

# Tribal and NGO Appeal of Delta Conveyance Project Certification of Consistency

Eric Buescher, Managing Attorney  
Christie Ralston, Associate Attorney  
**San Francisco Baykeeper**

February 26-27, 2026

Consistency Determination  
Appeal No. C20257-A5



# DCP is Destructive to the Delta as a Place

## EJ Communities & Delta Tribes

- **23 Cal. Code Regs. § 5011:** conflicts with existing uses of the Delta must be avoided or reduced
- DCP will significantly and unavoidably **harm Delta environmental justice communities**
  - Pattern of impact to Indigenous and Hispanic/Latino communities is consistent with DWR targeting already overburdened environmental justice communities
- DCP will significantly and **unavoidably harm Delta Tribal Cultural Landscape and Tribal cultural resources**
  - DCP will negatively impact Tribal historic village sites, customs, and practices
  - DWR did not meaningfully engage in government-to-government consultations with Tribes throughout the Bay-Delta watershed



Photo: Florence Low/Department of Water Resources

# DCP is Destructive to the Delta as a Place Recreation and Economy

- **23 Cal. Code Regs. § 5011:** conflicts with existing uses of the Delta must be avoided or reduced
- DCP will negatively impact recreation in the Delta
  - DWR does not adequately address the likely proliferation and intensification of **harmful algal blooms** under DCP operation
  - DWR admits that DCP construction and operation will result in **reduced recreation opportunities** in the Delta
- DCP will negatively impact Delta businesses
  - **10+ years of construction impact** will likely lead to shuttered businesses
  - DWR's Community Benefits Program is **speculative**, and it and other mitigation measures are **insufficient** to rectify harms to Delta businesses and communities



# Mitigation and Paving the Way for Invasive Species ≠ **Habitat or Ecosystem Restoration**

- **23 Cal. Code Regs.**
  - **§ 5006:** restore habitats at appropriate elevations
  - **§ 5007:** avoid adverse impacts on habitat restoration
  - **§ 5008:** increase floodplains and riparian habitats in levee projects
- DWR **mitigates** rather than restoring or increasing habitat
  - Mitigation is reducing harm, not improving conditions
  - DWR does not provide substantial evidence that mitigation will be effective
  - Protect and restore requires more than limiting new damage
- **23 Cal. Code Regs. § 5009:** improved conditions for invasive species must be avoided or mitigated to protect the ecosystem
  - DCP will lead to conditions benefitting the Golden Mussel and non-native invasive fish species that prey on native fish species



Photo: Florence Low/Department of Water Resources

# DWR Ignored Best Available Science

## Climate Change

- **23 Cal. Code Regs. § 5002(b)(3):** covered actions require documentation of best available science
- DWR analyses of DCP are unrepresentative of current or likely future conditions
  - Hydrological data biased by series of abnormally wet of years
  - Does not account for increased evapotranspiration or impact of wildfires
  - Inaccurately extrapolates sea level rise and Delta salinity intrusion
- DWR climate models failed to predict actual tropical warming patterns
- DWR declined to model conditions past 2070
- State Water Board:
  - “Additional modeling of DCP operations that incorporate . . . a reasonable range of future climate conditions is necessary . . . .”
  - California Department of Water Resources’ Petitions for Change of Water Right Permits 16478, 16479, 16481, and 16482, Administrative Hearing Office Letter to A. Carroll Requesting Additional Information (Oct. 10, 2025)

# DWR Ignored Best Available Science Traditional Ecological Knowledge (TEK)

- **23 Cal. Code Regs. § 5002(b)(3):** covered actions require documentation of best available science
  - TEK is part of “best available science” under Delta Plan (Delta Plan App. 1A at 1A-1.)
  - TEK is “is a body of observations, oral and written knowledge, innovations, practices, and beliefs that promote sustainability and the responsible stewardship of cultural and natural resources through relationships between humans and their landscapes. [It] cannot be separated from the people inextricably connected to that knowledge. It applies to phenomena across biological, physical, social, cultural, and spiritual systems.”  
(DCPV2.14.00041, 66)
- DWR failed to incorporate TEK regarding:
  - Fish and wildlife
  - Tribal uses of water
  - Harmful algal blooms
  - Tribal cultural and religious practices



