

**DWR's Delta Conveyance Project
Consistency Appeal (Cert. ID C20257)**
January 2, 2026

1. Introduction

This supplemental brief is submitted in support of the appeal of the California Department of Water Resources' ("DWR") Final Draft Delta Conveyance Project ("DCP") Certification of Consistency with the Delta Plan ("Certification" [DCP.AA1.2.00001]) filed on behalf of the counties of San Joaquin, Solano, and Yolo, as well as the Central Delta Water Agency and Local Agencies of the North Delta, collectively referred to as the Delta Agencies and Counties ("DAC").

2. Errata to Appeal Filed on November 17, 2025

In reviewing the DAC appeal filed on November 17, 2025, we noted the need for a few corrections, as follows:

- Introduction and Procedural Matters
 - Correction: header on pages 2-7 should refer to DWR's Delta Conveyance Project Consistency Appeal (Cert. ID C20257)
- DP P2
 - Correction: page 7 reference to Delta Stewardship Council ("Council"), Delta Levees Investment Strategy Final Report, July 2017, should include record cite, which is DCP.D3.1.00507.
 - Correction: page 12 reference to Delta Protection Commission, Economic Sustainability Plan for the Sacramento-San Joaquin Delta Recreation and Tourism Chapter, 2020 Update, should include record cite, which is DCP.D3.1.03926.

3. Supplemental Information Regarding Delta Plan Policy Inconsistencies

a. Delta Plan Regulatory Policy G P1(b)(2) – Include All Feasible Mitigation Measures from the Delta Plan or Equally Effective Measures

Golden Mussel Mitigation Is Nonexistent

DAC raised the issue of inconsistency with Delta Plan Regulatory Policy G P1(b)(2) in the electronic form submitted to the Council. (Cal. Code Regs., tit. 23, § 5002, subd. (b)(2).) Delta Plan Regulatory Policy G P1(b)(2) states that "[c]overed actions not exempt from CEQA 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. . . .” (Cal. Code Regs., tit. 23, § 5002, subd. (b)(2).) Golden mussels (*Limnoperna fortunei*) constitute a relatively new but widely known invasive species problem in the Delta.¹ Golden mussel readily attaches to and colonizes artificial hard substrates.² Delta Plan Mitigation Measure 4-1(e) provides very stringent requirements for management of invasive species and is quoted in its entirety below. DWR is well-aware that golden mussel afflicts the entire length of the State Water Project (“SWP”), and DWR characterizes the Delta as “ground zero” for golden mussel.³

Delta Plan Mitigation Measure 4-1(e): Develop and implement an invasive species management plan for any project whose construction or operation could lead to introduction or facilitation of invasive species establishment. The plan shall ensure that invasive plant species and populations are kept below preconstruction abundance and distribution levels. The plan shall be based on the best available science and developed in consultation with DFW and local experts, such as the University of California Extension, county agricultural commissioners, representatives of County Weed Management Areas (WMA), California Invasive Plant Council, and California Department of Food and Agriculture. The invasive species management plan shall include the following elements:

- i. Non-native species eradication methods (if eradication is feasible)
- ii. Non-native species management methods
- iii. Early detection methods
- iv. Notification requirements
- v. Best management practices for preconstruction, construction, and postconstruction periods
- vi. Monitoring, remedial actions and reporting requirements
- vii. Provisions for updating the target species list over the lifetime of the project as new invasive species become potential threats to the integrity of the local ecosystems⁴

¹ Rachel Becker, Calmatters, November 4, 2025, ‘Emerging threat’: An invasive species is upending life in the Delta, with no help on the way. Available at: <https://calmatters.org/environment/water/2025/11/tiny-invaders-golden-mussels-delta/> [subject to request to supplement the record and/or request for judicial notice]

² Yang et al., *Establishment risk of invasive golden mussel in a water diversion project: An assessment framework*. Environmental Science and Ecotechnology, 17 (2024) 100305, p. 1. Available at: <https://www.sciencedirect.com/science/article/pii/S2666498423000704> [subject to request to supplement the record and/or request or judicial notice]

³ California Department of Water Resources. December 3, 2025. *SWP Golden Mussel Update*. PowerPoint presentation by Brianne Sakata. [subject to request to supplement the record and/or request or judicial notice]

⁴ Delta Stewardship Council. June 2022. *Delta Plan Appendix O. Delta Plan Ecosystem Amendment Mitigation Monitoring and Reporting Program*. Available at:

Delta Plan Mitigation Measure 4-1(e) states that it applies to any covered action that would cause “facilitation of invasive species establishment.”⁵ The two intakes facing the river would be approximately 1,000 feet long and allow water to enter vast sedimentation basins that are each roughly 1,000 feet on a side. (Bethany Reservoir Alignment Alternative 5 Mapbook, pp. 2-3 [Alternative 5 Mapbook, DCP.D1.1.00026].) The tunnel itself would have an internal diameter of 36 feet and be 45 miles long. (Delta Conveyance Project, Final Environmental Impact Report, Chapter 3, Project Description, p. 3-15 [FEIR Chapter 3, Project Description, DCP.D1.1.00010].) Assuming that the submerged surface of the intakes is 10 feet in height, the intakes would each create 10,000 square feet of new hard substrate that is ideal for colonization by golden mussel. The sedimentation basins would create approximately 1 million square feet of new substrate for mussel colonization. The tunnel itself would then create another 8.5 million square feet of hard substrate for mussel colonization.⁶

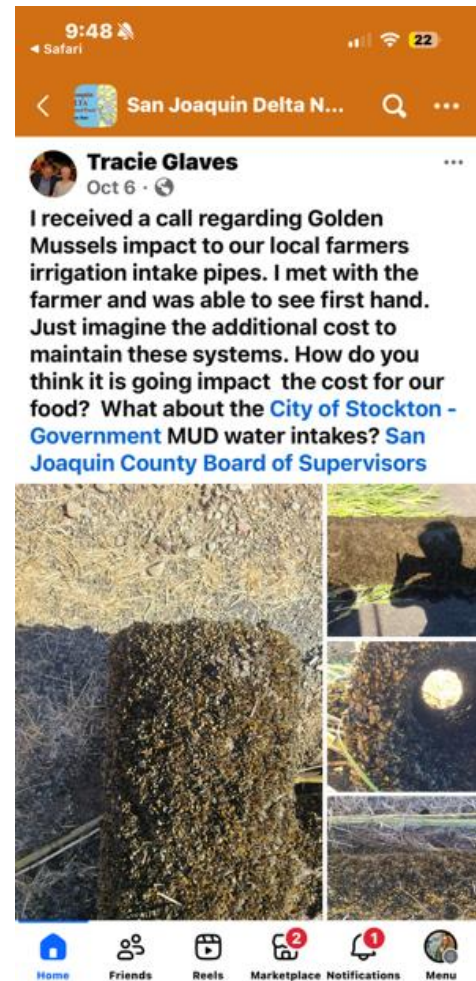
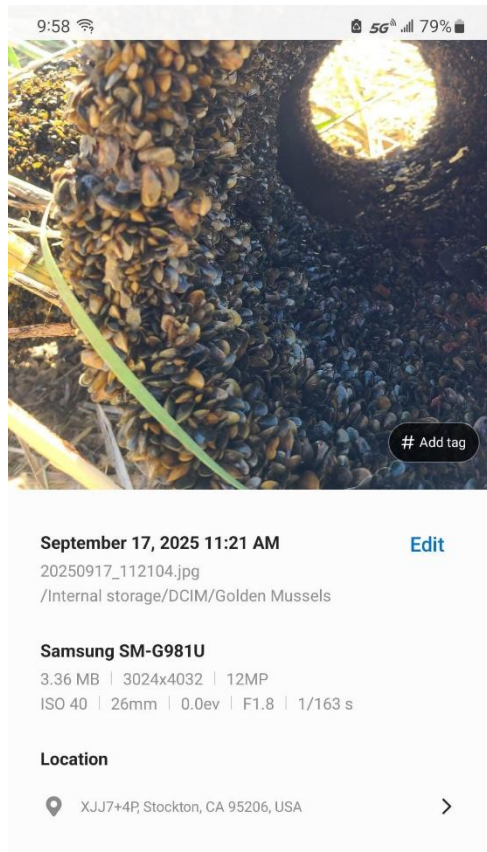
Alarmingly, the golden mussels are already on irrigation siphons that divert Delta water onto farmland. The siphon photographed on the following page in San Joaquin County was so thickly encrusted that the mussels piled two inches deep, both inside and out.⁷

<https://deltacouncil.ca.gov/pdf/delta-plan/2025-06-19-appendix-o-mitigation-monitoring-and-reporting-program.pdf> (because the regulation incorporates this by reference it is not necessary to add it to the record [Cal. Code Regs., tit. 23, § 5002, subd. (b)(2)]).

