.00001](#), p. 71).  
24 Appellants County of Sacramento, SF Baykeeper, Sac Sewer, City of Stockton, and  
25 San Joaquin County argue that the Certification improperly excludes the discussion of  
26 the impacts on the environment and that WR P1 subsection (a)(3) applies to the  
27 Covered Action because of the numerous significant and unavoidable impacts to the  
28 environment that the DCP causes, as documented throughout the Final EIR.  
29 ([DCP.D1.1.00005](#)). The Department does not evaluate this potential, nor does it contest  
30 Appellants’ claims in this regard. Accordingly, the Department concedes that subdivision  
31 (a)(3) applies.

32 **d. WR P1 Conclusion**

33 As explained above, WR P1 subsections (a)(1) and (a)(3) apply. WR P1  
34 subsection (a)(2) does not. Appellants County of Sacramento, SF Baykeeper, Sac  
35 Sewer, City of Stockton, SDWA, and San Joaquin County have failed to meet their  
36 burden, and there is substantial evidence in the record to support the Department’s  
37 finding that the DCP is consistent with WR P1 because subdivision (a)(2) does not  
38 apply. The Council, therefore, **denies all appeals** of WR P1.

1           **6. Policy ER P1 (Cal. Code Regs., tit. 23 § 5005): Delta Flow Objectives**

2           The Department certifies that the DCP is consistent with Delta Plan Policy ER  
 3 P1. Seven Appellants raise substantive arguments that it is not. For the reasons  
 4 discussed below, the Council finds that Appellants have failed to meet their burden, and  
 5 that there is substantial evidence in the record to support the Department’s finding that  
 6 the DCP is consistent with ER P1. Accordingly, the Council **denies the appeals** as  
 7 follows:

<b>ER P1 Appeal Issue</b>	<b>Appellants</b>	<b>Decision</b>
Inadequate flow modeling	County of Sacramento, Sac Sewer, City of Stockton, San Joaquin County	Denied
Temporary Urgency Change Orders	County of Sacramento, SF Baykeeper, Sac Sewer, City of Stockton, SDWA, San Joaquin County	Denied
Pending CPOD petition / D-1641 compliance	County of Sacramento, Sac Sewer, City of Stockton, San Joaquin County	Denied
Salinity-based, flow-dependent objectives	SDWA	Denied
Navigability impacts	Steamboat Resort	Denied

8

9                           **a. Policy Requirements**

10           ER P1 requires covered actions that could significantly affect flow in the Delta to  
 11 demonstrate consistency with the State Water Resources Control Board’s (“SWRCB”)  
 12 Bay-Delta Water Quality Control Plan (“Bay-Delta Plan”) flow objectives. It states:

13                           “(a) The State Water Resources Control Board's Bay Delta Water Quality  
 14 Control Plan flow objectives shall be used to determine consistency with the  
 15 Delta Plan. If and when the flow objectives are revised by the State Water  
 16 Resources Control Board, the revised flow objectives shall be used to determine  
 17 consistency with the Delta Plan.

18                           (b) For purposes of Water Code section 85057.5(a)(3) and section  
 19 5001(o)(1)(E) of this Chapter, the policy set forth in subsection (a) covers a  
 20 proposed action that could significantly affect flow in the Delta.”

1 A “flow objective” sets the amount of water (measured in cubic feet per second)  
2 that must be flowing in a watercourse at a given time. (*State Water Resources Control*  
3 *Board Cases* (2006) 136 Cal.App.4th 674, 689, fn.3.) Current flow objectives are  
4 described in SWRCB Decision 1641 (“D-1641”, [DCP.D3.1.00321](#)).

5 **b. Certification**

6 In the Certification, the Department states that the DCP is consistent with ER P1,  
7 noting that modeling of DCP operations shows that the SWP, with the DCP completed  
8 and operated under defined criteria, will meet D-1641 flow objectives.  
9 ([DCP.AA1.2.00001](#), p. 99). The modeling approach to support this conclusion used the  
10 CalSim 3 operations planning models ([DCP.AA1.2.00001](#), pp. 101-102). The  
11 Department states that the CalSim 3 models used for the analysis were updated from  
12 those supporting the Final EIR to include updated baseline conditions, and that the  
13 models include operational changes made in the updated 2024 ITP and 2024 Biological  
14 Opinions adopted for the long-term operations of the CVP and SWP  
15 ([DCP.AA1.2.00001](#), p. 101-102).

16 The Department also states that the SWP has historically met D-1641 flow  
17 objectives 99.8 percent of the time, and that modeling shows that adding the DCP will  
18 not hinder the SWP’s ability to meet D-1641 flow objectives ([DCP.AA1.2.00001](#), p. 116).  
19 The Department states that it does not operate under Temporary Urgency Change  
20 Orders (“TUCOs”)<sup>41</sup> as part of normal operations of the SWP and does not anticipate  
21 that operations of the DCP will lead to an increase in frequency of TUCOs issued by the  
22 SWRCB.

23 Finally, the Department states that when and if the Bay-Delta Plan is revised, the  
24 SWP and the DCP are legally obligated to comply with any revised flow objectives  
25 properly assigned to it, and the SWP will be operated to do so. ([DCP.AA1.2.00001](#), p.  
26 120) The Department includes evidence in the record showing that it has submitted a  
27 Petition for a CPOD for the DCP to the SWRCB ([DCP.V1.1.00001](#) – [DCP.V1.2.00343](#)).  
28 The CPOD does not seek modifications to the requirements of D-1641 and states that  
29 the DCP will meet D-1641 requirements. ([DCP.V1.1.00001](#), pp. 13, 15.)

30 **c. Appeals and Analysis**

31 Appellants County of Sacramento, Steamboat Resort, SF Baykeeper, Sac  
32 Sewer, City of Stockton, SDWA, and San Joaquin County appealed the Department’s  
33 Certification of Consistency with ER P1, claiming that the Department’s modeling is  
34 inadequate, that the DCP cannot comply with D-1641 without TUCOs, that the  
35 Department lacks evidence that the DCP will meet flow objectives due to its pending  
36 CPOD petition before the SWRCB, and that ER P1 requires the Department to  
37 demonstrate compliance with salinity-based flow-dependent objectives. These issues  
38 are addressed in turn below.

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<sup>41</sup> Appellants refer to Temporary Urgency Change Orders as Temporary Urgency Change  
Petitions, or TUCPs.

1                                    **i.        Inadequate flow modeling**

2            Appellants County of Sacramento, Sac Sewer and City of Stockton allege that  
3 the Department’s Delta Simulation Model 2 (“DSM2”) modeling is insufficient because it  
4 does not address the operations and impacts of the DCP based on the conditions that  
5 are projected to exist when the DCP is operational ([DCP.V2.12.00002](#)). Additionally,  
6 these Appellants state that the Department’s CalSim 3 modeling shows “chronic  
7 noncompliance” with D-1641 requirements ([DCP.V2.5.00004](#)). Appellants also argue  
8 that the Department’s Semi-implicit Cross-scale Hydroscience Integration System  
9 Model (“SCHISM”) “demonstrated that several millions of acre-feet of additional  
10 freshwater flowing to the Delta would be required to maintain D-1641 compliance  
11 ([DCP.V2.12.00002](#)).

12            Appellants cite to a technical memorandum describing the Department’s  
13 sensitivity analysis for 2070 climate change and sea level rise projections  
14 ([DCP.V2.5.00004](#)), where the Department states “TUCP-like actions are likely to  
15 become more frequent – potentially occurring in about 15% of years”, and “would likely  
16 require actions such as relaxing water quality standards and flow requirements.”  
17 Appellants also reference Dr. Paulsen’s testimony in the water rights hearing,  
18 “[b]ecause [the Department] did not perform DSM2 modeling to characterize Delta  
19 water quality or residence time in 2070 (or beyond), it is not possible for the SWRCB or  
20 Delta water users to understand the impacts of the DCP during this timeframe”  
21 ([DCP.V2.5.00004](#)). Appellants emphasize concerns raised by the Delta Independent  
22 Science Board (Delta ISB) that “the methods used to project the effects of future climate  
23 change on water inflows, which involve modifying historical time series by monthly  
24 change factors, are not providing a realistic representation of the future.”  
25 ([DCP.AA5.1.00001](#)).

26            Appellant San Joaquin County claims that the Department’s modeling obscures  
27 chronic future noncompliance with D-1641 as demonstrated in CalSim 3 evaluations of  
28 2070 conditions” ([DCP.V2.12.00002](#), pp. 10-11), that modeling data based on averages  
29 obscures the significance of non-compliance with Delta flows ([DCP.V2.12.00002](#), pp.  
30 30-31), and that the sea-level rise increases assumed by the Department to occur due  
31 to climate change would also require several million-acre feet of additional Delta inflow  
32 to achieve D-1641 compliance ([DCP.V2.12.00002](#), p.12).

33            The Department describes its analytical framework and key analytical tools and  
34 approaches used in the quantitative evaluation of existing conditions, No Project  
35 Alternative (2040), proposed project, and includes an overview of the numerical models  
36 and supporting assumptions ([DCP.D1.1.00034](#), p. A-8). The Department finds that  
37 “modeling of covered action operations shows that the SWP with the covered action and  
38 operated under the project’s operational criteria will meet D-1641 flow objectives”  
39 ([DCP.AA1.2.00001](#), pp. 96–120).

40            In its written submission, the Department holds that TUCOs do not violate  
41 conditions in a water right holder’s underlying permit or license, nor are TUCOs included  
42 in proposed operations of the project ([Department, Writ. Sub.](#), p. 138); that its modeling  
43 approach is supported by the best available science ([Department, Writ. Sub.](#), p. 138);

1 and that ER P1 does not require modeling of future climate conditions ([Department,](#)  
2 [Writ. Sub.](#), p. 138).

3 Appellants' criticism of the Department's modeling approach does not establish  
4 that the Department's methodology was unsupported by substantial evidence. (See  
5 *South of Market Community Action Network v. City and County of San Francisco* (2019)  
6 33 Cal.App.5th 321, 337.) ER P1 does not require modeling to address future climate  
7 conditions. Indeed, such modeling is of uncertain value given that the SWRCB Bay-  
8 Delta Plan has not been fully updated and flow criteria may adjusted be pursuant to  
9 Water Code § 85086, subd. (c)(2).) The Council reviews whether there is substantial  
10 evidence to support the Department's findings of consistency with the applicable  
11 standard in effect at the time the Certification is submitted. To the extent appellants  
12 raise potential concerns of best available science, those concerns are addressed under  
13 G P1(b)(3). They are not additional appealable issues under ER P1.

14 **ii. Temporary Urgency Change Orders**

15 Appellants County of Sacramento, SF Baykeeper, Sac Sewer, City of Stockton,  
16 SDWA, and San Joaquin County argue that the issuance of a TUCO is evidence of non-  
17 compliance with D-1641. Appellants assert that the standard for consistency with ER P1  
18 "is compliance with the flow objectives established in the Bay-Delta Water Quality  
19 Control Plan" and that "the standard is not compliance with the terms and conditions of  
20 a given water right." Further, Appellants County of Sacramento, Sac Sewer, and City of  
21 Stockton state that the Department is incorrect in "concluding that the issuance of a  
22 TUCO is not proof of inconsistency with D-1641 flow objectives" and that a TUCO does  
23 not "temporarily modify D-1641 requirements" ([DCP.AA1.2.00001](#), p. 99; see also Wat.  
24 Code, § 1435, subd. (a).).

25 Appellant San Joaquin County claims that the Department presents a compliance  
26 history of actual SWP operations in the Certification but "does not include data where a  
27 [temporary urgency change order ("TUCO")] was granted by the [SWRCB] that  
28 temporarily modified SWP obligations" ([DCP.AA1.2.00001](#), p. 116).

29 Appellant SDWA also argues that the Certification does not describe how the  
30 Department intends to operate the DCP to address sea level rise, levee failures, and  
31 drought conditions. Because of this, there is no substantial evidence demonstrating how  
32 the DCP's operations will comply with the flow-dependent objectives of D-1641  
33 ([DCP.D1.1.00009](#)). SDWA also argues that the Certification lacks substantial evidence  
34 demonstrating that the operations of the DCP will not increase the need for TUCOs or  
35 accelerate the need for such changes.

36 The Department finds that "modeling of covered action operations shows that the  
37 SWP with the covered action and operated under the project's operational criteria will  
38 meet D-1641 flow objectives" ([DCP.AA1.2.00001](#), p. 99). The Department also finds  
39 that the SWP has "historically met D-1641 flow objectives 99.8% of the time, and the  
40 modeling shows that adding the covered action will not hinder the SWP's ability to meet  
41 D-1641 flow objectives" ([DCP.AA1.2.00001](#), p. 98).

1 The Department acknowledges in its Certification that its analysis intentionally  
2 did not include periods with a TUCO in place because it is not a part of normal  
3 operations of the SWP ([DCP.AA1.2.00001](#), pp. 116-117). The Department holds that  
4 TUCOs constitute the SWRCB’s approved temporary modification to existing water  
5 rights, and “a TUCO does not violate the conditions found in the water right holder’s  
6 underlying permit or license, and TUCOs have historically been accompanied by other  
7 legal actions that prevent inconsistency with the existing water quality control plans.”  
8 ([DCP.AA1.2.00001](#), pp. 99-100, 116-117).

9 The issuance of TUCOs is a regulatory action within the purview of the SWRCB,  
10 and therefore not a matter within the Council’s jurisdiction. (Wat. Code § 85057.5,  
11 subd.(b)(1).) The Delta Reform Act specifies that a covered action does not include a  
12 regulatory action of a state agency. (Ibid.) Whether a TUCO represents evidence of  
13 non-compliance with D-1641 is a question for the SWRCB and not the Council.

14 **iii. DCP will not meet flow objectives due to pending**  
15 **petition for a Change in Point of Diversion**

16 The Department has a pending petition before the SWRCB for a Change in Point  
17 of Diversion (“CPOD”). The petition seeks to add two points of diversion and re-  
18 diversion to the water rights for the SWP, and is a required step in the Department’s  
19 permit approvals for the DCP ([DCP.V1.1.00001](#), p. 1). County of Sacramento, Sac  
20 Sewer, City of Stockton, and San Joaquin County claim that the process to add points  
21 of diversion and re-diversion for the SWP is not completed, that any associated new  
22 conditions or permitted total diversion capacity are unknown, and that as a result, the  
23 Department lacks evidence to show consistency with ER P1. Appellants assert that,  
24 absent this information, the Department cannot accurately model how the Covered  
25 Action would operate or how compliance with Delta flow objectives would be achieved,  
26 noting that the proceeding at the SWRCB to consider the Department’s CPOD Petition  
27 is ongoing, and that the administrative hearing officer for the SWRCB has requested  
28 additional modeling from the Department to demonstrate compliance with the Delta flow  
29 objectives currently under consideration by the SWRCB ([DCP.V3.1.00042](#), p. 2, citing  
30 Wat. Code, § 85086.).

31 The Department states that “modeling of covered action operations shows that  
32 the SWP with the covered action and operated under the project’s operational criteria  
33 will meet the D-1641 flow objectives” and that “when and if the Bay-Delta WQCP is  
34 revised, the SWP and the covered action are legally obligated to comply with any  
35 revised flow objectives properly assigned to it, and the SWP will be operated to do so.”  
36 ([DCP.AA1.2.00001](#), pp. 120). During the Hearing, the Department acknowledged that it  
37 has a pending CPOD petition in before the SWRCB (“CPOD petition”,  
38 [DCP.V1.1.00001](#)).

39 In its written submittal, the Department explains that “implementation of the DCP  
40 requires the [SWRCB] to approve [the Department]’s CPOD petition. The [SWRCB], in  
41 considering whether to grant the petition, must determine that the project is consistent  
42 with D-1641 for the Bay-Delta WQCP. The ongoing CPOD hearing process, by itself,

1 constitutes substantial evidence that the DCP will not be implemented unless it is  
2 consistent with the flow objectives as required by ER P1.” ([DCP.AA1.2.00021](#), p. 142).

3 To demonstrate consistency with ER P1, a certification of consistency must be  
4 supported by substantial evidence that demonstrates that the Covered Action can  
5 comply with flow objectives in effect at the time that the certification is submitted: D-  
6 1641. The best practice for establishing consistency with ER P1 is securing an  
7 order/approval from the SWRCB prior to submitting a certification of consistency.  
8 However, if the SWRCB’s jurisdiction is invoked because a petition has been filed to  
9 change the conditions of a water rights permit (such as a CPOD) and that petition  
10 concerns compliance with Bay-Delta Plan flow objectives, the Council lacks the  
11 authority to review the sufficiency of the SWRCB’s order or separately determine  
12 *compliance* (as opposed to evidence of consistency) with Bay-Delta Plan flow  
13 objectives. Furthermore, the Department cannot commence construction “of any  
14 diversion, conveyance, or other facility necessary to divert and convey water pursuant  
15 to the change in point of diversion until the [SWRQB] issues an order approving a  
16 change in the point of diversion.” (Wat. Code, § 85088.)

17 The Council therefore agrees with the Department. Although it is the best  
18 practice for a public agency to secure approval from the SWRCB prior to submitting a  
19 certification of consistency because the issue of consistency with the Bay-Delta Plan’s  
20 flow objectives would be conclusively resolved, pre-approval is not required by ER P1.<sup>42</sup>  
21 (Cal. Code Regs., tit. 23, § 5005.) Here, the SWRCB’s jurisdiction was invoked prior to  
22 the Certification because the CPOD petition was duly submitted and that petition  
23 asserts compliance with Bay-Delta Plan flow objectives. Moreover, the Delta Reform Act  
24 provides that the Department cannot commence construction “of any diversion,  
25 conveyance, or other facility necessary to divert and convey water pursuant to the  
26 change in point of diversion until the [SWRCB] issues an order approving a change in  
27 the point of diversion.” (Wat. Code, § 85088.) Accordingly, it is the SWRCB and not the  
28 Council that is statutorily required to resolve the question of the DCP’s substantive  
29 compliance with D-1641. Rather, the Council’s task is to determine whether substantial  
30 evidence supports the Department’s finding of *consistency* with existing flow objectives.  
31 The pending CPOD petition,<sup>43</sup> the requirement of Water Code § 85088, the record  
32 evidence, including the modeling and historical data, establish that the DCP will be  
33 consistent with existing Delta flow objectives. The DCP cannot do otherwise.

34 For these reasons, the Council finds that Appellants have failed to meet their  
35 burden, and that there is substantial evidence in the record to support the Department’s  
36 finding that the DCP is consistent with ER P1. Should the SWRCB require physical  
37 changes to the DCP as defined for purposes of this Covered Action as a condition of its

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<sup>42</sup> The Council has consistently advised public agencies to complete the SWRCB process before submitting a certification of consistency.

<sup>43</sup> The Council’s finding of consistency under the substantial evidence standard does not preclude or affect the SWRCB’s consideration of whether the DCP does or does not meet D-1641. The SWRCB is a fact-finder with direct jurisdiction over that issue.

1 CPOD determination, the Department may be required to submit a certification of  
2 consistency with the Delta Plan to the Council concerning the changes.

3 **iv. ER P1 requires compliance with salinity-based, flow-**  
4 **dependent objectives**

5 Appellant SDWA alleges that the Department misinterpreted ER P1, and that it  
6 must “[d]emonstrate compliance with all flow-dependent objectives the SWRCB  
7 imposes on its operations in SWRCB’s Decision 1641, including salinity-based flow-  
8 dependent objectives.” SDWA argues that the Department incorrectly asserts that it  
9 must only comply with flow objectives that “have a fixed cubic feet per second” and not  
10 flow-dependent objectives that, “are measured by determining the electrical conductivity  
11 or chloride of the water flowing at a particular location in the Delta” ([DCP.AA1.2.00001](#),  
12 p. 10).

13 SDWA argues that there is no substantial evidence that the DCP will be operated  
14 to comply with all flow-dependent objectives in D-1641. SDWA points to the Bay-Delta  
15 Water Quality Control Plan (Bay-Delta Plan), Delta Plan and Council documents to  
16 demonstrate that ER P1 requires compliance with all flow-dependent objectives in  
17 SWRCB decisions such as D-1641, whether they are cfs-based or salinity-based  
18 ([DCP.V2.14.00023](#), p.4; Delta Plan, Ch. 6 p. 231; [DCP.AA2.7.00005](#), p. 38-39). The  
19 Appellant asserts that the D-1641 document itself refers to all flow and flow-dependent  
20 objectives collectively as “flow objectives”, as opposed to non-flow dependent water  
21 quality objectives such as total maximum daily loads, implemented through restrictions  
22 of discharges into a water body and not by flow requirements on to water right holders  
23 ([DCP.D3.1.00321](#), p. 15 ). The Appellant therefore argues that the Department’s  
24 analysis of compliance with all flow and non-flow objectives in D-1641 is incomplete  
25 ([SDWA Appeal Memo](#), p.13).

26 The Department states that the term “flow objectives” as used in ER P1 has a  
27 specific definition in the Delta Plan and D-1641 and must be used to determine  
28 consistency with ER P1 ([DCP.AA1.2.00001](#), p. 96). The Department references the  
29 definition of flow objectives in the Bay-Delta Plan, which is defined as, “the amount of  
30 water that must be flowing in a watercourse at a given time” ([DCP.AA1.2.00001](#), p. 97).  
31 The Department also states that Chapter 6 of the Delta Plan demonstrates the  
32 difference between “flow” and “water quality” issues ([DCP.AA1.2.00001](#), p.97). The  
33 Department argues that “flow objective” and “salinity” are “different and distinct water  
34 quality parameters.” ([DCP.AA1.2.00001](#), p.97).

35 The Council agrees. For the purpose of ER P1, the flow objectives refer to the  
36 amount of water that must be flowing in a watercourse at a given time to protect  
37 beneficial uses of water. ([Delta Plan, Ch. 4.](#), at p. 4-69 [“The volume, timing and extent  
38 of freshwater flows through the Delta directly affect the health of the ecosystem.”]; *State  
39 Water Resources Control Board Cases*, supra, 136 Cal.App.4th 674, 701-702.) The  
40 Council therefore finds that SDWA failed to raise an appealable issue with respect to  
41 meeting salinity-based flow dependent objectives under ER P1.



1           **7. Policy ER P2 (Cal. Code Regs., tit. 23 § 5006.): Restore Habitats at**  
 2           **Appropriate Elevations; Policy ER P3 (Cal. Code Regs., tit. 23 §**  
 3           **5007.): Protect Opportunities to Restore Habitat; and Policy ER P4**  
 4           **(Cal. Code Regs., tit. 23 § 5008.): Expand Floodplains and Riparian**  
 5           **Habitats in Levee Projects**

6           The Department certifies that the DCP is consistent with Delta Plan Policies ER  
 7 P2, ER P3, and ER P4.<sup>44</sup> Appellant SF Baykeeper raises arguments that it is not. These  
 8 three policies were appealed by SF Baykeeper as a group and are therefore grouped  
 9 together in the analysis. For the reasons described below, the Council finds that the  
 10 Appellant has failed to meet its burden, and that there is substantial evidence in the  
 11 record to support the Department’s finding that the DCP is consistent with ER P2, ER  
 12 P3, and ER P4. Accordingly, the Council **denies the appeals** of these policies as  
 13 follows:

Appeal Issue	Appellant	Decision
Restore habitats at appropriate elevations (ER P2)	SF Baykeeper	Denied
Protect opportunities to restore habitat (ER P3)	SF Baykeeper	Denied
Expand floodplains and riparian habitats in levee projects (ER P4)	SF Baykeeper	Denied

14  
 15                                   **a. Policy Requirements**

16           ER P2 (Cal. Code Regs., tit. 23, § 5006) covers proposed actions that include  
 17 habitat restoration and requires that such restoration be carried out at appropriate  
 18 elevations consistent with CDFW conservation strategies and in accordance with an  
 19 elevation map in the Delta Plan depicting appropriate habitat restoration actions based  
 20 on an area's elevation. ER P3 (Cal. Code Regs., tit. 23, § 5007.) covers proposed  
 21 actions located in specific Priority Habitat Restoration Areas (“PHRAs”) identified in the  
 22 Delta Plan and requires that significant adverse impacts to the opportunity to restore  
 23 habitat in these areas as described in section 5006 must be avoided or mitigated. ER  
 24 P4 (Cal. Code Regs., tit. 23, § 5008.) covers proposed actions to construct new levees  
 25 or substantially rehabilitate or reconstruct existing levees. It requires those actions to  
 26 evaluate, and where feasible, incorporate alternatives to increase floodplains and

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<sup>44</sup> In the Certification, the Department identifies that the operative ER P2, ER P3, and ER P4 policies for the DCP are the 2013 regulatory language, but states that the findings of consistency and consistency conclusion also apply to the April 1, 2025, amended versions of each.

1 riparian habitats, and specifically requires evaluation of setback levees in specific areas  
2 identified in the regulation.

3 **b. Certification**

4 The Department finds that the DCP is consistent with ER P2 based on the  
5 location and expected implementation of habitat enhancements identified in the  
6 Compensatory Mitigation Plan (“CMP”). ([DCP.AA1.2.00001](#), p. 122). The Certification  
7 details the selection process for mitigation sites, defining objectives for sites at Bouldin  
8 Island and the I-5 ponds, and objectives for future channel margin and tidal wetland  
9 habitats ([DCP.AA1.2.00001](#), pp. 122-125, 128-134). It includes detailed characteristics  
10 and maps of proposed mitigation sites ([DCP.AA1.2.00014](#), pp. 1-10; [DCP.AA1.2.00015](#),  
11 p. 1).

12 The Department also finds that the DCP is consistent with ER P3, as it does not  
13 significantly impact habitat restoration opportunities in PHRAs ([DCP.AA1.2.00001](#), p.  
14 137). Where DCP features are in a PHRA, they are sited on the edge, minimizing  
15 conflict ([DCP.AA1.2.00001](#), p. 138). Maps included in the Certification show proposed  
16 facilities and mitigation sites relative to PHRAs ([DCP.AA1.2.00016](#); [DCP.AA1.2.00017](#),  
17 p. 1). According to the Certification, the DCP would place project features in two Delta  
18 Plan PHRAs: the Cosumnes River-Mokelumne River confluence and the Lower San  
19 Joaquin River floodplain. The Department finds that these features have been sited to  
20 minimize and avoid significant adverse impacts on habitat restoration.  
21 ([DCP.AA1.2.00001](#), pp. 139-140). The Certification further discusses how the CMP's  
22 project- and program-level actions relate to the Delta Plan PHRAs ([DCP.AA1.2.00001](#),  
23 pp. 140-141).

24 The Department finds that while the DCP is not a levee project, it aligns with ER  
25 P4 because it involves altering levees at new north Delta intake sites within the  
26 Sacramento River Flood Control Project area (ER P4(a)(1)). The Certification indicates  
27 that ER P4 does not apply to the DCP but shows that if the DCP were to construct or  
28 significantly rehabilitate levees, it would still be consistent with ER P4  
29 ([DCP.AA1.2.00001](#), p. 143).

30 The Department finds that while the DCP is not a levee project, it aligns with ER  
31 P4 because it involves altering levees at new north Delta intake sites within the  
32 Sacramento River Flood Control Project area (ER P4(a)(1)). ER P4 applies to covered  
33 actions that would construct new levees or substantially rehabilitate or reconstruct  
34 existing levees. The Certification indicates that ER P4 does not apply to the DCP but  
35 shows that if the DCP were to construct or significantly rehabilitate levees, it would still  
36 be consistent with ER P4 ([DCP.AA1.2.00001](#), p. 143).

37 **c. Appeals and Analysis**

38 Appellant SF Baykeeper argues that ER P2, ER P3, and ER P4 require  
39 improvement, enhancement, and restoration activities as part of a covered action – not  
40 mitigation, which the Appellant defines as “the act of reducing the seriousness of an

1 effect.”<sup>45</sup> The appeal notes that mitigation would reduce some of the significant harm  
2 the DCP could cause, but that it does not eliminate those harms or represent an effort to  
3 restore or enhance the existing ecosystem. The Appellant also argues that mitigation  
4 proposed by the Department is speculative and unlikely to provide benefits to  
5 ecosystems or native fish species, and that there is no substantial evidence that the  
6 mitigation proposed by the Department will make up for the harms that the DCP would  
7 cause. ([SF Baykeeper, Appeal](#), p. 11.)

8 The Appellant references water rights hearing testimony as evidence that the  
9 mitigation proposed by the Department will not improve or enhance the Delta  
10 ecosystem ([DCP.V2.30.00011](#), pp. 25-26, 30-31, 34-35, 40-41, 43-44, 46-47;  
11 [DCP.V2.18.00006](#), pp. 3-6). The Appellant also points out significant and unavoidable  
12 impacts of the DCP in the Department’s CEQA Findings of Fact and Statement of  
13 Overriding Considerations ([DCP.C.1.00001](#), pp. 9-28). Upon examination, the cited  
14 evidence summarizes ecological harms that could result from the DCP but does not  
15 describe the efficacy of proposed mitigation and its benefits or drawbacks.

16 ER P2 requires habitat restoration to be carried out at appropriate elevations  
17 consistent with California Department of Fish and Wildlife conservation strategies and in  
18 accordance with an elevation map in the Delta Plan depicting appropriate habitat  
19 restoration actions based on an area’s elevation. Appellant does not address the ER P2  
20 requirements, or the Department’s findings and evidence in the record, but assert the  
21 Department’s reliance on mitigation measures to claim consistency with ER P2, is not  
22 supported by substantial evidence.

23 ER P3 requires covered actions located in specific PHRAs identified in the Delta  
24 Plan to avoid or mitigate significant adverse impacts to the opportunity to restore habitat  
25 in these areas. The inconsistency claim does not specifically address ER P3 (Cal. Code  
26 Regs., tit. 23, § 5007.), requirements to avoid or mitigate significant impacts on habitat  
27 restoration opportunities in the PHRAs. Appellant also does not address the  
28 Department’s evidence that project features in two PHRAs are located at the edges, do  
29 not segment the PHRAs, and occupy minimal area, thus not significantly impacting  
30 habitat restoration opportunities ([DCP.AA1.2.00001](#), p. 138). While known mitigation  
31 sites in the Compensatory Mitigation Plan (“CMP”) do not intersect PHRAs, the  
32 Department notes that some elements, like channel margin habitat enhancement and  
33 tidal marsh wetland restoration, have not yet been located ([DCP.AA1.2.00001](#), p. 141).  
34 Substantial evidence in the record establishes that proposed mitigation sites are not  
35 located within a PHRA and therefore do not affect future habitat restoration  
36 opportunities. The Council cannot speculate about future mitigation locations and their  
37 impact on PHRAs.<sup>46</sup> In addition, Appellant’s claim does not address the requirements  
38 of ER P3 or the Department’s findings and evidence in the record regarding PHRA.

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<sup>45</sup> The appeal refers generally to “mitigation” that would encompass both “mitigation measures” adopted in the MMRP and “mitigation sites” identified in the CMP but does not identify any specific measure or site at issue.

<sup>46</sup> Once the mitigation locations have been determined, the Department may be required to file a certification of consistency with the Council for each proposed action prior to implementation.

1 ER P4 requires a levee project to evaluate, and where feasible, incorporate  
2 alternatives including setback levees, to increase floodplains and riparian habitats. The  
3 DCP, though it may require some site-specific levee work at intake sites, is not a levee  
4 project and therefore the Appellant does not raise an appealable issue. In addition,  
5 Appellant’s claim does not address the requirements of ER P3 or the Department’s  
6 findings and evidence in the record regarding PHRA.

7 Based on the above, the Council finds that the Appellant fails to identify an appealable  
8 issue under ER P2, ER P3, and ER P4. (Wat. Code, §§ 85225.10 and 85225.20; Cal.  
9 Code Regs, tit. 23, §§ 5022 and 5030.)

10 **d. ER P2, ER P3, and ER P4 Conclusion**

11 For the reasons described above, the Council finds that Appellant SF Baykeeper  
12 failed to identify an appealable issue or show that the Certification lacked substantial  
13 evidence in the record to support the Department’s finding that the DCP is consistent  
14 with ER P2, ER P3, and ER P4. Accordingly, the Council **denies the appeals**.

15 **8. Policy ER P5 (Cal. Code Regs., tit. 23 § 5009): Avoid Introductions of**  
16 **and Habitat Improvements for Invasive Nonnative Species**

17 The Department certifies that the DCP is consistent with Delta Plan Policy ER  
18 P5. Appellants San Joaquin County and SF Baykeeper raise substantive arguments  
19 that it is not. For the reasons discussed below, the Council finds that San Joaquin  
20 County showed that the Certification is not supported by substantial evidence in the  
21 record and the Council **remands the matter** to the Department to fully consider and  
22 reduce the potential for the DCP to improve habitat conditions for the nonnative invasive  
23 golden mussel. The Council **denies the appeal** from SF Baykeeper concerning ER P5.

<b>ER P5 Appeal Issue</b>	<b>Appellants</b>	<b>Decision</b>
Improved habitat conditions for golden mussel	San Joaquin County	Remanded to Department
Improved habitat conditions for nonnative fish	SF Baykeeper	Denied

24

25 **a. Policy Requirements**

26 ER P5 states:

27 “(a) The potential for new introductions of, or improved habitat conditions for,  
28 nonnative invasive species, striped bass, or bass must be fully considered and avoided  
29 or mitigated in a way that appropriately protects the ecosystem.

30 (b) For purposes of Water Code Section 85057.5(a)(3) and Section 5001(j)(1)(E)  
31 of this Chapter, this policy covers a proposed action that has the reasonable probability

1 of introducing, or improving habitat conditions for, nonnative invasive species.” (Cal.  
2 Code Regs., tit. 23, § 5009.)<sup>47</sup>

3 **b. Certification**

4 The Department finds that the DCP is consistent with ER P5 (Cal. Code Regs.,  
5 tit. 23, § 5009.) because the potential for new introductions of or improved habitat  
6 conditions for nonnative invasive species has been fully considered and has been  
7 avoided or mitigated in a way that appropriately protects the ecosystem.  
8 ([DCP.AA1.2.00001](#), p. 163)

9 The consistency analysis states that the Department has fully considered the  
10 potential for introductions of or improved habitat conditions for nonnative invasive  
11 species, including striped bass. As evidence, the Department cites the DCP, Final EIR,  
12 which includes discussion of nonnative species that occur in the DCP project area  
13 (specifically referencing Chapter 12, Fish and Aquatic Resources ([DCP.D1.1.00104](#))  
14 and Chapter 13, Terrestrial Biological Resources ([DCP.D1.1.00112](#)), as well as Impact  
15 BIO-52: Impacts of Invasive Species Resulting from Project Construction and  
16 Operations on Established Vegetation). The Certification also references the DCP, ITP  
17 Application, Chapter 4, Take Analysis and Effects ([DCP.D1.1.00028](#)), with respect to  
18 the evaluation of nonnative invasive species impacts and presence in the DCP project  
19 area.

20 The Department states that the potential for new introductions of or improved  
21 habitat conditions for nonnative invasive species will be avoided or mitigated in a way  
22 that appropriately protects the ecosystem through the Covered Action’s design features,  
23 MMs, ECs, CMP actions, together with the Adaptive Management and Monitoring  
24 Program, the DCP Incidental Take Permit requirements, and State- and Department-  
25 wide invasive species programs. ([DCP.AA1.2.00001](#), p. 163) Specific MMs, ECs,  
26 actions, plans, and permit requirement components are cited as evidence that the  
27 Department has fully considered and included measures that will avoid “exacerbating  
28 the impacts of preexisting nonnative invasive species and minimize the potential for new  
29 introductions of nonnative invasive species” ([DCP.AA1.2.00001](#), p. 148-159).

30 Furthermore, the Department states that the DCP will be part of the SWP and  
31 therefore all relevant SWP programs, plans and other commitments pertaining to  
32 managing potential new introductions of or improved habitat conditions for nonnative  
33 invasive species will be applied to the DCP as appropriate or necessary  
34 ([DCP.AA1.2.00001](#), p. 159).

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<sup>47</sup> The Delta Plan defines “nonnative invasive species” for purposes of ER P5 as “species that establish and reproduce rapidly outside of their native range and may threaten the diversity or abundance of native species through competition for resources, predation, parasitism, hybridization with native populations, introduction of pathogens, or physical or chemical alteration of the invaded habitat.” (Cal. Code Regs., tit. 23, § 5001, subd. (v).)



