Appeal of Certification of Consistency

C20257-A7

Step 1 - Appeallant(s) Information

Appellant Representing:	City of Stockton
Primary Contact:	Kelley M. Taber, ktaber@somachlaw.com
Address:	Somach Simmons & Dunn, 500 Capitol Mall, Suite 100
City, State, Zip:	Sacramento, CA 95814
Telephone/Fax:	(916) 446-7979
E-mail Address:	gloomis@somachlaw.com

Step 2 - Covered Action being Appealed

Covered Action ID:	C20257
Covered Action Title:	Delta Conveyance Project
Agency Subject to Appeal:	California Department of Water Resources
Contact Person Subject to Appeal:	Katherine Marquez
Address:	1600 9th Street Bateson, 2nd Floor
City, State, Zip:	Sacramento, CA 95814
Telephone/Fax:	(866) 924-9955
E-mail Address:	dcp_consistency@water.ca.gov
Covered Action Description:	The covered action consists of the construction, operation, and maintenance of new SWP water diversion and conveyance facilities in the Delta that will be part of the SWP and will be operated in coordination with the existing SWP south Delta water diversion facilities. The covered action includes the following five key components and actions: (1) Two intake facilities along the Sacramento River in the north Delta near the community of Hood with on-bank intake structures that will include state-of-the-art fish screens approved by state and federal fish and wildlife agencies; (2) A concrete-lined tunnel, and associated vertical tunnel shafts, to convey flow from the intakes about 45 miles to the south to the Bethany Reservoir Pumping Plant and Surge Basin at a location south of the existing SWP Clifton Court Forebay; (3) A Bethany Reservoir Pumping Plant to lift the water from inside the tunnel below ground into the Bethany Reservoir Aqueduct for conveyance to the Bethany Reservoir Discharge Structure and into the existing Bethany Reservoir; (4) Other ancillary facilities to support construction and operation of the conveyance facilities including access roads, concrete batch plants, fuel stations, and power transmission and distribution lines; (5) Efforts to identify geotechnical, hydrogeologic, agronomic, and other field conditions that will guide appropriate construction methods and monitoring programs for final engineering design and construction (including the 2024–2026 Proposed Geotechnical Activities). For the purposes of this Certification, the covered action includes the actions described in Final EIR 1 Volume 1, Chapter 3, Description of the Proposed Project and Alternatives (California Department of Water Resources 2023c), refinements to those actions as described in Addendum 1 and Addendum 2 to the Final EIR (California Department of Water Resources 2025a, 2025g), and commitments included in the adopted MMRP (California Department of Water Resources

2023e) (including the Compensatory Mitigation Plan for Special-Status Species and Aquatic Resources [CMP], as described in Final EIR Volume 1, Appendix 3F). For details on the engineering design for the covered action see the Delta Conveyance Project Concept Engineering Report (Delta Conveyance Design and Construction Authority 2024a). For details on operations of the covered action see the Delta Conveyance Project Operations Plan (California Department of Water Resources 2025f). For information on SWP water supply contract amendments, negotiations of project-wide contract amendments, and the Agreement in Principle (AIP) among DWR and many SWP contractors that describes a conceptual approach to cost allocation and the related financial and water management matters, see Final EIR Chapter 3, Section 3.22, Contract Amendments. See the Delta Conveyance Project Certification of Consistency with the Delta Plan (DCP.AA1.2.00001) for additional details.

Step 3 - Consistency with the Delta Plan

DELTA PLAN CHAPTER 2

G P1/Cal. Code Regs., tit. 23, § 5002 - **Detailed Findings to Establish Consistency with the Delta Plan.**

G P1/Cal. Code Regs., tit. 23, § 5002 identifies what must be addressed in a certification of consistency filed by a State or local public agency with regard to any covered action and only applies after a "proposed action" has been determined by a State or local public agency to be a covered action because it is covered by one or more of the regulatory policies listed under Delta Plan Chapters 3, 4, 5, and 7 of this form. Inconsistency with this policy may be the basis for an appeal.

A certification of consistency must include detailed findings that address each of the regulatory policies identified in Cal. Code Regs., tit. 23, §§ 5002-5013 and listed on this Form that is implicated by the covered action.

As outlined in Cal. Code Regs., tit. 23, § 5002 (b)(1), the Delta Stewardship Council acknowledges that in some cases, based upon the nature of the covered action, full consistency with all relevant regulatory policies may not be feasible. In those cases, the agency that files the certification of consistency may nevertheless determine that the covered action is consistent with the Delta Plan because, on whole, that action is consistent with the coequal goals. That determination must include a clear identification of areas where consistency with relevant regulatory policies is not feasible, an explanation of the reasons why it is not feasible, and an explanation of how the covered action nevertheless, on whole, is consistent with the coequal goals. That determination is subject to review by the Delta Stewardship Council on appeal.