⁵ *Ibid.*

⁶ The new substrate area was estimated based on the tunnel length and internal diameter, combined with the estimated surface area of the intake surfaces and sedimentation basins as measured based on depictions in the record. (See FEIR Chapter 3, Project Description, p. 3-15 [DCP.D1.1.00010]; Bethany Reservoir Alignment Alternative 5 Mapbook, pp. 2-3 [Alternative 5 Mapbook, DCP.D1.1.00026].)

⁷ Rachel Becker, Calmatters, November 4, 2025, *‘Emerging threat’: An invasive species is upending life in the Delta, with no help on the way*. Available at: <https://calmatters.org/environment/water/2025/11/tiny-invaders-golden-mussels-delta/>. [subject to request to supplement the record and/or request for judicial notice]



October 6, 2025, Facebook Post referenced in Rachel Becker's November 4, 2025 article.

It is not difficult to imagine mussels similarly colonizing the inside of the Delta Tunnel and other new hard surfaces, yet DWR has failed to identify any mitigation measure that corresponds to or achieves the same level of protection against golden mussel that would be provided by Delta Plan Mitigation Measure 4-1(e). (G P1(b)(2) Attachment 1: Delta Plan and Delta Conveyance Project Mitigation Crosswalk Table [Mitigation Crosswalk Table, DCP.AA1.1.00020].) DWR's maintenance plans only call for inspection of the tunnel once every ten years during the first 50 years of the project's operational phase, which would clearly be inadequate. (FEIR Chapter 3, Project Description, p. 3-127 [DCP.D1.1.000001].)

Because the Certification fails to provide mitigation equal to Delta Plan Mitigation Measure 4-1(e) with respect to golden mussel, the Certification lacks substantial evidence and fails to comply with Delta Plan Regulatory Policy G P1(b)(2). (Wat. Code, § 85225.25; Cal. Code Regs., tit. 23, § 5002, subd. (b)(2).) Existing maintenance plans only call for inspection of the tunnels once every ten years for the first 50 years following construction. (FEIR Chapter 3, Project Description, p. 3-127, DCP.D1.1.00001.) Given the speed with which golden mussel

proliferates, this is certainly inadequate, as is the utter paucity of relevant or legally mandated mitigation.⁸

There Is No Mitigation for Recreational Impacts

DWR's mitigation measures for the project's impacts to recreation do not acknowledge either the severity of the project's impacts to recreational facilities or the need to adopt mitigation equivalent to the Delta Plan. (Cal. Code Regs., tit. 23, § 5002, subd. (b)(2).) Construction of the project would span 13 years. (FEIR Chapter 3, Project Description, p. 3-131 [DCP.D1.1.00001].) The relevant section of DWR's Mitigation Crosswalk Table, however, only refers generally to the impact of lost recreation that would occur at the intakes on the Sacramento River, rather than all lands that would be affected during the construction period. (Mitigation Crosswalk Table, p. 59.)

The Mitigation Crosswalk discussion acknowledges that the Delta Tunnel would cause a massive influx of construction workers that may also recreate in the Delta. (Mitigation Crosswalk Table, p. 60.) Despite the length of the construction period and the addition of new recreational users to the region, the Certification and the FEIR both fail to consider the combined reduction in areas that would no longer be available for recreation in the Delta, or the need for mitigation equivalent to Delta Plan Mitigation Measure 18-2.⁹

Delta Plan Mitigation Measure 18-2 requires the covered action proponent to ensure that “[i]f substantial temporary or permanent impairment, degradation, or elimination of recreational facilities causes users to be directed towards other existing facilities, lead agencies shall coordinate with impacted public and private recreation providers to direct displaced users to under-utilized recreational facilities through signage and public noticing, such as newsletters.” (Mitigation Crosswalk Table, p. 59; Delta Conveyance Project, FEIR Chapter 16, Recreation [FEIR Chapter 16, DCP.D1.1.00149].) Contrary to DWR's claims, negative effects on recreational opportunities from the project would extend beyond waterside or in-water recreation, and include upland recreational activities such as birdwatching. (SOSC-1, Testimony of David Yee, ¶¶ 5-6, [SOSC-1, DCP.V2.31.00001].) Because DWR failed to incorporate feasible and relevant mitigation from the Delta Plan, or equivalent measures, the Council should remand the certification back to DWR.

b. Delta Plan Regulatory Policy G P1(b)(3) – Use Best Available Science

DAC raised the issue of inconsistency with Delta Plan Regulatory Policy G P1(b)(3) in its appeal submitted to the Council. (Cal. Code Regs., tit. 23, § 5002, subd. (b)(3).) As described above, DWR failed to include any information in the Certification regarding the invasive, non-native freshwater/brackish water bivalve the Golden mussel (*Limnoperna fortunei*), even though

⁸ Yang, et. al, *supra*, pp. 1-2.

⁹ Delta Stewardship Council. June 2022. *Delta Plan Appendix O*.

the species was officially found in the Delta in October 2024.¹⁰ Golden mussel was likely present for more than a year before detection, according to Tanya Veldhuizen of DWR.¹¹ DWR allegedly has a response plan for the golden mussel, and has presented information regarding the mussel to scientific groups.¹² DWR is also actively addressing an infestation of the SWP with the golden mussel. (See photographs in DAC Appeal on Delta Plan Policy G P1(b)(3) Best Available Science, on November 17, 2025, pp. 4, 6-7.) Yet when it comes to the Delta Tunnel, DWR remains silent and dangerously unprepared.

DWR's failure to include any information regarding the issue of golden mussel and the project's creation of 9.5 million square feet of new durable substrates¹³ that would provide a vast area subject to golden mussel colonization violates the Delta Plan requirement to use best available science. (Cal. Code Regs., tit. 23, § 5002, subd. (b)(3).) This error is also relevant to the failure to show consistency with ER P5, as discussed below.

c. Delta Plan Regulatory Policy G P1(b)(4) – Provide Adequate Resources for Adaptive Management

DAC raised the issue of inconsistency with Delta Plan Regulatory Policy G P1(b)(4) in its appeal submitted to the Council. (Cal. Code Regs., tit. 23, § 5002, subd. (b)(4).) Delta Plan Regulatory Policy G P1(b)(4) requires:

- (A) An adaptive management plan that describes the approach to be taken consistent with the adaptive management framework in Appendix 1B; and
- (B) Documentation of access to adequate resources and delineated authority by the entity responsible for the implementation of the proposed adaptive management process.