1 central and southern area of the Sacramento–San Joaquin Delta as well as the  
2 SWP. The Department is an active member of the interagency Golden Mussel  
3 Task Force led by CDFW, where agency staff develop coordinated monitoring  
4 plans as well as a Golden Mussel Response Plan in coordination with the  
5 California State Lands Commission and other participating agencies. The Golden  
6 Mussel Response Framework provides recommendations to state and local  
7 policy makers, managers, and the public on how to respond to the recent  
8 detections of golden mussel through a common framework across agencies and  
9 jurisdictions. It is the goal of the State of California to prevent further  
10 introductions and spread of golden mussel within the state, contain mussels  
11 within currently infested waters, and suppress mussel populations within infested  
12 waters to minimize impacts on the environment, economy, infrastructure, and  
13 human health.” ([DCP.AA2.1.00072](#), pp. 4-5)

14 The Certification does not include a discussion or reference any record material  
15 describing if or how the Department considered the potential for the DCP facilities  
16 themselves to create or enhance habitat for the golden mussel. ER P5 requires that a  
17 covered action show how the potential for improving habitat conditions for nonnative  
18 invasive species was fully considered and avoided or mitigated. (Cal. Code Regs., tit.  
19 23, § 5009.)

20 The Department acknowledges that “golden mussels are a real threat, and the  
21 Department has set a process to deal with them in its adaptive management plan” ([Vol.  
22 2, Hearing Transcript \(HT\)](#), 16:8-10). The Department points to the CDFW Golden  
23 Mussel webpage ([DCP.AA2.1.00069](#)) and the Golden Mussel Response Framework  
24 mentioned above ([DCP.AA2.1.00072](#), p. 9) to point out that the Golden mussel is  
25 already present in the Delta, that the spread through conveyance systems has no  
26 known prevention mechanisms, and that the overland spread should be prevented. The  
27 Department actively participates in various multi-agency and statewide efforts, such as  
28 the Golden Mussel Task Force, with the goal to manage the treatment of invasive  
29 nonnatives species as threats develop ([DCP.AA1.2.00001](#), p. 159). The Department  
30 also includes MM AQUA-1b *Develop and Implement a Barge Operations Plan* related to  
31 preventing the spread of invasive species generally via watercraft. The Department also  
32 states that the DCP Incidental Take Permit contains provisions related to nonnative  
33 invasive species, which does not include measures to control the golden mussel  
34 ([DCP.U1.1.00001](#)).

35 Additionally, the Department states that after construction, the DCP will be part of  
36 the SWP and the Department must comply with all applicable SWP programs, plans,  
37 and other commitments related to managing the potential for new introductions of or  
38 improved habitat conditions for nonnative invasive species ([DCP.AA1.2.00001](#), p. 159).  
39 The Department hosts the Aquatic Nuisance Species Program ([DCP.AA2.1.00076](#)),  
40 which encompasses invasive species planning, prevention, surveillance, rapid  
41 response, and management in the SWP and the Delta. The Department implements the  
42 Quagga and Zebra Mussel Prevention Program for the SWP ([DCP.AA2.1.00083](#)), the  
43 Quagga and Zebra Mussel Rapid Response Plan for the SWP ([DCP.AA2.1.00077](#)), and

1 the Quagga Mussel Control Plan for Pyramid Lake, Angeles Tunnel, and Castaic Lake  
2 ([DCP.AA2.1.00081](#)) to control invasive mussels.

3 The record establishes that the Department became aware of the golden  
4 mussel's presence in the Delta in October 2024, and that the Department participates in  
5 program-wide interagency efforts with a specific focus on managing the proliferation of  
6 the golden mussel ([DCP.AA2.1.00069](#); [DCP.AA2.1.00072](#)). The record also establishes  
7 that the Department has generally considered the potential for the DCP to improve  
8 habitat conditions for a range of known invasive species ([DCP.AA1.2.00001](#), pp. 147-  
9 163). However, the Certification does not describe, nor does the record support, how  
10 the Department fully considered and avoided or mitigated the potential for the *proposed*  
11 *DCP facilities to improve habitat conditions* for the *invasive golden mussel*.<sup>49</sup> The DCP  
12 is a proposed water conveyance facility that will provide extensive infrastructure-water  
13 interface areas representing habitat for the golden mussel. ([DCP.AA2.1.00072](#), p.3).  
14 The failure of the Department to address how the facilities themselves could improve  
15 habitat for the golden mussel is inconsistent with ER P5.

16 For these reasons, the Council finds that San Joaquin County has shown that the  
17 Certification is not supported by substantial evidence with respect to ER P5 on the issue  
18 of fully considering and avoiding or mitigating the potential to improve habitat conditions  
19 for the golden mussel. The Council therefore **remands the matter** to the Department to  
20 fully consider and avoid or mitigate the potential for DCP facilities to improve habitat  
21 conditions for the nonnative invasive golden mussel in a way that appropriately protects  
22 the ecosystem.

23 **ii. Improved habitat conditions for nonnative fish species**

24 Appellant SF Baykeeper claims that the Department fails to address that  
25 nonnative invasive fish species would benefit from lower, more stagnant river flows, and  
26 large infrastructure projects to prey on native juvenile fish. ([SF Baykeeper, Appeal](#), p.11,  
27 [SF Baykeeper, Writ. Sub.](#), p. 14) Appellant claims that the DCP will provide habitat and  
28 improve conditions for invasive species, including through reduced flows, and the  
29 Department fails to address the impact substantial new infrastructure will have on  
30 invasive species, providing new habitat for those species at the expense of native,  
31 desirable ones. Appellant does not cite evidence in the record supporting this claim.

32 The Certification states that the Department considered nonnative invasive  
33 aquatic species present in the project area including striped bass ([DCP.D1.1.00104](#), pp.  
34 12-22). Additionally, the Department states that there will be no significant changes in  
35 flow conditions in the Delta based on simulated changes in river conditions that show  
36 long-term average monthly flows under project operations will be similar to existing  
37 conditions ([DCP.D1.1.00249](#), p. 48; [DCP.D1.1.00032](#), p. 5-26). As stated above,  
38 appellant did not address the Department's evidence and it is therefore presumed that

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<sup>49</sup> The Council notes that neither the DCP ITP nor its adaptive management plans include mention of golden mussel, and the record does not describe if or how techniques used to manage Zebra or Quagga mussels are effective to manage golden mussel.

1 the Department’s findings are supported by the administrative record (*Poncio v. Dept.*  
2 *of Resources Recycling & Recovery, supra*, 34 Cal.App.5th 663, 669; See also  
3 *Desmond v. County of Contra Costa, supra*, 21 Cal.App.4th 330, 335.)

4 The Council therefore finds that SF Baykeeper failed to meet its burden, and that  
5 there is substantial evidence in the record to support the Department’s finding that the  
6 DCP is consistent with ER P5 as to the issue of avoiding and mitigating the potential to  
7 improve habitat conditions for nonnative fish species.

8 **d. ER P5 Conclusion**

9 For the reasons discussed above, the Council finds that San Joaquin County  
10 showed that the Certification is not supported by substantial evidence in the record that  
11 the DCP is consistent with ER P5, and the Council **remands the matter** to the  
12 Department to fully consider and avoid or mitigate the potential for DCP facilities to  
13 improve habitat conditions for the nonnative invasive golden mussel.

14 The Council also finds that SF Baykeeper failed to meet its burden, and that  
15 there is substantial evidence in the record to support the Department’s finding that the  
16 DCP is consistent with ER P5, and the Council **denies the appeal** regarding the issue  
17 of improving habitat conditions for nonnative fish species.

18 **9. Policy DP P1 (Cal. Code Regs., tit. 23 § 5010.): Locate New Urban**  
19 **Development Wisely**

20 The Department finds that Delta Plan Policy DP P1 does not apply to the DCP.  
21 ([DCP.AA1.2.00001](#), p. 43) Two Appellants (Pear Fair and Steamboat Resort) contend  
22 that DP P1 does apply and that the DCP is inconsistent with the policy ([Pear Fair](#).  
23 [Appeal](#) p.2; [Steamboat, Appeal](#), p.3). For the reasons discussed below, the Council  
24 finds that Appellants fail to meet their burden, and that there is substantial evidence in  
25 the record to support the Department’s finding that DP P1 does not apply to the DCP.  
26 Accordingly, the Council **denies the appeals** as summarized below.

<b>DP P1 Appeal Issue</b>	<b>Appellants</b>	<b>Decision</b>
DP P1 applies to the DCP	Pear Fair, Steamboat Resort	Denied

27

28 **a. Policy Requirements**

29 DP P1 states:

30 “(a) New residential, commercial, and industrial development must be limited to  
31 the following areas, as shown in Appendix 6 and Appendix 7:

1 (1) Areas that city or county general plans, as of May 16, 2013, designate  
2 for residential, commercial, and industrial development in cities or their spheres  
3 of influence;

4 (2) Areas within Contra Costa County's 2006 voter approved urban limit  
5 line, except no new residential, commercial, and industrial development may  
6 occur on Bethel Island unless it is consistent with the Contra Costa County  
7 general plan effective as of May 16, 2013;

8 (3) Areas within the Mountain House General Plan Community Boundary  
9 in San Joaquin County; or

10 (4) The unincorporated Delta towns of Clarksburg, Courtland, Hood,  
11 Locke, Ryde, and Walnut Grove.

12 (b) Notwithstanding subsection (a), new residential, commercial, and industrial  
13 development is permitted outside the areas described in subsection (a) if it is consistent  
14 with the land uses designated in county general plans as of May 16, 2013, and is  
15 otherwise consistent with this Chapter.

16 (c) For purposes of Water Code section 85057.5(a)(3) and section 5001(o)(1)(E)  
17 of this Chapter, this policy covers proposed actions that involve new residential,  
18 commercial, and industrial development that is not located within the areas described in  
19 subsection (a). In addition, this policy covers any such action on Bethel Island that is  
20 inconsistent with the Contra Costa County general plan effective as of May 16, 2013.  
21 This policy does not cover commercial recreational visitor-serving uses or facilities for  
22 processing of local crops or that provide essential services to local farms, which are  
23 otherwise consistent with this Chapter.

24 (d) This policy is not intended in any way to alter the concurrent authority of the  
25 Delta Protection Commission to separately regulate development in the Delta's Primary  
26 Zone." (Cal. Code Regs., tit. 23, § 5010.)

27 **b. Certification**

28 In the Certification, the Department finds that DP P1 is not applicable to the DCP  
29 because it involves a State government use and does not include residential,  
30 commercial, or industrial development regulated by DP P1 ([DCP.AA1.2.00001](#), p.30).  
31 The Department recognizes that the DCP involves various temporary and permanent  
32 structures, stating that "the permanent water conveyance facilities must be located at  
33 specific locations within the Delta, and the temporary construction-related structures  
34 must be placed along and adjacent to these facilities to fulfill their governmental  
35 purposes. In this context, these structures are classified as governmental public use  
36 rather than new permanent residential, commercial, or industrial development"  
37 ([DCP.AA1.2.00001](#), p. 31).



1           **10. Policy DP P2 (Cal. Code Regs., tit. 23 § 5011): Respect Local Land**  
 2           **Use When Siting Water or Flood Facilities or Restoration Habitats**

3           The Department certifies that the DCP is consistent with Delta Plan Policy DP  
 4 P2. All 10 Appellants raise substantive arguments that it is not. For the reasons  
 5 discussed below, the Council finds that Appellant Sac Sewer showed, in relevant part  
 6 that the record does not support the finding that the DCP’s proposed TCC was sited to  
 7 avoid or reduce a conflict with Harvest Water to the extent feasible. The Council  
 8 **remands the matter** to the Department to reconsider and avoid or reduce conflicts  
 9 between the siting of the DCP Twin Cities Complex and Sac Sewer’s Harvest Water  
 10 regarding agricultural use, groundwater recharge, and Sandhill Crane habitat uses. For  
 11 all other issues raised by Appellants under DP P2, the Council finds that Appellants  
 12 failed to meet their burden, and that there is substantial evidence in the record to  
 13 support the Department’s finding that the DCP is consistent with DP P2, and therefore  
 14 the Council **denies the other appeals**. These findings are summarized below:

DP P2 Appeal Issue	Appellants	Decision
Conflicts with Sac Sewer’s Harvest Water	Sac Sewer	Remanded to Department
Consideration of alternative sites	Commission, Pear Fair, County of Sacramento, Sac Sewer, City of Stockton, SDWA, San Joaquin County	Denied
Conflicts with Sac Sewer EchoWater facility	Sac Sewer	Denied
Conflicts with Delta Legacy Communities	Commission, Pear Fair, County of Sacramento, San Joaquin County	Denied
Conflicts with lower-income, minority, and environmental justice communities	SF Baykeeper	Denied
Conflict with the Delta National Heritage Area	County of Sacramento	Denied
Conflicts with existing visual resources and aesthetics	Commission, County of Sacramento, San Joaquin County	Denied

Conflicts with water quality	City of Stockton, SF Baykeeper, San Joaquin County	Denied
Considering comments from the Commission and local agencies	Commission, County of Sacramento, Sac Sewer, City of Stockton	Denied
Conflicts with recreation	County of Sacramento, Commission, City of Stockton, SDWA, Steamboat Resort	Denied
Conflicts with agricultural land uses	Commission, Pear Fair, County of Sacramento, Sac Sewer, City of Stockton, San Joaquin County	Denied
Traffic, transportation, and RTM conflicts	Commission, Pear Fair, County of Sacramento, Steamboat Resort, City of Stockton, San Joaquin County	Denied
Tribal consultation	SF Baykeeper, San Joaquin County	Denied
Tribal cultural resources and uses	SF Baykeeper, San Joaquin County	Denied
Community Benefits Agreements and Community Benefits Program	Pear Fair, SF Baykeeper, San Joaquin County	Denied
Levee maintenance	Pear Fair, DCC Engineering	Denied
Noise conflicts	Pear Fair, Steamboat Resort, Commission, Sac Sewer	Denied

1

2

1                                   **a.     Policy Requirements**

2                   DP P2 states:

3                   “(a)   Water management facilities, ecosystem restoration, and flood  
4 management infrastructure must be sited to avoid or reduce conflicts with existing uses  
5 or those uses described or depicted in city and county general plans for their  
6 jurisdictions or spheres of influence when feasible, considering comments from local  
7 agencies and the Delta Protection Commission. Plans for ecosystem restoration must  
8 consider sites on existing public lands, when feasible and consistent with a project's  
9 purpose, before privately owned sites are purchased. Measures to mitigate conflicts  
10 with adjacent uses may include, but are not limited to, buffers to prevent adverse effects  
11 on adjacent farmland.

12                   (b)   For purposes of Water Code section 85057.5(a)(3) and section  
13 5001(o)(1)(E) of this Chapter, this policy covers proposed actions that involve the siting  
14 of water management facilities, ecosystem restoration, and flood management  
15 infrastructure.” (Cal. Code Regs., tit. 23, § 5011.)

16                                   **b.     Certification**

17                   In the Certification, the Department states that the DCP is consistent with DP P2.  
18 It goes on to say that “the language of Delta Plan Policy DP P2 effectively allows for two  
19 approaches for evaluation consistency with the regulatory policy: (1) consideration of  
20 existing uses or (2) consideration of uses depicted in general plans and that ” to  
21 accurately capture the range of existing land uses that may not be identified in existing  
22 local agency general plans the Department elected to primarily follow the first approach  
23 of considering existing land uses.” ([DCP.AA1.2.00001](#), p. 2). The Certification also  
24 highlights design changes, ECs, and MMs that aim to minimize conflicts with existing  
25 uses. The analysis examines project siting characteristics for specific components of the  
26 DCP, such as concrete batch plants, electrical facilities, and tunnel shafts, and  
27 assesses their potential to conflict with current land uses ([DCP.AA1.2.00018](#) Table 7,  
28 pp. 93-113; [DCP.AA1.2.00001](#), p. 165).

29                   When the Department identifies potential conflicts between DCP facilities and  
30 existing land uses, the Certification evaluates how these conflicts might be avoided or  
31 reduced through project design, ECs, and/or MMs. The Certification categorizes DCP  
32 components according to the general plan land use designations of each of the Delta  
33 Counties ([DCP.AA1.2.00018](#), pp. 2-5). It also outlines site selection criteria for each  
34 DCP component, considering factors like environmental impact, infrastructure  
35 accessibility, and community engagement. Additionally, the Certification discusses  
36 various constraints affecting the placement of each DCP component  
37 ([DCP.AA1.2.00018](#), pp. 7-31).

38                   The Certification outlines the Department's efforts to identify and reduce land use  
39 conflicts. This includes tribal consultation, public engagement, the Stakeholder  
40 Engagement Committee (“SEC”), activities in the 2025 Accountability Action Plan, an  
41 environmental justice survey, proposed ECs and MMs, and the CMP

1 ([DCP.AA1.2.00018](#), pp. 31-52). It also summarizes comments received on the DCP  
2 Draft EIR and Final EIR from the Delta Protection Commission and local agencies and  
3 explains how these comments were considered in the DP P2 consistency analysis  
4 ([DCP.AA1.2.00018](#), pp. 54-90).

5 The Certification mentions that although the operations and maintenance of the  
6 DCP's physical elements (not related to siting considerations) are outside the necessary  
7 scope of a DP P2 analysis, such potential conflicts were still examined and included in  
8 DP P2 Attachment 2 (see [DCP.AA1.2.00018](#), p. 3). These conflicts broadly cover areas  
9 like agriculture, freshwater flows, seismic safety, water residence time, and economic  
10 impacts. The Department concludes by stating that if any additional conflicts are  
11 identified after submitting the Certification, it believes those conflicts have been  
12 adequately considered. This is because the analysis included categories of land use  
13 that cover both general and specific aspects, with measures available to mitigate these  
14 conflicts ([DCP.AA1.2.00001](#), p. 165).

15 **c. Appeals and Analysis**

16 The Council received appeals regarding the Department's Certification of  
17 Consistency with DP P2 from the Commission, Pear Fair, County of Sacramento,  
18 Steamboat Resort, SF Baykeeper, Sac Sewer, City of Stockton, SDWA, San Joaquin  
19 County, and DCC Engineering. Appellants contend that the DCP is not consistent with  
20 DP P2, as it would result in multiple conflicts with existing uses, fails to meaningfully  
21 consider comments from the Commission and local agencies, and does not consider  
22 conflicts with proposed uses identified in local general plans, among other allegations.

23 The appeals identify 18 issues related to alleged inconsistencies of the DCP with  
24 DP P2:

- 25 1. DP P2 requirements to avoid or reduce siting conflicts with both existing
- 26 uses and uses described or depicted in general plans
- 27 2. Conflicts with Sac Sewer's Harvest Water
- 28 3. Consideration of alternative sites
- 29 4. Conflicts with Sac Sewer's EchoWater facility
- 30 5. Conflicts with Delta Legacy Communities
- 31 6. Conflicts with lower-income, minority, and environmental justice
- 32 communities
- 33 7. Conflict with the Delta National Heritage Area
- 34 8. Conflicts with existing visual resources and aesthetics
- 35 9. Conflicts with water quality
- 36 10. Considering comments from the Commission and local agencies
- 37 11. Conflicts with recreation
- 38 12. Conflicts with agricultural land uses
- 39 13. Traffic, transportation, and RTM conflicts
- 40 14. Tribal consultation
- 41 15. Tribal cultural resources and uses
- 42 16. Community Benefits Agreements and Community Benefits Program
- 43 17. Levee maintenance

1 18.Noise conflicts

2 The Council considers each issue below.

3 i. **DP P2 requires the DCP to avoid or reduce siting**  
4 **conflicts with *both* existing uses and uses described or**  
5 **depicted in general plans**

6 In its Certification and subsequent written submission, the Department asserts  
7 that “DP P2 only asks whether the Covered Action is sited to avoid or reduce conflicts  
8 with existing use when feasible” ([Department, Writ. Sub.](#), p. 10). The Department also  
9 states that “DP P2 requires water management facilities, ecosystem restoration, and  
10 flood management infrastructure to be sited to avoid or reduce conflicts with existing  
11 uses or those uses described or depicted in city and county general plans for their  
12 jurisdictions or spheres of influence when feasible” ([Department, Writ. Sub.](#), p.9). The  
13 Department clarifies its interpretation of DP P2 as follows: to comply, substantial  
14 evidence in the record must demonstrate one of the following: (1) conflicts with existing  
15 land uses have been avoided; (2) where a land use conflict has not been avoided  
16 altogether, the certifying agency has sited the covered action considering specific  
17 design elements incorporated within the DCP to reduce conflicts ([DCP.AA2.1.00096](#), p.  
18 27); or (3) it is not feasible for the covered action to be sited to avoid or reduce conflicts  
19 with existing land uses. The Department concludes that “substantial evidence in the  
20 record demonstrates that, in consideration of specific design elements ... [the  
21 Department] sited the DCP to avoid or reduce conflicts with existing [!]and uses where  
22 feasible” ([Department, Writ. Sub.](#), p. 10).

23 Appellants argue that DP P2 requires consideration of both existing uses and  
24 those uses described or depicted in city or county general plans, and that the language  
25 of the policy means project siting should not conflict with current or planned future uses.  
26 County of Sacramento argues that the Department misinterprets the plain language of  
27 DP P2, which Appellant reads to require an analysis of both existing uses and those  
28 depicted in city and county general plans, rather than one or the other ([County of](#)  
29 [Sacramento, Appeal](#), p. 60). While County of Sacramento does not dispute that the  
30 Department considered existing uses, Appellant asserts that the Department did not  
31 adequately analyze the County’s general plan or its interaction with DCP siting. ([County](#)  
32 [of Sacramento, Appeal](#), pp. 60-61). Sac Sewer and City of Stockton state: “Without  
33 citing to authority, [the Department] asserts that there are two possible approaches to  
34 evaluate consistency with DP P2: [the Department] could either consider existing uses  
35 or [the Department] could consider uses depicted in the general plans  
36 ([DCP.AA1.2.00018](#), p. 1). [The Department] ‘elected to primarily follow the first  
37 approach’ but also ‘included a consideration of land uses depicted in general plans ...  
38 although this consideration is not required.’ ([DCP.AA1.2.00018](#), p. 1). These Appellants  
39 argue that the Department misinterprets the plain language of DP P2, which they  
40 believe requires an analysis of both existing uses and those depicted in city and county  
41 general plans ([Sac Sewer, Appeal](#), pp. 51-52; [City of Stockton, Appeal, Memo](#), p. 39).  
42 City of Stockton further argues that the Department provides no analysis of city general  
43 plans, including Stockton’s ([DCP.AA1.2.00018](#), p. 4).

1 In its written submittal, the Department defends its approach, stating that “DP P2  
2 neither requires documentation of consistency with county general plan policies or  
3 future planned uses, ...” ([Department, Writ. Sub.](#), p. 29). The Department maintains that  
4 while that documentation is not required, it “considered general plan land use  
5 designations to demonstrate full disclosure” and contends that because “none of the  
6 general plans designate public water supply infrastructure as a land use or in the vicinity  
7 of any DCP facilities it was infeasible to site DCP facilities to avoid existing designated  
8 land uses” ([Department, Writ. Sub.](#), p. 29).

9 The Council disagrees with the Department’s assertion that it may choose not to  
10 consider general plan land uses because it is focusing on existing land uses  
11 ([DCP.AA1.2.00018](#), p. 2). The Council interprets DP P2 to require consideration of both  
12 existing uses and those uses depicted in city and county general plans. (Delta  
13 Stewardship Council, FSOR, Cal. Code Regs., tit. 23, § 5011, July 2013, p. 4). This  
14 consideration is significant in cases where the existing use and the general plan use are  
15 different.

16 **ii. Conflicts with Sac Sewer’s Harvest Water**

17 Appellant Sac Sewer asserts that the DCP is inconsistent with both existing uses  
18 and uses described or depicted in the Sacramento County General Plan associated with  
19 Harvest Water ([Sac Sewer, Appeal](#), pp. 42-45)<sup>50</sup>. Specifically, the Appellant contends  
20 that the location of the TCC<sup>51</sup> presents conflicts due to the TCC site’s current  
21 agricultural use and the Harvest Water infrastructure that has been recently completed  
22 or is presently under construction. Furthermore, Appellant maintains that the TCC would  
23 be incompatible with the agricultural uses described and depicted in the Sacramento  
24 County General Plan, as well as the groundwater recharge benefits and Greater  
25 Sandhill Crane habitat supported by those agricultural activities, both of which are  
26 considered essential to the success of the program. The Appellant also argues that  
27 these conflicts may jeopardize funding awarded to Sac Sewer by the California Water  
28 Commission under the Water Storage Investment Program (WSIP), and which is vital to  
29 the continued progress of the Harvest Water program.

30 As a threshold matter, it is undisputed that the existing use of the TCC site is  
31 agriculture ([DCP.D3.1.03807](#)). The Sacramento County General Plan land use diagram  
32 designates the TCC site as Agricultural with an 80-acre minimum lot size. Adjacent

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<sup>50</sup> Harvest Water is described by Sac Sewer as “a recycled water program that will support agricultural irrigation while creating, protecting and enhancing critical wildlife habitat and contributing to groundwater sustainability efforts by serving as a foundational project and management action to support the Sustainable Groundwater Management Act for the South American and Cosumnes groundwater subbasins.” ([Sac Sewer, Appeal](#), p. 18)

<sup>51</sup> TCC is described by the DCA as “a dual launch shaft. – One shaft of the [TCC] dual launch shaft site would be used to construct the tunnel north to the intakes (Tunnel Reach 1). – The other shaft would be used to construct a tunnel south to a tunnel reception shaft on Terminous Tract (Tunnel Reach 2). Reach 2 would include tunnel maintenance shafts on New Hope Tract and Canal Ranch Tract. – The site would be sized to accommodate all facilities and functions necessary for tunneling operations, including [RTM] processing, testing, drying and stockpiling.” ([DCP.D4.3.00001](#), pp. 2-6)

1 parcels also carry a Resource Overlay combining designation that recognizes their  
2 value as habitat resources for special status species ([DCP.D3.1.03807](#)). DP P2 requires  
3 the Department to demonstrate that it sited the TCC (as a component of the DCP) to  
4 avoid or reduce potential conflicts with existing uses or those uses described or  
5 depicted in the Sacramento County General Plan or explain why it was infeasible to do  
6 so.

7 **(a) Department’s consideration of Harvest Water**

8 In the Certification, the Department mentions Harvest Water in DP P2  
9 Attachment 1 ([DCP.AA1.2.00018](#), Table 7).<sup>52</sup> In the Final EIR comment responses in  
10 DP P2 Attachment 1, the Department states that it consulted with Sac Sewer<sup>53</sup>  
11 regarding the DCP and Harvest Water and that it evaluated whether the DCP would  
12 directly impact lands prioritized for the implementation of Harvest Water, finding that in  
13 2020 “the TCC, including the associated RTM footprint, and the northern concrete batch  
14 plants along Lambert Road are not located on properties that are identified as initially  
15 receiving Harvest Water, and there are currently no service collection laterals identified  
16 in the project map in the most recent CEQA document for Harvest Water to those  
17 locations.” The Department notes that the comment raises concerns about potential  
18 conflicts between the DCP and Harvest Water ([DCP.AA1.2.00018](#), pp. 81-82). The  
19 Department further states that the RTM and other excavated materials will be tested  
20 and hazardous materials treated and disposed of properly and that, through local  
21 coordination, safe surplus fill would be transferred to local agencies based on their  
22 needs. The Department adds that due to the uncertainty about possible future use of  
23 RTM for other projects, their analyses assume that all RTM removed for the tunnel will  
24 be stored at RTM storage sites ([DCP.AA1.2.00018](#), p. 82).

25 In its Certification, the Department acknowledges that the TCC tunnel shafts  
26 have potential to conflict with existing water supply uses and that these conflicts were  
27 minimized through the design of the DCP and by MMs in the Final EIR  
28 ([DCP.AA1.2.00018](#), p. 99). The Department references MM AG-3, which states that if  
29 conflicts to irrigation and drainage infrastructure cannot be avoided, the Department  
30 would provide new temporary wells and/or replace infrastructure needed to support  
31 ongoing agricultural uses. If those options are not feasible, the Department would  
32 compensate owners for production losses attributable to reductions in water supply from  
33 the DCP ([DCP.AA1.2.00018](#), p. 99). The Department goes on to claim, referencing Sac  
34 Sewer’s Harvest Water website, that Harvest Water will become operational in 2027  
35 and therefore is not an existing land use as the Department “has not been made aware  
36 that the parcels located at the [TCC] site have been issued Recycled Water Use  
37 Permits to participate in the program and can therefore not confirm the potential conflict  
38 with the specific location” ([DCP.AA1.2.00018](#), p. 99).

39 Continuing, the Department shares its understanding that Harvest Water would  
40 only include willing landowners and that the program does not restrict land use

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<sup>52</sup> Written as Table 8 in the Certification.

<sup>53</sup> At the time known as Sacramento Regional Sanitation District.

1 decisions in the area if the Department acquires the parcels. The Department claims the  
2 DCP would not conflict with Harvest Water because the TCC would occupy 586 acres  
3 (222 acres of which would be permanently occupied) of the 22,000-acre Harvest Water  
4 Recycled Water Delivery Area<sup>54</sup> and would not conflict with the program’s ability to  
5 provide recycled water to other landowners or the various other benefits of the program.  
6 In addition, the Department cites the siting considerations outlined in DCA’s Concept  
7 Engineering Report (“CER”) Appendix C5 ([DCP.AA1.2.00018](#), p. 99). The CER lays out  
8 six considerations made for the launch shaft siting evaluation, starting with “the sites  
9 should avoid being in areas of sensitive habitat, such as wildlife preserves or refuges,”  
10 and ending with “a site size of 250 to 400 acres was considered for the size constraint”  
11 (an area large enough to accommodate the tunnel shaft as well as the construction of it)  
12 ([DCP.D4.3.00021](#), p. C5-7). The CER concludes that after construction,  
13 geotechnical/geology, property ownership, and land use were analyzed that the TCC  
14 site received a “Favorable” final rating, where the evaluations states “No known  
15 [protected conservation land, refuges, preserves and/or vernal pool critical habitat]  
16 areas exist within the site”. ([DCP.D4.3.00021](#) p. C5-9). The Department does not  
17 mention Sandhill Crane habitat or outcomes as a potential conflict with DP P2. The  
18 Department also does not address Harvest Water funding obligations within the  
19 Certification.

20 **(b) Sac Sewer appeal and supporting evidence**

21 In its appeal, Sac Sewer argues that Harvest Water is an existing and planned  
22 use and the DCP will have significant impacts on Sac Sewer’s ability to provide a  
23 reliable supply of recycled water, which Sac Sewer has executed agreements for ([Sac](#)  
24 [Sewer, Appeal](#), pp. 1, 42, 44; [Combined Writ. Sub.](#), pp. 16, 46-47; [DCP.V2.27.00016](#),  
25 pp. 7-8). Sac Sewer states that Harvest Water will provide recycled water to support  
26 agriculture, wildlife habitat, and groundwater recharge benefits to support Sustainable  
27 Groundwater Management Act (“SGMA”) objectives for the South American and  
28 Cosumnes groundwater subbasins ([Sac Sewer, Appeal](#), p. 18; [Sac Sewer, Writ. Sub.](#),  
29 p. 46-49). Appellant further argues that Harvest Water was a known allowable land use  
30 under the Sacramento County General Plan at the time the Department started planning  
31 for the DCP, and that Sac Sewer informed the Department about their concerns in a  
32 March 2020 comment letter on the Draft EIR ([DCP.D2.3.00509](#)). In that comment letter,  
33 Sac Sewer states that it received WSIP funding for Harvest Water from the California  
34 Water Commission that relies in part specifically on the program’s “wintertime water  
35 application specifically for Sandhill Crane foraging and roosting habitat”  
36 ([DCP.D2.3.00509](#), p. 20). In the comment letter, Sac Sewer also informs the  
37 Department that Harvest Water’s requirement to provide foraging and roosting habitat  
38 for the Cranes relies on the TCC area identified by the Department as the site for RTM  
39 processing and stockpiling, which will make it unusable for Crane habitat and thereby  
40 jeopardize its WSIP funding ([DCP.D2.3.00509](#), p. 20). In CPOD water rights hearing  
41 testimony, Sac Sewer further states that the Department knew that Harvest Water

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<sup>54</sup> The record establishes that the recycled water irrigated area for Harvest Water is 16,000 acres. Parcels outside this area cannot be flooded for Sandhill Crane habitat or groundwater recharge. ([DCP.D3.2.00704](#) p. 2-1-2-2; [DCP.D2.3.00509](#), p. 19; [Sac Sewer, Appeal](#), p. 19)

1 serves as the foundational project and management action to support the Sustainable  
2 Groundwater Plans for the South American and Cosumnes groundwater subbasins  
3 approved by the Department in October 2023, as required under SGMA  
4 ([DCP.V2.27.00001](#), p. 2-3; [DCP.V2.27.00016](#), p. 4-6; [DCP.V2.29.00005](#), p. 4-7).  
5 According to Sac Sewer, construction of Harvest Water facilities is expected to be  
6 completed by the end of 2026 and testing, start-up, and commissioning of the facilities  
7 is planned for early 2027 to support starting delivery to some properties during the 2027  
8 irrigation season ([DCP.V2.27.00016](#), p. 7; [sacsewer.com/harvest-water](http://sacsewer.com/harvest-water))

9 In its written submittal, the Department notes that its administrative record for this  
10 proceeding does not contain any environmental, encroachment, or water quality  
11 permits, executed participation agreements, or site-specific ecological plans or analysis  
12 tying the implementation of Harvest Water to the TCC location ([Department, Writ. Sub.](#),  
13 p. 36). The Department reiterates that “Harvest Water is currently under construction  
14 and thereby was not an existing land use at the time of Certification for the DCP, nor  
15 had it established any site-specificity tying it to the Twin Cities Complex,” and argues  
16 that therefore the conflict is not an appealable issue under DP P2 ([Department, Writ.](#)  
17 [Sub.](#), p. 36). Further, the Department reiterates that it has “not been made aware that  
18 the parcels located at the Twin Cities Complex site have been issued a Recycled Water  
19 Use Permit or are otherwise identified through executed participation agreements,  
20 parcel-level approvals, or site-specific planning documents to participate in [Harvest  
21 Water]” and therefore the Department cannot confirm if any asserted potential future  
22 conflict would occur at the TCC ([Department, Writ. Sub.](#), p. 36).

23 The Department continues by stating that its record does not establish any site-  
24 specific land use or ecological commitments regarding the TCC site as a requirement  
25 for Harvest Water, citing the 2020 EcoPlan and the 2017 South Sacramento County  
26 Agriculture and Habitat Lands Recycled Water, Groundwater Storage, and Conjunctive  
27 Use Program ([DCP.D3.2.00704](#); [DCP.V2.27.00022](#)).<sup>55</sup> The Department further  
28 reiterates that only willing landowners will be part of Harvest Water, which does not  
29 restrict land use decisions if and when the Department acquires the parcels for the TCC  
30 and describes Harvest Water as a framework to guide future implementation that does  
31 not identify or designate the TCC as a site specific location for program implementation  
32 ([Department, Writ. Sub.](#), p. 36, [DCP.D3.2.00704](#); [DCP.V2.27.00003](#);  
33 [DCP.V2.27.00022](#)). The Department continues, stating that “the [TCC] will occupy 586  
34 acres (with 222 acres being permanent) of the Harvest Water delivery area, which is  
35 approximately 22,000 acres ([DCP.D1.1.00028](#), [DCP.D1.1.00247](#), p. 1118) and will not  
36 conflict with Sac Sewer providing recycled water to other landowners.

37 **(c) Groundwater and ecosystem conflicts**

38 The Department’s written submittal notes that alleged impacts on groundwater  
39 and associated ecosystems do not constitute conflicts with an existing land use, and

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<sup>55</sup> What is referred to today as Harvest Water was formerly known as the “South Sacramento County Agriculture and Habitat Lands Recycled Water, Groundwater Storage, and Conjunctive Use Program.”