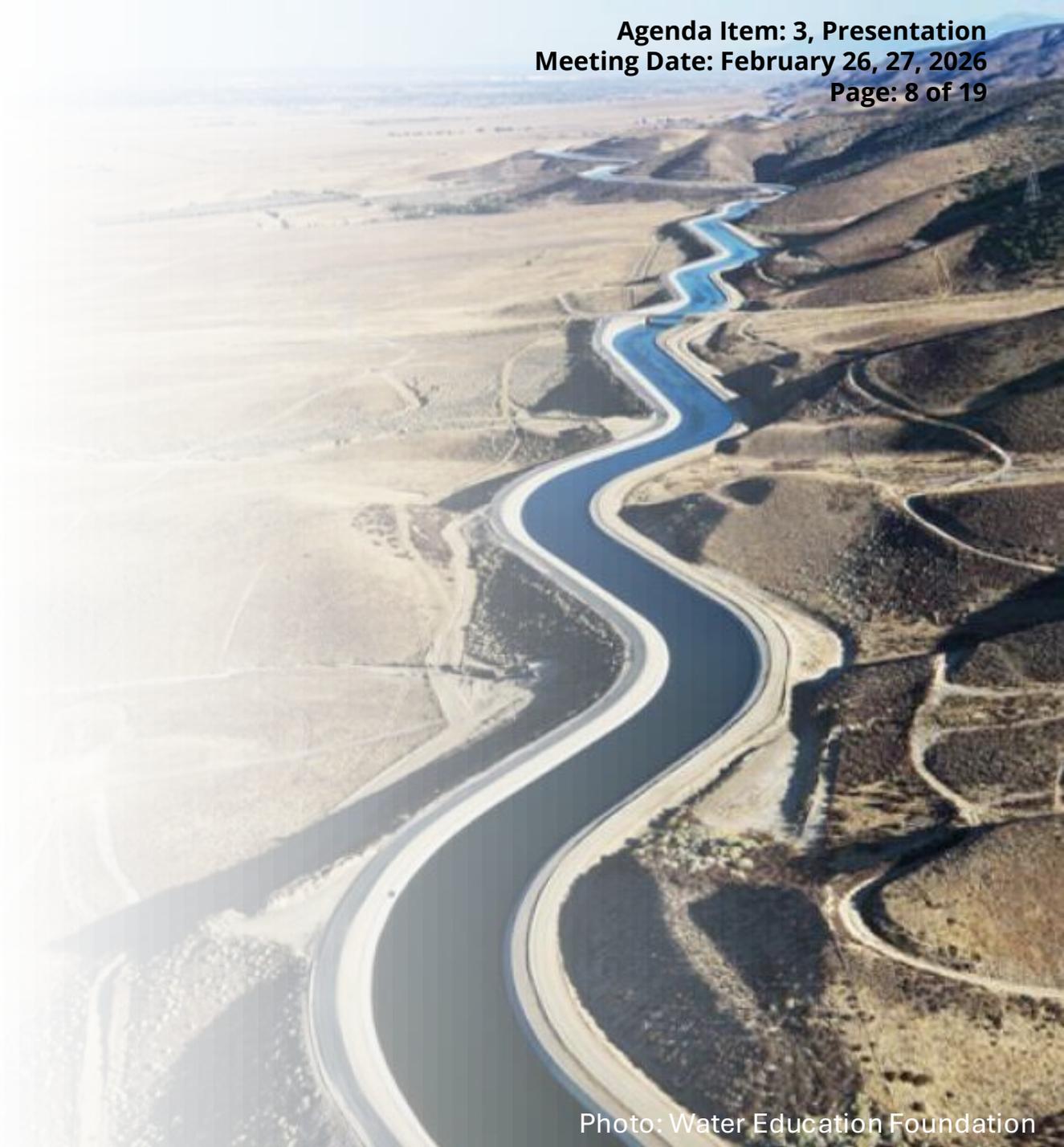
# DCP Does Not Reduce Reliance on the Delta *Legal Standard*