Despite these requirements, DWR fails to provide any documentation of the funding that will be available for adaptive management, or any meaningful estimation of what adaptive management implementation would cost, to support consistency with this policy. (Certification, pp. 186-188;

¹⁰ State of California, Golden Mussel Response Framework, April 14, 2025. <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=231231> [subject to request to supplement the record and/or request for judicial notice]

¹¹ Rachel Becker, Calmatters, July 15, 2025. “*A new invader threatens California water supplies. Can the state stop its spread?*” <https://calmatters.org/environment/water/2025/07/golden-mussel-california-water-supplies-spread-inspections/>

¹² California Department of Water Resources. October 23, 2025. One Year Later: How California is Combating Golden Mussels (Video), available at: <https://www.youtube.com/watch?v=zPEN7BNK70Q&t=1s>. [subject to request to supplement the record and/or request for judicial notice]

¹³ See *ante* fn. 6.

Cal. Code Regs., tit. 23, § 5002, subd. (b)(4)(B).) DWR has thus failed to provide substantial evidence supporting the finding of consistency with Delta Plan Regulatory Policy G P1(b)(4).

Adaptive management is critical to the permitting approach for the project. In addition to the adaptive management plans summarized in the Certification (pp. 177-179), the Incidental Take Permit ("ITP") issued by the California Department of Fish and Wildlife in 2025 includes extensive studies that would need to be carried out in the future to inform operation. (AHO-065, California Endangered Species Act Native Plant Protection Act Incidental Take Permit No. 2081-2024-018-00 Construction and Operation of the Delta Conveyance Project [AHO-065 ITP, DCP.V3.3.00065].) These studies pertain to: (1) Fisheries Evaluations, (2) Water Quality Evaluations, (3) Ecological Response Evaluations, (4) North Delta Intake hydraulic Modeling, (5) Operations Hydraulic Data Plan, and (7) Hydraulic Testing for Velocity Requirements. (AHO-65 ITP, PDF pp. 107-131.) The ITP is critical to the ability to deliver water as promised, the ITP expires in 2045, and only covers take for the project construction period and up to two years of operation. (ITP, pp. 1-2.) Adequate funding for these studies must be available to ensure species and other protections in the ITP are effectively carried out and adaptively managed in conformance with Delta Plan Regulatory Policy G P1(b)(4), and so that the project can be operated to provide the promised water supplies.

There is currently no financial analysis to determine the financial feasibility of the Delta Tunnel project. (SOL-1, Testimony of Dr. Jeffrey Michael [SOL-1, DCP.V2.7.00001], p. 13; see also SOL-4: DWR Economic Analysis Guidebook, 2008 [DCP.V2.7.00004].) A financial analysis answers questions, such as, "Who benefits from a project? Who will repay the project costs? Are they able to meet repayment obligations? Will the beneficiaries be financially better off compared to what they will be obligated to pay?" (*Ibid.*) The largest of the State Water Contractors, Metropolitan Water District, has recently required significant conditions and "off-ramps" just to agree to pay its share of planning costs of the Delta Tunnel. (SOL-16: MWD Presentation - DCP Funding Agreement and Other Updates June 23, 2025, PDF p. 8 [DCP.V2.7.00016].) It stands to reason that without a financial analysis, there is uncertainty about the ability to fund adaptive management as required by the Delta Plan.

Adding to the uncertainty regarding adequate resources to fund adaptive management (and the project itself), an appellate court has rejected DWR's 2020 attempt to obtain authority to issue bonds to fund planning and construction of the Delta Tunnel, and a second bond validation attempt in 2024 is also in active litigation.¹⁴ According to the Third District Court of Appeal opinion, Water Code 11260 does not authorize issuance of revenue bonds for the so-called "Delta Program" DWR claimed was a modification of the State Water Project ("SWP").¹⁵

¹⁴ *Cal. Dep't of Water Res. v. Metro. Water Dist. of S. Cal.* (Dec. 31, 2025, No. C100552) ____ Cal.App.5th ____ (2025 Cal. App. LEXIS 877, at *59), available at: <https://www4.courts.ca.gov/opinions/documents/C100552.PDF>; see also *Cal. Dep't of Water Res. v. All Interested Persons*, Case No. 25CV000704, Superior Court of Sacramento California, filed January 7, 2024.

¹⁵ 2025 Cal. App. LEXIS 877, at *42.

Events during the last legislative session confirm that DWR currently lacks authority to issue bonds for modifications of the SWP that include facilities for the isolated transfer of water across the Delta. As explained by the California Legislative Analyst, changes in law sought as part of a 2025-2026 Budget Trailer Bill¹⁶ by the Governor and supported by the State Water Contractors would have:

Explicitly include[ed] the DCP as part of the SWP. This would allow DWR to pay for the project in the same way that it has paid for other SWP facilities, that is, by issuing revenue bonds which then would be required to be repaid by contracting SWP water agencies. (This responds to a court ruling that DWR exceeded its authority in seeking to issue revenue bonds for a broader "Delta Program," which the court ruled was more than a modification of the SWP) (*Section 6*).¹⁷

Thus, DWR does not currently have authority to finance the project, including costs associated with adaptive management, and it cannot be assumed that such costs will be funded in the future.

Furthermore, even if there were existing sources of funding, which DWR does not describe in the Certification, the cost of the tunnel is likely grossly underestimated, further threatening the financial feasibility of the project. DWR claims the tunnel will cost \$20.12 billion. (Certification, p. 15.) Independent cost benchmarking based on comparison to a large reference class of 86 completed tunnel megaprojects, however, suggests the true cost for the tunnel would likely be closer to a range of \$27 to \$33 billion.¹⁸ (See SOL-15R, Cost Benchmarking and Risk Analysis of the Delta Tunnel Project, pp. 3-4 [SOL-15R, DCP.V2.7.00015].) The Delta Tunnel is in the 90th percentile (i.e., highest cost) ranking of tunneling projects globally.¹⁹ It is also at a very early stage of design and unsupported by adequate geotechnical data.²⁰ These factors mean that small deviations in cost relative to the absolute cost of the project are likely to result in an absolute variance in final cost that is very large. For these reasons, Techau et al. estimate the final cost may be closer to \$33 billion.²¹

¹⁶ See May Revision Trailer Bill Proposals on Delta Conveyance Project, Section 6(b), amending Water Code section 11260, available at: <https://trailerbill.dof.ca.gov/public/trailerBill/pdf/1263>.

¹⁷ Legislative Analyst Office, May 27, 2025, *The 2025-26 Budget May Revision Trailer Bill Proposals on the Delta Conveyance Project and Water Quality Control Plans*, available at: <https://lao.ca.gov/Publications/Report/5053>.

¹⁸ See also Techau et al, *The \$32bn question: Benchmarking California's Delta Water Tunnel Against Global Tunnelling Risk*, New Civil Engineer, November 14, 2025. Available at: <https://www.newcivilengineer.com/opinion/the-32bn-question-benchmarking-californias-delta-water-tunnel-against-global-tunnelling-risk-14-11-2025/>. [subject to request for judicial notice]

¹⁹ *Ibid.*

²⁰ *Ibid.*; see also *Tulare Lake Basin Water Storage Dist. v. Department of Water Resources* (2025) 115 Cal.App.5th 342, 358 [DWR claims it was enjoined from gathering geotechnical data needed to prepare certification of consistency to present to Council].)