1 even if groundwater-dependent ecosystems could be considered an existing land use  
2 for the purpose of DP P2, the DCP would not conflict with groundwater-dependent  
3 ecosystems ([Department, Writ. Sub.](#), p. 37). The Department notes that impacts on  
4 groundwater are discussed in the Final EIR, calling out MM GW-1 and MM GW-5  
5 ([DCP.AA1.2.00018](#)). According to the Department, these MMs “function to reduce or  
6 avoid conflicts from implementing the project with existing land uses affected by  
7 groundwater levels, such as agricultural draining and water supply ([DCP.AA1.2.00018](#)).”  
8 Upon examination, MM GW-1 applies to the north Delta intakes and Southern Forebay  
9 Spillway and Outlet Structure, but not the TCC ([DCP.D1.1.00060](#) p. 8-35). MM GW-5  
10 addresses agricultural drainage concerns with increased groundwater levels. Neither  
11 MM addresses the concerns raised by Sac Sewer regarding Harvest Water  
12 ([DCP.D1.1.00060](#), p. 8-35). Additionally, in response to Sac Sewer comments within the  
13 Final EIR, the Department cites Common Response 8 ([DCP.D1.1.00229](#)). Yet, in  
14 Common Response 8, the Department states that there will be no undesirable effects  
15 on groundwater since the “construction...would not negatively impact the ability of  
16 subbasins in the Delta to implement recharge projects because such recharge projects  
17 would be constructed and operated by the Subbasin GSAs or independent entities and  
18 would not be co-located with Delta Conveyance Project infrastructure or facilities.  
19 ([DCP.D1.1.00229](#), p. 8-12, emphasis added)”

20 Sac Sewer also argues that construction of the TCC will negatively impact  
21 Sandhill Crane habitat provided by Harvest Water ([Sac Sewer, Appeal](#), pp. 25-26, 44;  
22 [Combined Writ. Sub.](#) p. 48-49). Sac Sewer cites record evidence describing potential  
23 impacts on Sandhill Crane habitat and populations, including the removal of 644 acres  
24 of habitat within Harvest Water due to the siting of the proposed TCC through the water  
25 rights hearing testimony of Dr. Gary Ivey. Dr. Ivey’s expertise regarding Greater Sandhill  
26 Cranes was also relied on within the Department’s Final EIR, and he is the lead author  
27 and coordinator of the Department’s Greater Sandhill Crane Conservation Strategy  
28 ([DCP.V2.27.00001](#), p.3, [DCP.V2.17.00005](#), p.3, 13).

29 Sac Sewer argues that Harvest Water was funded in part through WSIP, which  
30 required Sac Sewer to execute Contracts for the Administration of Public Benefits  
31 (“CAPBs”) ([DCP.V2.27.00016](#), p. 6). Under these contracts, Sac Sewer must track and  
32 provide evidence that the anticipated ecological benefits are occurring pursuant to its  
33 WISP funding ([DCP.V2.27.00004](#), p. 4). Sac Sewer notes that the Sandhill Crane  
34 habitat is listed among the enforceable ecosystem benefits in its WSIP funding  
35 agreement and that based on evidence in the record ([DCP.V2.27.00001](#), p.3;  
36 [DCP.V2.17.00005](#), pp. 3, 20; [DCP.V2.27.00016](#), p. 24), the siting of the TCC could  
37 potentially impact the identified Sandhill Crane habitat, thus impacting Sac Sewer’s  
38 ability to meet its contractual obligations. Sac Sewer claims that Harvest Water is an  
39 existing use, since it has secured funding, has almost completed construction, and has  
40 secured all required entitlements, easements, and agreements. Harvest Water is also  
41 described as a planned use in the Sacramento County General Plan and a covered  
42 activity in the South Sacramento Habitat Conservation Plan (“SSHCP”)(General Plan  
43 Land Use Diagram [DCP.D3.1.03807](#), SSHCP Section 5.2.4  
44 [landuse.sacounty.gov/sshcp/ch05/](#)).

1 In response to Sac Sewer’s appeal and written submittal concerning the TCC  
2 site, the Department references proposed Sandhill Crane mitigation strategies from the  
3 CMP to use Bouldin Island or other suitable lands that provide connectivity between  
4 Stone Lakes National Wildlife Reserve and CRP to create roosting habitat to  
5 compensate for loss of habitat elsewhere ([Department, Writ. Sub.](#), citing  
6 [DCP.D1.1.00018](#), pp. 1-3)).

7 **(d) Department’s position on applicability and**  
8 **consistency**

9 The Department explains that, even if the DCP could affect Harvest Water’s  
10 recycled water contract goals and its commitment to providing Sandhill Crane habitat,  
11 this is not considered an appealable land use conflict under DP P2. Addressing Sac  
12 Sewer’s concerns about how the DCP might impact WSIP funding, the Department  
13 clarifies that DP P2 only requires water management facilities to be located in ways that  
14 avoid or lessen conflicts with current land uses, when possible. The policy does not  
15 require the certification process to consider indirect effects on whether other plans or  
16 projects can meet their habitat goals ([Department, Writ. Sub.](#), p. 42). Regarding Sac  
17 Sewer’s claim that the Department did not follow up after receiving their comment letter  
18 about the overlap between Harvest Water and DCP areas, the Department responds  
19 that “Harvest Water is currently under construction and was therefore not considered an  
20 existing land use when the DCP Certification took place. Thus, the challenge related to  
21 the Department’s consideration of local agency comments and [Commission] issues  
22 about Harvest Water is not an appealable issue under DP P2.”

23 **(e) Analysis**

24 In summary, Sac Sewer claims that the DCP will impact Harvest Water’s WSIP  
25 funding because the location chosen for the TCC conflicts with an area identified as a  
26 Sandhill Crane habitat mitigation site. Sac Sewer was required to set aside Sandhill  
27 Crane habitat to execute an existing CAPB. Sac Sewer argues that the TCC site was  
28 the only mitigation option safe from sea level rise, suitable for foraging and roosting, and  
29 located between the Stone Lakes National Wildlife Reserve and the CRP, in order to  
30 provide the highest value habitat. To meet requirements for WSIP funding, Sac Sewer  
31 must track and provide evidence that the anticipated ecological benefits are occurring  
32 pursuant to its contract, including those for Sandhill Crane foraging and roosting habitat  
33 ([Sac Sewer, Appeal](#), pp. 25-26; [DCP.V2.27.00016](#), p. 6). Sac Sewer argues that  
34 Harvest Water is an existing use, as demonstrated by nearly completed construction,  
35 secured entitlements, and secured state and federal funding, all of which depend on  
36 continued agricultural use of the TCC site, as described and depicted in the Sacramento  
37 County General Plan and SSHCP. Sac Sewer states that failing to meet its contractual  
38 obligations could cause Sac Sewer to lose its funding, impacting its ability to implement  
39 Harvest Water and thereby jeopardizing implementation of Groundwater Sustainability  
40 Plans under SGMA. Appellant argues that the Department should: (a) demonstrate,  
41 through specific analyses of the impacts to Harvest Water that it sited the DCP project  
42 features (in this instance, the TCC) to avoid or reduce potential conflicts (in this instance

1 with the existing and general plan-depicted future agricultural use of the site); or (b)  
2 explain why it is infeasible to do so. The Council agrees.

3 The record indicates that the Department did not thoroughly review or fully  
4 comprehend DCP siting conflicts with Sac Sewer’s Harvest Water, including the critical  
5 dependence of program funding on location-specific habitat improvements, the extent of  
6 recycled water irrigation areas, and the impact that reducing these areas would have on  
7 the Groundwater Sustainability Plans for the South American and Cosumnes  
8 groundwater subbasins, which were approved by the Department in July 2023 under  
9 SGMA. The Department asserts its understanding that Harvest Water collaborates with  
10 willing landowners and that Sac Sewer may utilize any remaining acres; however, this  
11 presupposes an overlap of suitable roosting and foraging habitats that can be  
12 monetized at the same value for the Sandhill Crane habitat as the TCC parcels, and  
13 also requires those parcels to be owned by cooperative landowners. In its Certification  
14 and written submittal, the Department contends that Harvest Water can supply recycled  
15 water to additional landowners within the 22,000-acre program area. This demonstrates  
16 a misunderstanding of the program, as the recycled water irrigation area is limited to  
17 16,000 acres. The Department also fails to recognize that the specific location at TCC is  
18 integral to securing the level of WSIP funding for which the program has received  
19 approval.

20 All of these considerations are contingent upon the selection of a site by the  
21 Department for tunnel access shafts and collection, processing, and stockpiling of RTM  
22 – a site which is currently in agricultural use and described and depicted as Agriculture  
23 with an 80-acre minimum lot size in the relevant local general plan. The Council  
24 concludes that it is reasonable for Sac Sewer to base programmatic decisions on the  
25 assumption that the TCC site would retain its Agriculture land use designation, thereby  
26 facilitating recycled water application, groundwater recharge, and habitat support for  
27 Sandhill Cranes—purposes permitted within the Agriculture designation and compatible  
28 with agricultural activities.

29 For the reasons discussed above, the Council finds that Sac Sewer has shown  
30 that the Certification is not supported by substantial evidence that the DCP is consistent  
31 with DP P2 regarding siting conflicts with Sac Sewer’s Harvest Water. In its appeal, Sac  
32 Sewer identifies that the DCP’s inconsistency with DP P2 would significantly and  
33 adversely affect the coequal goals as follows:

34 “inconsistency with DP P2 will result in a significant adverse impact on the  
35 Coequal Goals to provide a more reliable water supply and to protect, restore,  
36 and enhance the Delta ecosystem. As described above, there is substantial  
37 evidence that the DCP will result in significant adverse impacts on ... Harvest  
38 Water. These adverse impacts will affect [Sac Sewer]’s ability to provide a  
39 reliable supply of recycled water within the Harvest Water area, and its ability to  
40 provide the key ecosystem benefits as outlined in the EcoPlan. Accordingly, both  
41 Coequal Goals are significantly and adversely impacted by [the Department]’s  
42 failure to ensure consistency with DP P2.” ([Sac Sewer, Appeal](#), p. 52)



1 seismic risks, avoid conflicts with local land uses, and likely have support of all the  
2 parties who oppose the DCP” ([Combined, Writ. Sub.](#), pp. 28-29).

3 San Joaquin County also argues that an armored levee through-Delta  
4 Conveyance alternative is feasible and would avoid DP P2 conflicts to a greater degree  
5 than the current proposed DCP tunnel route ([San Joaquin County, Appeal](#), pp.8-9). The  
6 Appellant lists the primary arguments that the Department offers against this alternative  
7 plan as “maintenance and improvements to address flooding and other risks, generally  
8 refer to potential levee failures from earthquakes and subsequent water quality impacts  
9 that threaten to reduce exports.” ([San Joaquin County, Appeal](#), pp.8-9). Evidence cited  
10 by the Appellant includes Final EIR Appendix 3A, ([DCP.D1.1.00011](#), pp.3A-31 - 3A-32;  
11 [DCP.V2.22.00001](#), p. 2). Appellant questions the validity of the Department’s claims that  
12 the potential for levee failure makes the through-Delta conveyance system infeasible,  
13 arguing that maintaining and improving existing levees will be essential whether the  
14 DCP is present or not ([San Joaquin County, Appeal](#), p. 8, citing [DCP.V2.22.00001](#), p.  
15 4). The Appellant also mentions that Metropolitan Water District developed levee  
16 standards that could withstand the seismic, sea level, and flooding risks that pose a  
17 threat to the armored levee alternative design ([DCP.V2.22.00001](#), p. 5;  
18 [DCP.V2.22.00008](#), p. 97). Additionally, the Appellant asserts that if implemented, a  
19 through-Delta conveyance alternative with “modern levee standards” is estimated to be  
20 \$3-5 billion compared to the total DCP cost of \$20 billion ([DCP.V2.22.00001](#), p. 5;  
21 [DCP.V2.22.00008](#) p. 97; [DCP.AA1.2.00001](#), p.15; San Joaquin County, Appeal, p.8).

22 In its written submission the Department replies that it analyzed a “through-Delta”  
23 alternative, and it was determined that this alternative “failed to meet multiple  
24 fundamental project objectives and therefore was not a feasible approach for the DCP”.  
25 The Department goes on to cite *Bay-Delta Programmatic Environmental Impact Report*  
26 *Coordinated Proceedings* (2008) 43 Cal.4<sup>th</sup> 1143, 1165 which states “an EIR need not  
27 study an alternative that fails to meet the proposed project’s fundamental purpose  
28 because such an alternative is infeasible.” ([Department, Writ. Sub.](#), p. 20).

29 **(b) Portfolio-based alternative**

30 The Commission states that the DCP was not sited to avoid conflicts with existing  
31 uses and the Department has not demonstrated that it is infeasible to achieve project  
32 goals with alternatives to avoid these conflicts. The Commission argues that project  
33 alternatives considered by the Department are “meaningfully no different than the  
34 proposed project, as suggested by the [Delta ISB] in comments on the Draft EIR”  
35 ([Commission, Appeal, Attachment B](#) pp.7-9). As an example, the Commission notes  
36 that it has advocated for a “portfolio” approach of through-Delta conveyance and  
37 reduced reliance on exports as an alternative to the DCP, but this was not considered  
38 by the Department in its analysis ([Commission, Appeal, p. 20, Attachment B](#), p. 8). The  
39 Commission points to their own comments on the Draft EIR which “raised concerns  
40 about lack of consideration of alternatives and protection of Delta as Place values”  
41 ([Commission, Writ. Sub.](#), p.8, citing [DCP.D1.1.00241](#) and [DCP.D1.1.00224](#)). In its  
42 written submission, the Commission argues that the Department’s consistency with DP  
43 P2 is not supported by substantial evidence because the Department “failed to seriously

1 consider feasible alternatives to the [DCP] including ...the ‘Resilient Water Portfolio’  
2 approach advocated by the Delta Counties Coalition for many years” ([Commission,  
3 Writ. Sub.](#), p. 7, citing [DCP.D1.1.00011](#), p. 3A-18 – 3A-19).

4 The Department responds in its written submission that DP P2 does not require  
5 consideration of alternatives that are a completely different project than the proposed  
6 DCP, which is it states, what the “Resilient Water Portfolio” is since the main focus of  
7 that approach is on armoring existing levees in lieu of new intakes for dual conveyance  
8 ([Department, Writ. Sub.](#), p. 57). The Department cites to a court ruling which found that  
9 “a certification of consistency does not serve as an informational document for use by  
10 the decision maker in selecting among project alternatives” (*Tulare Lake Basin Water  
11 Storage District v. Dept. of Water Resources*, (2025) 115 Cal. App.5th 342, 361). In the  
12 Final EIR, the Department states that the portfolio-based alternative was first proposed  
13 after the scoping period for the Bay Delta Conservation Plan had ended and the  
14 analysis was already underway. The Department considered the alternative at the time  
15 but felt that the proposal included portions of previous alternatives considered during  
16 the screening process ([DCP.D1.1.00011](#), p. 3A-19). A complete analysis of the portfolio  
17 approach and other options can be found in Final EIR Appendix 3A ([DCP.D1.1.00011](#),  
18 pp. 3A-16 – 3A-46).

19 **(c) Western Delta intake concept alternative**

20 The Commission states that the DCP was not sited to avoid conflicts with existing  
21 land uses and the Department has not demonstrated that it is infeasible to achieve  
22 project goals with alternatives to avoid these conflicts. The Commission points to its  
23 own comments on the Draft EIR which “raised concerns about lack of consideration of  
24 alternatives and protection of Delta as Place values” ([Commission Writ. Sub.](#), p.8)  
25 ([DCP.D1.1.00241](#); [DCP.D1.1.00224](#)). In its written submission, the Commission argues  
26 that DP P2 is not supported by substantial evidence because “the Department “failed to  
27 seriously consider feasible alternatives to the project including a Western Delta location  
28 (Western Delta Intake Concept)...” ([Commission Writ. Sub.](#), p. 7, [DCP.D1.1.00011](#), p.  
29 3A-18).

30 City of Stockton argues that the Department’s assertion to not site intakes further  
31 West due to salinity concerns is flawed because the Department separately asserts that  
32 the intakes will only divert when Delta flows are high and freshwater would be  
33 abundant.<sup>56</sup> Additionally, City of Stockton argues the Western Alignment that was  
34 deemed logistically infeasible in WaterFix remained in the DCP final EIR as a  
35 “strawman” alternative ([DCP.V2.5.00001](#)).

36 San Joaquin County argues that the Department incorrectly assumes that the  
37 proposed intake location is the only possible location. Appellant states there are two  
38 alternative sites that would reduce conflict with respect to DP P2 more than the  
39 proposed project plan: one that originates in the West Delta and one that depends on  
40 existing levee infrastructure in the Delta ([San Joaquin County, Appeal](#), p. 5). San

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<sup>56</sup> Appellant cites to [DCP.V2.20.00044](#), p. 15, which is an incorrect reference in the record.

1 Joaquin County argues that Department was incorrect to dismiss the Western Delta  
2 location because the Department overstates the seismic risks on Sherman Island  
3 ([DCP.V2.22.00001](#), pp. 3-5). Appellant also claims that the threat of sea level rise is  
4 overestimated and references the Council’s Delta Levees Investment Strategy ([San](#)  
5 [Joaquin County, Appeal](#), p. 7, citing [DCP.D3.1.00507](#)). Appellant also argues that the  
6 logic behind dismissing the Western Delta location because of lower water quality in the  
7 summer is flawed based on the proposed timing of when exports would be taking place  
8 according to the Department’s Operation Plan ([San Joaquin County, Appeal](#), p. 7, citing  
9 [DCP.V1.2.00255](#), pp. 9-10). Appellant concludes that siting in the West Delta would be  
10 less disruptive and would cost less because the Department owns Sherman Island,  
11 pointing to the Final EIR Appendix 3A for information on cost efficiency and the  
12 construction footprint ([San Joaquin County, Appeal](#), p. 7, citing [DCP.D1.1.00011](#)).  
13 Appellant argues that siting the DCP at this location would also alleviate the land use  
14 conflicts in the current proposed location because there is adequate Department-owned  
15 space on Sherman Island for the DCP’s RTM disposal needs ([DCP.D1.1.00010](#), pp. 3-  
16 32).

17 The Department considered and rejected the Western Delta Intake Concept  
18 ([DCP.D1.1.00011](#), p. 3A-18) as well as a Delta conveyance option without a new  
19 diversion facility in the Final EIR Appendix 3 ([San Joaquin County, Appeal](#) p. 50, citing  
20 [DCP.D1.1.00011](#), pp. 3A-16-3A-25). In its written submission, the Department states  
21 that the intake locations in the western Delta were considered but were screened out  
22 because they would increase the risk to delta smelt and longfin smelt ([Department, Writ.](#)  
23 [Sub.](#), p. 50, citing [DCP.D4.3.00009](#), p. 3F-8). The Department goes on to say that the  
24 western Delta intakes would also limit the ability to adjust to changing sea levels and  
25 increased salinity ([DCP.D1.1.00011](#), pp. 3A-30 – 3A-33). Furthermore, locating an  
26 intake site near Antioch would present heightened seismic risks due to the proximity of  
27 faults near Suisun Bay ([DCP.D1.1.00011](#), p. 3A-32). This site also has restricted  
28 flexibility to accommodate future changes in sea level and salinity ([Department, Writ.](#)  
29 [Sub.](#), p. 50; [DCP.D1.1.00011](#), p. 3A-28).

30 **(d) Alternative intake facility locations**

31 The Commission argues that there is no substantial evidence to support the  
32 Department’s claim that conflicts have been avoided or reduced ([Commission Writ.](#)  
33 [Sub.](#), p. 3; [DCP.AA1.2.00018](#), Table 8). The Commission refers to the Department’s  
34 Certification, which states: “while it is infeasible to site the project to fully avoid conflicts  
35 with existing Delta land uses, [the Department] adopted design changes, ECs, and MMs  
36 to reduce direct and indirect conflicts with these uses, including conflicts from project  
37 operations” ([Commission Writ. Sub.](#), p. 4; [DCP.AA1.2.00001](#), p. 164). The Commission  
38 argues that Department documents do not demonstrate “how much or how effective  
39 these various efforts will be to actually reduce land use conflicts that arise from siting  
40 the DCP as proposed, as if any amount of post-siting reduction in land use conflict  
41 suffices to comply with DP P2” ([Commission Writ. Sub.](#), p. 5).

42 Pear Fair claims that the Department determined consistency with DP P2 without  
43 analyzing alternative siting options that would have avoided or reduced conflicts with

1 existing land uses ([Pear Fair, Appeal](#), p. 6; [DCP.D6.1.00129](#)). For example, Pear Fair  
2 claims that the Department received input in various forums regarding facility locations,  
3 but the same sites first proposed were carried forward with “no deference to community-  
4 identified alternatives” that could have reduced or eliminated conflicts in Hood and  
5 Courtland ([Pear Fair, Appeal](#) p. 6).

6 County of Sacramento argues that the Department did not site intake facilities to  
7 avoid or reduce conflicts, instead relying on mitigation after the impacts occur ([County  
8 of Sacramento, Appeal](#), p. 43). Appellant also argues the intake locations have not  
9 significantly changed from the WaterFix project ([County of Sacramento, Appeal](#), p. 55),  
10 and that any changes to reduce impact on the community were “purely coincidental,  
11 given that WaterFix alignment reviewed by the [Independent Technical Review Panel]  
12 was plainly infeasible” ([County of Sacramento, Appeal](#), p. 57).

13 City of Stockton argues that the record does not demonstrate that the  
14 Department could not feasibly site the Covered Action to avoid or reduce conflicts with  
15 land uses ([City of Stockton, Appeal](#), pp. 35-38). The Appellant argues that the  
16 Department does not provide evidence of engaging the public regarding the siting of the  
17 intakes or tunnel shafts ([DCP.AA1.2.00019](#), pp. 8, 29-31) and that siting is solely based  
18 on decade-old information that ignores that the Delta is an evolving place  
19 ([DCP.D2.3.00493](#), p. 14). The Appellant points to the fact that siting is no different than  
20 WaterFix despite the designation of the Delta as a National Heritage Area and public  
21 expectations to reconsider intake siting. The Appellant cites evidence from SEC  
22 meetings and water rights hearing materials as evidence that alternative siting was not  
23 meaningfully considered ([DCP.V2.14.00039](#), p. 6, [DCP.V2.20.00037](#) , p. 3).

24 In their combined written submission, County of Sacramento and City of Stockton  
25 argue that the Department relied on old analyses and reports generated as part of the  
26 now-defunct Bay-Delta Conservation Plan (“BDCP”) to determine intake location siting  
27 without citing to any evidence showing these old analyses were still valid ([Combined  
28 Writ. Sub.](#), p. 27). As such, Appellants argue that the Department did not make its siting  
29 decisions “for the present DCP based on existing siting conditions, including the current  
30 condition of affected fish species” and therefore failed to give “meaningful consideration  
31 to alternative locations for the DCP intakes that would fully or even substantially avoid  
32 conflicts with existing uses” ([Combined Writ. Sub.](#), p. 27). Appellants cite to evidence in  
33 the Final EIR to support their claims ([DCP.AA1.2.00018](#), pp. 8–14). They also cite to the  
34 water rights hearing testimony of Robert Granberg, P.E., providing an example of a  
35 temporal water diversion to protect fish—something that the Department could have  
36 investigated as part of a process of considering other siting locations, but did not  
37 ([DCP.V2.3.00004](#), p. 6).

38 Appellants state “the original BDCP intake locations, incorporated in the DCP,  
39 were selected prior to any environmental review under the [CEQA] or adoption of the  
40 Delta Plan” ([Combined Writ. Sub.](#), p. 27), arguing that intake locations were sited before  
41 harms were fully analyzed. Appellants also argue that members of the SEC were not  
42 allowed to discuss alternative intake siting, being told that the intake locations were  
43 fixed and not up for discussion ([Combined Writ. Sub.](#), pp. 29–30). The Appellants cite  
44 water rights hearing testimony and SEC member letters to support these claims

1 ([DCP.V2.20.00037](#); [DCP.V2.20.00041](#); [DCP.V2.20.00043](#)). Appellants argue that  
2 refusal to engage with SEC members on siting shows that “[the Department] did not  
3 consider the feasibility of alternative siting locations” and that “[the Department]  
4 provides no substantial evidence to support the claim that intake location was dictated  
5 by ‘administrative requirements’” as purportedly claimed during SEC meetings  
6 (Combined Writ. Sub., pp. 29-30).

7 In the Certification, the Department describes convening a Value Planning Study  
8 (“VPS”) “to assist in further defining intake locations and configurations”  
9 ([DCP.AA1.2.00018](#), p. 13). The Department states “the findings made during the BDCP  
10 siting evaluations for the north Delta intakes were overall still valid” ([DCP.AA1.2.00018](#),  
11 p. 14). In the Final EIR Appendix 3A, the Department states: “For the [DCP], the [DCA]  
12 reviewed and reconsidered the previously considered intake site locations again in 2019  
13 and reexamined the reach of the Sacramento River between Freeport and the  
14 confluence with Sutter Slough for other viable intake sites” ([DCP.D1.1.00011](#), p. 4). The  
15 Certification breaks up the prospective intake locations in Reach A through Reach I and  
16 walks out the analysis for each, citing the Final EIR Appendix 3A ([DCP.D1.1.00011](#)) and  
17 the CER and attachments ([DCP.D4.3.00001](#); [DCP.D4.3.00009](#)).

18 Regarding the SEC, the Department states that the DCA engaged in public  
19 outreach early in the planning process through the SEC to “ensure that elements of the  
20 project were sited in a manner to avoid conflicts with local land uses where feasible”  
21 ([Department, Writ. Sub.](#), p. 17). The Department also points to a DCA Technical Memo  
22 “Efforts to Minimize Delta Community Effects” describing the outcomes of the SEC  
23 process and design considerations and changes resulting from SEC input  
24 ([DCP.D4.1.00063](#); [DCP.D4.1.00112](#)).

25 **(e) Analysis**

26 In summary, Appellants argue that the Department has not sufficiently analyzed  
27 alternatives to the construction of the DCP itself (such as implementation of the  
28 Resilient Water Portfolio approach) or alternative sites for intakes for the DCP, and  
29 instead rely on what they assert is in some cases obsolete information from the BDCP  
30 analysis. They further argue that the SEC was only asked for feedback on details after  
31 the DCP preferred alternative was established and no discussion of alternative intake  
32 sites were considered in the conversations.

33 DP P2 requires a certifying agency to “avoid or reduce conflicts...when  
34 feasible...”. The Department has provided substantial evidence in the record that  
35 analyses of alternative sites were conducted in an attempt to reduce conflicts where  
36 feasible ([Department, Writ. Sub.](#), p. 20, citing [DCP.D1.1.00011](#), pp. 3A-18- 3A-19). The  
37 DCP encompasses a substantial portion of the Delta, and while the Council remains  
38 mindful of possible effects resulting from the placement and construction of the  
39 proposed DCP, DP P2 does not mandate an examination of distinct project alternatives  
40 or a completely different project than the one submitted by the certifying agency. For the  
41 reasons above, the Council finds that the Commission, Pear Fair, County of  
42 Sacramento, Sac Sewer, City of Stockton, SDWA, and San Joaquin County have failed  
43 to meet their burden, and that there is substantial evidence in the record to support the

1 Department’s finding that the DCP is consistent with DP P2 regarding consideration of  
2 alternative sites.

3 **iv. Conflicts with Sac Sewer EchoWater facility**

4 Sac Sewer argues that the DCP conflicts with existing and planned land uses  
5 associated with Sac Sewer’s EchoWater wastewater treatment facility, and therefore the  
6 DCP is inconsistent with DP P2 ([Sac Sewer, Appeal](#), pp. 41-44).<sup>57</sup> Alleged conflicts with  
7 EchoWater result mainly from increased occurrence and length of reverse flows in the  
8 Sacramento River due to DCP operations. Sac Sewer cites testimony that describes  
9 how discharge from the EchoWater facility is authorized and regulated under National  
10 Pollutant Discharge Elimination System (“NPDES”) permits and how altered conditions  
11 of the Sacramento River at Freeport due to DCP operations upstream would require  
12 Sac Sewer to divert effluent more often, for longer durations, and in larger quantities  
13 than under existing conditions ([DCP.V2.27.00010](#)). Appellant claims: “Sac Sewer  
14 planned, designed, and constructed all ESBs (Emergency Storage Basins) in  
15 consideration of future operations and contingencies, before it had any information  
16 about how the DCP might increase the number of EchoWater diversions required”  
17 ([DCP.V2.27.00010](#)). Sac Sewer argues that the lost operational flexibility and increased  
18 maintenance costs are negative impacts that the Department has not addressed.

19 The Department’s proposed mitigation is to coordinate operations with Sac  
20 Sewer by sharing information and modelling results about reverse flows  
21 ([DCP.V2.27.00010](#), pp. 9-10; [DCP.V1.2.00309](#), p. 2; [DCP.V2.27.00013](#), pp. 7-8).  
22 Appellant argues that this is not sufficient mitigation, as the Department does not intend  
23 to modify DCP operations to minimize reverse flow impacts ([DCP.V1.1.00018](#), pp. 116–  
24 117; [DCP.V2.27.00016](#), pp. 7-8, 9-10; [DCP.V2.27.00010](#), p. 8, pp. 9-10). Appellant  
25 states: “[S]imply sharing forecasts does not substitute for meaningful action, and [the  
26 Department’s] refusal to commit to operational adjustments leaves Sac Sewer  
27 vulnerable to potential harm from reverse flows in a manner that conflicts with the  
28 existing EchoWater facility and is inconsistent with ... DP P2” (Combined Writ. Sub., p.  
29 46).

30 The Department’s Certification acknowledges the increased frequency and  
31 duration of reverse flows at the intake site as supported by detailed water quality  
32 modeling of existing versus with-project conditions ([DCP.AA1.2.00019](#), pp. 24-34). The  
33 Department notes an increase in reverse flows during operation: “The results of the  
34 assessment determined that the frequency of reverse flows in the Sacramento River  
35 upstream of the intakes will increase slightly during intake operation. These increased  
36 reverse flows, however, are small in both duration and distance and results show that  
37 there is no increase in the frequency of *stronger* [emphasis added] reverse flow events  
38 caused by project operations” ([DCP.AA1.2.00019](#), p. 34). Additionally, the Department  
39 cites Final EIR Volume 1, Chapter 5, Surface Water ([DCP.D1.1.00032](#), p. 5-27) and

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<sup>57</sup> According to Sac Sewer, “EchoWater, which was previously known as the Sacramento Regional Wastewater Treatment Plant, is an advanced tertiary treatment facility that receives wastewater not only from Sac Sewer, but also from local wastewater collection systems operated by the Cities of Folsom, Sacramento, and West Sacramento.” ([Sac Sewer, Appeal](#), p. 17)

1 Appendix 5C, which show model results and monthly changes in flow by water year  
2 type without the project and under with-project scenarios ([DCP.D1.1.00054](#)). According  
3 to the Department: “sites downstream of the Freeport Regional Water Authority intake  
4 and Sac Sewer outfall will have less impact on the total flow rate in the river and reverse  
5 flows affecting Sac Sewer’s treated wastewater outfall at Freeport” ([DCP.AA1.2.00018](#)).

6 Finally, Sac Sewer argues that potential conflicts may occur “where the intakes,  
7 tunnel alignment or other facilities ... may be constructed over or adjacent to existing  
8 pipelines and associated appurtenances” ([Sac Sewer, Appeal](#), p. 44). The Department  
9 states that “the location of underground utilities sewage pipes connected to EchoWater  
10 can be identified and avoided by consulting with Sac Sewer, reviewing available records  
11 (e.g., permits), and ground-truthing through potholing. As stated in Final EIR Ch. 21  
12 ([DCP.D1.1.00172](#)), conflicts with existing utilities are unlikely to occur. The Final EIR  
13 notes that some existing utilities may need to be relocated, but the Department is  
14 consulting with utility companies, a process that will continue during the design phase  
15 and will avoid interruption to service” ([Department, Writ. Sub.](#), p. 40).

16 Record evidence establishes that the Department modeled and detailed  
17 increases in reverse flows and their durations, including at the Freeport intake location  
18 used for EchoWater, assessed future changes to flows under different climate  
19 scenarios, and has established a process to address potential conflicts with existing  
20 utilities. ([DCP.AA1.2.00019](#), pp. 24-34; [DCP.D1.1.00032](#), p. 5-27; [DCP.D1.1.00054](#);  
21 [DCP.AA1.2.00018](#)). The Council therefore finds that Sac Sewer has failed to meet its  
22 burden, and that there is substantial evidence in the record to support the Department’s  
23 finding that the DCP is consistent with DP P2 as it relates to conflicts with the Sac  
24 Sewer EchoWater facility.

25 **v. Conflicts with Delta Legacy Communities**

26 The Department addresses potential conflicts between the DCP and Delta  
27 Legacy Communities in the Final EIR, Volume 1, Chapter 17 Socioeconomics  
28 ([DCP.D1.1.00154](#)). Here, the Department provides an analysis regarding declining  
29 property values, concluding that effects would be minimal: “Under each project  
30 alternative, additional regional employment and income could create effects on the  
31 character of statutory Delta communities by way of increased investments in some  
32 communities. In contrast, property values may decline in other communities if they  
33 become less desirable places in which to live, work, shop, or participate in recreational  
34 activities. Although project construction could result in some effects that enhance the  
35 economic welfare of a community, other social effects could arise because of declining  
36 economic stability in other communities, although these are expected to be minimal”  
37 ([DCP.D1.1.00154](#), p. 17-66).

38 The Department also notes that “the [CBP] fund could be used to fund actions to  
39 enhance efforts that would support the unique culture and history of the Delta  
40 community, as well as recreation, agriculture, and the economic vitality of Delta  
41 communities, which is consistent with the goals of the Delta Protection Commission’s  
42 Economic Sustainability Plan” ([DCP.AA1.2.00018](#), p. 71), drawing upon evidence from  
43 the Final EIR ,Ch. 4 ([DCP.D1.1.00028](#), Table 4-3, pp. 542–544). In its written

1 submission, the Department finds that it reduced conflict with “Delta Small  
2 Communities” by creating MMs to offset these effects. To support this, the Department  
3 cites to: the Accountability Action Plan ([DCP.D6.5.00002](#)) which includes an  
4 Ombudsman Program ([DCP.D6.5.00004](#)); the MMRP ([DCP.C.1.00002](#)); and the CBP  
5 ([DCP.D6.4.00001](#)); as well as consultation with community advisory groups and  
6 numerous project communications materials.

7 The Commission, Pear Fair, County of Sacramento, and San Joaquin County  
8 claim that the Certification does not account for conflicts with Delta Legacy  
9 Communities, including Hood and Courtland, in a variety of ways.

10 **(a) Conflicts with the Hood Community Action Plan**

11 The Commission and County of Sacramento argue that up to 15 hours a day of  
12 construction of two intake facilities on either side of the community of Hood over the  
13 course of 13 years “will...conflict with the Hood Community Action Plan’s goal of  
14 increasing tourism and enjoyment of Hood’s cultural and natural heritage” ([County of  
15 Sacramento, Appeal](#), p. 46). Evidence cited includes water rights hearing testimony  
16 from the owner and operator of the Willow Ballroom event venue who is “deeply  
17 concerned about the impacts of the intakes on the Willow Ballroom’s ability to continue  
18 as a business” ([DCP.V2.20.00003](#)), in addition to maps from the Final EIR  
19 demonstrating the proximity of existing businesses in Hood to intake facilities  
20 ([DCP.D1.1.00026](#)). The Commission cites the Final EIR ([DCP.D1.1.00014](#)) which  
21 shows a range of 9 to 15 hours of pile driving depending on alternative intake locations,  
22 which would disrupt the Hood economy. The Commission claims that this “intensive  
23 construction period, the permanent re-routing of State Route 160 (SR-160, a Scenic  
24 Highway), the large new permanent infrastructure, and the effects on the economic  
25 drivers of agriculture, recreation and emerging heritage tourism” are all impacts that  
26 Delta communities will face, especially the town of Hood as a result of the DCP  
27 ([Commission, Appeal, Attachment B](#), p. 4). Appellants argue that the Department “did  
28 not adopt [MMs] that would meaningfully support the economic health and well-being of  
29 Delta communities, especially the town of Hood, to ensure that it will survive the  
30 construction...” ([Commission, Appeal, Attachment B](#), p. 3).” The Commission claims that  
31 the Department’s MMs to reduce these conflicts by compensating property owners of  
32 affected residential properties “doesn’t address displacement of renters, or loss of a  
33 sense of place, or lost recreational values” ([Commission, Appeal, Attachment B](#), p. 5).