Specific requirements of this regulatory policy:

a. G P1(b)(1)/Cal. Code Regs., tit. 23, § 5002, subd. (b)(1) - **Coequal Goals**

As outlined in **Cal. Code Regs., tit. 23, § 5002 (b)(1)** , the Delta Stewardship Council acknowledges that in some cases, based upon the nature of the covered action, full consistency with all relevant regulatory policies may not be feasible. In those cases, the agency that files the certification of consistency may nevertheless determine that the covered action is consistent with the Delta Plan because, on whole, that action is consistent with the coequal goals. That determination must include a clear identification of areas where consistency with relevant regulatory policies is not feasible, an explanation of the reasons why it is not feasible, and an explanation of how the covered action nevertheless, on whole, is consistent with the coequal goals. That determination is subject to review by the Delta Stewardship Council on appeal.

Is the covered action inconsistent with this portion of the regulatory policy?

Yes, Inconsistent

Answer Justification:	Please see attached Appeal. Appellant claims that the Covered Action is inconsistent with several Delta Plan policies, including Policies G P1, WR P1, ER P1, and DP P2, discussed in more detail elsewhere. (Appeal, Section I.) The Covered Action is on whole inconsistent with the Delta Plan's Coequal Goals, in violation of 23 CCR § 5002(b)(1), because it: (1)

does not ensure a more reliable water supply for the state and actually makes delta water supply less reliable (Appeal, Section I.A); (2) fails to protect, restore, and enhance the delta ecosystem and instead will substantially damage and degrade the delta ecosystem (Appeal, Section I.B); and (3) fails to protect and enhance and any of the unique cultural, recreational, natural resource, and agricultural values of the delta as an evolving place (Appeal, Section I.C). Appellant relies on statutory and regulatory language in the Water Code and the California Code of Regulations and evidence in the draft Certification of Consistency Record in support of its claim. The Covered Action's inconsistency with this regulatory policy and the Coequal Goals will have a significant adverse impact on both Coequal Goals because they will be unachievable, and DWR has not demonstrated otherwise. 11172025 Stockton Appeal of DCP Cert of Consistency.pdf

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a. G P1(b)(2)/Cal. Code Regs., tit. 23, § 5002, subd. (b)(2) - **Mitigation Measures**

G P1(b)(2)/Cal. Code Regs., tit. 23, § 5002, subd. (b)(2) provides that covered actions not exempt from CEQA, must include all applicable feasible mitigation measures adopted and incorporated into the Delta Plan as amended April 26, 2018, (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. For more information, see Cal. Code Regs., tit. 23, § 5002, and Delta Plan Appendix O, Mitigation Monitoring and Reporting Program, which are referenced in this regulatory policy.

Is the covered action inconsistent with this portion of the regulatory policy?

Yes, Inconsistent

Answer Justification:

Please see attached Appeal. Appellant claims that the Covered Action does not include all applicable feasible Delta Plan mitigation measures nor has DWR provided equally or more effective substitute measures, in violation of 23 CCR § 5002(b)(2). The Covered Action does not include Delta Plan Mitigation Measures 20-1 nor has DWR demonstrated that it provided equally or more effective substitute measures. Appellant relies on the express language in the Delta Plan mitigation measures, evidence in the draft Certification of Consistency Record, and the Public Resources Code in support of its claim. The inconsistency will have a significant adverse impact on the coequal goal of protecting, restoring, and enhancing Delta ecosystems because DWR's failure to include all applicable, feasible mitigation measures or effective substitute measures results in an increase in potential significant adverse impacts associated with the disposal of tunneling spoils and any unmitigated increase to the impacts on resources is antithetical to the protection, restoration, and the enhancement of the Delta ecosystem, and DWR has not demonstrated otherwise. 11172025 Stockton Appeal of DCP Cert of Consistency.pdf

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b. G P1(b)(3)/Cal. Code Regs., tit. 23, § 5002, subd. (b)(3) - **Best Available Science**

G P1(b)(3)/Cal. Code Regs., tit. 23, § 5002, subd. (b)(3) provides that, relevant to the purpose and nature of the project, all covered actions must document use of best available science. For more information, see Appendix 1A, which is referenced in this regulatory policy.

Is the covered action inconsistent with this portion of the regulatory policy?