²¹ *Ibid.*

Given that the lengthy time frame for planning, constructing and commissioning the project, as well as the financing challenges the project continues to face, along with the wide variation in estimated versus final cost, DWR must provide a good faith estimate of the cost of adaptive management and documentation of adequate funding to comply with this regulatory policy. (Cal. Code Regs., tit. 23, § 5002, subd. (b)(4)(B).) Instead, DWR has provided no information regarding the estimated cost of adaptive management or the sources of funding that would demonstrate “[d]ocumentation of access to adequate resources.” Thus, the finding of consistency with Policy G P1(b)(4) is not supported by substantial evidence. (Cal. Code Regs., tit. 23, § 5002, subd. (b)(4)(B); Wat. Code, § 85225.25.)

d. Delta Plan Regulatory Policy WR P1 – Reduce Reliance on the Delta Through Improved Regional Self Reliance

DAC raised the issue of inconsistency with Delta Plan Regulatory Policy WR P1 in its written appeal to the Council. (Cal. Code Regs., tit. 23, § 5003; 25.11.17 WR P1 FINAL.pdf.) Under Delta Plan Regulatory Policy WR P1, water may not be exported from the Delta if one or more water suppliers have failed to contribute to reduced reliance on the Delta, which then causes the need for exports from the Delta, and as a result, also causes significant environmental impacts in the Delta. (Cal. Code Regs., tit. 23, § 5003, subds. (a)(1)–(a)(3).) In addition, WR P1 requires water suppliers that rely on the Delta for water supplies to improve regional self-reliance. (Cal. Code Regs., tit. 23, § 5003, subds. (a)(1).)

DWR claims that the Delta Tunnel is consistent with WR P1 because “the need for the covered action was not significantly caused by one or more water suppliers that will receive water from the project failing to adequately contribute to reduced reliance on the Delta.” (Certification, p. 71.) This conclusion is not supported by substantial evidence in the record. (Wat. Code, § 85225.25 [certification of consistency must be supported by substantial evidence²²].) The following discussion provides additional information regarding the inconsistency of the Delta Tunnel with WR P1.

DWR's Finding of Reduced Reliance Is Not Supported by Substantial Evidence

DWR refers to WR P1 Attachment 1, Supplemental Technical Memorandum: Results of Data Compilation and Analysis for Demonstrating Contributions to Reduced Reliance on the Delta and Improved Regional Self-Reliance to support its consistency determination for WR P1.

²² “Substantial evidence” is generally defined as relevant evidence that is adequate to support a conclusion that is reasonable in nature, credible, and of solid value. (*Auburn Woods I Homeowners Assn. v. Fair Employment & Housing Com.* (2004) 121 Cal.App.4th 1578, 1583.) Regulations implementing the California Environmental Quality Act, define substantial evidence as facts, reasonable assumptions predicated on facts, and expert opinion supported by facts. (Cal. Code Regs., tit. 14, § 15384, subd. (b).) Speculation or conjecture alone is not substantial evidence. (*California Assn. of Medical Products Suppliers v. Maxwell-Jolly* (2011) 199 Cal.App.4th 286, 308.)

(DCP.AA1.2.00009.) Table A.2-1 of Appendix 2 of WR P1, Attachment 1, shows numerous water suppliers for which total quantities of Delta demand remains essentially constant from present through 2040, while the same suppliers report a percentage showing reduction in Delta demand. (WR P1 Attachment 1, p. A2-1 [DCP.AA1.2.00009].) Examination of Table A.2-1, however, shows that the demand reduction is actually based upon **an assumed overall increase in demand**. (WR P1 Attachment 1, p. A2-1 [DCP.AA1.2.00009].) For example, Alameda County Flood Control District Zone 7 shows essentially unchanged quantitative demand on the Delta across the time frame studied (the baseline in 2010 is 56,045 acre-feet and the 2045 projection is 56,000 acre-feet). (WR P1 Attachment 1, p. A2-1 [DCP.AA1.2.00009].) At the same time, the 2045 fraction of Delta demand is reduced to 58 percent relative to the 2010 baseline of 85 percent. This reporting could only be correct if the underlying assumption is that total quantities of demand increase *substantially* by 2045. This finding for Alameda County Flood Control District Zone 7 is not unique; a review of Tables A2-1 and A2-2 show several instances where a demand reduction is reported by 2045 based on a percent to total Delta reliance, while absolute quantitative reliance on the Delta is essentially flat. (WR P1 Attachment 1, pp. A2-1 to A2-3.) The underlying assumption that demand will increase in support of this proportional reduction of Delta reliance is not supported by substantial evidence.

Evidence in the record before DWR demonstrates that future water demand will not increase or at least will not increase in the manner assumed in DWR's analysis. (SOL-1, Testimony of Dr. Jeffrey Michael [SOL-1, DCP.V2.7.00001].) Exhibit SOL-1 demonstrates that the State of California, Department of Finance, projects a total population increase of only 4.6 percent over the time frame of 2020 to 2070. (SOL-1, ¶ 12 [DCP.V2.7.00001], citing SOL-11 [DCP.V2.7.00010].) The net effect of foreseeable changes in population growth and other factors such as improved efficiency have caused the State Water Resources Control Board ("SWRCB") to project a total statewide urban water demand to decline by 12.6 percent between 2022 and 2050. (SOL-12, Table 7, p. 23 [SOL-12, DCP.V2.7.00011].) Even without regulatory changes that are the subject of SOL-12, overall statewide demand is projected to decrease. (SOL-12, p. 24, Figure 7 [DCP.V2.7.00011].) Table 1 below provides a sample of key findings by DWR assuming dramatic increases in overall water demand that allow DWR to find a putative reduction in Delta reliance. Because the demand projections that support the conclusion of reduced Delta reliance are not based in reality, this finding of reduced reliance lacks substantial evidence.

Table 1. Sample of DWR's Findings Regarding Reduced Delta Demand*

Water Agency	2020 Delta Demand (acre feet)	2040 Delta Demand	2020 Delta Demand %	2040 Delta Demand %
Morro Bay, City of	1,313	1,313	81%	72%
Santa Clara Valley Water District	185,000	200,000	55%	50%
Monte Vista Water District	8,921	9,500	37%	34%
<i>Source:</i> WR P1 Attachment 1, pp. A2-1 – A2-2 [DCP.AA1.2.00009].				

Moreover, even if risk reduction were the legitimate objective of the Delta Conveyance Project, DWR has failed to justify why a \$20 billion tunnel is a reasonable response to the risk of levee failure that could disrupt the freshwater pathway (Certification, p. 15 [tunnel cost].) The time to fix a levee breach is estimated at one month or less and \$70 million dollars. (LAND-9, Metropolitan Water District, Delta Islands Strategic, Fiscal, and Risk Analysis, PDF p. 70 [LAND-9, DCP.V2.22.00008].) MWD also estimated a total cost of approximately \$400 to \$700 million to improve the entire thru-Delta freshwater pathway sufficient to withstand sea level rise and seismic risk. (LAND-9, PDF p. 103 [DCP.V2.22.00008].)

Many Water Suppliers Do Not Reduce Delta Demand as Required by Law

In addition to the unsupported findings of reduction in Delta demand, many other water suppliers report increases in Delta demand, in direct violation of WR P1. (Cal. Code Regs., tit. 23, § 5003, subds. (a)(1).) For example, the following water suppliers report an increase in the relative percentage of Delta reliance between 2020 and 2040:

- Metropolitan Water District of Southern California
- Ventura County Waterworks District No. 08—Simi Valley
- Mojave Water Agency
- San Bernardino Valley Municipal Water District
- Beaumont–Cherry Valley Water District
- Montecito Water District

The Council advised DWR of the need for consistency with WR P1 in 2022, stating that “DWR should identify in detail all water suppliers (defined as both wholesalers and retailers) that would receive water from the Delta as a result of the project, identify in detail how those suppliers have adequately contributed to reduced reliance on the Delta, and describe how each has improved regional self-reliance as required by WR P1.”²³ DWR has failed to satisfy the

²³ Delta Stewardship Council. December 16, 2022. *Comments on the Draft Environmental Impact Report for the Delta Conveyance Project*, p. 100 [DCP.D1.1.00241].

requirements of WR P1 as explained by the Council because it has failed to demonstrate reduced reliance on the Delta.