34 San Joaquin County claims that the Certification record has identified, but  
35 ignored severe conflicts with the Legacy Community of Hood that are caused by the  
36 close proximity of intakes B and C. This Appellant cites the CER, Appendix B6  
37 ([DCP.D4.3.00009](#), p. B6-11) as an example of how the record describes conflicts with  
38 Hood but does not avoid or mitigate them ([San Joaquin County, Appeal](#), p.18), noting  
39 that the foundation of the Department’s work to consider the impacts of siting the  
40 intakes focuses on fisheries rather than on the impact to the town of Hood, citing  
41 Concept Engineering Report Appendix B6 ([DCP.D4.3.00009](#), p. B6-4; [San Joaquin  
42 County, Appeal](#), p. 18).

1 In its Certification, the Department finds that “it was ultimately not feasible to site  
2 the project’s intake facilities in a manner to avoid all potential land use conflicts”  
3 ([DCP.AA1.2.00018](#), p. 43). The Department states it evaluated intake locations  
4 upstream of downtown Sacramento, but the intakes would have been located at the  
5 Sacramento Weir ([DCP.AA1.2.00018](#), p. 13), which is primarily used as a flood control  
6 system for the City of Sacramento. Intakes at the Sacramento Weir would have required  
7 additional tunnel shafts; which would have needed to be located close to communities  
8 of West Sacramento, Freeport, Clarksburg, and Hood ([DCP.D1.1.00011](#), pp. 11-12).  
9 Additionally, “intake locations associated with Reach G (just downstream of Hood) and  
10 Reach H (between Hood and Courtland) were preferred because multiple bank intakes  
11 can be joined to a single tunnel conveyance facility with a minimum of land use  
12 disturbance and impacts to terrestrial habitat” ([DCP.AA1.2.00018](#), p. 14). The  
13 Department’s written submittal furthers states that intake siting considered existing  
14 uses. The [CER] ([DCP.D4.3.00001](#), pp. 4-5) describes the siting considerations used for  
15 selection of candidate intake sites. These include bathymetry and river encroachment;  
16 effects on adjacent parcels; geotechnical considerations; roads and traffic impacts  
17 (*ibid*). A suitable intake site, site C-E-4, was not pursued in part because the work area  
18 was directly adjacent to Hood; access road development and State Route 160 regrading  
19 was expected to extend into the town. “It is not recommended for further consideration  
20 due to its proximity to Hood, the resulting indirect impact to residences and traffic, and  
21 the number of properties that could be directly or indirectly impacted” ([DCP.D4.3.00009](#),  
22 p. B6-3) The two sites outside of the town of Hood were favorable because: C-E-3 had  
23 “the least land-side impacts, mainly because only one residential structure would be  
24 expected to fall inside the permanent footprint;” and C-E-5 had “relatively fewer land-  
25 side impacts, mainly because only one or two residential structures are expected to fall  
26 inside the permanent footprint” ([DCP.D4.3.00009](#) p.16).

27 Regarding economic wellbeing of Hood, the Department’s written submittal  
28 states that “while DP P2 does not address general economic concerns, in consideration  
29 of the effects that construction of the DCP may have on the general economy of Hood,  
30 the CBP is an example of a specific effort the Department is implementing to reduce  
31 conflicts with existing land uses when feasible in a manner consistent with DP P2  
32 ([DCP.AA1.2.00018](#), p. 33). Regarding Appellant concerns about the effect of project  
33 construction on the Willow Ballroom and other commercial land uses in Hood, the DCP  
34 will not directly convert land uses in the town, and an Ombudsman will be available to  
35 handle claims for construction related damages for expedient consideration and  
36 resolution ([DCP.D1.1.00010](#), pp. 3-163).”

37 Community Action Plans are a standardized way that local unincorporated towns  
38 and governments in the Delta can identify economic development, historic preservation,  
39 and other goals, often facilitated by the Commission. However, these plans are not uses  
40 described or depicted in city or county general plans outlined in DP P2 – rather they are  
41 economic development plans that are not necessarily tied to land uses ([Delta Plan, Ch.](#)  
42 [5](#), p. 176.). Thus, a conflict with a Community Action Plan is not an appealable issue. In  
43 addition, the Department has allocated \$200 million in its CBP to benefit economic  
44 development in Delta communities, including Hood, and will appoint an Ombudsman for  
45 community members to work through any business disruption issues that may arise. For

1 these reasons, the Council finds that Appellants failed to meet their burden, and that  
2 there is substantial evidence in the record to support the Department’s finding that the  
3 DCP is consistent with DP P2 regarding conflicts with Hood’s Community Action Plan.

4 **(b) Conflicts with Hood’s water wells and treatment**  
5 **facilities supporting residential and commercial**  
6 **uses.**

7 The Commission argues that thirteen years of facility construction could result in  
8 short-term lower groundwater levels locally at neighboring supply wells, including Hood  
9 water supply wells and a treatment plant serving 75 connections that rely exclusively on  
10 groundwater ([DCP.D1.1.00135](#), p. 15B-4; [DCP.D1.1.00010](#), pp. 3-132-3-133,  
11 [DCP.D1.1.00014](#), p. 3D-2). The Commission claims that the Department’s proposed  
12 mitigation approach to install groundwater recharge and extraction wells would further  
13 compound construction disruption and noise ([DCP.D1.1.00060](#), p. 8-43). County of  
14 Sacramento claims that DCP construction will impact Hood’s “only water supply for its  
15 residents and commercial operations” ([County of Sacramento, Appeal](#), p. 47). Since the  
16 Sacramento County Water Agency owns and operates municipal and industrial water  
17 wells in Hood, this Appellant asserts that the DCP would directly conflict with its ability  
18 to provide water to its users.

19 The Department notes that “[c]onflicts with existing infrastructure could occur if  
20 project construction crosses an existing water line or other water conveyance  
21 infrastructure. A small portion of the Hood Well and Treatment facility lies above the  
22 proposed tunnel alignment for Alternatives 1, 2a, 2c, 3, 4a, 4c, and 5”  
23 ([DCP.D1.1.00172](#), p. 32). “The closest edge of [Hood] W[ater] T[reatment] P[lant] site is  
24 located approximately 175 feet west of the tunnel alignment for both the Central and  
25 Eastern corridors and for project design capacity options of 4,500, 6,000, and 7,500 cfs  
26 (SCWA, 2017). [Groundwater well] W-25 is the closest identified water supply well; it  
27 reaches a depth of 160 feet and is screened from 125 to 140 feet in depth, while the top  
28 of the tunnel would be located approximately 115 feet below the ground surface at  
29 Hood-Franklin Road. However, this well is located over 300 feet from the centerline of  
30 the tunnel at this location” ([DCP.D4.1.00049](#), p. 6). The Department goes on to explain  
31 that “crossing an existing pipeline does not necessarily mean there would be a physical  
32 conflict but represents areas where conflicts could potentially occur. According to the  
33 technical memoranda, none of the alternatives would conflict with existing water and  
34 wastewater pipelines. During the design phase, more in-depth analysis of easement  
35 locations associated with acquired parcels and utilities surveys would be completed to  
36 locate, understand, and avoid conflicts with existing utilities” ([DCP.D1.1.00172](#), pp. 32-  
37 33).

38 On the issue of dewatering and water contamination in Hood, the Department  
39 cites to the Final EIR ([DCP.D1.1.00172](#); [DCP.D4.1.00049](#)) to support its finding that it  
40 considered and is aware of potential conflicts with groundwater wells and the Hood  
41 Water Treatment Plant, including information describing the proximity of potentially  
42 conflicting infrastructure based on current design parameters. The Department also  
43 references Final EIR Chapter 21 ([DCP.D1.1.00172](#)), which acknowledges that more in-

1 depth analysis of conflicts with existing utilities will be conducted in subsequent design  
2 phases. For these reasons, the Council finds that Appellants failed to meet their burden,  
3 and that there is substantial evidence in the record to support the Department’s finding  
4 that the DCP is consistent with DP P2 regarding conflicts with Hood’s water wells and  
5 treatment facility.

6 **(c) Conflicts with the Courtland Pear Fair**

7 Appellant Pear Fair contends that the DCP will conflict with the Courtland Pear  
8 Fair, an annual summer festival that takes place in the Courtland Delta Legacy  
9 Community ([Pear Fair Writ. Sub.](#), p. 3). Appellant cites to the Sacramento County  
10 General Plan Delta Protection Element ([DCP.D3.1.03946](#)) supporting that “Courtland is  
11 an unincorporated Delta town within the Primary Zone, functioning as a social and  
12 service center for surrounding agricultural lands... The Element designates agriculture  
13 as the priority land use, expressly supports agricultural tourism and community events...  
14 and requires Delta roadways to serve existing agricultural, community, and recreational  
15 uses. These adopted policies confirm that the Courtland Pear Fair is an expressly  
16 supported land use that depends on agricultural viability and rural access”  
17 ([DCP.D3.1.03946](#); [Pear Fair, Writ. Sub.](#), p.4).

18 The Appellant points to the Department’s DP P2 Detailed Findings to show that  
19 “existing land uses’ were treated primarily as physical agricultural and infrastructure  
20 uses, not as cultural/community uses such as the Courtland Pear Fair” ([Pear Fair,  
21 Appeal](#) p. 4). The Appellant claims the Department “never identifies the Courtland Pear  
22 Fair as an existing land use or cultural/community resource within the DP P2 analysis”  
23 or “show[s] that DCP facilities were sited in a way that avoids or reduces conflicts with  
24 Courtland’s community institutions when feasible” ([Pear Fair, Appeal](#), p. 6). The  
25 Appellant further claims that the Department did not conduct outreach to the Fair and  
26 points to the Department’s Final EIR Response to Comments as evidence of this ([Pear  
27 Fair, Appeal](#), p. 4).<sup>58</sup> The Courtland Pear Fair is not mentioned in any comments  
28 compiled in Volume 2 of the Final EIR ([DCP.D1.1.00221-DCP.D1.1.00238](#)).

29 The Department does not acknowledge the Courtland Pear Fair as an existing  
30 use in its DP P2 analysis ([DCP.AA1.2.00018](#); [DCP.AA1.2.00019](#)). The Department  
31 finds that “it was ultimately not feasible to site the project’s intake facilities in a manner  
32 to avoid all potential land use conflicts” ([DCP.AA1.2.00018](#), p. 43). In its written  
33 submittal, the Department states “[the Department] has demonstrated that it was  
34 infeasible to site the DCP facilities to avoid all land use conflicts, and it has shown that  
35 facilities were sited to reduce conflicts when feasible. Appellant fails to discuss the  
36 substantial evidence supporting the Department’s Certification and show that it is not  
37 substantial, and so fails to carry their burden of proof” ([Department, Writ. Sub.](#), p. 79).  
38 Further, the Department states that “Intake C (i.e., the intake located over 1 mile south  
39 of Hood and the closest DCP intake to Courtland) is sited almost 2 miles away from

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<sup>58</sup> Appellant refers to “the outreach table in Chapter 4” in its appeal form, which is assumed to refer to Final EIR Volume 2 Chapter 4: Response to Comments Tables 4-2 and 4-3 ([DCP.D1.1.00241](#), [DCP.D1.1.00244](#), [DCP.D1.1.00245](#), [DCP.D1.1.00246](#), [DCP.D1.1.00247](#), [DCP.D1.1.00248](#)).

1 Courtland, where the Pear Fair is held ([DCP.D4.3.00009](#), p. B6-12)” ([Department, Writ.](#)  
2 [Sub.](#), p. 79).

3 In its CER, Volume 1, Appendix B6 (Intake Site Identification and Evaluation  
4 Report), the DCA details the siting criteria used to guide identification of intake sites  
5 ([DCP.D4.3.00009](#), pp. 4-5). The DCA assessed alternative upstream and downstream  
6 intake locations but they were not selected because they did not meet Project objectives  
7 ([DCP.D4.3.00009](#), p. 5). One assumption applied to identifying intake sites was to  
8 relocate SR-160 inland to facilitate flood protection and intake construction and  
9 operation ([DCP.D4.3.00009](#), p. 6). The CER acknowledges that Site C-E-5 (the closest  
10 to Courtland) was preferred due to its suitable depth, length, and conformance with  
11 siting criteria ([DCP.D4.3.00009](#), p. 7). Each of five candidate sites were further  
12 evaluated using multiple evaluation categories ([DCP.D4.3.00009](#), p. 3). The findings for  
13 candidate site C-E-5 demonstrate that the intake site is approximately two miles from  
14 Courtland and in general, the site furthest from towns, however, there would be road  
15 and traffic related issues requiring the use of SR-160 and/or construction of an access  
16 road ([DCP.D4.3.00009](#), p. 12). The DCA identifies the intake site impacts as  
17 “consistently lower than all other sites being considered except Candidate Site C-E-3”  
18 and the site “is considered the second best choice among the candidate sites”  
19 ([DCP.D4.3.00009](#), p. 16). The DCA weighed various criteria in siting intakes including  
20 proximity to towns and road and traffic impacts and acknowledges it cannot avoid all  
21 potential land uses.

22 The Department’s DP P2 analysis identifies ECs relevant to reducing conflicts  
23 with existing land uses. EC-18 (Minimize Construction-Related Disturbances to Delta  
24 Community Events and Festivals) requires construction contractors to coordinate with  
25 the Ombudsman to identify community events and festivals that could be disturbed by  
26 construction and develop site or activity-specific plans to minimize and avoid  
27 construction disturbances such as from noise and traffic ([DCP.AA1.2.00018](#), p. 35). The  
28 Department refers to Final EIR Chapters 16 and 17 regarding community events.  
29 Chapter 16 notes the Pear Fair as an annual event ([DCP.D1.1.00149](#), p.16), while  
30 Chapter 17 outlines its economic impact in the Delta region ([DCP.D1.1.00154](#), p. 28). In  
31 addition, the Department stated at the hearing that they will reach out to the Pear Fair  
32 again to ensure coordination with them. ([Vol. 2, HT](#) 74:22-75:5). For these reasons, the  
33 Council finds that Pear Fair failed to show that the Certification is not supported by  
34 substantial evidence that the DCP is consistent with DP P2 regarding efforts to minimize  
35 conflicts with the Courtland Pear Fair.

36 Regarding the Appellant’s claim of lack of outreach, evidence in the record  
37 demonstrates that staff from Ag Innovations contracted by the Department reached out  
38 to Courtland Pear Fair regarding conducting outreach at the event, and their vendor  
39 application was rejected ([DCP.AA5.1.00021](#)). This matter was discussed at the  
40 February 27, 2026, appeals hearing, and the Courtland Pear Fair stated that a request  
41 to participate as a vendor should not “be construed as meaningful engagement” ([Vol. 2,](#)  
42 [HT](#) 35:7) and that it commonly receives more vendor applications than the Pear Fair  
43 has space for ([Vol. 2, HT](#) 35:7) and that it commonly receives more vendor applications  
44 than the Pear Fair has space for ([Vol. 2, HT](#) 129:20-21). The Department notes in its

1 written submittal that considering that the Courtland Pear Fair is “not a local agency...  
2 any claimed failure to adequately consider comments from the Courtland Pear Fair  
3 organizers is not an appealable issue” ([Department, Writ. Sub.](#), p. 79). The Council  
4 recognizes and appreciates that an email requesting a vendor space at a festival does  
5 not demonstrate meaningful outreach and engagement with Fair staff. However,  
6 Appellants have not identified evidence in the record that demonstrates that the  
7 Courtland Pear Fair provided comments to the Department that were not considered by  
8 the Department. Furthermore, Courtland Pear Fair would not constitute a “local agency”  
9 under the Government Code.<sup>59</sup> As such, this is not an appealable issue under DP P2  
10 the Council does not consider it further.

11 **(d) Traffic and access conflicts with the Courtland**  
12 **Pear Fair and similar community events**

13 Appellant Pear Fair argues that the Certification does not “evaluate how long-  
14 term construction and operational traffic, industrial noise, and visual impacts will affect  
15 the Fair’s access, attendance, or volunteer base” ([Pear Fair, Appeal](#), p. 5). Specifically,  
16 Appellant alleges that the Department did not analyze traffic and access conflicts with  
17 the Fair, stating that: “The DCP will generate substantial construction traffic, haul routes,  
18 and potential detours along SR-160 and River Road during the same summer period  
19 when the Pear Fair occurs” ([Pear Fair, Appeal](#), p. 5). In its written submittal, the  
20 Appellant cites Final EIR Chapter 20 as evidence of “sustained construction traffic and  
21 haul activity on rural roadways and levee-adjacent corridors serving Courtland, including  
22 SR-160 and River Road” (Pear Fair Writ. Sub., p.2). Pear Fair summarizes:  
23 “constructing the north Delta intakes will require temporary relocation of SR 160 onto a  
24 newly constructed jurisdictional levee in order to maintain flood protection during  
25 construction, followed by permanent realignment of SR 160 on top of backfill along the  
26 Sacramento River once construction is complete ([DCP.D1.1.00010](#), pp. 24-25). SR 160  
27 currently runs atop a federal flood-control levee and functions as a critical transportation  
28 corridor for Delta residents, agricultural operations, emergency response, and  
29 community events such as the Courtland Pear Fair. The Certification of Consistency  
30 does not evaluate how rerouting and realigning this scenic rural highway over an  
31 extended construction period will affect community access, agricultural activity, tourism,  
32 or cultural events...” (Pear Fair Writ. Sub., p.2).

33 In its Certification, the Department refers to several siting considerations related  
34 to avoiding traffic on SR 160 during construction. Specifically, the siting of intakes B and  
35 C (as referred to in the Final EIR) will affect properties due to the re-routing of traffic to  
36 avoid impacts to SR-160 ([DCP.AA1.2.00018](#), p.17). The Department notes that “to  
37 minimize traffic on the local Delta roadways and specifically on SR 160, and to minimize  
38 the land requirements and footprint of materials storage areas at the individual intake  
39 sites, dedicated construction support facilities (e.g., the off-site concrete batch plants)

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<sup>59</sup> For purposes of DP P2, “local agency” means any county, city, city and county, including any charter county, city, or city and county, and any district, school district, community college district, municipal or public corporation, political subdivision, or public agency of the state, or any instrumentality of any one or more of these agencies. ([Government Code, Title 5, Division 2, Part 1, Chapter 2](#))

1 would be incorporated into the [DCP]" ([DCP.AA1.2.00018](#), p. 23). The Department  
2 notes that the rationale for minimizing SR 160 traffic is "due to its proximity to Delta  
3 communities along the Sacramento River and the route's location on top of a levee"  
4 ([DCP.AA1.2.00018](#), p. 23).

5 The Certification does not specifically address traffic impacts or River Road  
6 rerouting, but Final EIR Chapter 20 discusses project alternatives and transportation  
7 impacts (see [DCP.AA1.2.00018](#), p. 87). It also outlines construction management and  
8 design requirements to minimize traffic effects on Delta communities ([DCP.D1.1.00168](#),  
9 pp. 29-32). Proposed strategies most relevant to the Courtland Pear Fair include  
10 ([DCP.D1.1.00168](#), pp. 29-32):

- 11 • No construction traffic would be allowed on SR-160 between SR 12  
12 and Cosumnes River Boulevard except for realignment of this  
13 highway at the intake locations, installation of SCADA cables, or  
14 individuals or vehicles traveling from homes or businesses along  
15 the affected routes.
- 16 • New 3.8-mile paved intake haul road at ground level along the west  
17 side toe of the abandoned railroad embankment to the east of the  
18 intakes to avoid use of SR-160 and access Intakes A, B, and C...

19 The Department claims in its written submittal that traffic is not a land use  
20 ([Department, Writ. Sub.](#), p. 80). However, the Delta Plan explains that a proposed  
21 action "can alter scenic views, make noise, create conflicts with adjoining land uses,  
22 generate traffic, or disrupt transportation routes if not planned carefully," and therefore  
23 traffic impacts can be considered indirect siting conflict under DP P2 ([Delta Plan, Ch. 5](#),  
24 p. 179.). While the Department does not refer to a traffic analysis for the Courtland Pear  
25 Fair specifically, its construction and design requirements address potential siting  
26 impacts on SR-160. The record supports that EC-18 will mitigate construction-related  
27 impacts to community events, including the Pear Fair, by developing site or activity-  
28 specific plans to minimize and avoid disturbances including traffic impacts. The  
29 Department also highlights in its written submittal that "major road improvements, such  
30 as the widening of the existing bridge at Hood-Franklin Road ([DCP.D1.1.00154](#), pp. 17-  
31 73), will be incorporated into the DCP to reduce congestion and delays and could  
32 benefit Delta businesses even after construction is complete. Access to community  
33 gathering places is not likely to be affected because the DCP is designed to avoid road  
34 effects or closures" ([Department, Writ. Sub.](#), p. 80). Additionally, the Department notes  
35 that construction activities will generally occur during the day on weekdays, whereas  
36 community events typically occur on weeknights or the weekend, so conflicts with  
37 construction traffic would be avoided ([Department, Writ. Sub.](#), p. 80). For these reasons,  
38 the Council finds that Pear Fair failed to meet its burden, and that there is substantial  
39 evidence in the record to support the Department's finding that the DCP is consistent  
40 with DP P2 regarding efforts to reduce traffic impacts from project siting that result in a  
41 conflict with the Courtland Pear Fair.



1 community priorities: clean air, safe drinking water, and environmental protection  
2 ([Department, Writ. Sub.](#), p. 62).

3 The Accountability Action Plan covers programs like Ombudsman, Community  
4 Benefits, Advisory Groups, Project Communications, and Mitigation, Monitoring, and  
5 Reporting Program (MMRP) ([DCP.AA1.2.00018](#), p. 32). EIR analysis found construction  
6 and operation would affect environmental justice communities via visual, air, and noise  
7 impacts ([DCP.D1.1.00200](#); [Department, Writ. Sub.](#), p. 63), which MMs aim to address.

8 Given the above cited evidence, the record demonstrates that the Department  
9 conducted outreach to disadvantaged, historically burdened, underrepresented people  
10 of color and low-income communities. Record evidence mentioned above further  
11 establishes that the Department analyzed environmental justice impacts of the DCP and  
12 adopted MMs and ECs to reduce siting impacts associated with air quality, visual  
13 resources, and noise. The above cited record evidence also shows that the Department  
14 made siting changes based on input from the SEC by adjusting facilities, construction  
15 traffic, and project operations.

16 Evidence in the record establishes that the DCP will have disproportionate  
17 adverse effects on EJ communities related to visual effects, air quality, and noise  
18 ([DCP.D1.1.00200](#)). At the hearing, the Department acknowledged that “essentially the  
19 entirety of the Delta” is a disadvantaged community and therefore siting the project to  
20 avoid impacts to these communities was not feasible, and it was the priority of the  
21 Department to reduce these effects as described in MMRP and CBP commitments  
22 discussed above ([Vol. 2, HT](#) 75:10-12). The Council recommends that the Department  
23 continue to meaningfully engage with and apply recommendations from these  
24 communities in order to reduce adverse effects from ongoing project activities.

25 “Land use” is defined in the Delta Plan as uses shaped by local and state  
26 agencies that are responsible for planning and regulating land use development, and  
27 the Delta’s twelve cities and five counties have primary authority for land use planning  
28 (Delta Plan, Ch. 5, p. 176.). Specific siting conflicts with land uses can occur, for  
29 example, if siting a facility conflicts with a residential area characterized by low-income  
30 housing. However, Appellants do not identify such specific land use conflicts nor relate  
31 them to a community’s demographic or socioeconomic characteristics. An  
32 Environmental Justice community or disadvantaged community does not in-and-of-itself  
33 constitute a land use within the scope of DP P2. The Council understands that local  
34 community concerns are significant and ongoing, however, this claim, as broadly  
35 characterized by Appellants, does not raise an appealable issue under DP P2.

36 **vii. Conflicts with the Delta National Heritage Area**

37 County of Sacramento argues that the construction and operations of the DCP  
38 will degrade the Sacramento-San Joaquin Delta National Heritage Area (“NHA”) and  
39 impede the implementation of the Sacramento-San Joaquin Delta National Heritage  
40 Area Management Plan 2020-2035 (“Management Plan”). Appellant argues using  
41 testimony from the water rights hearing that the construction and operations of the DCP  
42 will “irreparably change and degrade the unique character of the Delta,” particularly as

1 an NHA, and that the Department has not sited facilities to avoid or reduce this conflict  
2 ([DCP.V2.5.00036](#); [County of Sacramento, Appeal](#), p. 54). The Appellant further  
3 contends based on testimony from Dr. Nancy Morgan, that the DCP “poses substantial  
4 and compounding threats to the mission, vision, and goals articulated in the  
5 [Management Plan], severely curtailing the NHA’s ability to implement key strategies  
6 across preservation, interpretation, and stewardship” ([DCP.V2.5.00010](#), [County of](#)  
7 [Sacramento, Appeal](#), p. 53). Appellant contends that the DCP presents “irreconcilable  
8 conflicts with the Delta NHA as a landscape of national significance” ([County of](#)  
9 [Sacramento, Appeal](#), p. 52) ... “and will impede implementation of the Management  
10 Plan and attainment of its objectives for historic preservation, tourism and recreation  
11 development, and economic development activities” ([DCP.V2.5.00036](#), p. 6). In its  
12 written submission, Appellant states that the Department recognizes that the NHA  
13 designation for the Delta “is expected to further develop the brand identity of the region  
14 and help boost tourism providers and the local tourist economy” ([DCP.AA1.2.00018](#), p.  
15 61), but that the Department “never analyzes how the DCP will conflict with this existing  
16 use and therefore ... cannot show that its consistency determination is supported by  
17 substantial evidence.” ([Combined, Writ. Sub.](#), p. 47)

18 The Department finds in its Certification that the DCP “... will not interfere with  
19 the implementation of actions in the [Management Plan]” ([DCP.AA1.2.00001](#), p. 195).  
20 The Department provides evidence of how it has responded to similar assertions  
21 concerning the NHA in the Final EIR ([DCP.D1.1.00245](#)), responding, “the assertion that  
22 the project construction and permanent presence of the project features would interfere  
23 with upcoming recreation and tourism improvements is not supported by the analyses  
24 contained in the EIR. The project plans are generally away and apart from the main  
25 tourist areas and would not remove or change the recreation utility of river channels or  
26 recreation areas.” ([DCP.D1.1.00245](#)) The Department goes on to say: “[NHAs] are not a  
27 type of historical resource under CEQA and a [NHA] designation does not  
28 connote NRHP [National Register of Historic Places] eligibility. Historic contexts for  
29 evaluating resources within the Delta NHA incorporated themes from the Delta NHA,  
30 as appropriate.” ([DCP.D1.1.00245](#), pp. 523-61).

31 The Department also identifies the potential of the CBP “... to support actions to  
32 enhance the local Delta economy and tourism and build on the regional vision to  
33 support the unique cultural, recreational, natural resource and agricultural values of the  
34 Delta articulated by the Delta Plan, [NHA] and Conservancy Grant Program (among  
35 others)” ([DCP.AA1.2.00001](#), p. 195; [DCP.D1.1.00245](#), pp. 590-592; [DCP.D1.1.00229](#),  
36 pp. 8-1 - 8-30). In its written submission, the Department argues that: (1) the NHA  
37 supports partnership but is not a land use, making the issue non-appealable; (2) the  
38 DCP must be located in the Delta to be cost-effective; and (3) the DCP does not conflict  
39 with the NHA designation. ([Department, Writ. Sub.](#), p. 16)

40 The record does not support the assertion that implementation of the NHA  
41 Management Plan would be impeded. Furthermore, neither the NHA nor the  
42 Management Plan constitutes an existing use as described in DP P2. Therefore, the  
43 Council finds that this claim does not raise an appealable issue under DP P2.  
44 Therefore, the Council finds that County of Sacramento has failed to meet its burden,

1 and that there is substantial evidence in the record to support the Department’s finding  
2 that the DCP is consistent with DP P2.

3 **viii. Conflicts with existing visual resources and aesthetics**

4 In their appeals, the Commission, County of Sacramento, and San Joaquin  
5 County argue that the construction of the DCP would alter visual resources and  
6 aesthetics of the Delta. San Joaquin County states that the Department’s description of  
7 the aesthetic impacts would “introduce large-scale industrial looking features and  
8 prominent elevated landforms to a landscape that is currently predominantly flat”  
9 ([DCP.D1.1.00160](#)). San Joaquin County argues that the DCP is inconsistent with DP P2  
10 because the Department failed to consider how to avoid impacts caused by RTM  
11 stockpiles.

12 County of Sacramento refers to CPOD water rights hearing testimony to argue  
13 that “permanent establishment of the TCC, including the permanent RTM stockpile,  
14 would constitute a significant and unavoidable adverse aesthetic change,”  
15 ([DCP.V2.5.00025](#), pp. 48, 50) and that “the TCC would include a RTM stockpile area  
16 resulting in 214-acres of RTM at 15-feet in height, just north and south of the  
17 surrounding CRP” ([DCP.V2.5.00025](#), p. 50). Appellant further argues that the aesthetic  
18 impact could “decrease visits to local wineries.” ([DCP.V2.28.00001](#), p. 51).

19 The Commission argues that the Department did not meaningfully address the  
20 DCP’s scale in relationship to small Delta communities, saying “intakes B and C will  
21 completely dwarf Hood by installing industrial facilities on either side of this rural Delta  
22 community that will be roughly 4-5 times its size during construction, and roughly 2-3  
23 times its size in its permanent condition” (Commission, Writ. Sub., p. 4).

24 The Department acknowledges in its written submission that the siting of the  
25 TCC “will reduce visual quality from moderately high to moderate ([DCP.D1.1.00156](#), pp.  
26 18-57–18-58; ([Department, Writ. Sub.](#), p. 34). Additionally, the Final EIR notes that  
27 “[p]roposed intake facilities would likely not be visible [from Hood] due to the presence  
28 of orchards blocking views of these facilities. Access roads would be visible from the  
29 eastern edge of Hood, but only for a brief distance before being obscured by orchards.  
30 Areas affected by underground utility lines will be restored upon completion of  
31 construction and are not anticipated to affect views from Hood” ([DCP.D1.1.00160](#), p.  
32 18D-3).

33 The Department acknowledges that RTM stockpiles will negatively affect the  
34 visual landscape of the Delta but maintains this is not an issue subject to appeal  
35 because DP P2 only requires conflicts with land uses to be considered ([Department,  
36 Writ. Sub.](#), p. 34). Furthermore, the Department finds that even if it were an appealable  
37 issue, the record evidence shows how the Department made efforts to minimize  
38 conflicts caused by stockpiles—particularly in the tables found in Final EIR Appendix  
39 18D ([DCP.D1.1.00160](#)), which detail visual characteristics and impacts. Additional  
40 aesthetic MMs are proposed, including MM AES-1a, which calls for temporary visual  
41 barriers at construction areas with direct line-of-sight to sensitive receptors, such as  
42 locations within the CRP ([DCP.D1.1.00156](#), p. 18-95) ([Department, Writ. Sub.](#), p. 34).

1 Based on the evidence above, the Department has identified evidence within the  
2 record supporting its findings concerning impacts to visual resources, particularly  
3 regarding RTM stockpiles. Furthermore, MMs have been incorporated to minimize  
4 potential impacts. DP P2 applies to conflicts with existing uses or uses described or  
5 depicted in local general plans. Appellants' broad claims concerning visual impacts do  
6 not describe a conflict with that use. For these reasons, the Council finds that the  
7 Commission, County of Sacramento, and San Joaquin County have failed to meet their  
8 burden, and that there is substantial evidence in the record to support the Department's  
9 finding that the DCP is consistent with DP P2.

10 **ix. Conflicts with water quality**

11 Appellants City of Stockton, SF Baykeeper, and San Joaquin County assert that  
12 the construction and operation of the DCP will create water quality conflicts related to  
13 salinity and bromide concentrations near the City of Stockton's drinking water intake,  
14 and related to the proliferation of CHABs throughout the Delta.

15 In its appeal, the City of Stockton raises concerns regarding the Department's  
16 use of a threshold of 250 mg/L for its salinity impacts analysis, which is above the City  
17 of Stockton's 110 mg/L operational threshold and will likely be exceeded more often  
18 under DCP operation ([City of Stockton, Appeal](#), p. 33; citing [DCP.V2.3.00020](#), pp. 4, 6-  
19 7)<sup>60</sup>. Appellant argues that the Department provides only long-term averages and that  
20 the Department incorrectly calculated summary statistics, so there is insufficient data in  
21 the record to determine the full extent of salinity impact to Stockton's water supply ([City  
22 of Stockton, Appeal](#), p. 33; citing [DCP.V2.3.00020](#), pp. 6-7). The cited record material is  
23 water rights hearing testimony wherein Appellant argues that the Department's  
24 averaging and summarizing of model results don't reflect the real-time operations and  
25 impacts that would impact Stockton water quality and water management  
26 ([DCP.V2.3.00020](#)). Also, the testimony cited explains that the Department's DSM2  
27 model results for monthly average chloride concentrations shows that DCP is likely to  
28 increase the amount of time that the water at Stockton's intake exceeds 110 mg/L  
29 chloride by 2-6% ([DCP.V2.3.00020](#), pp. 7-9). City of Stockton claims that the  
30 Department does not provide sufficient information to determine that the DCP will not  
31 increase bromide concentrations at Stockton's intake, while a 5% increase in bromide  
32 concentrations would impact the City's water supply ([DCP.V2.3.00020](#), pp. 8-9). City of  
33 Stockton also alleges that the Department's calculations for bromide may not be based  
34 on an accurate method and show increases in bromide concentrations at Stockton's  
35 intake ([DCP.V2.3.00020](#) pp. 8-9).

36 In its written submittal, the Department states that it is more important to  
37 understand water quality effects consistently during a given time of  
38 year for each water year than to understand water quality changes that may occur  
39 within a single day ([DCP.D1.1.00231](#), pp. 10-9-10-13). The Department claims that the  
40 City of Stockton has not identified information in the record to support the claim that it

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<sup>60</sup> City of Stockton's appeal incorrectly cites to [DCP.V2.3.00022](#), but this is corrected to [DCP.V2.3.00020](#) in its written submission.

1 alters operations based on sub-daily water quality measurement. The Department  
2 further states that the DCP "... would not affect water quality due to increases in  
3 chloride and cyanobacteria, bromide, or other constituents," and, "impact determinations  
4 in Chapter 9 [of the Final EIR: Chapter 9, Section 9.3.3] demonstrate that the project  
5 would not cause the loss of adequate surface water supply of suitable quality water for  
6 the City [of Stockton]." ([DCP.AA1.2.0018](#), p. 85). The Department references a  
7 thorough analysis of water quality-related impacts, "including modeled changes in  
8 boron, bromide, chloride, organic carbon, mercury, and selenium concentrations at the  
9 City's drinking water intake at Empire Tract" ([DCP.AA1.2.0018](#), p. 85; [DCP.D1.1.00064](#)  
10 p. 9-40, [DCP.D1.1.00064-DCP.D1.1.00098](#)). The Department also references Final EIR  
11 Chapter 9, Water Quality analysis results and states, "based on these impact  
12 assessment determinations, adverse changes in the vicinity of Stockton diversion  
13 facilities is not expected." ([DCP.AA1.2.00019](#), p. 30).

14 In its appeal, City of Stockton also argues that the DCP would increase the  
15 likelihood of CHABs at its drinking water intake based on the Department's analysis  
16 showing increased water temperatures due to climate change ([City of Stockton, Appeal](#),  
17 pp. 18, 33). Appellant also cites to CPOD water rights hearing testimony, arguing that  
18 the Department did not consider impacts beyond 2040 and incorrectly modeled tidal  
19 hydrodynamics, resulting in an incorrect determination by the Department that  
20 residence times would not change ([DCP.V2.3.00020](#), pp. 9-10; [DCP.V2.3.00020](#), pp. 4,  
21 6-7, 9-10; [DCP.V2.12.00002](#), p. 5).

22 In its appeal, SF Baykeeper argues that the Department's Certification does not  
23 address the impacts of CHABs, which it claims will be worsened by the DCP, and  
24 conflict with recreational uses ([SF Baykeeper, Appeal](#), p. 12, citing [DCP.V2.14.00051](#),  
25 [DCP.V2.14.00045](#)). Water rights hearing testimony by Spencer Fern describes Restore  
26 the Delta's CHABs monitoring program and summarizes results from the last several  
27 years showing how reduced flow from the DCP could increase water residence time and  
28 increase CHABs, especially in hotter, drier years ([DCP.V2.14.00051](#)).