Yes, Inconsistent

Answer Justification:

Please see the attached appeal. Appellant claims that DWR does not use best available science (BAS) in planning and environmentally analyzing the Covered Action and therefore cannot and does not document the use of BAS, in violation of 23 CCR § 5002(b)(3) DWR: (1) as contended by the Delta Independent Science Board, used flawed methodology and modeling for climate change, ecology analysis, and impacts to fish and terrestrial species, and overstated seismic risks in the Delta in the Final EIR, thereby undermining DWR's analysis; and (2) failed to analyze impacts on Stockton's Delta Water Supply Project and Regional Wastewater Control Facility based on conditions projected to exist when it would actually operate; and (3) provides insufficient or flawed analysis on climate change, sea level rise, Harmful Algal Blooms, salinity impacts, and bromide concentrations. Appellant relies on regulatory language in the California Code of Regulations, the Delta Independent Science Board's published review , and evidence in the draft Certification of Consistency Record in support of its claim. The inconsistency will have a significant adverse impact on the coequal goals because, by failing to rely on BAS, DWR ignores the scope of DCP impacts associated with hydrological and ecological responses to climate change, ecology in general, fish and terrestrial species, seismicity, and water quality impacts, leading to significant effects on the ecosystem that is required by the coequal goals to be protected, restored, and enhanced. 11172025 Stockton Appeal of DCP Cert of Consistency.pdf

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DELTA PLAN CHAPTER 3

WR P1 / Cal. Code Regs., tit. 23, § 5003 - **Reduce Reliance on the Delta through Improved Regional Water Self-Reliance**

Is the covered action inconsistent with this portion of the regulatory policy?

Yes, Inconsistent

Answer Justification:

Please see attached Appeal. Appellant claims that the DCP is not consistent with Delta Plan Policy WR P1, in violation of 23 CCR § 5003, because: (1) DWR has dramatically understated relevant water suppliers' failure to demonstrate reduced reliance on the Delta; (2) DWR has incorrectly determined that the need for the Delta Conveyance Project (DCP) has not been significantly caused by the water suppliers' failure to demonstrate reduced reliance on the Delta and has overstated the need for the DCP; and (3) DWR has conceded that numerous significant and unavoidable impacts will result from the DCP. Appellant relies on statutory language in the Water Code, regulatory language in the California Code of Regulations, case law, and evidence in the draft Certification of Consistency Record in support of its claim. The Covered Action's inconsistency with this regulatory policy will have a significant adverse impact on the Coequal Goal to protect, restore, and enhance the Delta ecosystem because, in part, it will result in significant and unavoidable adverse environmental impacts, and DWR has not demonstrated otherwise. 11172025 Stockton Appeal of DCP Cert of Consistency.pdf

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DELTA PLAN CHAPTER 4

ER P1 / Cal. Code Regs., tit. 23, § 5005 - **Delta Flow Objectives**

Is the covered action inconsistent with this portion of the regulatory policy?

Yes, Inconsistent

Answer Justification:

Please see attached Appeal. Appellant claims that the DCP is not consistent with Delta Plan Policy ER P1, in violation of 23 CCR § 5005, because DWR has not provided substantial evidence of consistency with the applicable flow objectives. Specifically, Appellant claims that: (1) DWR's modeling of the Delta Conveyance Project (DCP) is insufficient with respect to its ability to comply with flow objectives, as recognized by the Delta Independent Science Board and State Water Resources Control Board's Office of Administrative Hearings, (2) the California State Water Project is chronically out of compliance with flow objectives, which can be anticipated to continue with the DCP; and (3) DWR improperly assumes that issuance of Temporary Urgency Change Orders modifying its water rights is not evidence of inconsistency with flow objectives. Appellant relies on statutory language in the Water Code, regulatory language in the California Code of Regulations, and evidence in the draft Certification of Consistency Record in support of its claim. The Covered Action's inconsistency with this regulatory policy will have a significant adverse impact on the on the Coequal Goals because, in part, it would substantially increase non-compliance with flow objectives. 11172025 Stockton Appeal of DCP Cert of Consistency.pdf

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DELTA PLAN CHAPTER 5

DP P2 / Cal. Code Regs., tit. 23, § 5011 - **Respect Local Land Use When Siting Water or Flood Facilities or Restoring Habitats**

Is the covered action inconsistent with this portion of the regulatory policy?

Yes, Inconsistent

Answer Justification:

Please see attached Appeal. Appellant claims that DWR did not site Covered Action facilities to avoid or reduce conflicts with existing and planned land uses, in violation of 23 CCR § 5011. DWR: (1) failed to site the DCP to avoid or reduce conflicts with Stockton's existing uses of its Delta Water Supply Project and Regional Wastewater Control Facility and with Stockton's air quality; (2) failed to demonstrate that it could not feasibly site the DCP to reduce or avoid conflicts with existing land uses; and (3) did not adequately consider comments from local agencies, including the City, and the Delta Protection Commission. Moreover, DWR, based on a misreading of the regulation, failed to analyze uses described or depicted in any city or county general plans, including the City's. Appellant relies on statutory language in the Water Code, regulatory language in the California Code of Regulations, and evidence in the draft Certification of Consistency Record in support of its claim. The Covered Action therefore will have a significant adverse impact on the Coequal Goal of providing a more reliable water supply for California because it will impair the operations of the Delta Water Supply Project and Regional Wastewater Control Facility and damaging a vital water supply that supports the largest City wholly within the Delta. 11172025 Stockton Appeal of DCP Cert of Consistency.pdf

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