DWR openly concedes that not all water suppliers have complied with the duty to both reduce Delta reliance and improve regional self-reliance. (Certification, p. 45.) DWR mistakenly argues that the failure to reduce Delta reliance does not drive or “cause” the need for the Delta tunnel. (Certification, pp. 45, 56.) Following the issuance of the Incidental Take Permit under the California Endangered Species Act, DWR presented evidence in the SWRCB Change to Points of Diversion hearing showing that in approximately 50 percent of years, the North Delta intakes would export approximately 500,000 acre-feet of water. (DWR-00110, Supplemental Testimony of Amardeep Singh, ¶ 14 [DWR-00110, DCP.V1.2.00049].) In approximately 75 percent of years, exports would be around 250,000 acre-feet. (DWR-00110, ¶ 14 [DCP.V1.2.00049].) As reported in the Certification, the quantity of water consumption caused by the failure to reduce Delta reliance is 40,198 acre-feet, which constitutes approximately 8 percent of 500,000 acre-feet and 16 percent of 250,000 acre-feet. (Certification, p. 68.) This is a significant fraction of the total diversions proposed by the Delta Tunnel. The failure to reduce reliance on the Delta thus drives in significant part the need for the Delta Tunnel. The failure to satisfy both elements of WR P1, contrary to the Council's direction²⁴ and applicable law thus constitutes a failure to show consistency with WR P1. (Cal. Code Regs., tit. 23, § 5003, subd. (a)(1) [water suppliers must reduce Delta reliance and improve regional self-reliance].) The Council should remand the certification back to DWR based on this error.

e. Delta Plan Regulatory Policy ER P5 – Avoid Introductions of and Habitat Improvements for Invasive Nonnative Species

DAC raised the issue of inconsistency with Delta Plan Regulatory Policy ER P5 in its appeal submitted to the Council. (Cal. Code Regs., tit. 23, § 5009.) The appeal identified DWR's failure to address ER P5 in relation to golden mussel. The plain language of ER P5 requires certifying agencies to avoid introduction of or creation of new habitat for invasive species. (Cal. Code Regs., tit. 23, § 5009, subd. (a).) The regulation states it applies to covered actions that have a “reasonable probability of introducing or improving habitat conditions for nonnative invasive species.” (Cal. Code Regs., tit. 23, § 5009, subd. (b).) The Delta Tunnel, if built, would create a combined area of roughly 9.5 million square feet²⁵ of new hard durable substrate that would be available for golden mussel colonization. DWR's failure to consider golden mussel at all in its discussion of ER P5 in the Certification thus demonstrates that the Certification lacks substantial evidence for its conclusion of consistency. (Certification, p. 147; Wat. Code, § 85225.25 [substantial evidence required].)

²⁴ *Ibid.*

²⁵ See *ante*, fn. 6.

f. Delta Plan Regulatory Policy DP P2 – Respect Local Land Uses

Failure to Conduct a Siting Analysis and Reduce Impacts

DAC raised the issue of inconsistency with Delta Plan Regulatory Policy DP P2 in its written appeal to the Council. (Cal. Code Regs., tit. 23, § 5011; 25.11.17 DP P2 Final.pdf.) As explained in DAC's appeal of DWR's finding of consistency with DP P2, DWR must demonstrate that the *siting* of the Delta Conveyance Project has been conducted to reduce impacts on local land use to the extent feasible. (Cal. Code Regs., tit. 23, § 5011, subd. (a).) DWR disclosed a range of significant and unavoidable impacts that are relevant to land use in the findings made pursuant to the California Environmental Quality Act ("CEQA"). (CEQA Findings, pp. 1-8 [DCP.C.1.00001].) For the following resource areas, DWR fails to show any meaningful attempt to reduce the impact via *siting*. (CEQA Findings, Table 1 [DCP.C.1.00001]; "Constraints to Siting of the Delta Conveyance Project," DP P2 Attachment 1, pp. 7-26 [DCP.AA1.2.00018].)

- Tribal Cultural Resources
 - The FEIR states only that some access road locations were adjusted to avoid archaeological sites. (FEIR Chapter 32, Tribal Cultural Resources, p. 32-46 [FEIR Chapter 32, DCP.D1.1.00205].) The key elements of the resource, however, are much more extensive and include the Delta as a wholistic place, the waterways, the biota, archaeological sites, and views and vistas. (FEIR Chapter 32, pp. 32-46, 32-25 to 32-26 [DCP.D1.1.00205].)
- Existing Visual Character
- Scenic Resources
- Scenic Vistas
- Built Environment Historical Resources

The Council advised DWR that where an impact relevant to land use remains significant and unavoidable, DWR must show *why* the impacts must occur in that location.²⁶ Because DWR has failed to adhere to the unambiguous requirements of DP P2, despite the direction of the Council regarding compliance, the Council should remand the Certification back to DWR.

The Community Benefits Agreements Listed in the Certification Fail to Address DP P2 Inconsistencies and Would Exhaust This Inadequate Fund

In addition to the analytical and legal deficiencies with DWR's attempted analysis of DP P2, the Community Benefits Program fails to provide meaningful or appropriate means of remediating the effects of the Delta Tunnel on Delta communities. DWR maintains that the Community Benefits Program will mitigate effects that exceed the mitigation required by existing regulatory programs. (Certification, p. 16.) The purpose of the Community Benefits

²⁶ Delta Stewardship Council. October 27, 2022. E-mail from Daniel Constable to Other Staff of the Delta Stewardship Council. [subject to request for judicial notice]

Program was created to fund community benefits agreements with local entities, with a maximum total funding of \$200 million. (Certification, p. 17.) The available documentation, however, shows that DWR has already tentatively committed almost half of the planned funding for the Community Benefits Program. (See Table 2 below [showing possible commitments of approximately \$89 million in funding, rounded up].)

Table 2. Existing Funding Estimates for Community Benefit Program

Citation	Entity and Location	Amount
DCP.AA2.1.00010, p. 4	Courtland Fire Protection District	\$5,590,000
DCP.AA2.1.00011, p. 4	Courtland Town Association	\$10,000,000
DCP.AA2.1.00013, p. 3	Sacramento Audubon Society	\$11,500,000
DCP.AA2.1.00012, p. 2	East Bay Regional Park District (Oakland)	\$3,750,000
DCP.AA2.1.00014, p. 4	Sacramento Audubon Society and the Institute for Bird Populations (Petaluma)	\$1,000,000
DCP.AA2.1.00009, p. 4	City of Mountain House	\$10,000,000
DCP.AA2.1.00007, p. 4	Byron Bethany Irrigation District (Byron)	\$46,570,000
DCP.AA2.1.00106, p. 4	Center for Land-Based Learning (Woodland)	\$588,291
	Grand total	\$88,998,291

The paucity of funding potentially available in the Community Benefits Program becomes even more apparent when one considers that the identified funding recipients are located in only three geographic areas of the Delta (see red Xs on Tunnel Impacts Map²⁷ on final page of submission) or are organizations with headquarters outside of the Delta. Moreover, they do not include many of the geographic locations where the highest intensity of impacts would occur, such as the town of Hood and communities that would be burdened by construction and operation of tunnel shafts, muck piles and concrete batch plants, among other components. Thus, the existence of the Community Benefits Program is not evidence of consistency with DP P2.