29 In its appeal, San Joaquin County argues that the Department has not analyzed  
30 the hydrodynamic impact of the mitigation restoration that is required by its Incidental  
31 Take Permit. This Appellant asserts that a large portion of this mitigation will consist of  
32 tidal habitat, based on the species affected based on the list of species, impact types,  
33 and mitigation type, and acres ([DCP.V2.12.00005](#), pp. 62-63); and claim that the  
34 Department has not analyzed the "attendant effects" on water users in the Delta and  
35 that tidal wetland restoration can increase water residence time which is good for  
36 beneficial fish productivity but also provides conditions under which CHABs grow well  
37 ([DCP.V2.12.00005](#), p. 63).

38 The Department's assessment of CHAB impacts in the Certification cites its own  
39 analyses, which indicate that the DCP is not anticipated to cause significant increases in  
40 Delta salinity or residence time, nor a decline in Delta water quality—including any rise  
41 in the frequency or severity of CHABs. Furthermore, negative effects concerning  
42 CHABs near the City of Stockton diversion facilities are considered unlikely  
43 ([DCP.AA1.2.00019](#), p. 30; [DCP.D1.1.00064](#)). The Department notes that the impact of  
44 channel velocity on CHABs is not yet fully understood within current research. Appendix

1 9E of the Final EIR predicts minimal changes in water temperature between June and  
2 November ([DCP.AA1.2.00019](#), p. 26; [DCP.D1.1.00072](#)). Additionally, the Department  
3 references its 2040 water quality analysis, which evaluates modeled temperature  
4 differences in relation to CHABs. This analysis concludes that while an earlier onset of  
5 CHAB blooms may occur, blooms are likely to persist with similar or increased  
6 frequency throughout the study area ([DCP.AA1.2.00019](#), p. 29; [DCP.D1.1.00085](#), pp. 6-  
7 7).

8 In summary, City of Stockton and the Department fundamentally disagree on  
9 whether there are siting conflicts associated with locating the DCP intakes upstream of  
10 Stockton's water intake and further disagree regarding the extent and significance of  
11 those conflicts. Multiple Appellants also assert that impacts related to CHABs will result  
12 from degraded water quality. While the Council does not dispute that the issues brought  
13 forth by Appellants have the potential impacts, water quality does not represent an  
14 existing or planned land use regulated by DP P2. As a result, the Council finds that City  
15 of Stockton, SF Baykeeper, and San Joaquin County have failed to meet their burden,  
16 and that there is substantial evidence in the record to support the Department's finding  
17 that the DCP is consistent with DP P2.<sup>61</sup>

18 **x. Considering comments from the Commission and local**  
19 **agencies**

20 Appellants the Commission, County of Sacramento, Sac Sewer, and City of  
21 Stockton all allege that the Certification and record do not support the Department's  
22 finding that it considered comments from the Commission and local agencies as  
23 required by DP P2. The Commission's appeal notes that it recommended the EIR  
24 include mapped acreage for all affected areas ([Commission Appeal Attachment B](#), p. 3).  
25 While the Final EIR presents this information in tables and appendices, the Commission  
26 finds it difficult to interpret holistically ([Commission Appeal Attachment B](#), p. 3). The  
27 Commission does not directly engage with evidence summarized in the Department's  
28 Certification in DP P2 Attachment 1 Tables 2–7 ([DCP.AA1.2.00018](#)), which are intended  
29 to demonstrate consistency with DP P2 requirements. In its written submission, the  
30 Commission asserts that narrowly defined project objectives limited consideration of  
31 meaningful alternatives and references Final EIR comments and Table 7 in DP P2  
32 Attachment 1 ([Commission, Writ. Sub.](#), p. 8; citing [DCP.D1.1.00241](#), p. 20;  
33 [DCP.AA1.2.00018](#), pp. 93–113).

34 **(a) Appellants' claims**

35 In its appeal, the County of Sacramento claims that the Department did not  
36 "meaningfully address County comments" ([County of Sacramento, Appeal](#), p. 58). The  
37 County refers to an entry in DP P2 Attachment 1 Table 3 ([DCP.AA1.2.00018](#), p. 66),  
38 stating that its comment about how construction of the Twin Cities Complex would

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<sup>61</sup> The Council acknowledges that water quality concerns at the City of Stockton's intake are currently being addressed in the Department's CPOD petition before the SWRCB. It is anticipated that these issues will be resolved through that process, particularly as they pertain to any harm to existing water users, including Stockton.

1 impact noise, dust, and traffic at CRP was "under-summarized" ([County of Sacramento, Appeal](#), p. 58). Furthermore, the County notes that CRP is omitted from the entry  
2 discussing conflicts between tunnel shaft siting and recreation as an existing land use in  
3 Table 7 ([DCP.AA1.2.00018](#), p. 98). The County also critiques the Department's  
4 Consistency Certification for stating—without referencing any record evidence—that  
5 "substantial evidence in the record demonstrates that the tunnel shafts will have minimal  
6 conflicts with the existing recreational uses" ([County of Sacramento, Appeal](#), p. 58).  
7

8 Sac Sewer's appeal claims that the Department did not sufficiently consider its  
9 concerns about coordination and consultation, especially regarding potential impacts to  
10 Harvest Water, despite Sac Sewer submitting extensive comments and technical  
11 reports ([Sac Sewer, Appeal](#), pp. 48–49; citing [DCP.V3.3.00033](#)). Sac Sewer  
12 acknowledges that the Department included its feedback in summary tables  
13 ([DCP.AA1.2.00018](#), Tables 2–7, pp. 57–113; [DCP.AA1.2.00019](#), Tables 1-6, pp. 9–40),  
14 but asserts that the responses failed to address coordination issues and were  
15 dismissive of Sac Sewer's concerns and permit obligations ([Sac Sewer, Appeal](#), pp. 49–  
16 50).

17 The City of Stockton argues that, in its response to Stockton's Draft EIR  
18 comments, "[the Department] simply stated its disagreement with the assertion that the  
19 siting of the DCP would cause land use conflicts for Stockton due to water quality  
20 degradation. When outlining potential conflicts and corresponding [MMs] for the North  
21 Delta Intakes siting, [the Department] overlooks any water quality-related effects and  
22 relies exclusively on MM AG-3: Replacement or Relocation of Affected Infrastructure  
23 Supporting Agricultural Properties as the relevant measure. According to City of  
24 Stockton, this fails to address its water quality concerns" ([City of Stockton, Appeal](#), pp.  
25 38–39, citing [DCP.AA1.2.00018](#), pp. 53, 85). City of Stockton additionally points out that  
26 in the Certification's DP P2 Attachment 2 ([DCP.AA1.2.00019](#)), the Department  
27 summarizes City of Stockton's feedback regarding water and wastewater operations,  
28 noting, "[the Department] considered this comment in the context of ... DP P2 and did  
29 not identify a specific link to siting conditions" ([City of Stockton, Appeal](#), p. 39, citing  
30 [DCP.AA1.2.00019](#), pp. 29–31). Appellant also references its CPOD water rights hearing  
31 testimony ([DCP.V3.3.00020](#), p. 10) to contend that the Department's conclusion is  
32 "without merit" ([City of Stockton, Appeal](#), p. 39). Furthermore, Appellant asserts that the  
33 Department disregarded its expert evidence submitted during the water rights hearing,  
34 which, according to Appellant, exposes deficiencies in the EIR as supporting evidence  
35 for its Certification ([City of Stockton, Appeal](#), p. 39).

36 In their combined written submittal, County of Sacramento, Sac Sewer, and City  
37 of Stockton restate their claims, contending that the Department failed to "[consider]  
38 comments from local agencies and the Delta Protection Commission" as mandated by  
39 DP P2 ([Combined, Writ. Sub.](#), p. 32). They emphasize that the Commission urged the  
40 Department to examine alternative approaches such as strengthening Delta levees,  
41 dredging channels, and investing in measures to boost water use efficiency and  
42 recycling ([Combined, Writ. Sub.](#), p. 32). The written submittal further develops City of  
43 Stockton's position by arguing for the inclusion of water rights hearing testimony,  
44 maintaining that evidence presented during the hearing forms part of the certified record

1 and reveals that the Certification lacks substantial supporting evidence. Appellants  
2 contend that relying exclusively on the Final EIR to consider comments of the  
3 Commission and local public agencies does not suffice, as expert testimony highlights  
4 shortcomings in the Final EIR’s analysis as evidence supporting the Certification  
5 ([Combined, Writ. Sub.](#), p. 33).

6 **(b) Department’s response to claims**

7 In its Certification, the Department asserts that DP P2 Attachment 1  
8 demonstrates that it considered relevant comments about existing land uses and  
9 potential conflicts, including input from local agencies, tribes, and Delta stakeholders  
10 ([DCP.AA1.2.00001](#), p. 164). Outreach and consultation activities are described in  
11 Sections 3.2 and 3.3 of DP P2 Attachment 1 ([DCP.AA1.2.00018](#), pp. 27–33), but only  
12 local agencies and the Commission’s comments are required for DP P2. Section 4 of  
13 DP P2 Attachment 1 records public comments on land use conflicts and mitigation in  
14 five tables, including summaries, responses, and DP P2 considerations  
15 ([DCP.AA1.2.00018](#), pp. 53, 57). The tables—identified as Tables 2–6 in  
16 [DCP.AA1.2.00018](#) and Tables 1–5 in [DCP.AA1.2.00019](#)—summarize agency feedback  
17 on the Draft EIR concerning conflicts with existing land uses and present Department  
18 responses drawn from the Final EIR. Typically, these responses reference previous  
19 analyses. The DP P2 considerations column provides context for the Draft EIR  
20 comment but does not engage with core issues related to DP P2. Additionally, a  
21 synthesis table ([DCP.AA1.2.00018](#), Table 6; [DCP.AA1.2.00019](#), Table 6)<sup>62</sup> aggregates  
22 potential conflicts, relying mainly on Final EIR analysis and proposed MMs, and lacks  
23 direct acknowledgment of local agency or Commission comments. Feedback from  
24 comments on the 2020 Notice of Preparation of an EIR and CPOD water rights hearing  
25 testimony are not directly reflected; instead, the Department claims—without supporting  
26 evidence—that these topics are either not pertinent or have already been addressed  
27 within Final EIR comments and responses.

28 Department responses summarize Final EIR analyses but do not explicitly  
29 address DP P2 or detail efforts to avoid or reduce land use conflicts. The DP P2  
30 Considerations column provides context regarding comment responses but lacks  
31 substantive resolution to several DP P2-specific issues. The Department claims that  
32 input from the Commission and local agencies was used to assess existing land use  
33 conflicts in DP P2 Attachment 1 ([DCP.AA1.2.00018](#), Tables 2-7)<sup>63</sup>. Table 7 offers a  
34 summary of potential conflicts and MMs, asserting that conflicts were avoided where  
35 possible and reduced through ECs when avoidance was not feasible  
36 ([DCP.AA1.2.00001](#), p. 165). The separation of public comments from DCP siting  
37 impacts makes it unclear how public input influenced conflict reduction measures  
38 ([DCP.AA1.2.00018](#), p. 91, pp. 93–113).

39 During the hearing, the Department consistently asserted that input from water  
40 rights hearing testimony was reviewed during the development of the Certification.

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<sup>62</sup> Table 6 is written as Table 7 in the Certification

<sup>63</sup> Table 7 is written as Table 8 in the Certification

1 Additionally, Councilmember Ann Patterson raised a question to the Department's  
2 attorney regarding the distinction between considering a comment and merely  
3 acknowledging it. In response, the attorney stated, "We consider them and address  
4 them ... All of that information was considered by the Department in reaching its  
5 conclusions in the Certification." The attorney further clarified, "Unlike CEQA, the  
6 Certification process doesn't require a comprehensive response to every comment  
7 received. What is required is that we and the experts we are working with have taken  
8 the comments into consideration in formulating our conclusions that are set forth in the  
9 Certification," ([Vol. 2, HT](#) 90:11-91:5).

10 **(c) Conclusion**

11 Based on the cited evidence above, the Council finds that evidence in the record  
12 supports the finding that the Department considered comments from local agencies and  
13 the Commission during the siting of DCP features. While Appellants may disagree with  
14 or find the Department's responses to their comments unsatisfactory, that is distinct  
15 from the question of whether the Department *considered* those comments. The  
16 Department's provision of tables in DP P2 Attachments 1 and 2—which summarize  
17 Draft EIR comments, the Department's responses, synthesize the feedback, and  
18 connect the outcomes to Covered Action siting issues—meets the DP P2 requirement  
19 to consider that input. Therefore, the Council finds that the Commission, County of  
20 Sacramento, Sac Sewer, and City of failed to meet their burden, and that there is  
21 substantial evidence in the record to support the Department's finding that the DCP is  
22 consistent with DP P2 regarding considering comments from the Commission and local  
23 public agencies.

24 **xi. Conflicts with recreation**

25 Appellants County of Sacramento, the Commission, City of Stockton, SDWA, and  
26 Steamboat Resort all challenge aspects of the Department's DP P2 Certification related  
27 to recreation.

28 **(a) Conflicts with existing recreational activities**

29 The County of Sacramento asserts that the siting of the DCP will interfere with  
30 recreational activities such as hiking, birding, photography, paddling, boating, and  
31 agritourism, given the proximity of the TCC to the CRP and SLNWR ([County of  
32 Sacramento, Appeal](#), p. 47). The anticipated impacts include restricted access,  
33 increased noise, dust, visual disturbances, diminished air quality, ground vibrations, and  
34 construction-related traffic. Separate concerns are offered regarding effects on wineries,  
35 commercial activity, and agritourism ([County of Sacramento, Appeal](#), pp. 50–51), with  
36 supporting references to Amber Veselka's water rights hearing testimony  
37 ([DCP.V2.5.00025](#)). The Commission contends that the DCP does not comply with DP  
38 P2, stating it results in "disruption of the [Delta's] secondary economic driver, land and  
39 water-based recreation" ([Commission](#), Appeal. p. 1). The City of Stockton maintains that  
40 "the DCP would increase the likelihood and severity of CHABs at Stockton's drinking  
41 water intake, which would affect Stockton's ability to utilize water diverted therefrom and  
42 would impact recreational activities in the central Delta, including at the Stockton

1 waterfront ([DCP.V2.3.00022](#), pp. 9-10; [DCP.V2.12.00002](#), p. 5). San Joaquin County  
2 argues that the DCP will adversely affect recreation, offering examples such as RTM  
3 disposal sites and concrete batch plants. Appellant claims that recreational concerns  
4 receive minimal attention in the Department's Certification ([DCP.AA1.2.00001](#)). SDWA  
5 asserts in its appeal that "there will also be continuous disturbance from operation and  
6 maintenance of the tunnel. The remoteness of these areas lends greatly to their value  
7 for habitat and recreational hunting. Investments already made in habitat for  
8 environmental enhancement, mitigation, hunting, bird watching, and wildlife-friendly  
9 farming will be greatly devalued by the DCP siting and other impacts." ([SDWA, Appeal](#),  
10 p. 31) Appellant further notes that "the proposed siting goes through portions of the area  
11 of greatest use by waterfowl and includes significant acreage of cropland winter-flooded  
12 for agricultural purposes and areas flooded for habitat and hunting purposes. Numerous  
13 hunting clubs and hunting group areas are concentrated in the impacted area," and list  
14 affected locations ([SDWA, Appeal](#), p. 32).

15 In Section 4.7 of the Department's Certification, titled Accountability Action Plan  
16 and Public Outreach ([DCP.AA1.2.00001](#), p. 28), the Department refers to the CBP. This  
17 initiative acknowledges impacts on local Delta communities, specifically those arising  
18 from conflicts with existing land uses, and was created to identify and realize  
19 commitments aimed at safeguarding and improving the Delta's cultural, recreational,  
20 natural resource, and agricultural assets. Notably, the Department does not directly cite  
21 efforts to avoid or reduce conflicts with the CRP within its DP P2 Certification  
22 documentation. Instead, it regularly references Chapter 16, Recreation, of the Final EIR,  
23 which includes the CRP as a recreational area in proximity to proposed DCP elements  
24 ([DCP.D1.1.00149](#), p. 4). Chapter 16 explains that construction-related effects on  
25 recreation will be minimal and not result in significant environmental changes; while  
26 dust, noise, and slower traffic may occur, such impacts are considered less than  
27 significant since recreational areas are not directly affected and recreational use has not  
28 been noted at intake locations ([DCP.D1.1.00149](#), p. 26). The Final EIR further notes  
29 that some changes to shoreline access may happen, but these comprise a small portion  
30 of the available shoreline, and recreational users have easy access to many other  
31 nearby areas. Additionally, MMs could enhance wildlife viewing and expand habitat for  
32 various species ([DCP.D1.1.00149](#), pp. 25-26).

33 The Department responds to City of Stockton's water quality concerns by stating  
34 they fall outside the scope of DCP siting ([DCP.AA1.2.00018](#), p.12). For County of  
35 Sacramento's concerns about impacts near SLNWR, the Department dropped  
36 Candidate Site C-E-2 due to proximity to the SLNWR. Similarly, Reach F was excluded  
37 because it was too close to Clarksburg, and Candidate Site C-E-4 was removed for  
38 being too close to Hood, despite its favorable conditions ([DCP.AA1.00018](#), pp. 20, 23).  
39 Concrete batch sites were centralized to ensure timely deliveries, with some  
40 unavoidable land use conflicts due to engineering and environmental constraints  
41 ([DCP.AA1.00018](#), pp. 27-28, 7, 9-13, 16-17).

42 The record provides evidence that conflicts with recreation and agritourism have  
43 been avoided or reduced where feasible. The Department's DP P2 Attachment 1 clearly  
44 outlines the considerations made when selecting sites and when it avoided conflicts if

1 possible ([DCP.AA1.2.00018](#), pp. 20-28). When conflicts cannot be avoided, the  
2 Department points to programs like the CBP to identify and implement commitments to  
3 help protect and enhance the cultural, recreational, natural resource, and agricultural  
4 values in the Delta. The Department also points to MMs to reduce impacts from noise  
5 and traffic and to analysis in the record that shows less than significant impacts to  
6 recreation ([DCP.AA1.2.00001](#), pp.13). For this reason, the Council finds that the  
7 Commission, County of Sacramento, and SDWA have failed to meet their burden, and  
8 that there is substantial evidence in the record to support the Department’s finding that  
9 the DCP is consistent with DP P2 regarding potential conflicts with recreation and  
10 agritourism uses.  
11

12 **(b) Conflicts with existing Steamboat Resort**  
13 **recreational land use**

14 Steamboat Resort contends that the Department’s Certification fails to evaluate  
15 or disclose the potential effects of siting, staging, or constructing intake facilities on the  
16 resort and its recreational uses. Appellant asserts that construction noise would disrupt  
17 the resort’s “quiet recreational environment,” vessel operations during construction  
18 could introduce navigational risks, near- and in-water activities would negatively affect  
19 water quality for recreation, hydrological changes could create “low-tide access  
20 challenges,” and that no binding MMs or construction restrictions have been included  
21 ([Steamboat Resort Appeal](#), pp., 3-4). Notably, the Appellant does not provide citations  
22 to support these claims from the record.

23 The Department’s Certification acknowledges that noise is an indirect effect  
24 potentially leading to conflicts with existing land uses, such as parks  
25 ([DCP.AA1.2.00001](#), p.13). However, it clarifies that DP P2 does not mandate the  
26 preservation of all existing uses; rather, it requires avoidance or reduction of conflicts  
27 where feasible ([DCP.AA1.2.00001](#), p.13). To address those issues, the Department  
28 references Final EIR MM NOI-1, Develop and Implement a Noise Control Plan, as its  
29 primary strategy for minimizing conflicts with current uses ([DCP.AA1.2.00001](#), p.13).  
30 Appellant notes that the resort is located approximately two miles from the proposed  
31 intakes. According to the Final EIR Chapter 24, Noise and Vibration, the noise study  
32 area included a two-mile radius around the planned above-ground construction sites  
33 and new infrastructure, placing Steamboat Slough outside of the zone of anticipated  
34 impact ([DCP.D1.1.00188](#), pp. 3, 5).

35 Although it does not appear that conflicts with the Steamboat Resort were  
36 specifically considered in the Certification, it is located outside the range for the DCP’s  
37 noise impact analysis study area. The Department also provides MMs to address  
38 impacts of noise from the DCP ([DCP.AA1.2.00001](#), p.13). Appellant does not address  
39 the evidence provided by the Department. For these reasons, the Council finds that  
40 Steamboat Resort failed to meet its burden, and that there is substantial evidence in the  
41 record to support the Department’s finding that the DCP is consistent with DP P2 on this  
42 issue.

1 (c) Impacts of hydrological conditions on existing  
2 recreational activities

3 Steamboat Resort asserts that several factors will negatively affect the  
4 hydrological conditions essential for its recreational activities. These include:  
5 construction noise disrupting the resort's quiet environment; construction vessel traffic  
6 posing navigation and safety hazards for small recreational boats; in-water and near-  
7 water construction altering wake, turbidity, and water clarity; and potential water-level  
8 changes hindering navigability, especially during "low-tide access challenges"  
9 (Steamboat Resort, Appeal, p.3). Appellant specifies that boating, water skiing,  
10 wakeboarding, and paddling are the types of water recreation that may be impacted.  
11 Final EIR Chapters 20 and 24 are cited in support of these concerns ([DCP.D1.1.00168](#),  
12 pp. 52–62; [DCP.D1.1.00188](#), pp. 1–17).

13 The record shows that 42 to 94 barge trips per intake are planned for material  
14 transport and geotechnical activities, with no more than two upstream and two  
15 downstream trips daily. Work at each intake will be staggered by at least one year  
16 ([DCP.D1.1.00104](#), p. 55). Final EIR Chapter 20, Transportation, states that vessel  
17 passage will not be blocked, river flow changes will not restrict access, and construction  
18 barge traffic will be prohibited on weekends ([DCP.D1.1.00168](#), pp. 2, 29). The  
19 Department finds the impact on marine transport to be minor due to the limited use of  
20 barges and other vessels for construction ([DCP.D1.1.00168](#), p. 65). Final EIR Chapter  
21 17, *Socioeconomics*, includes a table listing recreational resources that may face  
22 disruptions or reduced quality during construction; while some recreational sites offering  
23 boating, angling, and other day-use activities could be affected, Steamboat Resort is not  
24 included ([DCP.D1.1.00154](#), p. 72).

25 The Department has clearly defined the number of daily barge trips, confirmed  
26 that those trips will not take place on weekends when recreational use is highest, and  
27 ensured that river flows will be maintained for continued access. The impact on marine  
28 transport is anticipated to be minor ([DCP.D1.1.00104](#), p. 55; [DCP.D1.1.00168](#), pp. 2,  
29 29, 65). For these reasons, the Council finds that Steamboat Resort failed to meet its  
30 burden, and that there is substantial evidence in the record to support the Department's  
31 finding that the DCP is consistent with DP P2 on this issue.

32 (d) Enforceable mitigation or restrictions on  
33 construction methods

34 Steamboat Resort asserts that "no enforceable mitigation or restrictions on  
35 construction methods, including barge use, are included, even though construction  
36 methods cannot be controlled through bid documents at this stage of project approval"  
37 (Steamboat Resort, Appeal, p. 3).

38 The Certification identifies MM AQUA-1b: *Develop and Implement a Barge*  
39 *Operations Plan* ([DCP.AA1.2.00001](#), p. 160). This measure requires any construction  
40 contractor proposing to use barges to develop a detailed barge operations plan  
41 ([DCP.D1.1.00104](#), p. 66). The plan would be part of a comprehensive traffic control  
42 strategy with the U.S. Coast Guard for major channels. Barge operation plans must

1 address potential issues such as bank erosion, loss of aquatic vegetation from  
2 excessive wake, sediment disturbance affecting turbidity, hazardous spills, and material  
3 spillage ([DCP.D1.1.00104](#), p. 66). Barge operators are required to operate vessels  
4 safely to avoid significant impacts on Delta aquatic resources, report any disturbance or  
5 damage to a project biological monitor, and comply with all other relevant plans  
6 ([DCP.D1.1.00104](#), p. 67).

7 The Certification includes a binding MM that requires construction contractors  
8 using barges to prepare a barge operations plan ([DCP.D1.1.00104](#), p. 66). Appellant  
9 does not address the evidence in the record. For these reasons, the Council finds that  
10 Steamboat Resort failed to meet its burden, and that there is substantial evidence in the  
11 record to support the Department’s finding that the DCP is consistent with DP P2 on this  
12 issue.

13 **(e) Conclusion**

14 As described above, the Council finds that Appellants County of Sacramento, the  
15 Commission, City of Stockton, SDWA, and Steamboat Resort failed to meet their  
16 burden, and that there is substantial evidence in the record to support the Department’s  
17 finding that the DCP is consistent with DP P2 on issues related to conflicts with existing  
18 recreational activities, conflicts with existing Steamboat Resort recreational land use,  
19 impacts of hydrological conditions on existing recreational activities, or enforceable  
20 mitigations on construction methods.

21 **xii. Conflicts with agricultural land uses**

22 Appellants Commission, Pear Fair, County of Sacramento, Sac Sewer, City of  
23 Stockton, and San Joaquin County claim that the DCP will result in various land use  
24 conflicts involving the permanent conversion of agricultural lands. These include  
25 both general conversion and loss of farmland (Pear Fair, County of Sacramento) and  
26 temporary and permanent loss of farmland near the intakes, at the TCC, on Roberts  
27 Island, and at the Bethany Complex (County of Sacramento, Sac Sewer, City of  
28 Stockton, San Joaquin County).

29 **(a) Appellants’ claims**

30 Appellant Pear Fair contends that “agricultural operations that surround  
31 Courtland will be adversely affected, through land conversion, reduced productivity, or  
32 degraded operating conditions, undermining their economic viability,” which could  
33 impact Fair sponsorships and continued operations ([Pear Fair Appeal](#), p. 5). In their  
34 written submittal, Courtland provides additional evidence to support this claim, including  
35 Final EIR Chapter 14 ([DCP.D1.1.00126](#), pp. 1–4), which states that the DCP will affect  
36 up to approximately 4,753 acres, permanently convert agricultural land to conveyance

1 and mitigation uses, and result in the removal of approximately 61 to 93 structures  
2 located in rural agricultural areas ([DCP.D1.1.00126](#), p. 2).<sup>64</sup>

3 Appellant County of Sacramento argues that the DCP will result in “permanent or  
4 temporary loss of farmland, degradation of water quality, disruption of transportation  
5 systems, and indirect economic consequences; the cumulative toll on Delta agriculture  
6 would be profound and long-lasting” ([DCP.V2.5.00028](#); [County of Sacramento, Appeal](#),  
7 p. 43). Appellant further states that the loss of Important Farmland conflicts with the  
8 County’s General Plan. In its combined written submittal, County of Sacramento  
9 contends that the intake facilities conflict with existing agricultural uses,  
10 meaning temporary and permanent loss of designated Important Farmland, and that  
11 it will significantly affect local farmers’ use of roadways to operate farms. Appellant  
12 contends that the Department references MM AG-1 to reduce these conflicts but claims  
13 it is insufficient. Appellant points to water rights hearing testimony from the McManis  
14 Family Vineyard Vice President, Dirk Huevel that fragmenting agriculture parcels will  
15 result in zero access and zero irrigation water, effectively making the remaining  
16 agriculture parcels non-viable ([DCP.V2.35.00001](#)).

17 The Commission contends that the 13-year acreage impact from land  
18 conversions at the TCC and on Lower Roberts Island will likely result in permanent  
19 impacts to agricultural land. The Commission notes that the Department characterizes  
20 these impacts as “temporary,” with reclamation expected to take approximately one  
21 year following tunneling work ([DCP.D1.1.00010](#), pp. 3-132–3-133). The Commission  
22 argues the extent of disturbances makes permanent impacts more probable.  
23 Furthermore, the Commission asserts in its written submittal that “the DCP does not  
24 include enforceable measures to limit the long-term footprint of roads, ramps, staging  
25 areas, and other infrastructure that fragment agricultural landscapes and erode Delta as  
26 Place values over time, despite acknowledging significant and unavoidable agricultural  
27 impacts” ([Commission, Writ. Sub.](#), p.11; [DCP.D1.1.00133](#), pp. 42-48).

28 San Joaquin County notes that the DCP will have significant and unavoidable  
29 impacts on agriculture. Its appeal claims these impacts will include the permanent and  
30 temporary conversion of 3,800 acres of Prime Farmland and other Important Farmland  
31 categories, as well as 1,200 acres of land under Williamson Act contracts. According to  
32 these Appellants, the CMP would also result in the loss of 1,175 acres of Important  
33 Farmland on Bouldin Island ([DCP.D1.1.00142](#)).

34 **(b) Department’s response to claims**

35 The Department’s Certification states that land use conflicts were avoided when  
36 possible, but that due to the nature of the project, not all conflicts could be eliminated  
37 ([DCP.AA1.2.00001](#), p.177). The Certification further identifies two MMs to reduce siting  
38 conflicts with agricultural lands. The first is MM AG-1: *Preserve Agricultural Land*, which  
39 requires that Important Farmland be mitigated at an acreage ratio of 1:1, with

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<sup>64</sup> Note that the acreage cited by Appellant is the highest affected acreage under Alternative 2a; the range across alternatives is 2,667 to 4,753 acres, and all alternatives were determined to be less than significant in the table cited ([DCP.D1.1.00126](#) pp. 1–2).

1 replacement land matching or exceeding the quality of what was permanently lost (e.g.,  
2 Prime Farmland replaces Prime Farmland) ([DCP.AA1.2.00001](#), p. 42). The second is  
3 MM AG-3: Replacement or Relocation of Affected Infrastructure Supporting Agricultural  
4 Properties, which requires the DCP to be modified as much as feasible to avoid impacts  
5 to irrigation or drainage infrastructure servicing farmland outside the construction area  
6 ([DCP.AA1.2.00018](#), p. 43). The record indicates that infrastructure sizing was based on  
7 design and engineering constraints, and facility locations were limited due to  
8 environmental resource concerns. Nonetheless, impacts to agriculture were minimized  
9 when possible ([DCP.D1.1.00135](#), p. 8). For example, the elimination of the intermediate  
10 forebay (proposed in some project alternatives, but not the Bethany Alignment) avoided  
11 the loss of approximately 200 acres of land ([DCP.D1.1.00135](#), p. 8). Another example  
12 considered is the reduction in the number of tunnel shafts and launch shaft sites for the  
13 DCP ([DCP.D1.1.00135](#), p. 9). The record also supports that for areas without  
14 permanent infrastructure, but where permanent impacts may occur (e.g., temporary  
15 concrete slabs compacting peat soils), agronomic methods will be employed to  
16 minimize effects and restore the agricultural potential of disturbed farmland  
17 ([DCP.D1.1.00133](#), p. 26).

18 **(c) Conclusion**

19 The record supports the Department’s finding in the Certification that the  
20 Department avoided conflicts with existing land uses where feasible. When land use  
21 conflicts cannot be avoided, the Department applies mitigation measures MM AG-1, MM  
22 AG-2, and MM AG-3 described above. For these reasons, the Council finds that the  
23 Commission, Pear Fair, County of Sacramento, Sac Sewer, City of Stockton, and San  
24 Joaquin County have failed to meet their burden, and that there is substantial evidence  
25 in the record to support the Department’s finding that the DCP is consistent with DP P2  
26 on the issue of conflicts with agricultural use.

27 **xiii. Traffic, transportation, and Reuseable Tunnel Material**  
28 **conflicts**

29 The Commission, Pear Fair, County of Sacramento, Steamboat Resort, City of  
30 Stockton, and San Joaquin County all raise concerns about adverse effects of the DCP  
31 on local traffic and transportation systems and concerns regarding conflicts associated  
32 with treatment and stockpiling of RTM.

33 **(a) Traffic and transportation conflicts**

34 Pear Fair argues that construction activities will disrupt traffic patterns during its  
35 annual event and asserts that these impacts were not evaluated in the Department’s DP  
36 P2 analysis of existing land uses ([Pear Fair, Appeal](#), p. 5). Pear Fair also claims the  
37 DCP will significantly affect SR-160 and River Road, potentially compromising access to  
38 the Fair, and notes that the event was overlooked as an existing land use in the DP P2  
39 analysis ([Pear Fair, Writ. Sub.](#), p. 2). Additionally, Pear Fair contends that SR-160—  
40 Courtland’s principal access route—will be physically rerouted and permanently  
41 realigned, which could impact community access, agriculture, tourism, and cultural  
42 events throughout the 13-year construction period ([Pear Fair, Writ. Sub.](#), p. 2). Pear

1 Fair’s written submittal stresses the significant impacts on SR-160 and River Road, and  
2 the permanent realignment of SR-160, asserting that the Department did not consider  
3 the ramifications of rerouting this main access route over the long construction period  
4 for community access, agriculture, tourism, or cultural events (Pear Fair, Writ. Sub., p.  
5 2).

6 County of Sacramento states that road closures and construction activities could  
7 reduce visitor numbers to local wineries ([DCP.V2.20.00003](#), p. 51) and threaten  
8 business continuity for establishments like the Willow Ballroom ([DCP.V2.20.00003](#), p.  
9 46). The County further claims that construction-related noise, dust, and traffic at the  
10 TCC would negatively affect the Cosumnes River Preserve. Appellant argues that  
11 construction delays and road deterioration could hinder farming operations and restrict  
12 irrigation access, potentially rendering some agricultural parcels unusable (water rights  
13 hearing testimony of Dirk Huevel, [DCP.V2.35.00001](#)). Appellant also argues that traffic  
14 could prevent farmers from delivering seasonal produce—specifically California Bartlett  
15 Pears—on time, with detours and delays causing fruit bruising and crop loss ([Combined](#)  
16 [Writ. Sub.](#), pp. 43-44).

17 The Commission asserts that the DCP conflicts with DP P2 by worsening traffic  
18 congestion on roads that are already heavily traveled (Commission Appeal, p. 1). The  
19 Commission also points to the permanent rerouting of Scenic Highway SR-160 in  
20 Hoodin regard to the disruption to businesses and restricted access for both tourists and  
21 residents (Commission Appeal Attachment B, p. 1). The City of Stockton argues that the  
22 Department did not adequately select the project site to mitigate or prevent air quality  
23 conflicts. Appellant claims that increased use of heavy equipment, dredging, demolition,  
24 land clearing, and increased traffic—on both paved and unpaved surfaces—will result in  
25 elevated air pollution and dust emissions ([DCP.V3.3.00020](#), p. 46). Appellant argues  
26 that, even with mitigation, these impacts remain substantial and potentially understated,  
27 posing health risks to residents in both private and public spaces ([DCP.V3.3.00020](#), pp.  
28 45-48; [DCP.AA1.2.00018](#), pp. 7-26). City of Stockton further states that operations at  
29 Lower Roberts Island will degrade air quality in Stockton and nearby areas as a result of  
30 increased emissions and dust ([City of Stockton, Appeal](#), p. 34; citing [DCP.V3.3.00020](#),  
31 p. 46; [DCP.AA1.2.00018](#), pp. 7-26). Steamboat Resort contends that construction  
32 vessel traffic will interfere with waterway navigation and compromise safety for smaller  
33 recreational boats, arguing that the DCP is incompatible with DP P2 due to its  
34 detrimental effects on established recreational activities ([Steamboat Appeal](#), p. 3).

35 In its Certification, the Department clarifies that although the Final EIR analyzes  
36 traffic and transportation, these resources are not existing land uses by themselves;  
37 instead, conflicts with them may impact physical land uses ([DCP.AA1.2.00018](#), p. 54).  
38 The Department responds that, to minimize traffic on local Delta roadways and  
39 especially SR-160, and to reduce the footprint of material storage areas at intake sites,  
40 dedicated construction support facilities (such as off-site concrete batch plants) will be  
41 included in the DCP ([DCP.AA1.2.00018](#), p. 23). Contractors will develop site-specific  
42 plans to minimize disturbances, like noise and traffic, and may limit or reroute truck  
43 hauling during events, creating traffic management strategies tailored to local festivals  
44 ([DCP.AA1.2.00018](#), p. 35). The Department has also adopted MMs—including a

1 Transportation Demand Management Plan and a Transportation Management Plan—to  
2 support transportation in Delta communities and reduce conflicts with existing land uses  
3 due to changing traffic volumes ([DCP.AA1.2.00018](#), pp. 64, 39-40).