- **23 Cal. Code Regs. § 5003(a):** water shall not be exported if:
  - (1) one or more recipient water suppliers have not adequately contributed to reduced reliance on the Delta **and** improved regional self-reliance;
  - (2) failure to reduce reliance and improve regional self-reliance caused need for exports; and
  - (3) exports would have a significant adverse environmental impact in the Delta
- **23 Cal. Code Regs. § 5003(c)(1):** to contribute to reduced reliance on the Delta and improved regional self-reliance, recipient water suppliers must show:
  - (A) completed UWMP;
  - (B) identified, evaluated, and commenced implementation of projects in UWMP which will reduce reliance on the Delta; and
  - (C) expected outcome for measurable reduction in Delta reliance **and** improvement in regional self-reliance.



# DCP Does Not **Reduce Reliance on the Delta**

- The purpose of the DCP is to **increase diversions** of water from the Sacramento River
- Water suppliers will **receive more water** from the Bay-Delta watershed than currently
- An increase in water diverted away from the Delta inherently means that recipient water suppliers as a whole have **failed to reduce reliance on the Delta**



# Increasing Self-Reliance Alone ≠ Decreasing Reliance on Delta

- DWR ignored the “and” in section 5003
  - DWR passed off 186 water suppliers as having reduced reliance on the Delta despite categorizing them as only having improved regional self-reliance
  - This is nearly 4 out of 5 recipient water suppliers
- DWR inaccurately excluded these 186 recipient water suppliers from its calculations for total demand for increased exports
- 19 of these 186 recipient water suppliers showed a decrease in supplies contributing to regional self-reliance from 2010 to 2040

Table 3.3-1. Urban Water Suppliers Demonstrating Improved Regional Self-Reliance

Count	Regional Agency	Reporting Agency
1	Ala	
2	Ant	
3	Ant	Metropolitan Water District Compton, City of
39	Met	
40	Met	
41	Met	
42	Met	Metropolitan Water District Laguna Beach County Water District
43	Met	
44	Met	
45	Met	
46	Met	
47	Met	
48	Met	
49	Met	
50	Met	
51	Met	
52	Met	
53	Met	
54	Met	
55	Met	
56	Met	
57	Met	
58	Met	
59	Met	
60	Met	
61	Met	
62	Met	
63	Met	
64	Met	
65	Met	
66	Met	
67	Met	
68	Met	
69	Met	
70	Met	
71	Met	
72	Met	
73	Met	
74	Met	
75	Met	
76	Met	
77	Met	
78	Met	
79	Met	
80	Met	
81	Met	
82	Met	
83	Met	
84	Met	
85	Met	
86	Met	
87	Met	
88	Met	
89	Met	
90	Met	
91	Met	
92	Met	
93	Met	
94	Met	
95	Met	
96	Met	
97	Met	
98	Met	
99	Met	
100	Met	
101	Met	
102	Met	
103	Met	
104	Met	
105	Met	
106	Met	
107	Met	
108	Met	
109	Met	
110	Met	
111	Met	
112	Met	
113	Met	
114	Met	
115	Mo	
116	Mo	
117	Mo	
118	Mo	
119	Mo	
120	Mo	
121	Mo	
122	Mo	
123	Mo	
124	Mo	
125	Mo	
126	Mo	
127	Mo	
128	Mo	
129	Mo	
130	Mo	
131	Mo	
132	Mo	
133	Mo	
134	Mo	
135	Mo	
136	Mo	
137	Mo	
138	Mo	
139	Mo	
140	Mo	
141	Mo	
142	Mo	
143	Mo	
144	Mo	
145	Mo	
146	Mo	
147	Mo	
148	Mo	
149	Mo	
150	Mo	
151	Mo	
152	Mo	
153	Mo	
154	Mo	
155	Mo	
156	Mo	
157	Mo	
158	Mo	
159	Mo	