4. Conclusion

DWR has submitted a Certification that fails to address several regulatory policies of the Delta Plan that would be implicated by the Delta Tunnel and therefore lacks substantial evidence for consistency with those policies. For those policies DWR concedes apply to the covered action, DWR also fails to demonstrate consistency with those policies. DWR's Delta Tunnel would introduce extensive new habitat for golden mussel and also export water to entities that have not complied with the dual requirements of reducing Delta reliance and improving regional self-reliance. These impacts will thus substantially undermine the goal of "protecting, restoring, and enhancing the Delta ecosystem." (Wat. Code, § 85054 [part of the coequal goals].) For these reasons, as well as for the reasons explained in the initial DAC appeal submission submitted on November 17, 2025, the Delta Tunnel would have a substantial adverse impact on the achievement of the coequal goals. (Wat. Code, § 85225.10, subd. (a) [basis for an appeal].) In

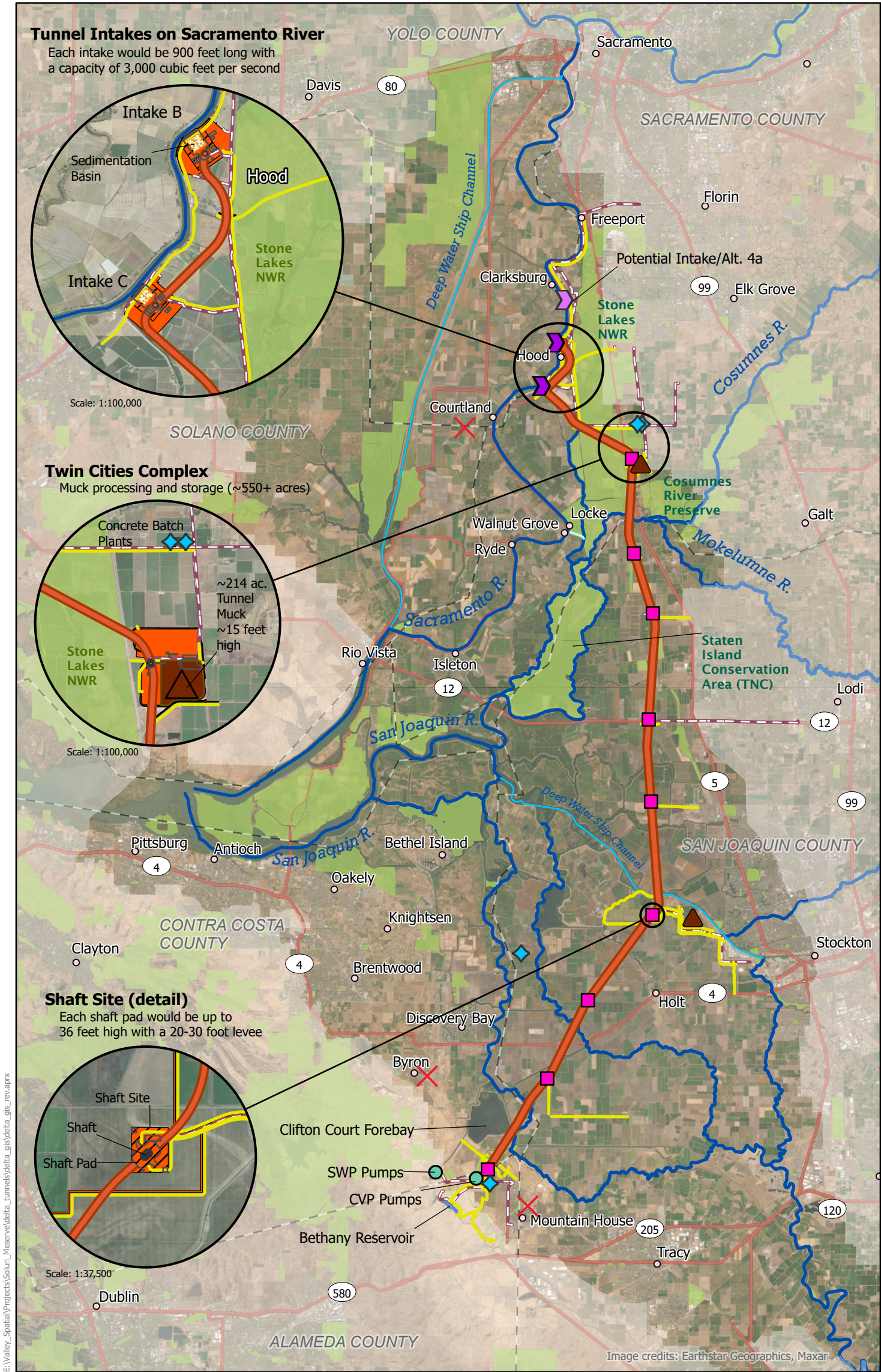
²⁷ CCC-9 – Tunnel Impacts Map [DCP.V2.4.00009].

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addition, the failure to adopt feasible mitigation, ensure adequate funding for adaptive management, provide best available science, and respect local land uses exacerbate the impacts on Delta waters and land uses, and the coequal goals.

For these reasons, as well as those articulated in the initial DAC appeal submission, the Council should remand the Certification to DWR.

DWR Tunnel Impacts on the California Delta



E:\Valley_Spatial\Projects\Soluri_Meserve\delta_delta_tunnels\delta_gis\delta_delta_gis_rev.aprx

Image credits: Earthstar Geographics, Maxar

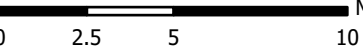
- Permanent Impact
- Work Area
- Parks and Public Lands
- County Boundary

- Major Rivers
- Deep Water Ship Channel
- Delta Cross Channel
- Highways
- New Utilities

- Tunnel Muck Site
- Shaft Site
- Intake Site
- Potential Intake Site
- Concrete Batch Plant
- Shaft

- Alternative 5 / Bethany**
(Adopted Project)
- Tunnel (45 mi. long, 39' outer diameter)
 - Roads and Connections

Scale: 1:350,000



Projection: State Plane Zone III NAD83 Feet

Prepared Mar 2024 by Valley Spatial
Locations Approximate
Project Components: DWR (2023)
State Lands: gis.data.ca.gov (2019)

**DWR's Delta Conveyance Project
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Introduction

This brief supports the appeal submitted on behalf of the counties of San Joaquin, Yolo, and Solano, as well as the Central Delta Water Agency, and Local Agencies of the North Delta. For purposes of this appeal, these entities are collectively referred to as the Delta Agencies and Counties ("DAC"). The supporting documents submitted with this brief are appropriate for inclusion in the consistency appeal record because they were before the Department of Water Resources ("DWR") when it made its consistency determination, or, in the alternative, are subject to judicial notice by the Delta Stewardship Council ("Council"). (Cal. Code Regs, tit. 23, §§ 5026 [records before the certifying agency], 5032 [records subject to judicial notice].)

Procedural Compliance for Record Supplementation

The Council's regulations provide for supplementing the record for an appeal. (Cal. Code Regs, tit. 23, § 5026.) In compliance with this section, the attached Table 1 provides information required by this regulation:

- This brief specifies that the request is being submitted pursuant to this section. (Cal. Code Regs, tit. 23, § 5026, subd. (c)(1).)
- The documents submitted pursuant to this regulation are also attached or provided as weblinks where relevant. (Cal. Code Regs, tit. 23, § 5026, subd. (c)(2).)
- Where relevant, specific evidence is provided in Table 1 that the document or information requested for admission was part of the record before the certifying agency prior to the date of the Council's receipt of the certification. (Cal. Code Regs, tit. 23, § 5026, subd. (c)(3).)

Procedural Compliance with Requirements for Council to Take Notice of Documents

The Council's regulations provide the requirements for the Council to take notice of additional documents in an appeal. (Cal. Code Regs., tit. 23, § 5032, subd. (c).) In compliance with this regulation:

- Documents marked for notice in Table 1 (attached) are submitted pursuant to this section. (Cal. Code Regs., tit. 23, § 5032, subd. (c)(1).)
- The relevant documents are identified in Table 1 as subject to notice and are also provided as attachments or weblinks as appropriate. (Cal. Code Regs., tit. 23, § 5032, subd. (c)(2).)