4 In response to concerns about the deterioration of Delta pavement, the  
5 Department states it will conduct pre-construction pavement analysis and improve  
6 access roads as needed, then remediate them after project completion  
7 ([DCP.AA1.2.00018](#), pp. 64-65). Regarding intake locations, the Department notes that  
8 these were comprehensively analyzed and alternatives did not meet project objectives  
9 or reduce environmental impacts, so further evaluation was not pursued in the EIR  
10 ([DCP.AA1.2.00018](#), p. 74). The Department mentions that construction of the north  
11 Delta intakes could have temporary effects on tourism due to localized traffic, but  
12 construction is scheduled to avoid weekends, when most tourism occurs  
13 ([DCP.AA1.2.00018](#), p. 95). Additionally, intake locations on the west side of the  
14 Sacramento River were excluded because of limited transportation options and higher  
15 potential for disruption ([DCP.AA1.2.00018](#), p. 15). The Certification’s DP P2 Attachment  
16 1 includes EC-18, which requires contractors to coordinate with the Ombudsman to  
17 identify Delta community events that may be disrupted by construction  
18 ([DCP.AA1.2.00018](#), pp. 35). The Ombudsman is tasked with working alongside  
19 contractors to develop specific plans to avoid disturbance from traffic and noise where  
20 feasible ([DCP.AA1.2.00018](#), pp. 35).

21 Considering the binding MMs and ECs described above, the record supports the  
22 Department’s conclusion that it has reduced traffic and transportation conflicts where  
23 feasible. The Council finds that Pear Fair, County of Sacramento, and the Commission  
24 have failed to meet their burden, and that substantial evidence supports the  
25 Department’s conclusion that the DCP is consistent with DP P2 as to traffic and  
26 transportation conflicts.

27 **(b) Reusable Tunnel Material conflicts**

28 The Commission claims that there has been no proof of avoidance or reduction  
29 of conflicts tied to the TCC, Lower Roberts Island, and Bethany Complex, specifically  
30 regarding RTM drying and long-term storage (Commission, Appeal, Attachment B, p. 5).  
31 The DCP is set to use around 403 acres of Important Farmland for RTM drying and  
32 stockpiling ([Commission, Attachment B](#), p. 6; [DCP.D1.1.00133](#), p. 15-35). The Final EIR  
33 evaluation acknowledges that, at many locations, it is not practicable to avoid Important  
34 Farmland ([Commission, Attachment B](#), p. 6). Comments from the Commission question  
35 whether much of the material described as “reusable” will in fact be permanently  
36 stockpiled ([DCP.AA1.2.00019](#), p. 57) and whether it can actually be reused for levee  
37 construction ([DCP.AA1.2.00019](#), p. 57).

38 The County of Sacramento supports the argument that moving RTM storage to  
39 the Twin Cities Complex will not lessen intake construction impacts on Hood and the  
40 surrounding area ([DCP.D2.3.00061](#), p. 59). Written submittals from several Appellants  
41 discuss RTM impacts near the CRP. San Joaquin County argues that RTM is effectively  
42 not reusable and would create a lasting blight, interrupting agricultural and recreational  
43 land uses. San Joaquin County further notes that tunnel construction would generate

1 14.4 million cubic yards of permanently stockpiled RTM, with piles up to 15 feet high  
2 covering 214–225 acres ([San Joaquin County, Appeal](#), p. 9 citing [DCP.D1.1.00001](#), p.  
3 3-118; [DCP.D4.1.00097](#), pp. 23, 27).

4 The Department concedes some RTM stockpiles will be permanent but does not  
5 offer a solution for long-term land-use conflicts ([San Joaquin County, Appeal](#), p. 10,  
6 citing [DCP.AA1.2.00001](#), p. 156). Final EIR Chapter 3 outlines land reclamation  
7 possibilities for RTM ([DCP.D1.1.00010](#), pp. 3-58 – 3-59), such as transferring disturbed  
8 land to parties for agricultural or habitat use and planting native grasses on permanent  
9 stockpiles.

10 Appellants further dispute the Department's claim that RTM could be used by  
11 reclamation districts, citing levee expert CPOD water rights hearing testimony that such  
12 material is likely not reusable due to distance and other factors ([DCP.V2.22.00001](#), p.  
13 6). The Department responds to these concerns by referencing Final EIR chapters  
14 where RTM is discussed at length ([DCP.AA1.2.00018](#), p. 57), and notes that stockpiles  
15 were sited to minimize impacts on existing land uses, as required by DP P2. RTM is first  
16 mentioned in site selection criteria for tunnel shafts, and shaft sites without public road  
17 access were ruled out partly due to RTM transport needs ([DCP.AA1.2.00018](#), p. 18).  
18 RTM is referenced in comments from various agencies throughout the Draft EIR  
19 ([DCP.AA1.2.00018](#), pp. 57, 61, 66, 81-82, 85). The Department maintains that, where  
20 land use conflicts cannot be fully avoided, DP P2 requires actions to reduce conflicts as  
21 much as feasible, supported by substantial evidence in the record ([Department, Writ.](#)  
22 [Sub.](#), p. 61; [DCP.AA2.1.00096](#), p. 36).

23 In the Department's written submission, the Department alleges that San Joaquin  
24 County fails to "confront all the substantial evidence that DWR reduced conflicts with  
25 recreational uses when siting RTM stockpiles." ([Department, Writ. Sub.](#), p. 74). The  
26 Department points to a summary of the substantial evidence that the RTM stockpiles  
27 were sited to reduce conflicts with existing land uses provided in ([Department, Writ.](#)  
28 [Sub.](#), p. 60). This section addresses the comments that the Commission made  
29 regarding the RTM and their permanent impact ([Department, Writ. Sub.](#), p. 60). The  
30 Department further states they will reuse the RTM "to the extent possible" ([Department,](#)  
31 [Writ. Sub.](#), p. 61; [DCP.D1.1.00010](#), p. 3-32). The Department's response also  
32 addresses Appellant arguments on transportation of RTM being unfeasible for traffic  
33 and air quality concerns ([Department, Writ. Sub.](#), p. 61; [DCP.D4.1.00023](#), pp. 31-32) as  
34 well as discussion of agricultural land being used for RTM stockpiles ([Department, Writ.](#)  
35 [Sub.](#), p. 27-29). The Department further cites the Council decision from 2022 on  
36 Certification C202110 ([DCP.AA2.1.00096](#), p. 36) stating that when land use conflicts  
37 exist and a certifying agency determines based on substantial evidence in the record  
38 that the "conflicts cannot be avoided altogether, DP P2 requires that a covered action  
39 be sited to reduce conflict with existing land uses when feasible" ([Department, Writ.](#)  
40 [Sub.](#), p. 61).

41 Based on these record citations, the record supports the Department's  
42 conclusion that it will reduced traffic and transportation conflicts where feasible and  
43 Appellants fail to confront all of the Department's evidence. Thus, the Council finds that  
44 San Joaquin County, County of Sacramento, and the Commission have failed to meet

1 their burden, and that substantial evidence supports the Department’s conclusion that  
2 the DCP is consistent with DP P2 as to RTM conflicts.

3 **(c) Conclusion**

4 The record supports the Department’s findings that the Department avoided  
5 conflicts with existing land uses where feasible. The Council finds that the Commission,  
6 Pear Fair, County of Sacramento, Steamboat Resort, City of Stockton, and San Joaquin  
7 County have failed to meet their burden, and that there is substantial evidence in the  
8 record to support the Department’s finding that the DCP is consistent with DP P2 on the  
9 issue of land use conflicts associated with DCP transportation and RTM impacts.

10 **xiv. Tribal consultation**

11 Appellants SF Baykeeper and San Joaquin County claim that the Department  
12 failed to meaningfully consult with tribes, suggesting that the extent of consultation was  
13 insufficient and that the consultation that was conducted was not meaningful, and cite to  
14 the following record evidence ([DCP.V2.14.00038](#) [Winnemem Wintu comments on Draft  
15 EIR], [DCP.V2.14.00033](#) [Gary Mulcahy water rights hearing testimony],  
16 [DCP.V2.14.00056](#) [Dr. Sarmento water rights hearing testimony], and  
17 [DCP.V2.14.00081](#) [Dr. Diver water rights hearing testimony]).

18 San Joaquin County argues that no meaningful changes were made based on  
19 those consultations: “The Final EIR states only that some access road locations were  
20 adjusted to avoid archaeological sites ([DCP.D1.1.00205](#); [San Joaquin County, Writ.  
21 Sub.](#), p. 13). SF Baykeeper claims the Department failed to ensure that affected tribes  
22 concur with the analysis of impacts ([SF Baykeeper, Appeal](#), p. 13.). SF Baykeeper also  
23 cites Draft EIR comments from the Council related to tribal consultation  
24 ([DCP.D1.1.00241](#), Comment No. 507).

25 The Department provides evidence that it conducted tribal consultation and  
26 engagement in the Certification ([DCP.AA1.2.00001](#), pp. 27-29; [DCP.D1.1.00205](#);  
27 [DCP.D1.1.00206](#)). Specifically, the Department “conducted government-to-government  
28 consultation with tribes under two different processes: Public Resources Code section  
29 21080.3.1 and the Department’s Tribal Engagement Policy, as described in the Final  
30 EIR” ([DCP.AA1.1.00018](#), p. 27).<sup>65</sup>

31 Regarding whether the consultation was “meaningful,” the Department suggests  
32 that meaningful consultation is dependent on whether it made a good faith effort to

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<sup>65</sup> The Department has engaged in continuous, multiyear consultation during the development of the EIR, reaching out to “121 Tribes in total with invitations to consult on the Delta Conveyance Project and received responses from 13 Tribes requesting consultation on the project...” some of these included sustained engagement ([DCP.AA1.2.00001](#), p. 27; [DCP.D1.1.00206](#)). Consultation meetings included video conferencing, in-person meetings, and site-visits. As of January 2020, the Department “conducted over 150 formal government-to-government Tribal consultation meetings with interested California Tribes affiliated with the Delta and the Delta Conveyance Project’s area as well as several informational meetings to provide Tribal representatives with general updates about the project (see Final EIR Volume 1, Appendix 32A, Tribal Consultation and Engagement Log)” ([DCP.AA1.2.00018](#), p. 27).

1 identify tribal cultural resources, which is discussed in “Principles for the Identification of  
2 Tribal Cultural Resources for the Proposed Delta Conveyance Project”  
3 ([DCP.D1.1.00209](#), pp. 3-4). The Department states that it “will take into consideration  
4 the Tribal perspectives shared through consultation, which has not been a perspective  
5 traditionally taken for archaeological or historical architectural resources, when applying  
6 the California Register eligibility criteria” ([DCP.D1.1.00209](#), p. 3).

7 While concerns regarding the adequacy of tribal consultation are important to the  
8 Council, these matters do not fall within the scope of appealable issues under DP P2  
9 because they do not pertain directly to existing or planned land uses. As such, the  
10 Council finds that SF Baykeeper and San Joaquin County have failed to raise an  
11 appealable issue with respect to tribal consultation under DP P2.

12 **xv. Tribal cultural resources and uses**

13 Appellants SF Baykeeper and San Joaquin County argue that tribal cultural uses  
14 are existing land uses and the Department inadequately addressed siting impacts to  
15 tribal cultural resources and the Delta TCL. SF Baykeeper describes impacts to tribal  
16 cultural resources from the DCP and argue that tribal cultural use is an existing use  
17 under DP P2 that is inadequately assessed in the Certification ([SF Baykeeper, Appeal](#),  
18 p.13.). They also claim that the Department is familiar with the “significant and  
19 unavoidable impacts on tribal cultural resources and the TCL” the DCP will cause (see  
20 [DCP.C.1.00001](#), p. 8-2) and the Department “does not address the evidence before it  
21 that construction and operation of the DCP will cause irreparable harm to specific tribal  
22 cultural resources and the Delta as a [TCL]” ([SF Baykeeper, Appeal](#), p.13). The Council  
23 notes that no specific tribal cultural uses or character-defining features of the TCL are  
24 named, identified, or described in the SF Baykeeper appeal.

25 San Joaquin County argues that the Department’s discussion surrounding TCL  
26 resources is minimal. The Appellant claims that “the analysis of consistency with DP P2  
27 in the Certification itself is devoid of any specific analysis showing that [the Department]  
28 considered siting the Delta Tunnel to avoid impacts on the TCL” (San Joaquin County,  
29 Appeal, p.4). The Appellant argues that the only avoided impacts on tribal resources  
30 through siting were “that some access road locations were adjusted to avoid  
31 archaeological sites” ([DCP.D1.1.00205](#), pp. 32-46). The Appellant goes on to claim that  
32 the Department describes only “minor changes” to divert the DCP from impacting the  
33 TCL (San Joaquin County, Appeal, p. 4, citing [DCP.AA1.2.00018](#), p. 28).

34 In the Certification, the Department describes how it took steps to reduce siting  
35 conflicts by meaningful tribal consultation and engagement ([DCP.AA1.2.00018](#), pp. 27-  
36 29). Specifically, the Department “conducted government-to-government consultation  
37 with tribes under two different processes: Public Resources Code section 21080.3.1  
38 and [the Department’s] Tribal Engagement Policy, as described in Final EIR”  
39 ([DCP.AA1.2.00018](#), p. 27). The Department noted that these consultations “factored  
40 into [the Department’s] finding that the Delta TCL meets the criteria for listing in the  
41 CRHR, and thus qualifies as a Tribal cultural resource under CEQA”  
42 ([DCP.AA1.2.00018](#), p. 28). Though consultation has ended, the Department is  
43 continuing to coordinate with tribes through its Tribal Engagement Policy ([Department,](#)

1 [Writ. Sub.](#), p. 73). In its written submittal, the Department describes two documents  
2 developed through tribal coordination: the Tribal Cultural Resources Management Plan  
3 Part 1: Avoidance Phase ([DCP.X2.1.00017](#)) and the Heritage Resources Management  
4 Plan, which were developed in accordance with MM TCR-20 1b: Plans for the  
5 Management of Tribal Cultural Resources ([DCP.AA2.7.00001](#); [Department, Writ. Sub.](#),  
6 p. 73).

7 The Department also refers to MM TCR-1a to describe how the Department will  
8 construct the DCP in a way that avoids physically disturbing character-defining features  
9 of the Delta TCL ([DCP.AA1.2.00018](#), p. 28). Specifically, TCR-1a “requires  
10 preconstruction identification and avoidance of archaeological resources of tribal  
11 significance, if feasible. The measure requires [the Department] coordinate with  
12 affiliated tribes to inform project design refinements to avoid or minimize, whenever  
13 feasible, physical disturbances to character-defining features of the Delta Tribal Cultural  
14 Landscape, including Native American archaeological resources” ([DCP.AA1.2.00020](#), p.  
15 36). The Department will “conduct site-specific surveys, in coordination with affiliated  
16 Tribes” where “Native American archaeological resources, ceremonial sites, or other  
17 character-defining features have been identified” and based on the results of those  
18 surveys, design or redesign facilities to avoid resources ([DCP.D1.1.00205](#), p. 46).

19 The Department acknowledges efforts have already been made in planning to  
20 identify locations where construction could damage known ethnohistorical or  
21 archaeological locations and implementation of MM TCR-1a will further avoid impacts  
22 through design adjustments ([DCP.AA1.2.00018](#), p. 28).<sup>66</sup> *As an example*, the  
23 Department notes that “access roads related to one or more of the north Delta intakes  
24 are in proximity to known mound sites” and it relocated the roads to a safer distance  
25 ([DCP.AA1.2.00018](#), pp. 28-29). As another example, “based on previous mapping and  
26 consultation with the tribes regarding potential protective buffers, the engineering design  
27 team developed options for feasible avoidance near Intake B that both [the Department]  
28 and consulting tribes agreed would likely avoid impacts” to a character-defining feature  
29 of the Delta TCL ([DCP.AA1.2.00018](#), p.29). Tribal cultural resources identified thus far  
30 are confidential records, so it is not possible to evaluate specifically how DCP siting  
31 avoided or reduced impacts to character-defining features of the Delta TCL beyond the  
32 examples provided ([DCP1.1.00208](#)).

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<sup>66</sup> Regarding the Delta TCL, the Department states: “to avoid impacts through adjusting the design, [the Department] will field-verify the extent of the resource relative to the project’s activity and determine avoidance options” ([DCP.AA1.2.00018](#), p.29). Furthermore, the Department concluded based on Tribal consultation and input from the engineering design team, that “avoidance at certain locations of known archaeological resources is feasible through collaboration with Tribes during the Delta Conveyance Project’s design phase” ([DCP.AA1.2.00018](#), p.29). The Department invited each Tribe to provide information about resources of concern, including location and significance, and members of the project design team met with Tribal representatives to discuss options for adjusting the design to avoid or reduce impacts to these resources, as feasible ([DCP.D1.1.00205](#), p. 32-12) ([Department, Writ. Sub.](#), p. 73).

1 In addition, the Department provides evidence that it will take measures to  
2 reduce conflicts with Tribal Cultural Practices ([DCP.AA1.2.00019](#), p. 36). Evidence  
3 includes implementation of the following DCP Final EIR MMs:

- 4 • MM TCR-1b: Plans for the Management of Tribal Cultural Resources  
5 ([DCP.D1.1.00205](#), pp. 32-46– 32-48)
- 6 • MM TCR-1c: Implement Measures to Restore and Enhance the Physical,  
7 Spiritual, and Ceremonial Qualities of Affected Tribal Cultural Resources  
8 ([DCP.D1.1.00205](#), pp. 32-48– 32-49)
- 9 • MM TCR-1d: Incorporate Tribal Knowledge into Compensatory Mitigation  
10 Planning (Restoration) ([DCP.D1.1.00205](#), pp. 32-49–32-50)

11 The Department’s written submittal (pp. 72-74) asserts “it is not possible to site  
12 the tunnel, intakes, and other major features to avoid all impacts on Tribal cultural  
13 resources and the Delta TCL” ([Department, Writ. Sub.](#), p. 72). However, the Department  
14 asserts it made all efforts to reduce and avoid conflicts as discussed in “Efforts to  
15 Reduce or Address Siting Conflicts Through Tribal Consultation and Engagement”  
16 ([DCP.AA1.2.00018](#)). Additional evidence cited in the written submittal includes: the  
17 Department’s Tribal Engagement Policy ([DCP.D3.1.04830](#)); Tribal Cultural Resources  
18 Management Plan Part 1: Avoidance Phase ([DCP.X2.1.00017](#)); Plans for the  
19 Management of Tribal Cultural Resources ([DCP.AA2.7.00001](#)); and identified Tribal  
20 Cultural Resources ([DCP.D1.1.00205](#), p. 32-9), among other documents.

21 While the tribal cultural resources identified to date remain confidential, limiting  
22 the ability to fully assess the Department’s avoidance or reduction of conflicts with  
23 specific resources or character-defining features of the Delta TCL, the available record  
24 demonstrates that the Department has made meaningful efforts to collaborate with  
25 tribes and take steps to identify, avoid, and minimize siting impacts to tribal cultural  
26 resources wherever feasible. For these reasons, the Council finds that SF Baykeeper  
27 and San Joaquin County failed to meet their burden, and that there is substantial  
28 evidence in the record to support the Department’s finding that the DCP is consistent  
29 with DP P2 regarding conflicts with tribal cultural resources and uses.

30 **xvi. Community Benefits Agreements and Community**  
31 **Benefits Program**

32 Appellants Pear Fair, SF Baykeeper, and San Joaquin County contend that  
33 relying on the CBAs and CBP to demonstrate conflict avoidance is insufficient to  
34 demonstrate consistency with DP P2.

35 The Pear Fair appeal contends that the CBP fails to effectively minimize conflicts,  
36 citing that: “the same Detailed Findings outline and depend on a [CBP] and CBAs,  
37 including those related to Courtland, yet none directly identify or safeguard the  
38 Courtland Pear Fair.” Additionally, Appellant notes, “Table 4-1 lists draft CBAs for the  
39 Courtland Fire Protection District (replacement fire station) and the Courtland Town  
40 Association (funding plus an endowment for ... operations) but does not include a CBA  
41 for the Pear Fair or any comparable cultural entity.” The appeal refers to Table 4-1,

1 which is the Draft CBA table included in the Department’s Certification  
2 ([DCP.AA1.2.00001](#), pp. 18-19).

3 SF Baykeeper argues that the Department’s reliance on the CBP fails to address  
4 or mitigate harms to environmental justice communities, calling the CBP “an incomplete  
5 and illusory promise” ([SF Baykeeper, Appeal](#), pp. 12-13). Their written submission  
6 asserts that the CBP and related MMs do not adequately compensate for impacts on  
7 environmental justice communities, tribal and cultural resources, CHABs, and recreation  
8 ([SF Baykeeper, Writ. Sub.](#), pp. 8-10). SF Baykeeper also contends that projected short-  
9 term economic benefits from non-agricultural jobs are speculative and insufficient to  
10 offset potential negative effects on the Delta economy ([SF Baykeeper, Writ. Sub.](#), p.  
11 10).

12 San Joaquin County argues that the CBP is based on unexecuted, non-binding  
13 agreements that do not demonstrate enforceable consistency with DP P2 (San Joaquin  
14 County, Appeal Form, p. 17). Appellant cites the Certification’s DP P2 Attachment 1,  
15 which shows draft agreements with community entities, but contend these are  
16 contingent. Its written submittal estimates CBP commitments at \$89 million, while the  
17 Department caps the fund at \$200 million ([San Joaquin County, Writ. Sub.](#), p.14).  
18 Appellant notes that most tentative CBP recipients are located outside the Delta and  
19 asserts the CBP lacks a clear analytical link to DP P2 impacts ([San Joaquin County,](#)  
20 [Writ. Sub.](#), pp. 14, 16-17).

21 The Department’s written submittal acknowledges that Table 4-1 does not  
22 include a CBA specifically for the Pear Fair but notes the \$200 million CBP fund  
23 supports many projects and invites local groups to pursue CBAs with the Department  
24 ([Department, Writ. Sub.](#), p. 81). The Department states that the CBP aims to provide  
25 tangible, lasting benefits to communities most affected by construction ([Department,](#)  
26 [Writ. Sub.](#), p. 63; citing [DCP.D6.3.00074](#)), and is one of several strategies to minimize  
27 land use conflicts, not the sole approach. The Department cites evidence describing  
28 efforts to avoid or reduce those conflicts when possible ([DCP.AA1.2.00018](#), p. 33;  
29 [DCP.AA1.2.00001](#), pp. 165–166).

30 The Department clarifies that draft agreement commitments are about \$42  
31 million, not \$89 million ([Department, Writ. Sub.](#), p. 69). The draft agreements reached to  
32 date cover different Delta regions and the CBP will feature grants, economic  
33 development, and community-specific agreements, focused on delivering measurable  
34 benefits to those most impacted ([Department, Writ. Sub.](#), p. 69; citing  
35 [DCP.AA2.1.00007](#) – [DCP.AA2.1.00014](#); [DCP.AA2.1.00106](#); [DCP.D6.4.00001](#), p. 1).  
36 Collaboration with local Delta communities is emphasized to address specific land use  
37 concerns.

38 Appellants have not identified evidence in the record that would indicate that the  
39 CBP and/or CBAs are not adequate tools to reduce conflicts regarding a specific conflict  
40 caused by the siting of the DCP. Additionally, Appellants appear to base this argument  
41 on an incomplete review of the full record concerning the CBP and CBAs. Therefore,  
42 the Council finds that Pear Fair, SF Baykeeper, and San Joaquin County have failed to

1 meet their burden, and that there is substantial evidence in the record to support the  
2 Department's finding that the DCP is consistent with DP P2 regarding this matter.

3 **xvii. Levee maintenance**

4 Pear Fair and DCC Engineering argue that conflicts resulting from siting the DCP  
5 will affect the viability of long-term levee maintenance in the Delta. Appellant Pear Fair  
6 argues that any impacts to the Fair could affect the economic viability of community  
7 institutions and government-sponsored flood control programs ([Pear Fair, Appeal](#), p. 6).  
8 Appellant states: "The same cultural and economic networks that sustain the Pear Fair  
9 also underlie local assessments and political support for reclamation districts and levee  
10 maintenance programs. Long-term erosion of community institutions due to siting  
11 conflicts reduces the resilience of these government-sponsored flood control programs  
12 that protect people and property in the Delta" ([Pear Fair, Appeal](#), p. 6). Appellant refers  
13 to impacts on SR-160 and River Road from the DCP, both of which are necessary for  
14 levee patrolling ([Pear Fair, Writ. Sub.](#), p. 2). No further evidence is provided to support  
15 this argument.

16 Appellant DCC Engineering cites to Final EIR Chapter 14, which states that the  
17 DCP will lead to "land-use incompatibilities affecting up to approximately 4,753 acres,  
18 result in permanent conversion of agricultural land to conveyance and mitigation uses,  
19 and require the removal of approximately 61 to 93 structures located in rural agricultural  
20 areas" ([DCC Engineering, Writ. Sub.](#), p. 3; citing [DCP.D1.1.00126](#), pp.14-1-14-22).  
21 DCC Engineering also cites to Final EIR Chapter 17 which "documents permanent  
22 conversion of agricultural land, annual agricultural production losses of approximately  
23 \$2.8 million to \$5.6 million, and associated reductions in agricultural employment, with  
24 impacts concentrated in small, rural Delta communities" ([DCC Engineering, Writ. Sub.](#),  
25 p.3; citing [DCP.D1.1.00154](#), pp.17-2). Appellant goes on to argue that because  
26 "agricultural operations generate the property values and assessment base that fund  
27 Reclamation District operations and maintenance" that "reductions in agricultural  
28 acreage, productivity, and economic viability directly undermine local agencies' capacity  
29 to maintain levees, drainage systems, and transportation corridors that support existing  
30 land uses" ([DCC Engineering, Writ. Sub.](#), p. 3).

31 The Department's written submittal claims that allegations related to levee  
32 funding are not appealable issues under DP P2, that state and federal funding to  
33 maintain Delta levees will continue, and that construction of the DCP may not begin until  
34 SWP contractors enter contracts or make arrangements to fully mitigate impacts on  
35 local property tax and assessments ([Department, Writ. Sub.](#), pp. 78-79). As evidence  
36 the Department points to the Water Code, which requires: "[f]ull mitigation of property  
37 tax or assessments levied by local governments or special districts for land used in the  
38 construction, location, mitigation, or operation of new Delta conveyance facilities" (Wat.  
39 Code, § 85089, subd. (b)); ([Department, Writ. Sub.](#), p. 78). The Department notes the  
40 Appellants' claims that the DCP harms agricultural economics and affects funding for  
41 reclamation districts. However, it contends this point is not relevant to DP P2 and cites  
42 Chapter 17 of the Final EIR, which found only minor regional economic effects  
43 ([DCP.D1.1.00154](#), p. 17-68; [Department, Writ. Sub.](#), p. 84).

1 DCC Engineering argues that reclamation districts depend on resources like  
2 those needed for DCP construction—such as rip rap, rock, sheetpile, heavy equipment,  
3 and trucking—and that exclusive use of these resources by the DCP could negatively  
4 impact land uses in the Delta over time. The Appellant describes concerns about long-  
5 term harm to the physical landscape, stating this is "directly in conflict with DP P2"  
6 ([DCC Engineering, Appeal](#), p. 2). In its written submission, Appellant references Final  
7 EIR Chapter 3, Project Description, highlighting that the document outlines a roughly  
8 13-year construction period with overlapping phases throughout the Delta. Appellant  
9 contends this schedule indicates the DCP will continuously require contractors,  
10 equipment, materials, transportation, and marine resources, which would directly  
11 compete with reclamation district levee maintenance, emergency response, and flood-  
12 control work occurring at the same time. ([DCP.D1.1.00010](#), pp. 19 and 131; [DCC](#)  
13 [Engineering, Writ. Sub.](#), p. 3).

14 The provision of RTM for use in levee projects by reclamation districts was  
15 addressed during Department consultations with landowners and agricultural operators,  
16 specifically concerning strategies to minimize impacts on agricultural interests  
17 ([DCP.AA1.2.00018](#), p.31). The Department's written submission asserts that the effect  
18 of DCP construction on civil construction material availability is minimal ([Department,](#)  
19 [Writ. Sub.](#), p. 83). The Department refers to Chapter 27 of the Final EIR, which notes:  
20 "aggregate requirements under the DCP—including the percentage of 50-year permitted  
21 aggregate amount and percentage of 50-year aggregative demand is 1.38% and 0.65%,  
22 respectively" ([Department, Writ. Sub.](#), p. 83). Furthermore, the written submission  
23 explains that aggregate demand will be distributed over a period of 12–14 years,  
24 resulting in negligible long-term impact on aggregate supplies ([Department, Writ. Sub.](#),  
25 p. 84).

26 The Department has identified evidence in the record supporting its findings  
27 concerning economic and construction resource impacts to reclamation districts. DP P2  
28 applies to conflicts with existing uses or uses described or depicted in local general  
29 plans. Appellant's claims concerning economic and construction resource impacts do  
30 not describe a specific conflict with specific land use. For these reasons, the Council  
31 finds that DCC Engineering failed to raise an appealable issue with respect to resources  
32 needed for levee maintenance under DP P2.

33 **xviii. Noise conflicts**

34 Appellants Pear Fair, Steamboat Resort, the Commission, and Sac Sewer have  
35 expressed concerns about the potential noise impacts resulting from the construction  
36 phase of the DCP. These concerns focus on possible disturbances to community  
37 events, residential areas, recreational spaces, and sensitive wildlife habitats within the  
38 Delta region.

39 Pear Fair argues that noise from construction activities could significantly disrupt  
40 Fair events ([Pear Fair, Appeal](#), p. 5). Appellant maintains that the Department's existing  
41 land use analysis under DP P2 fails to account for these impacts. The Fair contends the  
42 prolonged construction period—over a decade—and especially noisy operations like  
43 pile driving could dramatically change the acoustic environment of the Delta

1 ([DCP.V2.5.00007](#), p. 44). Additionally, Appellant believes these impacts conflict with the  
2 goals of the Hood Community Action Plan ([DCP.V2.5.00007](#), p. 46). Steamboat Resort  
3 claims that construction noise is likely to compromise the “quiet recreational  
4 environment” valued by Delta visitors ([Commission](#), Appeal Form, p. 3). Its appeal  
5 highlights the Delta’s naturally low ambient noise and its vulnerability to increased noise  
6 levels from construction. Appellant identifies pile driving, heavy machinery, truck traffic,  
7 and barge activity as sources expected to exceed acceptable noise limits on multiple  
8 occasions. Appellant refers to Final EIR Chapter 24, Noise, in support of its argument  
9 ([DCP.D1.1.00188](#), pp. 1-17) and notes Steamboat Slough is excluded from the current  
10 noise study impact area ([DCP.D1.1.00188](#), p. 5).

11 The Commission claims the DCP is not consistent with DP P2 and places “small  
12 Delta communities in serious jeopardy” due to negative impacts from noise, dust,  
13 nighttime glare, and emissions ([Commission](#), Appeal, p. 2). Sac Sewer expresses  
14 concern regarding construction noise related to processing RTM near Sandhill Crane  
15 habitats. Sac Sewer argues that the ensuing noise will affect Sandhill Crane populations  
16 and roosting sites, including those managed by Harvest Water ([Sac Sewer, Appeal](#), p.  
17 45).

18 According to its Certification, the Department asserts that DP P2 does not require  
19 specific MMs or ECs. Nonetheless, the Final EIR for the Delta Conveyance Project  
20 includes several chapters that address existing land uses throughout the Delta  
21 ([DCP.AA1.2.00018](#), p. 34). Of the two ECs identified, one is dedicated to reducing noise  
22 disruptions: EC-18: Minimize Construction-Related Disturbances to Delta Community  
23 Events and Festivals. This commitment requires the construction contractor to work with  
24 the Ombudsman to create site-specific or activity-specific plans designed to lessen or  
25 avoid construction-related noise and traffic when feasible ([DCP.AA1.2.00018](#), p. 35).

26 The Department also explains that noise and vibration impacts are analyzed in  
27 Final EIR, Chapter 24, Noise and Vibration ([DCP.D1.00188](#); [Department, Writ. Sub.](#), pp.  
28 120-121). This chapter incorporates noise standards established by the Department  
29 based on expert consensus and input from both local and resource agencies. The  
30 Thresholds of Significance section details the rationale and sources behind these  
31 standards ([DCP.AA1.2.00018](#), p. 62). The established noise limits account for the  
32 Delta’s rural landscape, geographic range, and protected species. Mitigation efforts  
33 include measures such as sound insulation, implementing best practices for noise  
34 control, using temporary sound barriers, and, if needed, offering voluntary relocation to  
35 affected residents. Despite these MMs, the Final EIR recognizes that construction noise  
36 will continue to be significant and unavoidable ([DCP.AA1.2.00018](#), p. 68).

37 Additional mitigation steps involve actions prior to construction, ongoing sound  
38 level monitoring, and installing noise barriers in locations where sound is expected to  
39 exceed daytime or nighttime standards ([DCP.AA1.2.00018](#), p. 43). The construction  
40 contractor is also required to collaborate with the Ombudsman to identify community  
41 events and festivals that might be impacted by construction ([DCP.AA1.2.00018](#), p. 35).

42 The Department has provided evidence in the record that describes how noise  
43 disturbances are addressed through mitigation, where feasible. It is reasonable to

1 expect cumulative noise impacts over the projected construction period, but DP P2 does  
2 not require noise-specific mitigation unless there is direct conflict with existing land uses  
3 or land uses described or depicted in city and county general plans. Appellants have not  
4 shown that the Department failed to account for noise impacts with respect to land use  
5 or project siting. For these reasons, the Council finds that Pear Fair, Steamboat Resort,  
6 the Commission, and Sac Sewer have failed to meet their burden, and that there is  
7 substantial evidence in the record to support the Department’s finding that the DCP is  
8 consistent with DP P2 regarding land use conflicts associated with noise impacts due to  
9 siting considerations.

10 **d. DP P2 Conclusion**

11 For all the reasons discussed above, and in light of all the record evidence, the  
12 Council finds as follows:

- 13 1. Appellant Sac Sewer showed that the Certification is not supported by  
14 substantial evidence in the record and the Council **remands the matter**  
15 to the Department to reconsider and avoid or reduce conflicts when  
16 feasible between the siting of the TCC and Sac Sewer’s Harvest Water  
17 regarding agricultural use, groundwater recharge, and Sandhill Crane  
18 habitat uses.
- 19 2. As to all other issues raised by all 10 Appellants under DP P2, Appellants  
20 failed to meet their burden, and there is substantial evidence in the record  
21 to support the Department’s finding that the DCP is consistent with DP  
22 P2. The Council therefore **denies all other DP P2 appeals**.

23 **11. Policy RR P1 (Cal. Code Regs., tit. 23 § 5012.): Prioritization of State**  
24 **Investments in Delta Levees and Risk Reduction**

25 The Department finds that Delta Plan Policy RR P1 does not apply to the DCP.  
26 Appellant DCC Engineering contends that RR P1 does apply and that the DCP is  
27 inconsistent with the policy. For the reasons discussed below, the Council finds that  
28 substantial evidence in the record supports the Department’s conclusion that RR P1  
29 does not apply to the DCP. Accordingly, the Council **denies the appeal** as follows:

RR P1 Appeal Issue	Appellant	Decision
RR P1 applies to the DCP	DCC Engineering	Denied

30  
31 **a. Policy Requirements**

32 RR P1 establishes priorities for Delta levee operations, maintenance, and  
33 improvements. Subsection (a) identifies funding for levee operations and maintenance  
34 as a priority for all Delta islands and tracts. Subsection (b) outlines the Delta Levees  
35 Investment Strategy (“DLIS”), which establishes levee improvement priorities for each  
36 Delta island and tract. Subsection (c) outlines requirements for the Department to

1 prepare and present to the Council an annual report on State funds distributed or  
2 provided by the Department for levee improvement, operations, and maintenance.<sup>67</sup>

3 RR P1 subsection (d) states:

4 “For purposes of Water Code section 85057.5(a)(3) and section 5001(o)(1)(E) of  
5 this Chapter, this policy covers a proposed action that involves discretionary State  
6 investments in Delta flood risk management, including levee operations, maintenance,  
7 and improvements. Nothing in this policy establishes or otherwise changes existing  
8 levee standards.” (Cal. Code Regs., tit. 23, § 5012, subd. (d).)

9 **b. Certification**

10 The Certification states that RR P1 does not apply to the DCP because it  
11 includes no investment in Delta levees or flood risk reduction through discretionary state  
12 investments. Instead, water contractors will fund the DCP ([DCP.AA1.2.00001](#), p. 34).  
13 The Department cites to the DCP Final EIR Volume 1, Chapter 2 and DCP Final EIR  
14 Volume 2, Common Response 7 to support this claim ([DCP.AA1.2.00001](#), p. 33). The  
15 Certification notes that the DCP will carry out targeted repairs on existing levees to  
16 address flood risks, geometry, and historical issues. These improvements will take  
17 place at the TCC, Lower Roberts Island, and the proposed intake sites on the  
18 Sacramento River ([DCP.AA1.2.00001](#), p.45).