Count	Regional Agency	Reporting Agency
160	San Bernardino Valley Municipal Water District	Colton, City of
161	San Bernardino Valley Municipal Water District	East Valley Water District
162	San Bernardino Valley Municipal Water District	Loma Linda, City of
163	San Bernardino Valley Municipal Water District	Redlands, City of
164	San Bernardino Valley Municipal Water District	Rialto, City of
165	San Bernardino Valley Municipal Water District	Riverside Highland Water Company
166	San Bernardino Valley Municipal Water District	San Bernardino, City of
167	San Bernardino Valley Municipal Water District	West Valley Water District
168	San Geronio Pass Water Agency	Banning, City of
169	San Geronio Pass Water Agency	Yucaipa Valley Water District
170	San Luis Obispo County FC&WCD	San Luis Obispo County Flood Control and Water Conservation District
171	Santa Barbara County FC&WCD	Carpinteria Valley Water District
172	Santa Barbara County FC&WCD	Goleta Water District
173	Santa Clara Valley Water District	California Water Service Company Los Altos/Suburban
174	Santa Clara Valley Water District	East Palo Alto, City of
175	Santa Clara Valley Water District	Gilroy, City of
176	Santa Clara Valley Water District	Great Oaks Water Company Incorporated
177	Santa Clara Valley Water District	Milpitas, City of
178	Santa Clara Valley Water District	Morgan Hill, City of
179	Santa Clara Valley Water District	Mountain View, City of
180	Santa Clara Valley Water District	San Jose, City of
181	Santa Clara Valley Water District	Santa Clara, City of
182	Santa Clara Valley Water District	Sunnyvale, City of
183	Ventura County Watershed Protection District	Casitas Municipal Water District
184	Ventura County Watershed Protection District	Port Hueneme Water Agency
185	Ventura County Watershed Protection District	San Buenaventura, City of
186	Ventura County Watershed Protection District	United Water Conservation District

FC&WCD = flood control and water conservation district.

# DWR Justifies the DCP with Inconsistent Calculations

- DWR uses an **unrepresentative and arbitrary baseline** to determine reductions in reliance on Delta and increases in self-reliance
- DWR **cherry-picks** between percentages and volumes when calculating changes in demand and self-reliance
  - For water suppliers that “increased self-sufficiency,” 32 saw a decrease or no change in either volume or percentage of water supplies contributing to increased self-reliance
  - For water suppliers that “decreased reliance of the Delta,” 15 saw an increase or no change in either volume of Delta supplies or Delta supplies as a percentage of total demand
- DWR accepts **de minimis improvements** as “adequate contribut[ions]” to overall decreased reliance on the Delta and increased regional self-reliance



Photo: Department of Water Resources

Project Name	Change in Total Quantity of Delta Supplies, 2010-2030	Change in Delta Supplies as a Percent of Total Demand, 2010-2030
Alameda County Flood Control District 7	+7,455 AF	-15%
Beaumont-Cherry Valley Water District	+4,654 AF	-16%
City of Ontario	+3,176 AF	-6%
Contra Costa Water District	+6,700 AF	-8%
Cucamonga Valley Water District	+2,445 AF	-9%
Monte Vista Water District	+1,743 AF	-2%
Mojave Water Agency	+7,990 AF	-3%