DWR's Delta Conveyance Project
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- Table 1 also identifies whether the material is either:
 - a generally accepted technical or scientific matter within the Council's jurisdiction, or
 - a fact that may be judicially noticed by a court. (Cal. Code Regs., tit. 23, § 5032, subds. (c)(3)(A), (B).)
- All of the documents included in Table 1 are also available at the following Dropbox link:
https://www.dropbox.com/scl/fo/6iwww0hws7qq8c2oprs1m/AL_8kOo9ncdKLPSDQgezXxs?rlkey=e01bzneeri4f243vjngqr5bel&st=05hafxzc&dl=0.

Respectfully submitted,

SOLURI MESERVE
A Law Corporation

By: 

Osha R. Meserve
Attorney for Appellants County of San
Joaquin, County of Solano, County of Yolo,
Central Delta Water Agency, and
Local Agencies of the North Delta

Attachment: Table 1, Documents Subject to Notice/Supplementation

Appellants County of San Joaquin
County of Solano
County of Yolo
Central Delta Water Agency
Local Agencies of the North Delta

**Attachment to Brief in Support of
Evidence Offered with Appeal**

**DWR's Delta Conveyance Project
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TABLE 1 – DOCUMENTS SUBJECT TO NOTICE/SUPPLEMENTATION

Doc No.	Document/Where Cited	Basis for Inclusion
1	<p>Techau et al, <i>The \$32bn question: Benchmarking California's Delta Water Tunnel Against Global Tunnelling Risk</i>, New Civil Engineer, November 14, 2025. Available at: https://www.newcivilengineer.com/opinion/the-32bn-question-benchmarking-californias-delta-water-tunnel-against-global-tunnelling-risk-14-11-2025/</p> <p>Cited: Appeal of DP P2, p. 8 Supplemental Submission, p. 8 Electronic form submitted to Council</p>	<p>The cited article is a generally accepted technical or scientific matter within the Council's jurisdiction. (Cal. Code Regs., tit. 23, § 5032, subds. (c)(3)(A), (B).)</p> <p>Notice is also requested pursuant to Evidence Code section 452, subdivision (h) (facts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy). (Cal. Code Regs., tit. 23, § 5032, subds. (c)(3)(B) [Council may take notice of documents that would be subject to judicial notice by a court].)</p>
2	<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: https://delta.ca.gov/wp-content/uploads/2025/11/2025-11-13-DPC-Agenda-packet_v1-508.pdf</p> <p>Cited: Appeal of DP P2, pp. 11, 12</p>	<p>Notice pursuant to Evidence Code section 452, subdivision (c) (official acts of the State of California). (Cal. Code Regs., tit. 23, § 5032, subds. (c)(3)(B).)</p>

TABLE 1
Documents Subject to Notice/Supplementation

Doc No.	Document/Where Cited	Basis for Inclusion
3	<p>Delta Protection Commission, Thursday, November 13, 2025, Agenda Item 10, Maps. Available at: https://delta.ca.gov/wp-content/uploads/2025/11/2025-11-13-Item-10-DCP-Attachment-2-impact-maps.pdf.</p> <p>Cited: Appeal of DP P2, pp. 11, 12</p>	<p>Notice pursuant to Evidence Code section 452, subdivision (c) (official acts of the State of California). (Cal. Code Regs., tit. 23, § 5032, subds. (c)(3)(B) [Council may notice documents that would be subject to judicial notice by a court].)</p>
4	<p>Delta Stewardship Council. August 27, 2020, Meeting Recording, remarks of Carrie Buckman at 1:33:25. https://cal-span.org/meeting/dsc_20200827/.</p> <p>Cited: Appeal of ER P1, p. 4</p>	<p>Notice pursuant to Evidence Code section 452, subdivision (c) (official acts of the State of California [the statements were made by a DWR representative at a Council meeting]). (Cal. Code Regs., tit. 23, § 5032, subds. (c)(3)(B) [Council may notice documents that would be subject to judicial notice by a court].)</p>
5	<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>Cited: Appeal of G P1 (b)(1), p. 4 Appeal of ER P1, pp. 3, 4</p>	<p>Supplementation to the record pursuant to the Council’s regulations. Because the document was sent to DWR prior to the submittal of the certification of consistency on October 17, 2025, it is by necessity “before the agency.” (Cal. Code Regs, tit. 23, § 5026, subd. (c)(3).)</p> <p>The document is also subject to notice pursuant to Evidence Code section 452, subdivision (c) (official acts of the State of California [the statements were made by a DWR representative at a Council meeting]). (Cal. Code Regs., tit. 23, § 5032, subds. (c)(3)(B) [Council may notice documents that would be subject to judicial notice by a court].)</p>

TABLE 1
Documents Subject to Notice/Supplementation

Doc No.	Document/Where Cited	Basis for Inclusion
6	State Water Resources Control Board. November 10, 2025, Letter from Nicole Kuenzi, Administrative Hearing Officer, to Ann Carroll General, Counsel Department of Water Resources. Cited: Appeal of ER P1, pp. 4	Notice pursuant to Evidence Code section 452, subdivision (c) (official acts of the State of California [the letter is an official act of the SWRCB]). (Cal. Code Regs., tit. 23, § 5032, subds. (c)(3)(B) [Council may notice documents that would be subject to judicial notice by a court].)
7	Delta Independent Science Board Meeting, Agenda Item No. 6; Feb. 21, 2024. Available at: https://cal-span.org/meeting/disb_20240221/ Cited: Appeal of best available science compliance (“BAS”), pp. 2-3	Notice pursuant to Evidence Code section 452, subdivision (c) (official acts of the State of California). (Cal. Code Regs., tit. 23, § 5032, subds. (c)(3)(B).)
8	Delta Independent Science Board Meeting, Agenda Item No. 8; April 22, 2024. Available at: https://cal-span.org/meeting/disb_20240422/ Cited: Appeal of BAS, pp. 2-3	Notice pursuant to Evidence Code section 452, subdivision (c) (official acts of the State of California). (Cal. Code Regs., tit. 23, § 5032, subds. (c)(3)(B).)
9	Delta Independent Science Board Meeting, Agenda Item No. 3; May 22, 2024. Available at: https://cal-span.org/meeting/disb_20240522/ Cited: Appeal of BAS, pp. 2-3	Notice pursuant to Evidence Code section 452, subdivision (c) (official acts of the State of California). (Cal. Code Regs., tit. 23, § 5032, subds. (c)(3)(B).)
10	Delta Independent Science Board Meeting, Agenda Item No. 8; August 15, 2024. Available at: https://cal-span.org/meeting/disb_20240815/ Cited: Appeal of BAS, pp. 2-3	Notice pursuant to Evidence Code section 452, subdivision (c) (official acts of the State of California). (Cal. Code Regs., tit. 23, § 5032, subds. (c)(3)(B).)