19 The Certification explains that because the DCP will enable dual conveyance  
20 through the Delta, allowing water to be diverted from either the north or south Delta, the  
21 existing levees will play a crucial role in the Delta's operation under the modified SWP  
22 including the DCP, making their maintenance a continued high priority. The Certification  
23 cites Final EIR Volume 2, Common Response 8 and Final EIR Volume 1 Chapter 7,  
24 Section 7.1.3.9 to support these claims on continued focus on levee maintenance.  
25 ([DCP.AA1.2.00001](#), p. 34, citing [[DCP.D1.1.00229](#), p.8-27; [DCP.D1.1.00057](#), p. 7-25])

26 **c. Appeals and Analysis**

27 Appellant DCC Engineering challenges the Department's Certification of  
28 Consistency with RR P1, alleging that the policy applies to the DCP, that the DCP will  
29 put stress on existing levee systems and operating agencies, and that the Department's  
30 statement that the DCP involves no discretionary investment in Delta levees or flood-  
31 risk reduction is incomplete and incorrect ([DCC Engineering Appeal](#), p. 3). The  
32 Appellant argues that the Department's finding that RR P1 does not apply is incorrect,  
33 as the DCP relies on the existing Delta levee system throughout both construction and  
34 operation ([DCC Engineering Appeal](#), p. 3). Appellant cites the Final EIR project  
35 description ([DCP.D1.1.00010](#), Ch. 3), claiming the DCP involves numerous changes to  
36 Delta levee structures and will compete with local reclamation districts for materials and  
37 contractors, resulting in inflationary impacts to their budgets ([DCC Engineering, Writ.](#)  
38 [Sub.](#), p. 1, citing [DCP.D1.1.00014](#), p.3-13). The Appellant highlights the significant

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<sup>67</sup> The full regulatory text of RR P1 (Cal. Code Regs., tit. 23, § 5011) is available at West Law [using this link](#).

1 demand for resources like aggregate base, trucking, import fill, and other materials  
2 needed for access improvements and levee construction ([DCC Engineering, Writ. Sub.](#),  
3 p. 2).

4 Additionally, the Appellant claims that the DCP will rely on limited regional  
5 trucking services and notes that in-water activities for intake construction are restricted  
6 to a three-month period annually, referencing Final EIR, Chapter 3 and Chapter 20  
7 ([DCC Engineering Writ. Sub.](#), p. 3-4; [DCP.D1.1.00168](#); [DCP.D1.1.00010](#)). Construction  
8 is expected to last 13 years. The Appellant contends that this high resource demand will  
9 impact improvements to DLIS high priority levees, increasing the risk of levee failure  
10 and compromising Delta flood protection and water supply reliability ([DCC Engineering](#)  
11 [Appeal](#), p. 3).

12 The Certification states that RR P1 does not apply to the DCP since it includes  
13 no investment in Delta levees or flood risk reduction through discretionary State  
14 investments ([DCP.AA1.2.00001](#), p. 34). The Certification, further states that the  
15 Covered Action will be funded by water contractors rather than involving  
16 discretionary State investments in Delta levees. The Department cites to the Final EIR  
17 Volume 1, Chapter 2 and Final EIR Volume 2, Common Response 7 to support this  
18 claim ([DCP.AA1.2.00001](#), p. 33; [DCP.D1.1.00009](#); [DCP.D1.1.00228](#)).

19 RR P1 applies to *discretionary* State investments to levees only. The Appellant's  
20 statement regarding the necessity of a Certification to address engineering  
21 considerations, costs, benefits, and impacts to the state interests is not  
22 substantiated even if the DCP depends on the levee system and will put strain on  
23 Reclamation Districts construction supply.

24 The Council recognizes that the resource demand issues highlighted by the  
25 Appellant may pose a potentially significant challenge for reclamation districts seeking  
26 to improve levees in alignment with DLIS priorities and would welcome an opportunity  
27 outside of this regulatory process to collaborate with the Department and affected  
28 reclamation districts toward a resolution. Nevertheless, while important, these concerns  
29 do not present an appealable issue under RR P1. While the DCP includes the limited  
30 levee work described in the Certification, it does not involve discretionary investments in  
31 levee improvements governed by RR P1. Therefore, the Council finds that RR P1 does  
32 not apply to the DCP.

#### 33 **d. RR P1 Conclusion**

34 For the reasons discussed above, the Council finds that Appellant DCC  
35 Engineering failed to meet its burden, and that there is substantial evidence in the  
36 record to support the Department's finding that RR P1 does not apply to the DCP.  
37 Therefore, the Council ***denies the appeal***.

#### 38 **12. Policy RR P3 (Cal. Code Regs., tit. 23, § 5014.): Protect Floodways**

39 The Department finds that Delta Plan Policy RR P3 does not apply to the DCP.  
40 Appellant DCC Engineering contends that RR P3 does apply and that the DCP is

1 inconsistent with the policy. For the reasons discussed below, the Council finds that  
2 substantial evidence in the record supports the Department’s conclusion that RR P3  
3 does not apply. Accordingly, the Council **denies the appeal** as follows:

<b>RR P3 Appeal Issue</b>	<b>Appellant</b>	<b>Decision</b>
RR P3 applies to the DCP	DCC Engineering	Denied

4

5

**a. Policy Requirements**

6

RR P3 states:

7

“(a) No encroachment shall be allowed or constructed in a floodway, unless it  
8 can be demonstrated by appropriate analysis that the encroachment will not unduly  
9 impede the free flow of water in the floodway or jeopardize public safety.

10

(b) For purposes of Water Code section 85057.5(a)(3) and section  
11 5001(o)(1)(E) of this Chapter, this policy covers a proposed action that would encroach  
12 in a floodway that is not either a designated floodway or regulated stream.” (Cal. Code  
13 Regs., tit. 23, § 5014.)

14

**b. Certification**

15

In the Certification, the Department states that RR P3 does not apply to the DCP  
16 because it does not include any proposed actions that would encroach in a floodway  
17 that is not either a designated floodway or regulated stream ([DCP.AA1.2.00001](#), p. 36,  
18 emphasis added) In support of this claim, the Certification describes DCP features that  
19 would cross, but not encroach on a floodway that is not either a designated floodway or  
20 regulated stream. The Department cites evidence from the DCP CER  
21 ([DCP.D4.3.00001](#), pp. Att1-59 - Att1-70) to demonstrate that the conceptual design  
22 layout assumes that these activities would not require bridge support piers or abutments  
23 within the waterway, and that piers would be placed outside the floodways  
24 ([DCP.AA1.2.00002](#), p. 37).

25

The Certification also addresses the relationship of project- and program-level  
26 actions described in the CMP with floodways that are not either a designated floodway  
27 or regulated stream. The Certification states that the project-level mitigation sites on  
28 Bouldin Island and at the I-5 ponds do not occur within floodways, and that locations of  
29 program-level elements of the CMP such as channel margin habitat enhancement and  
30 tidal marsh wetland restoration have not been defined. Therefore, at this time it is not  
31 possible to identify whether these elements occur within floodways ([DCP.AA1.2.00001](#),  
32 p. 37).

33

**c. Appeals and Analysis**

34

Appellant DCC Engineering challenges the Department’s findings, alleging that  
35 RR P3 applies to the DCP, that the DCP physically encroaches on levees and

1 floodways, and that such encroachments have the potential to increase flood risk and  
2 impair floodway capacity ([DCC Engineering, Appeal](#), p. 3-4). The Appellant claims that  
3 RR P3 applies to any “floodway that conveys floodwaters in the Delta (including natural  
4 channels, regulated streams, and levee-lined river reaches)”([DCC Engineering, Appeal](#),  
5 p. 2). As a result, the Appellant claims that the Department bases its findings on an  
6 overly narrow definition of where the policy applies. The Appellant does not identify a  
7 specific location or waterway covered by the policy upon which the DCP would allegedly  
8 encroach.

9 RR P3 applies to an “action that would encroach in a floodway that is not either a  
10 designated floodway or regulated stream.” (Cal. Code Regs., tit. 23, § 5014) The policy  
11 addresses encroachments to specifically designated channels, not to Delta channels as  
12 whole. The Certification includes maps identifying the locations of proposed Covered  
13 Action facilities and project-level mitigation sites on Bouldin Island and at the I-5 ponds  
14 relative to the locations of regulated streams and designated floodways.  
15 ([DCP.AA1.2.00005](#), p. 1; [DCP.AA1.2.00006](#), p. 1). According to these maps, no  
16 facilities or mitigation sites are located on a designated floodway or regulated stream.  
17 Appellant has not addressed the maps provided by the Department in its record and  
18 does not identify a specific location or waterway covered by RR P3, upon which the  
19 DCP would allegedly encroach, in its appeal. Therefore, the Council finds that RR P1  
20 does not apply.

21 **d. RR P3 Conclusion**

22 RR P3 applies to specific channels in the Delta defined in the regulation, not to  
23 channels across the Delta as a whole. The Appellant’s statement regarding the  
24 applicability of this policy to the DCP is not substantiated by the record. Thus, the  
25 Council finds that DCC Engineering failed to meet its burden, and that there is  
26 substantial evidence in the record to support the Department’s finding that RR P3 does  
27 not apply to the DCP. Therefore, the Council ***denies the appeal.***

28

29

30

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**CONCLUSION**

31 In light of the whole record, including evidence identified in the Department’s  
32 Final Record Index, the Council finds that there is substantial evidence to support the  
33 Department’s determination that the following Delta Plan Policies are not applicable to  
34 the DCP: DP P1, RR P1, RR P2, RR P3, RR P4 and G P1(c). The Council further finds  
35 that Appellants failed to meet their burden, and there is substantial evidence to support  
36 the Department’s findings of consistency for the following Delta Plan policies: G  
37 P1(b)(2), G P1(b)(3), G P1(b)(4), WR P1, ER P1, ER P2, ER P3, and ER P4.

1        However, Appellants have shown, in relevant part, that the Certification is not  
2 supported by substantial evidence with respect to Delta Plan policies ER P5 and DP P2,  
3 as follows<sup>68</sup>:

- 4        • Appellant San Joaquin County has shown that the record does not support the  
5 finding that the Department fully considered how the DCP could improve the  
6 habitat conditions for the golden mussel, and how the Department would avoid or  
7 mitigate improved habitat conditions for the golden mussel in a way that  
8 appropriately protects the ecosystem; and  
9
- 10       • Appellant Sac Sewer has shown that the record does not support the finding that  
11 the DCP's proposed TCC was sited to avoid or reduce a conflict with Harvest  
12 Water when feasible.

13        The matter is therefore **remanded to the Department** for reconsideration of the  
14 Covered Action as to:

- 15       • Delta Plan Policy ER P5 to fully consider and avoid or mitigate the potential for  
16 DCP facilities to improve habitat conditions for the nonnative invasive golden  
17 mussel; and
- 18       • Delta Plan Policy DP P2 to consider and avoid or reduce conflicts between the  
19 siting of the TCC and Sac Sewer's Harvest Water regarding agricultural use,  
20 groundwater recharge, and Sandhill Crane habitat when feasible.

21        **The appeals are all otherwise denied.** The Department must file a revised  
22 certification of consistency addressing the Council's remanded issues with respect to  
23 ER P5 and DP P2, prior to proceeding with the Covered Action. (Wat. Code, §  
24 85225.25; Cal. Code Regs., tit. 23, §§ 5034, subd (b); 5035.)

25        Pursuant to Water Code Section 85210(h) the Council requests that the  
26 Department submit an annual implementation report to the Council as described in  
27 Section A(2) above, beginning on March 1, 2028. (Supra, pp. 3-4.)

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<sup>68</sup> For all other issues raised by Appellants under ER P5 and DP P2, the appeals are denied.

DELTA STEWARDSHIP COUNCIL  
RESOLUTION 2026-03

Adoption of a Determination on Appeals of Department of Water Resources  
Certification of Consistency Number C20257 for the Delta Conveyance Project

WHEREAS, on October 17, 2025, the Department of Water Resources (Department) submitted to the Delta Stewardship Council (Council) a certification of consistency number C20257 (Certification) for the Delta Conveyance Project; and

WHEREAS, the Delta Reform Act directs that the Council's Delta Plan must further the "coequal goals" (Water Code § 85300) and defines the coequal goals to mean the two goals of providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem 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 (Cal. Wat. Code § 85054); and

WHEREAS, any person may file an appeal with regard to a certification of consistency submitted 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 goals or implementation of government-sponsored flood control programs to reduce risks to people and property in the Delta (Cal. Wat. § Code 85225.10(a)); and

WHEREAS, on November 17, 2025, the Council received 10 timely appeals of the Certification from the following parties: 1) Appeal No. C20257-A1 -Delta Protection Commission; 2) Appeal No. C20257-A2 - Courtland Pear Fair; 3) Appeal No. C20257-A3 - County of Sacramento and Sacramento County Water Agency; 4) Appeal No. C20257-A4 - Steamboat Resort; 5) 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; 6) Appeal No. C20257-A6 - Sacramento Area Sewer District; 7) Appeal No. C20257-A7 - City of Stockton; 8) Appeal No. C20257-A8 - South Delta Water Agency; 9) Appeal No. C20257-A9 - San Joaquin County, Solano County, Yolo County, Central Delta Water Agency, and Local Agencies of the North Delta; and 10) Appeal No. C20257-A10 - DCC Engineering Co., Inc. (Cal. Code Regs., tit. 23, § 5022); and

WHEREAS, the Department submitted a "full and complete" certified record for the Certification on November 24, 2025 (Cal. Code Regs., tit. 23, § 5022, subd. (e)); and

WHEREAS, each party was given the opportunity to submit a brief, including any request to supplement the record pursuant to the Council's regulations (Cal. Code Regs., tit. 23, §5027); and

WHEREAS, on February 26 and 27, 2026, the Council held a hearing (Hearing) on the appeals at its regularly scheduled meeting (Cal. Wat. Code § 85225.20; 23 Cal. Code Regs § 5030); and

WHEREAS, each party appeared and made presentations concerning the appeals to the Council (Cal. Code Regs., tit. 23, §§ 5027 and 5028); and

WHEREAS, at the conclusion of the Hearing, the Presiding Officer directed staff to prepare a draft determination on the appeals for the Council's consideration at a future Council

meeting; and

WHEREAS, the Council is required to make written findings on appeals within 60 days of the Hearing, and may deny the appeals, remand the matter to the Department for reconsideration, or dismiss the appeals (Cal. Wat. Code §§ 85225.10(c), 85225.20 and 85225.25; Cal. Code Regs., tit. 23, §§ 5025, 5030, 5033, and 5034(d)); and

WHEREAS, the Council has reviewed and considered the Draft Determination (Draft Decision No. D20257) that is Attachment 1 to this Resolution, and which was prepared by staff as directed by the Presiding Officer.

NOW, THEREFORE, BE IT RESOLVED BY THE DELTA STEWARDSHIP COUNCIL THAT:

1. The Council hereby finds the foregoing recitals to be true and correct and incorporates them herein.
2. The Council adopts Draft Decision No. D20257 (which is Attachment 1 to this resolution, and which is incorporated herein and made a part of this resolution as if fully set forth) and the findings therein, except for any modifications approved by the Council and read into the record during the agenda item for this matter at the April 23-24, 2026, Council meeting.
3. The Council authorizes and directs the Executive Officer, or their delegee, to incorporate any modifications to Draft Decision No. D20257 which were approved by the Council and read into the record during the agenda item for this matter at the April 23-24, 2026, Council meeting.
4. The Council authorizes and directs the Executive Officer, or their delegee, to finalize Draft Decision No. D20257, including any necessary non-substantive changes.
5. The Council authorizes and directs the Executive Officer, or their delegee, to take such steps as are necessary to effect the intent of this resolution, including posting and distribution of the finalized Decision No. D20257.

Attachment 1: Draft Decision No. D20257

CERTIFICATION

On a motion by Councilmember Miller, seconded by Councilmember Eggman, and a vote of the Council, the foregoing resolution was passed and adopted by the Delta Stewardship Council by the following vote at a regular meeting of the Delta Stewardship Council on April 23, 2026.

Burgis        Nay

Eggman       Aye

Lee            Aye

Miller Aye

Mehranian Aye

Patterson Aye

Zingale Aye

Dated: April 23, 2026

Emma Askea   
Clerk of the Board of the Delta Stewardship Council

## EXHIBIT A. COUNCIL RULINGS ON RECORD ADMISSIONS

The Council may supplement the certified record and/or take official notice pursuant to sections 5026 and 5032 of the Council’s appeal procedures. (Cal. Code Reg., Tit. 23, §§ 5026 [Supplemental Record] and 5032 [Official Notice in a Hearing].) The Council will not consider evidence that is not part of the administrative record.

### **Rulings on Document Admissions Requests:**

1. *Delta Protection Commission*

<b>Document</b>	<b>Basis for Request</b>	<b>Ruling</b>
Map 1 – Delta Conveyance Project: A Look at Four Major Impact Areas	23 CCR § 5032	<b>Denied.</b> The proposed map is not an official map. It was submitted <u>after</u> the certification of consistency was filed to support the Commission’s appeal with features selected, arranged, and emphasized by the Commission. The Commission has failed to identify a specific geographic <b>fact</b> or technical/scientific matter that the Council can officially notice. To the extent the proposed map was based on facts and geographic locations in the EIR, those facts are already in the record.
Map 2 – Delta Conveyance Project Intakes: Impacts, Context & Schedule	23 CCR § 5032	<b>Denied.</b> The proposed map is not an official map. It was submitted <u>after</u> the certification of consistency was filed to support the Commission’s appeal with features selected, arranged, and emphasized by the Commission. The Commission has failed to identify a specific geographic <b>fact</b> or technical/scientific matter that the Council can officially notice. To the extent the proposed map was based on facts and geographic locations in the EIR, those facts are already in the record.

Map 3 – Delta Conveyance Project – Twin Cities/Lambert Road: Impact, Context & Schedule	23 CCR § 5032	<b>Denied.</b> The proposed map is not an official map. It was submitted <u>after</u> the certification of consistency was filed to support the Commission’s appeal with features selected, arranged, and emphasized by the Commission. The Commission has failed to identify a specific geographic <b>fact</b> or technical/scientific matter that the Council can officially notice. To the extent the proposed map was based on facts and geographic locations in the EIR, those facts are already in the record.
Map 4 – Delta Conveyance Project – Lower Roberts: Impacts, Context & Schedule	23 CCR § 5032	<b>Denied.</b> The proposed map is not an official map. It was submitted <u>after</u> the certification of consistency was filed to support the Commission’s appeal with features selected, arranged, and emphasized by the Commission. The Commission has failed to identify a specific geographic <b>fact</b> or technical/scientific matter that the Council can officially notice. To the extent the proposed map was based on facts and geographic locations in the EIR, those facts are already in the record.
Map 5 – Delta Conveyance Project – Bethany Complex: Impacts, Context & Schedule		<b>Denied.</b> The proposed map is not an official map. It was submitted <u>after</u> the certification of consistency was filed to support the Commission’s appeal with features selected, arranged, and emphasized by the Commission. The Commission has failed to identify a specific geographic <b>fact</b> or technical/scientific matter that the Council can officially notice. To the extent the proposed map was based on facts and geographic locations in the EIR, those facts are already in the record.
Map 6 – North Delta Cultural, Recreational Resources Within 1 Mile of Delta Conveyance		<b>Denied.</b> The proposed map is not an official map. It was submitted <u>after</u> the certification of consistency was filed to support the Commission’s appeal with features selected, arranged, and emphasized by the Commission. The Commission

Project Features During Construction		has failed to identify a specific geographic <b>fact</b> or technical/scientific matter that the Council can officially notice. To the extent the proposed map was based on facts and geographic locations in the EIR, those facts are already in the record.
Map 7 – Delta Conveyance Project: Central and South Delta Cultural, Recreational Resources Within 1 Mile of Delta Conveyance Project Features During Construction		<b>Denied.</b> The proposed map is not an official map. It was submitted <u>after</u> the certification of consistency was filed to support the Commission’s appeal with features selected, arranged, and emphasized by the Commission. The Commission has failed to identify a specific geographic <b>fact</b> or technical/scientific matter that the Council can officially notice. To the extent the proposed map was based on facts and geographic locations in the EIR, those facts are already in the record.
Appeal Map – DCP by Year: Few Breaks in Construction over 13 years at most locations	23 CCR § 5032	<b>Denied.</b> The proposed map is not an official map. It was submitted <u>after</u> the certification of consistency was filed to support the Commission’s appeal with features selected, arranged, and emphasized by the Commission. The Commission has failed to identify a specific geographic <b>fact</b> or technical/scientific matter that the Council can officially notice. To the extent the proposed map was based on facts and geographic locations in the EIR, those facts are already in the record.
Attachment 2 – Technical Analysis – Consistency with GP1(b)(3): Best Available Science Methods Used to Estimate Recreational Use	23 CCR § 5032	<b>Denied.</b> While Attachment 2 is part of the administrative record for a separate administrative proceeding before the Council concerning a different covered action, it does not concern the Delta Conveyance Project. Therefore, it is not relevant to the certification of consistency for the Delta Conveyance Project or this appeal. ( <i>Ketchum v. Moses</i> (2001) 24 Cal.4th 1122, 1135, fn. 1.)

2. Courtland Pear Fair

<b>Document</b>	<b>Basis for Request</b>	<b>Ruling</b>
Sacramento County General Plan – Delta Protection Element (pp. 7-8, 11-13, 13 [DP-24], 27 [DP-63]).	23 CCR § 5032	This document is already part of the record for this certification. (See DCP.3.1.03946.)
California State Assembly Resolution Recognizing the Courtland Pear Fair	23 CCR § 5032	<b>Admitted.</b> The Council takes official notice of Members Resolution No. 1646, dated July 31, 2016, by Honorable Jim Cooper. The resolution is an act by a member of the legislative department of the State of California and the fact that Courtland Pear Fair was the subject of the resolution is a fact not reasonably subject to the dispute.

3. Co of Sac/SASD/SCWA

<b>Document</b>	<b>Basis for Request</b>	<b>Ruling</b>
Exhibit. 1 – May 16, 2024 Declaration of Graham Bradner in Support of DWR’s Opposition t Motion for Preliminary Injunction	23 CCR §§ 5026, 5032	<b>Denied.</b> The Council may take official notice of facts that may be judicially noticed by a court. (Cal. Code Regs., tit. 23, § 5032.) Here, appellants do not identify any fact for the Council’s official notice but rather request the admission of an entire declaration submitted in court in another proceeding. While the Council may notice the <i>existence</i> of the document as a record in a court proceeding, it does not take official notice of the hearsay content in the document. ( <i>People v. Woodell</i> (1998) 17 Cal.4th 448, 455.) In addition, appellant has not established how the declaration is relevant to the pending certification of consistency for the Delta Conveyance Project. ( <i>Ketchum v. Moses</i> (2001) 24 Cal.4th 1122, 1135, fn. 1.) Appellant has failed to establish why the fact the declaration was filed should be noticed by the Council. In addition, it is not sufficient for the purpose of section 5026, that

		document existed prior to the date of the Certification. Appellant has not presented specific evidence that the document was part of the administrative record before the Department for the Certification prior to the date of the Certification. (Cal. Code Regs., tit. 23, § 5026, subd.(c)(3).)
Exhibit. 2 – July 19, 2024 Declaration of Graham Bradner in Support of DWR’s Ex Parte Application	23 CCR § 5026, 5032	<b>Denied.</b> The Council may take official notice of facts that may be judicially noticed by a court. Cal. Code Regs., tit. 23, § 5032.) Here, appellants do not identify any fact but rather request the admission of an entire declaration submitted in court in another proceeding. While the Council may notice the <i>existence</i> of the document as a record in a court proceeding, it does not take judicial notice of the hearsay content in the document. ( <i>People v. Woodell</i> (1998) 17 Cal.4th 448, 455.) In addition, the declaration is not relevant to the pending certification of consistency for the Delta Conveyance Project. ( <i>Ketchum v. Moses</i> (2001) 24 Cal.4th 1122, 1135, fn. 1.) Appellant has failed to establish why the fact the declaration was filed should be noticed by the Council. In addition, it is not sufficient for the purpose of section 5026, that document existed prior to the date of the Certification. Appellant has not presented specific evidence that the document was part of the administrative record for the certification prior to the date of the Certification. (Cal. Code Regs., tit. 23, § 5026, subd.(c)(3).)
Exhibit. 3 – Transcript of May 31, 2024, Hearing before Sacramento County Superior Court	23 CCR § 5026, 5032	<b>Denied.</b> The Council may take official notice of facts that may be judicially noticed by a court. Cal. Code Regs., tit. 23, § 5032.) Here, appellants do not identify any fact but rather request the admission of a hearing transcript in a court proceeding. While the Council may notice the <i>existence</i> of the document as a record in a court proceeding, it does not take judicial notice of

		<p>the hearsay content in the document. (<i>People v. Woodell</i> (1998) 17 Cal.4th 448, 455.) In addition, the declaration is not relevant to the pending certification of consistency for the Delta Conveyance Project. (<i>Ketchum v. Moses</i> (2001) 24 Cal.4th 1122, 1135, fn. 1.) Appellant has failed to establish why the fact the declaration was filed should be noticed by the Council. In addition, it is not sufficient for the purpose of section 5026, that document existed prior to the date of the Certification. Appellant has not presented specific evidence that the document was part of the administrative record for the certification prior to the date of the Certification. (Cal. Code Regs., tit. 23, § 5026, subd.(c)(3).)</p>
<p>Exhibit. 4 – Video Record of February 21, 2024, DISB Meeting of Agenda Item No. 6</p>	<p>23 CCR § 5026, 5032</p>	<p><b>Denied.</b> The Council may take official notice of facts that may be judicially noticed by a court. Cal. Code Regs., tit. 23, § 5032.) Here, appellants do not identify any fact but rather requests the admission of a video record of Delta ISB meeting. While the Council may notice the <i>existence</i> of the document as a record of an ISB meeting, it does not take judicial notice of the hearsay content in the document. (<i>People v. Woodell</i> (1998) 17 Cal.4th 448, 455.) In addition, the declaration is not relevant to the pending certification of consistency for the Delta Conveyance Project. (<i>Ketchum v. Moses</i> (2001) 24 Cal.4th 1122, 1135, fn. 1.) Appellant has failed to establish why the fact the declaration was filed should be noticed by the Council. In addition, it is not sufficient for the purpose of section 5026, that document existed prior to the date of the Certification. Appellant has not presented specific evidence that the document was part of the administrative record for the certification prior to the date of the Certification. (Cal. Code Regs., tit. 23, § 5026, subd.(c)(3).)</p>

<p>Exhibit. 5 – Video Record of April 22, 2024, DISB Meeting Agenda No. 8</p>	<p>23 CCR § 5026, 5032</p>	<p><b>Denied.</b> The Council may take official notice of facts that may be judicially noticed by a court. Cal. Code Regs., tit. 23, § 5032.) Here, appellants do not identify any fact but rather requests the admission of a video record of Delta ISB meeting. While the Council may notice the <i>existence</i> of the document as a record of an ISB meeting, it does not take judicial notice of the hearsay content in the document. (<i>People v. Woodell</i> (1998) 17 Cal.4th 448, 455.) In addition, the declaration is not relevant to the pending certification of consistency for the Delta Conveyance Project. (<i>Ketchum v. Moses</i> (2001) 24 Cal.4th 1122, 1135, fn. 1.) Appellant has failed to establish why the fact the declaration was filed should be noticed by the Council. In addition, it is not sufficient for the purpose of section 5026, that document existed prior to the date of the Certification. Appellant has not presented specific evidence that the document was part of the administrative record for the certification prior to the date of the Certification. (Cal. Code Regs., tit. 23, § 5026, subd.(c)(3).)</p>
<p>Exhibit. 6 – Video Record of May 22, 2024, DISB meeting Agenda Item No. 3</p>	<p>23 CCR § 5026, 5032</p>	<p><b>Denied.</b> The Council may take official notice of facts that may be judicially noticed by a court. Cal. Code Regs., tit. 23, § 5032.) Here, appellants do not identify any fact but rather requests the admission of a video record of Delta ISB meeting. While the Council may notice the <i>existence</i> of the document as a record of an ISB meeting, it does not take judicial notice of the hearsay content in the document. (<i>People v. Woodell</i> (1998) 17 Cal.4th 448, 455.) In addition, the declaration is not relevant to the pending certification of consistency for the Delta Conveyance Project. (<i>Ketchum v. Moses</i> (2001) 24 Cal.4th 1122, 1135, fn. 1.) Appellant has failed to establish why the fact the declaration was filed should be noticed by the Council. In addition, it is not sufficient for the purpose of section 5026, that document existed</p>

		prior to the date of the Certification. Appellant has not presented specific evidence that the document was part of the administrative record for the certification prior to the date of the Certification. (Cal. Code Regs., tit. 23, § 5026, subd.(c)(3).)
Exhibit. 7 – Video Record August 15, 2024, DISB Meeting Agenda item No. 8	23 CCR § 5026, 5032	<b>Denied.</b> The Council may take official notice of facts that may be judicially noticed by a court. Cal. Code Regs., tit. 23, § 5032.) Here, appellants do not identify any fact but rather requests the admission of a video record of Delta ISB meeting. While the Council may notice the <i>existence</i> of the document as a record of an ISB meeting, it does not take judicial notice of the hearsay content in the document. ( <i>People v. Woodell</i> (1998) 17 Cal.4th 448, 455.) In addition, the declaration is not relevant to the pending certification of consistency for the Delta Conveyance Project. ( <i>Ketchum v. Moses</i> (2001) 24 Cal.4th 1122, 1135, fn. 1.) Appellant has failed to establish why the fact the declaration was filed should be noticed by the Council. In addition, it is not sufficient for the purpose of section 5026, that document existed prior to the date of the Certification. Appellant has not presented specific evidence that the document was part of the administrative record for the certification prior to the date of the Certification. (Cal. Code Regs., tit. 23, § 5026, subd.(c)(3).)
Exhibit. 8 – Video Record of September 12, 2024, DISB Meeting No. 7	23 CCR § 5026, 5032	<b>Denied.</b> The Council may take official notice of facts that may be judicially noticed by a court. Cal. Code Regs., tit. 23, § 5032.) Here, appellants do not identify any fact but rather requests the admission of a video record of Delta ISB meeting. While the Council may notice the <i>existence</i> of the document as a record of an ISB meeting, it does not take judicial notice of the hearsay content in the document. ( <i>People v. Woodell</i> (1998) 17 Cal.4th 448, 455.) In addition, the declaration is not relevant to the

		pending certification of consistency for the Delta Conveyance Project. ( <i>Ketchum v. Moses</i> (2001) 24 Cal.4th 1122, 1135, fn. 1.) Appellant has failed to establish why the fact the declaration was filed should be noticed by the Council. In addition, it is not sufficient for the purpose of section 5026, that document existed prior to the date of the Certification. Appellant has not presented specific evidence that the document was part of the administrative record for the certification prior to the date of the Certification. (Cal. Code Regs., tit. 23, § 5026, subd.(c)(3).)
Exhibit. 9 – Hood Community Action Plan (Sept. 2018)	23 CCR § 5026, 5032	This document is already part of the record for this certification. (DCP.AA5.1.00022.)
Exhibit. 10 – Department of Water Resources, New Desalination Facility is Major Milestone for Drought – Smart Infrastructure solutions in the Delta (9/15/25)	23 CCR § 5026	<b>Denied.</b> It is not sufficient for the purpose of section 5026, that the publication existed prior to the date of the Certification. Appellant has not presented specific evidence that the document was part of the administrative record for the certification prior to the date of the Certification. (Cal. Code Regs., tit. 23, § 5026, subd.(c)(3).) In addition, Appellant has not explained how the publication is relevant to this proceeding. ( <i>Ketchum v. Moses</i> (2001) 24 Cal.4th 1122, 1135, fn. 1.)

4. *Steamboat Resort*

<b>Document</b>	<b>Basis for Request</b>	<b>Ruling</b>
Exhibit. 1 Sacramento Conty General Plan – Delta Protection Element (Adopted September 26, 2017)	23 CCR § 5032	This document is already part of the record for this certification. (DCP.D3.1.03946)
Exhibit. 2 Delta Economic Sustainability Plan for the	23 CCR § 5032	This document is already part of the record for this certification. (DCP.D3.2.00547)

Sacramento-San Joaquin Delta, January 19, 2012, Chapters 1, 8, and 11, pp. 17-18, 147-170, 195-199, 273-275		
Exhibit. 3 Delta Conveyance Design and Construction Authority, Barge Transportation Study Technical Memorandum (Final Draft, December 23, 2021) pp. 1-4, 10	23 CCR § 5032	This document is already in the record evidence. (DCP.D4.1.00043)
Exhibit. 4 Delta Protection Commission Land Use and Resource Management Plan for the Primary Zone of the Delta (2010)	23 CCR § 5032	This document is already part of the record for this certification. (DCP.D3.1.03821)

5. *San Francisco Baykeeper, SS Band Miwok, Winnemem Wintu, Center for Biological Diversity, CA Sportfishing Protection Alliance, Little Manila Rising, FOR, CIEA, Sierra Club California, Restore Delta*

<b>Document</b>	<b>Basis for Request</b>	<b>Ruling</b>
Report P-2A: Total Population Projections for California Counties, July 1, 2020 -2070	Excel Sheet	<b>Denied.</b> Appellant included this document without complying with sections 5026 or 5032. There was no request to supplement the record and no basis for admission was provided. (Cal. Code Regs., tit. 23, §§ 5026, 5032.) Lacks foundation.