# DWR Fails to Accurately Represent Delta Reliance

“As discussed in the *Causes of the Need for the Covered Action* section, the covered action is needed to protect against future water supply losses caused by climate change-driven weather extremes, sea level rise, and earthquakes, and compared to the demonstrated reduced reliance and improved regional self-reliance, **even the theoretical maximum failure to reduce reliance is not significant.**”

- DWR fails to provide substantial evidence that recipient water suppliers' failures to reduce Delta reliance is not significant
  - The calculated total demand does not account for the 186 water suppliers that only increased self-reliance
  - DWR measures underestimated demand against overestimated total supplies of 3.99 million acre-feet
- DWR ignores the mandates of the Water Code and the Delta Plan to justify the DCP
  - DWR claims that even the **maximum failure to reduce reliance** would not trigger application of WR P1 of the Delta Plan
  - DWR treats WR P1 as an unenforceable goal

# DWR Ignored Best Available Science

## Population Projections

- **23 Cal. Code Regs. § 5002(b)(3):** covered actions require documentation of best available science
- DWR relies on **disparate and misleading** population growth projections to justify DCP
  - Urban Watershed Management Plans (UWMPs) lack a single source for data
  - UWMPs are inconsistent in population growth projection methodologies
  - DWR does not acknowledge predicted near-future population declines
- DWR ignores that demand for water is decreasing and has been **consistently overestimated**



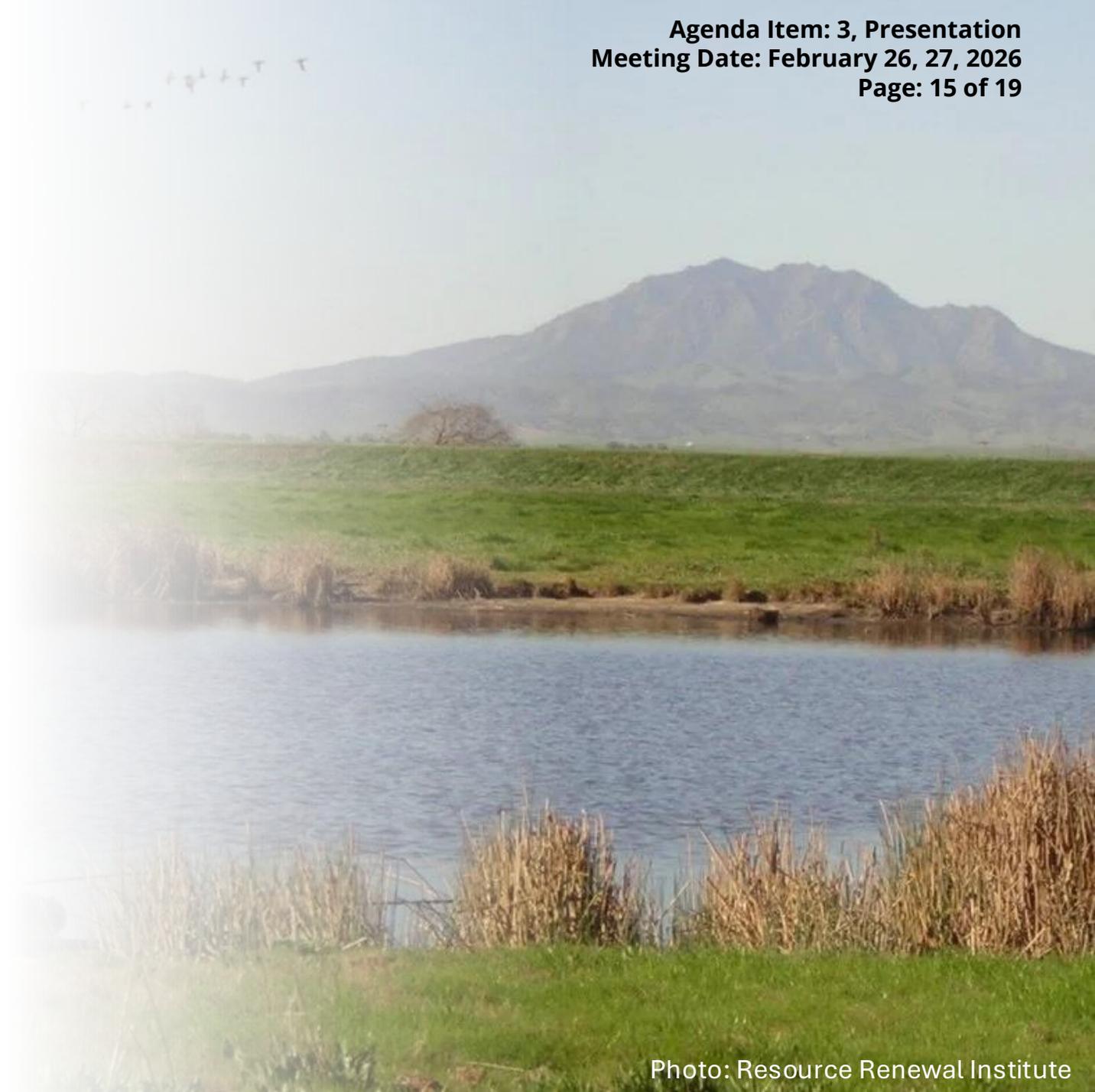
# Increased Water Exports Harm the Environment and Ecosystems