6. *SDWA*

<b>Document</b>	<b>Basis for Request</b>	<b>Ruling</b>
A copy of DWR's January 21, 2025 "Petition for Extension of	23 CCR § 5026 23 CCR § 5032	<b>Denied.</b> Appellant does not identify any fact for the Council's official notice but rather requests the admission of a petition

<p>Time to Perfect Conditional Water Rights Under the State Water Project Permits (SWP) 16578, 16479, 16481, and 16482 for water supply and permits 16477 and 16480 for hydropower operations, including the one page cover letter ("memorandum") submitted there with totaling 19 pages.</p>		<p>submitted in another proceeding. While the Council may notice the <i>existence</i> of the document as a record in a court proceeding, it does not take judicial notice of the hearsay content in the document. (<i>People v. Woodell</i> (1998) 17 Cal.4th 448, 455.) In addition, Appellant has not shown that the petition is relevant to the pending certification of consistency for the Delta Conveyance Project. (<i>Ketchum v. Moses</i> (2001) 24 Cal.4th 1122, 1135, fn. 1.) It is not sufficient for the purpose of section 5026, that document existed prior to the date of the Certification. Appellant has not presented specific evidence that the document was part of the administrative record before the Department for the Certification prior to the date of the Certification. (Cal. Code Regs., tit. 23, § 5026, subd.(c)(3).)</p>
<p>A copy of DWR's "Economic Analysis of the California Waterfix - Benefits and Costs to Project Participants," prepared by David L. Sunding, Ph.D., dated September 20, 2018, totaling 42 pages.</p>	<p>23 CCR § 5026 23 CCR § 5032</p>	<p><b>Denied.</b> Appellant does not identify any fact for the Council's official notice but rather requests the admission of a document submitted to the Council in a separate proceeding. While the Council may notice the <i>existence</i> of the document as a record in an administrative proceeding, it does not take judicial notice of the hearsay content in the document. (<i>People v. Woodell</i> (1998) 17 Cal.4th 448, 455.) In addition, the analysis of a different project is not relevant to the pending certification of consistency for the Delta Conveyance Project. (<i>Ketchum v. Moses</i> (2001) 24 Cal.4th 1122, 1135, fn. 1.) It is not sufficient for the purpose of section 5026, that document existed prior to the date of the Certification. Appellant has not presented specific evidence that the document was part of the administrative record before the Department for the Certification prior to the date of the Certification. (Cal. Code Regs., tit. 23, § 5026, subd.(c)(3).)</p>

<p>A copy of the "Further Corrected Case-in-chief Testimony [of] Gregory F. Wilson, P.E. " that SDWA submitted as its exhibit "SDWA-21b" on October 9, 2025 in the SWRCB;s pending proceeding on DWR 's petition to add new points of diversion for the DCP totaling 22 pages.</p>	<p>23 CCR § 5026 23 CCR § 5032</p>	<p>This document is already part of the record for this certification. (DCP.V2.33.00015)</p>
<p>"Further Corrected Case-in-chief Testimony [of] Thomas K. Burke, P.E." that SDWA submitted as its exhibit "SDWA-1b" on October 14, 2025 in the SWRCB's pending proceeding on DWR's petition to add new points of diversion for the DCP, totaling 44 pages.</p>	<p>23 CCR § 5026 23 CCR § 5032</p>	<p><b>Admitted.</b> Respondent has not objected and the Corrected Case-in-chief Testimony of Thomas K. Burke is already in the record evidence. (DCP.V2.33.00002)</p>
<p>A copy of the "Analytical Study on Flood Induced Seepage Under River Levees," by Senda Ozkan, dated May 2003, totaling 247 pages.</p>	<p>23 CCR § 5026 23 CCR § 5032</p>	<p><b>Denied.</b> Appellant does not identify any fact for the Council's official notice but rather requests the admission of a document submitted in a separate proceeding. While the Council may notice the <i>existence</i> of the document as a record in an administrative proceeding, it does not take judicial notice of the hearsay content in the document. (<i>People v. Woodell</i> (1998) 17 Cal.4th 448, 455.) Appellant has not presented specific evidence that the document was part of the administrative record before the Department for the Certification prior to the</p>

		date of the Certification. (Cal. Code Regs., tit. 23, § 5026, subd.(c)(3).) Appellant also fails to establish relevance. ( <i>Ketchum v. Moses</i> (2001) 24 Cal.4th 1122, 1135, fn. 1.)
A copy of the U.S. Army Corps' regulation ER 1110-1-1807, entitled "Engineering and Design, Drilling in Earth Embankment Dams and Levees," dated December 31, 2014, totaling 16 pages.	23 CCR § 5026 23 CCR § 5032	<b>Admitted.</b> A regulation issued under the authority of the United States may be judicially noticed. (Evid. Code § 452.) The Council takes official notice of the regulation.
A copy of a January 13, 2020 Memorandum prepared by Gilbert Cosio, Jr., an Engineer with MBK Engineers, to the CA Central Valley Flood Control Association re "Soil Investigations for Data Collection in the Delta IS/MND," totaling 4 pages.	23 CCR § 5026	<b>Denied.</b> Appellant does not identify any fact for the Council's official notice but rather requests the admission of a document submitted in a separate proceeding. While the Council may notice the <i>existence</i> of the document as a record in an administrative proceeding, it does not take judicial notice of the hearsay content in the document. ( <i>People v. Woodell</i> (1998) 17 Cal.4th 448, 455.) Further, although this document was submitted by SDWA in support of SDWA's appeal of the 2024-2026 Geotechnical Investigations, it was not admitted into the administrative record for that certification. Appellant has not presented specific evidence that the document was part of the administrative record before the Department for the Certification prior to the date of the Certification. (Cal. Code Regs., tit. 23, § 5026, subd.(c)(3).) Appellant also fails to establish relevance. ( <i>Ketchum v. Moses</i> (2001) 24 Cal.4th 1122, 1135, fn. 1.)

<p>A five-page collection of photos of boils that have erupted within Delta reclamation districts from preferential seepage paths.</p>	<p>23 CCR § 5026 23 CCR § 5032</p>	<p><b>Admitted.</b> The Council takes official notice of the photographs submitted. The photograph, date, and description are not reasonably subject to dispute.</p>
<p>A copy of Chapter 11 - "Cone Penetrometer" from the USDA/NRCS' "Part 631 Geology National Engineering Handbook, " issued January 2013, totaling 33 pages.</p>	<p>23 CCR § 5026 23 CCR § 5032</p>	<p><b>Admitted.</b> The Council takes official notice of the chapter submitted as a publication of the United States Department of Agriculture which is not reasonably subject to dispute. (Cal. Evid. Code § 452(h).)</p>
<p>A copy of DWR's Bulletin 74-90 entitled, California Well Standards," dated June 1991, totaling 112 pages</p>	<p>23 CCR § 5026 23 CCR § 5032</p>	<p><b>Admitted.</b> The Council takes official notice of the Bulletin submitted as a publication of the Department of Water Resources which is not reasonably subject to dispute. (Cal. Evid. Code § 452(h).)</p>
<p>A copy of U.S. Fish and Wildlife Service's National Wetlands Inventory: maps, dated March 15 and 16, 2023, totaling 6 pages.</p>	<p>23 CCR § 5026 23 CCR § 5032</p>	<p><b>Denied.</b> The maps submitted state they are for general reference only and that the U.S. Fish and Wildlife is not responsible for the accuracy or currentness of the base data shown on the map. Appellant has not presented specific evidence that the document was part of the administrative record before the Department for the Certification prior to the date of the Certification. (Cal. Code Regs., tit. 23, § 5026, subd.(c)(3).) Appellant also fails to establish relevance. (<i>Ketchum v. Moses</i> (2001) 24 Cal.4th 1122, 1135, fn. 1.)</p>
<p>A copy of the Internal Technical Review Panel's Memorandum re "ITR December Workshop on</p>	<p>23 CCR § 5026 23 CCR § 5032</p>	<p>This document is already part of the record for this certification. (DCP.H.1.00046)</p>

<p>[DCP] Tunnel and Shafts - Report, dated January 31, 2020, totaling 20 pages.</p>		
<p>A copy of Dante J. Nomellini, Sr.'s (attorney and general manager of the Central Delta Water Agency) handwritten markup of the map on page 9 of the above-referenced Internal Technical Review Panel memorandum, totaling one page.</p>	<p>23 CCR § 5026</p>	<p><b>Denied.</b> Appellant does not identify any fact for the Council's official notice but rather requests the admission of an attorney's markup to a map of a technical memorandum submitted by third parties to a federal agency. It is not a record of a court or administrative proceeding. It is also not a generally accepted technical or scientific fact or principle. Appellant has not presented specific evidence that the document was part of the administrative record before the Department for the Certification prior to the date of the Certification. (Cal. Code Regs., tit. 23, § 5026, subd.(c)(3).)</p>
<p>A copy of the Central Delta Water Agency's "CDWA Supplemental Comments on the Delta Conveyance Project Draft Environmental Impact Report," dated December 16, 2022, totaling 1039.</p>	<p>23 CCR § 5026</p>	<p>This document is already part of the record for this certification. (DCP.D2.3.00582 – DCP.D2.3.00582.0024)</p>
<p>A copy of the Central Delta Water Agency's comments on the U.S. Army Corp's Draft Environmental Impact Statement for the DCP entitled, "DEIS Delta Conveyance Project – DJN Sr. part One," dated March 16, 2023, totaling 242 pages.</p>	<p>23 CCR § 5026</p>	<p><b>Denied.</b> Appellant does not identify any fact for the Council's official notice but rather requests the admission of comments submitted to a federal agency. Appellant has not presented specific evidence that the document was part of the administrative record before the Department for the DCP Certification prior to the date of the Certification. (Cal. Code Regs., tit. 23, § 5026, subd.(c)(3).)</p>

6. San Joaquin County, Solano County, Yolo County, CDWA, and LAND

Document	Basis for Request	Ruling
<p>Techau et al, The 32 bn question: Benchmarking California’s delta Water Tunnel Against Global Tunnelling risk, Available at: <a href="https://www.newcivilengineer.com/opinion/the-32bn-question-benchmarking-californias-delta-water-tunnel-against-global-tunnelling-risk-14-11-2025">https://www.newcivilengineer.com/opinion/the-32bn-question-benchmarking-californias-delta-water-tunnel-against-global-tunnelling-risk-14-11-2025</a> New Civil Engineer, November 14, 2025.; appeal of DPP, p. 8; Supplemental Submission, p. 8; Electronic form submitted to Council</p>	<p>23 CCR § 5032</p>	<p><b>Denied.</b> Appellant does not identify any fact for the Council’s official notice. An opinion article is not a generally accepted technical or scientific matter within the Council’s jurisdiction. While it may be undisputed that the article exists, a the Council does not take official notice of the hearsay content in the document. (<i>People v. Woodell</i> (1998) 17 Cal.4th 448, 455.)</p>
<p>Delta Protection Commission, Thursday, November 13, 2025, Agenda and Meeting Packet, Agenda Item 10 (delegation of authority to respond to Delta Tunnel certification of consistency). Available at: <a href="https://delta.ca.gov/wp-content/uploads/2025/11/2025-11-13-DPC-Agenda-packet_v1-508.pdf">https://delta.ca.gov/wp-content/uploads/2025/11/2025-11-13-DPC-Agenda-packet_v1-508.pdf</a></p>	<p>23 CCR § 5032</p>	<p><b>Denied.</b> Appellant does not identify any fact for the Council’s official notice but rather requests the admission of documents constituting the agenda and meeting packet for the Delta Protection Commission. While the Council may notice the <i>existence</i> of the documents as a record of a public agency, it does not take official notice of the hearsay content in the document. (<i>People v. Woodell</i> (1998) 17 Cal.4th 448, 455.) Appellant also fails to establish relevance. (<i>Ketchum v. Moses</i> (2001) 24 Cal.4th 1122, 1135, fn. 1.)</p>

<p>Delta Protection Commission, Thursday, November 13, 2025, Agenda Item 10, Maps. Available at: <a href="https://delta.ca.gov/wp-content/uploads/2025/11/2025-11-13-Item-10-DCP-Attachment-2-impact-maps.pdf">https://delta.ca.gov/wp-content/uploads/2025/11/2025-11-13-Item-10-DCP-Attachment-2-impact-maps.pdf</a>.</p>	<p>23 CCR § 5032</p>	<p><b>Denied.</b> Appellant does not identify any fact for the Council’s official notice but rather requests the admission of maps that were part of a meeting of appellant Delta Protection Commission. While the Council may notice the <i>existence</i> of the documents as a record of a public agency, it does not take official notice of the hearsay content in the document. (<i>People v. Woodell</i> (1998) 17 Cal.4th 448, 455.) Appellant also fails to establish relevance. (<i>Ketchum v. Moses</i> (2001) 24 Cal.4th 1122, 1135, fn. 1.) See also denied request of Delta Protection Commission above.</p>
<p>Delta Stewardship Council. August 27, 2020, Meeting Recording, remarks of Carrie Buckman at 1:33:25. <a href="https://calspan.org/meeting/dsc_20200827/">https://calspan.org/meeting/dsc_20200827/</a>.</p>	<p>23 CCR § 5032</p>	<p><b>Denied.</b> Appellant does not identify any fact for the Council’s official notice but rather requests the admission of a recording of Carrie Buckman at a Council meeting. While the Council may notice the <i>existence</i> of the recording and Carrie Buckman’s remarks as a record of a public agency, it does not take official notice of the hearsay content in the recording. (<i>People v. Woodell</i> (1998) 17 Cal.4th 448, 455.) Appellant also fails to establish relevance. (<i>Ketchum v. Moses</i> (2001) 24 Cal.4th 1122, 1135, fn. 1.)</p>
<p>State Water Resources Control Board. October 10, 2025, Letter from Nicole Kuenzi, Administrative Hearing Officer, to Ann Carroll, General Counsel Department of Water Resources.</p>	<p>23 CCR § 5032 23 CCR § 5036</p>	<p>This document is already part of the record for this certification. (DCPV3.1.00042)</p>
<p>Letter of Official act of the SWRCB; State Water Resources Control Board.</p>	<p>23 CCR § 5032</p>	<p><b>Admitted.</b> The Council takes official notice of the SWRB Administrative Hearing Officer’s Letter.</p>

<p>November 10, 2025, Letter from Nicole Kuenzi, Administrative Hearing Officer, to Ann Carroll General, Counsel Department of Water Resources.</p>		
<p>Delta Independent Science Board Meeting, Agenda Item No. 6; Feb. 21, 2024. Available at: <a href="https://calspan.org/meeting/di_sb_20240221/">https://calspan.org/meeting/di_sb_20240221/</a></p>	<p>23 CCR § 5032</p>	<p><b>Denied.</b> Appellants seeks official notice of the video record of Delta ISB meeting with respect to a specific agenda item. Appellants do not identify any fact for the Council’s official notice but rather want to introduce a video recording without an explanation of its relevance. While the Council could notice the existence of the meeting and the topic of the agenda item, it cannot take official notice of the hearsay content of the recording and admit the recording as evidence. (<i>People v. Woodell</i> (1998) 17 Cal.4th 448, 455.) It is not enough to say that the Delta ISB is a scientific adviser to the Council without any explanation as to the content of the recordings and a specific fact for official notice or its relevance to the pending certification or appeals. (<i>Ketchum v. Moses</i> (2001) 24 Cal.4th 1122, 1135, fn. 1.) In addition, it is not sufficient for the purpose of section 5026, that the recording existed prior to the date of the Certification. Appellant has not presented specific evidence that the document was part of the administrative record before the Department for the Certification prior to the date of the Certification. (Cal. Code Regs., tit. 23, § 5026, subd.(c)(3).)</p>
<p>Document subject to Notice - Delta Independent Science Board Meeting, Agenda Item No. 8; April 22, 2024. Available at:</p>	<p>23 CCR § 5032</p>	<p><b>Denied.</b> Appellants seeks official notice of the video record of Delta ISB meeting with respect to a specific agenda item. Appellants do not identify any fact for the Council ‘s official notice but rather want to introduce a video recording without an explanation of its relevance. While the Council could notice the</p>

<p><a href="https://calspan.org/meeting/di_sb_20240422/">https://calspan.org/meeting/di_sb_20240422/</a></p>		<p>existence of the meeting and the topic of the agenda item, it cannot take official notice of the hearsay content of the recording and admit the recording as evidence. (<i>People v. Woodell</i> (1998) 17 Cal.4th 448, 455.) It is not enough to say that the Delta ISB is a scientific adviser to the Council without any explanation as to the content of the recordings and specific fact for official notice or its relevance to the pending certification or appeals. (<i>Ketchum v. Moses</i> (2001) 24 Cal.4th 1122, 1135, fn. 1.) In addition, it is not sufficient for the purpose of section 5026, that the recording existed prior to the date of the Certification. Appellant has not presented specific evidence that the document was part of the administrative record before the Department for the Certification prior to the date of the Certification. (Cal. Code Regs., tit. 23, § 5026, subd.(c)(3).)</p>
<p>Document subject to Notice - Delta Independent Science Board Meeting, Agenda Item No. 7; September 12, 2024. Available at: <a href="https://calspan.org/meeting/di_sb_20240912/">https://calspan.org/meeting/di_sb_20240912/</a></p>	<p>23 CCR § 5032</p>	<p><b>Denied.</b> Appellants seeks official notice of the video record of Delta ISB meeting with respect to a specific agenda item. Appellants do not identify any fact for the Council’s official notice but rather want to introduce a video recording without an explanation of its relevance. While the Council could notice the existence of the meeting and the topic of the agenda item, it cannot take official notice of the hearsay content of the recording and admit the recording as evidence. (<i>People v. Woodell</i> (1998) 17 Cal.4th 448, 455.) It is not enough to say that the Delta ISB is a scientific adviser to the Council without any explanation as to the content of the recordings and a specific fact for official notice or its relevance to the pending certification or appeals. (<i>Ketchum v. Moses</i> (2001) 24 Cal.4th 1122, 1135, fn. 1.) In addition, it is not sufficient for the purpose of section 5026, that the recording existed prior to the date of the Certification. Appellant has not presented specific evidence that the document was part of the</p>

		administrative record before the Department for the Certification prior to the date of the Certification. (Cal. Code Regs., tit. 23, § 5026, subd.(c)(3).)
California Department of Fish & Wildlife, Golden Mussel Response Framework, April 14, 2025. Available at: <a href="https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=231231">https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=231231</a>	23 CCR § 5032	This document is already part of the record for this certification. (DCP.AA2.1.00072)
Maven's Notebook, DELTA ISB: New threat in the Delta: Golden mussels join the ranks of invasive species. Available at: <a href="https://mavensnotebook.com/2025/02/05/delta-isb-new-threat-inthe-delta-golden-mussels-join-the-ranks-of-invasive-species/">https://mavensnotebook.com/2025/02/05/delta-isb-new-threat-inthe-delta-golden-mussels-join-the-ranks-of-invasive-species/</a> .	23 CCR § 5032	<b>Denied.</b> An online article is not a generally accepted technical or scientific matter within the Council's jurisdiction. Appellant does not identify any fact to be officially noticed. While it may be undisputed that the article exists, a the Council does not take official notice of the hearsay content in the document. ( <i>People v. Woodell</i> (1998) 17 Cal.4th 448, 455.)
California Department of Fish & Wildlife, 2025. California's Invaders, Golden Mussel. Available at: <a href="https://wildlife.ca.gov/Conservation/Invasives/Species/GoldenMussel">https://wildlife.ca.gov/Conservation/Invasives/Species/GoldenMussel</a> .	23 CCR § 5032	This website information is already part of the record for this certification. (DCP.AA2.1.00069)
California Department of Fish & Wildlife, 2025 Golden	23 CCR § 5032	This website information is already part of the record for this certification. (DCP.AA2.1.00069)

<p>Mussel Survey Results in California. Available at: <a href="https://wildlife.ca.gov/Conservation/Invasives/Species/GoldenMussel">https://wildlife.ca.gov/Conservation/Invasives/Species/GoldenMussel</a>.</p>		
<p>California Department of Water Resources. September 2025. Golden Mussel Detections (Sept. 2025 Update). Available at: <a href="https://water.ca.gov/-/media/DWR-Website/Web-Pages/What-We-Do/Recreation/Invasive-Mussel-Mitigation/Golden-Mussel-Detections-with-Clifton-Court-Forebay-Insert-v15-20250924.pdf">https://water.ca.gov/-/media/DWR-Website/Web-Pages/What-We-Do/Recreation/Invasive-Mussel-Mitigation/Golden-Mussel-Detections-with-Clifton-Court-Forebay-Insert-v15-20250924.pdf</a></p>	<p>23 CCR § 5026</p>	<p><b>Admitted.</b> The Council takes official notice of the Department’s Golden Mussel Detections map. (Cal. Evid. Code § 452(h).)</p>
<p>California Department of Water Resources. 2025. Invasive Mussel Mitigation - Available at: <a href="https://water.ca.gov/What-We-Do/Recreation/Mussel-Mitigation">https://water.ca.gov/What-We-Do/Recreation/Mussel-Mitigation</a>. Cited: Appeal of BAS p. 4</p>	<p>23 CCR § 5026</p>	<p><b>Admitted.</b> The Council takes official notice of the Department’s website concerning invasive mussel mitigation. (Cal. Evid. Code § 452(h).)</p>
<p>California Department of Water Resources. July 24, 2024,</p>	<p>23 CCR § 5026</p>	<p><b>Admitted.</b> The Council takes official notice of the Department’s photograph of golden mussel. (Cal. Evid. Code § 452(h).)</p>

<p>photograph of golden mussel.</p>		
<p>Yang et al. Establishment risk of invasive golden mussel in a water diversion project: An assessment framework. Environmental Science and Ecotechnology. 17 (2024) 100305. Available at: <a href="https://water.sciencedirect.com/science/article/pii/S2666498-423000704">https://water.sciencedirect.com/science/article/pii/S2666498-423000704</a>; Cited by United States Bureau of Reclamation, et al. 2025. Western Basin Invasive Mussel Incident Response Toolkit. Literature on Golden Mussels. Available at: <a href="https://www.westerninvasivemussel.org/golden-mussels">https://www.westerninvasivemussel.org/golden-mussels</a></p>	<p>23 CCR § 5032</p>	<p><b>Denied.</b> Appellant seeks the admission of an article in the Environmental Science and Ecotechnology journal. Appellant does not identify a fact for the Council’s official notice. The article is not a generally accepted technical or scientific matter. The fact that it was cited by the United States Bureau of Reclamation does not make it an official act of the United States Bureau of Reclamation. The Council cannot take official notice of the hearsay content of the article and admit it as evidence. (<i>People v. Woodell</i> (1998) 17 Cal.4th 448, 455.) Appellant has not presented specific evidence that the document was part of the administrative record before the Department for the Certification prior to the date of the Certification. (Cal. Code Regs., tit. 23, § 5026, subd.(c)(3).)</p>
<p>Rebelo, Mauro. 2025. The Thread of the Golden Mussel CALMS Webinar. ; Webinar-Available at : <a href="https://biobureau.notion.site/The-Thread-of-the-Golden-Mussel-CALMS-Webinar-January-2025-1842c1e8779c80dabff1ff3ad58459f">https://biobureau.notion.site/The-Thread-of-the-Golden-Mussel-CALMS-Webinar-January-2025-1842c1e8779c80dabff1ff3ad58459f</a></p>	<p>23 CCR § 5032</p>	<p><b>Denied.</b> Appellant seeks the admission of a webinar concerning the Golden Mussel generally. Appellant does not identify a fact for the Council’s official notice. The webinar is not a generally accepted technical or scientific matter. The Council cannot take official notice of the hearsay content of the webinar and admit it as evidence. (<i>People v. Woodell</i> (1998) 17 Cal.4th 448, 455.) Appellant has not presented specific evidence that the document was part of the administrative record before the Department for the Certification prior to the date of the Certification. (Cal. Code Regs., tit23, § 5026, subd.(c)(3).)</p>

<p>California Department of Water Resources. Jun 30, 2022, Delta Conveyance Deep Dive: Intakes and Fish Screens. Available at: <a href="https://www.youtube.com/watch?v=R4H3E_Pe-i4">https://www.youtube.com/watch?v=R4H3E_Pe-i4</a></p>	<p>23 CCR § 5026</p>	<p>This video is already part of the record for this certification. (DCP.D6.1.00185)</p>
<p>Activities and Facilities, Information Sources, and Economic Contributions of Delta Events. Available at :<a href="https://delta.ca.gov/wp-content/uploads/2020/09/Delta-Recreation-Report-508.pdf">https://delta.ca.gov/wp-content/uploads/2020/09/Delta-Recreation-Report-508.pdf</a>.</p>	<p>23 CCR § 5032</p>	<p>This document is already part of the record for this certification. (DCP.D3.1.03924)</p>
<p>Delta Stewardship Council, Delta Science Program. California Delta Residents Survey data Explorer, DSC, October 16, 2025. <a href="https://deltascience.shinyapps.io/DeltaResidentsSurveyDataViewer">https://deltascience.shinyapps.io/DeltaResidentsSurveyDataViewer</a></p>	<p>23 CCR § 5032</p>	<p><b>Denied.</b> The Council’s Delta Residents Survey Data Explorer is not an official act of the Council. Appellant further does not identify a fact for the Council’s official notice. The Explorer is not relevant to the Certification or appeals. (<i>Ketchum v. Moses</i> (2001) 24 Cal.4th 1122, 1135, fn. 1.)</p>
<p>Delta Stewardship Council. October 27, 2022. E-mail from Daniel Constable to Other Staff of the Delta Stewardship Council.</p>	<p>23 CCR § 5032</p>	<p><b>Denied.</b> Appellant has failed to articulate a basis for the Council to officially notice an internal email between Council staff. An email is not a fact and proposition that is not reasonably subject to dispute and capable of immediate and accurate determination. It is further not an official act or decision of the Council. Appellant has not presented specific evidence that the document was part of the administrative record before the</p>

		Department for the Certification prior to the date of the Certification. (Cal. Code Regs., tit. 23, § 5026, subd.(c)(3).)
California Department of Water Resources. December 3, 2025. SWP Golden Mussel Update PowerPoint presentation Brianne Sakata.	23 CCR § 5032	<b>Admitted.</b> The Council takes official notice of the Department’s PowerPoint presentation concerning the Golden Mussel. (Cal. Evid. Code § 452(h).)
About the Delta Independent Science Board; Available at: <a href="https://deltacouncil.ca.gov/delta-isb/">https://deltacouncil.ca.gov/delta-isb/</a> .	23 CCR § 5032	<b>Denied.</b> Appellant has failed to identify a fact for the Council’s official notice from the Council’s webpage titled “About the Delta Independent Science Board”. This webpage is not a generally accepted technical or scientific matter within the Council’s jurisdiction. In addition it is not clear what “fact” appellant claims to be beyond dispute.
California Department of Water Resources. October 23, 2025. One Year Later: How California is combating Golden Mussels (Video). Available: <a href="https://www.youtube.com/watch?v=zPEN7BNK70Q&amp;t=1s;">https://www.youtube.com/watch?v=zPEN7BNK70Q&amp;t=1s;</a>	23 CCR § 5032	<b>Admitted.</b> The Council takes official notice of the Department’s video. (Cal. Evid. Code § 452(h).)
Rachel Becker, Calmatters, July 15, 2025. "A new invader threatens California water supplies. Can't the state stop its spread?" Available at: <a href="https://calmatters.org/environment/water/2025/07/golden-">https://calmatters.org/environment/water/2025/07/golden-</a>	Evid. Code § 452, subd. (h)	<b>Denied.</b> Appellant has failed to identify a fact for the Council’s official notice. While the article may contain certain facts that would be subject to official notice if properly identified to the Council for admission, the article as a whole not is a generally accepted scientific fact within the Council’s jurisdiction or a fact subject to official notice. (Cal. Code Regs, tit. 23, § 5032.) This article is not a Department publication. Appellant has not presented specific evidence that the document was part of the

mussel-california-water-supplies-spread-inspections/		administrative record before the Department for the certification prior to the date of the Certification. (Cal. Code Regs., tit. 23, § 5026, subd.(c)(3).)
Rachel Becker, Cal matters, November 4, 2025. "Emerging threat': An invasive species is upending life in the Delta, with no help on the way." Available at: <a href="https://calmatters.org/environment/water/2025/11/tiny-invaders-golden-mussels-delta/">https://calmatters.org/environment/water/2025/11/tiny-invaders-golden-mussels-delta/</a>	Evid Code. Code § 452, subd. (h)	<b>Denied.</b> Appellant has failed to identify a fact for the Council's official notice. While the article may contain certain facts that would be subject to official notice if properly identified to the Council for admission, the article as a whole not is a generally accepted scientific fact within the Council's jurisdiction or a fact subject to official notice. (Cal. Code Regs, tit. 23, § 5032.) This article is not a Department publication. Appellant has not presented specific evidence that the document was part of the administrative record before the Department for the Certification prior to the date of the Certification. (Cal. Code Regs., tit23, § 5026, subd.(c)(3).)

7. DCC Engineering Co.

<b>Document</b>	<b>Basis for Request</b>	<b>Ruling</b>
<b>Exhibit - 1</b> Lost Slough Patrol Road Rehabilitation - Bid Schedule for Construction	23 CCR § 5032	<b>Denied.</b> Appellant has failed to identify a fact for the Council's official notice and has not presented specific evidence that the document was part of the administrative record before the Department for the Certification prior to the date of the Certification. (Cal. Code Regs., tit.23, § 5026, subd.(c)(3).) Further, Appellant has failed to establish relevance to a Delta Plan policy. ( <i>Ketchum v. Moses</i> (2001) 24 Cal.4th 1122, 1135, fn. 1.)

<p><b>Exhibit 2</b> - San Joaquin River Seepage Repair Project 2025 - Bid Schedule for Construction</p>	<p>23 CCR § 5032</p>	<p><b>Denied.</b> Appellant has failed to identify a fact for the Council’s official notice and has not presented specific evidence that the document was part of the administrative record before the Department for the Certification prior to the date of the Certification. (Cal. Code Regs., tit.23, § 5026, subd.(c)(3).) Further, Appellant has failed to establish relevance to a Delta Plan policy. (<i>Ketchum v. Moses</i> (2001) 24 Cal.4th 1122, 1135, fn. 1.)</p>
<p><b>Exhibit 3</b> - Sacramento River Levee Erosion Control and Habitat Enhancement Project - Bid Schedule for Construction</p>	<p>23 CCR § 5032</p>	<p><b>Denied.</b> Appellant has failed to identify a fact for the Council’s official notice and has not presented specific evidence that the document was part of the administrative record before the Department for the Certification prior to the date of the Certification. (Cal. Code Regs., tit.23, § 5026, subd.(c)(3).) Further, Appellant has failed to establish relevance to a Delta Plan policy. (<i>Ketchum v. Moses</i> (2001) 24 Cal.4th 1122, 1135, fn. 1.)</p>
<p><b>Exhibit 4</b> - Delta Conveyance Authority. Soil Balance and Reusable Tunnel Material Supplement (Final Draft) May 27, 2022</p>	<p>23 CCR § 5032</p>	<p>This document is already in the record evidence. (DCP.D4.1.00097)</p>
<p><b>Exhibit 5</b> - Lost Slough Patrol Road Rehabilitation, Time and Materials Invoice</p>	<p>23 CCR § 5032</p>	<p><b>Denied.</b> Appellant has failed to identify a fact for the Council’s official notice and has not presented specific evidence that the document was part of the administrative record before the Department for the Certification prior to the date of the Certification. (Cal. Code Regs., tit.23, § 5026, subd.(c)(3).) Further, Appellant has failed to establish relevance to a Delta</p>

		Plan policy. ( <i>Ketchum v. Moses</i> (2001) 24 Cal.4th 1122, 1135, fn. 1.)
<b>Exhibit 6</b> - Lost Slough Patrol Road Rehabilitation and Surfacing, Invoice	23 CCR § 5032	<b>Denied.</b> Appellant has failed to identify a fact for the Council’s official notice and has not presented specific evidence that the document was part of the administrative record before the Department for the Certification prior to the date of the Certification. (Cal. Code Regs., tit.23, § 5026, subd.(c)(3).) Further, Appellant has failed to establish relevance to a Delta Plan policy. ( <i>Ketchum v. Moses</i> (2001) 24 Cal.4th 1122, 1135, fn. 1.)
<b>Exhibit 7</b> - Snodgrass Slough Emergency Levee Repair Invoice	23 CCR § 5032	<b>Denied.</b> Appellant has failed to identify a fact for the Council’s official notice and has not presented specific evidence that the document was part of the administrative record before the Department for the Certification prior to the date of the Certification. (Cal. Code Regs., tit.23, § 5026, subd.(c)(3).) Further, Appellant has failed to establish relevance to a Delta Plan policy. ( <i>Ketchum v. Moses</i> (2001) 24 Cal.4th 1122, 1135, fn. 1.)
<b>Exhibit 8</b> - Delta Conveyance Authority, Barge Transportation Study, Final Draft. December 23, 2021	23 CCR § 5032	This document is already in the record evidence. (DCP.D4.1.00043)
<b>Exhibit 9</b> - Georgiana Slough Rock Slope Protection Restoration, Fall 2025- Summary of Work	23 CCR § 5032	<b>Denied.</b> Appellant has failed to identify a fact for the Council’s official notice and has not presented specific evidence that the document was part of the administrative record before the Department for the Certification prior to the date of the Certification. (Cal. Code Regs., tit.23, § 5026, subd.(c)(3).) Further, Appellant has failed to establish relevance to a Delta

		Plan policy. ( <i>Ketchum v. Moses</i> (2001) 24 Cal.4th 1122, 1135, fn. 1.)
<b>Exhibit 10</b> - California Department of Fish & Wildlife. February 5, 2021. Final Lake or Streambed Alteration Agreement, Notification No. 1600-2017-0091-R3, Sacramento River Erosion Control and Habitat Enhancement Project	23 CCR § 5032	<b>Denied.</b> Appellant has failed to identify a fact for the Council’s official notice and has not presented specific evidence that the document was part of the administrative record before the Department for the Certification prior to the date of the Certification. (Cal. Code Regs., tit.23, § 5026, subd.(c)(3).) Further, Appellant has further failed to establish relevance to a Delta Plan policy. ( <i>Ketchum v. Moses</i> (2001) 24 Cal.4th 1122, 1135, fn. 1.)
<b>Exhibit 11</b> - Central Valley Regional Water Quality Control Board. April 29, 2021. Clean Water Act Section 401 Water Quality Certification and Order, Sacramento River Erosion Control and Habitat Enhancement Project, 5A34CR00817	23 CCR § 5032	<b>Denied.</b> Appellant has failed to identify a fact for the Council’s official notice and has not presented specific evidence that the document was part of the administrative record before the Department for the Certification prior to the date of the Certification. (Cal. Code Regs., tit.23, § 5026, subd.(c)(3).) Further, Appellant has failed to establish relevance to a Delta Plan policy. ( <i>Ketchum v. Moses</i> (2001) 24 Cal.4th 1122, 1135, fn. 1.)
<b>Exhibit 12</b> - Metropolitan Water District (MWD), November 17, 2025, Joint One Water & Adaption Committee and Subcommittee on Imported Water <a href="https://tinyurl.com/mtt6p9sz">https://tinyurl.com/mtt6p9sz</a>	23 CCR § 5032	<b>Denied.</b> Appellant has failed to identify a fact for the Council’s official notice and has not presented specific evidence that the document was part of the administrative record before the Department for the Certification prior to the date of the Certification. (Cal. Code Regs., tit.23, § 5026, subd.(c)(3).) Further, Appellant has failed to establish relevance to a Delta Plan policy. ( <i>Ketchum v. Moses</i> (2001) 24 Cal.4th 1122, 1135, fn. 1.)

<b>Exhibit 13</b> - Delta Levees Investment Strategy Final Report (Delta Stewardship Council, July 2017), Executive Summary p. ES -1	23 CCR § 5032	This document is already part of the record for this certification. (DCP.D3.1.00507)
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**EXHIBIT B. ACRONYMS USED IN THIS DECISION**

<b>Acronym</b>	<b>Full Meaning</b>
<b>ALS</b>	Agricultural Land Stewardship
<b>AMMP</b>	Adaptive Management and Monitoring Plan
<b>ARMP</b>	Archaeological Resources Management Plan
<b>BAS</b>	Best Available Science
<b>BDCP</b>	Bay Delta Conservation Plan
<b>BMP</b>	Best Management Practices
<b>CAPB</b>	Contracts for the Administration of Public Benefits
<b>CBP</b>	Community Benefits Program
<b>CDFW</b>	California Department of Fish and Wildlife
<b>CEQA</b>	California Environmental Quality Act
<b>CER</b>	Concept Engineering Report
<b>CHAB</b>	Cyanobacteria Harmful Algal Bloom
<b>CMP</b>	Compensatory Mitigation Plan
<b>CPOD</b>	Change in Point of Diversion
<b>CRHR</b>	California Register of Historical Resources
<b>CRP</b>	Cosumnes River Preserve
<b>CVHM</b>	Central Valley Hydrologic Model
<b>DCA</b>	Delta Conveyance Design and Construction Authority
<b>DCP</b>	Delta Conveyance Project
<b>DWR</b>	Department of Water Resources
<b>DLIS</b>	Delta Levees Investment Strategy
<b>DSM2</b>	Delta Simulation Model 2
<b>EIR</b>	Environmental Impact Report
<b>EC</b>	Environmental Commitment
<b>EJ</b>	Environmental Justice
<b>ESA</b>	Endangered Species Act
<b>GIS</b>	Geographic Information System
<b>GSAs</b>	Groundwater Sustainability Agencies
<b>HAB</b>	Harmful Algal Bloom
<b>HRSER</b>	Historical Resources Survey and Evaluation Report
<b>ITP</b>	Incidental Take Permit
<b>MM</b>	Mitigation Measure
<b>MMRP</b>	Mitigation Monitoring and Reporting Program
<b>NHA</b>	National Heritage Area
<b>NHPA</b>	National Historic Preservation Act
<b>NRHP</b>	National Register of Historic Places
<b>OPC</b>	Ocean Protection Council
<b>PHRA</b>	Priority Habitat Restoration Area

<b>RTM</b>	Reusable Tunnel Material
<b>SEC</b>	Stakeholder Engagement Committee
<b>SHPO</b>	State Historic Preservation Officer
<b>SLNWR</b>	Stone Lakes National Wildlife Refuge
<b>SWP</b>	State Water Project
<b>SWRCB</b>	State Water Resources Control Board
<b>TCC</b>	Twin Cities Complex
<b>TCL</b>	Tribal Cultural Landscape
<b>TCR</b>	Tribal Cultural Resource
<b>TCRMP</b>	Tribal Cultural Resources Management Plan
<b>TUCO/TUCP</b>	Temporary Urgency Change Order/Petition
<b>UWMP</b>	Urban Water Management Plan
<b>VMT</b>	Vehicle Miles Traveled
<b>WSIP</b>	Water Storage Investment Program