- DWR failed to conduct an environmental impacts analysis in the context of section 5003(a)(3)
  - DCP will significantly and adversely affect flows, temperature, and other water quality measures for **seven ESA- and CESA-listed fish species** in the Delta
  - DCP construction and operation will adversely affect other native species
- Meaningful review of DWR's certification of consistency with WR P1 is impossible without addressing the DCP's **admitted environmental harms**



# DCP is Inconsistent with Protective **Delta Flow Objectives**

- **23 Cal. Code Regs. § 5005:** projects must meet Water Quality Control Plan flow objectives
- DWR obscures DCP's impact on Delta Flow Objectives
  - Downplays DWR's reliance on TUCPs to "meet" D-1641 flow requirements
  - Omits instances of noncompliance by relying on monthly averages
- DCP would never meet protective Delta flow objectives
  - DWR only analyzed D-1641 flows despite evidence that more is needed
  - DCP would reduce frequency of protective flows by 18.5%



# Conclusions

- DWR's **inconsistency** throughout the Certification undermines its findings
  - DWR failed to rely on the best available science regarding **climate change, TEK, and population growth** analyses
  - DWR did not adequately consult with **Delta Tribes**
  - DWR did not adhere to consistent or coherent methodologies when analyzing **reliance on the Delta and regional self-sufficiency**



# Conclusions

- DWR does not offer substantial evidence that it will **restore** or **protect**, the Delta
  - DCP will inherently result in **less instream flows** and **increased reliance** on the Delta for water supply
  - DCP will limit ability to meet protective **Delta flow objectives**
  - DWR avoided providing an analysis of the **environmental impact** in its WR P1 compliance section



# Conclusions

- DCP is **destructive** and **unnecessary**
  - Through construction and operations, the DCP will **adversely impact** Delta Tribes, communities, recreation, businesses, farms, native species, and fisheries
  - The Delta ecosystem is in a **state of crisis** and the DCP will push it further towards total collapse
  - Focusing on **improving local water supplies** avoids further depleting the Delta and protects ecosystems and communities



# Approval of a Consistency Determination for the DCP Betrays the Promises of the Delta Reform Act

- Protect and Restore the Delta Ecosystem
  - **Would further degrade existing crisis conditions**
- Increase Reliability of California's Water Supply
  - **Would not solve future unreliability due to climate change**
- Reduce Reliance on the Delta for Water Supply
  - **Increases reliance on and volume of exported Delta water**
- Preserve the Delta as a Place
  - **Would fundamentally change and destroy physical and social aspects of the Delta**