TABLE 1
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Doc No.	Document/Where Cited	Basis for Inclusion
11	Delta Independent Science Board Meeting, Agenda Item No. 7; September 12, 2024. Available at: https://cal-span.org/meeting/disb_20240912/ Cited: Appeal of BAS, pp. 2-3	Notice pursuant to Evidence Code section 452, subdivision (c) (official acts of the State of California). (Cal. Code Regs., tit. 23, § 5032, subds. (c)(3)(B).)
12	California Department of Fish & Wildlife, Golden Mussel Response Framework, April 14, 2025. Available at: https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=231231 Cited: Appeal of BAS, p. 3 Supplemental Submission, p. 4	Notice pursuant to Evidence Code section 452, subdivision (c) (official acts of the State of California). (Cal. Code Regs., tit. 23, § 5032, subds. (c)(3)(B).)
13	Maven's Notebook, DELTA ISB: New threat in the Delta: Golden mussels join the ranks of invasive species. Available at: https://mavensnotebook.com/2025/02/05/delta-isb-new-threat-in-the-delta-golden-mussels-join-the-ranks-of-invasive-species/ . Cited: Appeal of BAS, p. 3	Notice pursuant to Evidence Code section 452, subdivision (h) (facts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy). (Cal. Code Regs., tit. 23, § 5032, subds. (c)(3)(B).) The cited article is a generally accepted technical or scientific matter within the Council's jurisdiction. (Cal. Code Regs., tit. 23, § 5032, subds. (c)(3)(A), (c)(3)(B).)
14	California Department of Fish & Wildlife, 2025. California's Invaders, Golden Mussel. Available at: https://wildlife.ca.gov/Conservation/Invasives/Species/Golden-Mussel . Cited: Appeal of BAS, p. 3	Notice pursuant to Evidence Code section 452, subdivision (c) (official acts of the State of California). (Cal. Code Regs., tit. 23, § 5032, subds. (c)(3)(B).)

TABLE 1
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Doc No.	Document/Where Cited	Basis for Inclusion
15	<p>California Department of Fish & Wildlife, 2025. Golden Mussel Survey Results in California. Available at: https://www.arcgis.com/apps/mapviewer/index.html?webmap=ed2a3b37237e48ea98f025d85bc80269.</p> <p>Cited: Appeal of BAS, p. 3</p>	<p>Notice pursuant to Evidence Code section 452, subdivision (c) (official acts of the State of California). (Cal. Code Regs., tit. 23, § 5032, subds. (c)(3)(B).)</p>
16	<p>California Department of Water Resources. September 2025. Golden Mussel Detections (Sept. 2025 Update). Available at: https://water.ca.gov/-/media/DWR-Website/Web-Pages/What-We-Do/Recreation/Invasive-Mussel-Mitigation/Golden-Mussel-Detections-with-Clifton-Court-Forebay-Inset-v15-20250924.pdf</p> <p>Cited: Appeal of BAS, p. 4</p>	<p>Supplementation to the record pursuant to the Council’s regulations. Because the document was prepared by DWR during September 2025, prior to the submittal of the certification on October 17, 2025, it is by necessity “before the agency.” (Cal. Code Regs, tit. 23, § 5026, subd. (c)(3).)</p>
17	<p>California Department of Water Resources. 2025. Invasive Mussel Mitigation. Available at: https://water.ca.gov/What-We-Do/Recreation/Mussel-Mitigation</p> <p>Cited: Appeal of BAS, p. 4</p>	<p>Supplementation to the record pursuant to the Council’s regulations. Because the document was prepared by DWR prior to October 17, 2025, when the certification of consistency was submitted, it is by necessity “before the agency.” (Cal. Code Regs, tit. 23, § 5026, subd. (c)(3).)</p>
18	<p>California Department of Water Resources. July 24, 2024, photograph of golden mussel. Available at: https://pixel-ca-dwr.photoshelter.com/search/result/I0000O5p84p71voE?terms=golden%20mussel&.</p> <p>Cited: Appeal of BAS, p. 4</p>	<p>Supplementation to the record pursuant to the Council’s regulations. Because the photograph was captured by DWR prior to October 17, 2025, it is by necessity “before the agency.” (Cal. Code Regs, tit. 23, § 5026, subd. (c)(3).)</p>

TABLE 1
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Doc No.	Document/Where Cited	Basis for Inclusion
19	<p>Yang et al., <i>Establishment risk of invasive golden mussel in a water diversion project: An assessment framework</i>. Environmental Science and Ecotechnology, 17 (2024) 100305. Available at: https://www.sciencedirect.com/science/article/pii/S2666498423000704</p> <p>Cited by United States Bureau of Reclamation, et al. 2025. Western Basin Invasive Mussel Incident Response Toolkit, Literature on Golden Mussels. Available at: https://www.westerninvasivemussel.org/golden-mussels</p> <p>Cited: Appeal of BAS, pp. 3, 5, 6, 7 Supplemental Submission, pp. 2, 5 Online form submitted to Council</p>	<p>Notice pursuant to Evidence Code section 452, subdivision (c) (official acts of the United States Bureau of Reclamation). (Cal. Code Regs., tit. 23, § 5032, subds. (c)(3)(B).)</p> <p>The cited article is also a generally accepted technical or scientific matter within the Council’s jurisdiction. (Cal. Code Regs., tit. 23, § 5032, subds. (c)(3)(A), (c)(3)(B).)</p> <p>Finally, given DWR’s critical and ongoing role and expertise in addressing the golden mussel issue, it is reasonable to assume DWR is aware of this article.</p>
20	<p>Rebelo, Mauro. 2025. The Thread of the Golden Mussel CALMS Webinar. Available at: https://biobureau.notion.site/The-Thread-of-the-Golden-Mussel-CALMS-Webinar-January-2025-1842c1e8779c80dabff1ff3ad584593f</p> <p>Cited: Appeal of BAS, p. 6</p>	<p>Notice pursuant to Evidence Code section 452, subdivision (h) (facts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy.) (Cal. Code Regs., tit. 23, § 5032, subds. (c)(3)(B).)</p> <p>The cited article is also a generally accepted technical or scientific matter within the Council’s jurisdiction. (Cal. Code Regs., tit. 23, § 5032, subds. (c)(3)(A), (c)(3)(B).)</p>

TABLE 1
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Doc No.	Document/Where Cited	Basis for Inclusion
21	<p>California Department of Water Resources. Jun 30, 2022, Delta Conveyance Deep Dive: Intakes and Fish Screens. Available at: https://www.youtube.com/watch?v=R4H3E_Pe-i4</p> <p>Cited: Appeal of BAS, p. 7</p>	<p>Supplementation to the record pursuant to the Council’s regulations. Because the video was prepared by DWR prior to October 17, 2025, it is by necessity “before the agency” (Cal. Code Regs, tit. 23, § 5026, subd. (c)(3).)</p>
22	<p>Delta Protection Commission. May 2019. <i>Recreation & Tourism in the Delta - A Study of Preferences for Activities and Facilities, Information Sources, and Economic Contributions of Delta Events</i>. Available at :https://delta.ca.gov/wp-content/uploads/2020/09/Delta-Recreation-Report-508.pdf</p> <p>Cited: Appeal of BAS, p. 10</p>	<p>Notice pursuant to Evidence Code section 452, subdivision (c) (official acts of the State of California). (Cal. Code Regs., tit. 23, § 5032, subds. (c)(3)(B).)</p>
23	<p>Delta Stewardship Council, Delta Science Program. <i>California Delta Residents Survey Data Explorer</i>, DSC, October 16, 2025. https://deltascience.shinyapps.io/DeltaResidentsSurveyDataViewer</p> <p>Cited: Appeal of BAS, p. 10</p>	<p>Notice pursuant to Evidence Code section 452, subdivision (c) (official acts of the State of California). (Cal. Code Regs., tit. 23, § 5032, subds. (c)(3)(B).)</p>

TABLE 1
Documents Subject to Notice/Supplementation

Doc No.	Document/Where Cited	Basis for Inclusion
24	<p>Delta Stewardship Council. October 27, 2022. E-mail from Daniel Constable to Other Staff of the Delta Stewardship Council.</p> <p>Cited: Supplemental Submission, p. 13</p>	<p>Notice pursuant to Evidence Code section 452, subdivision (h), “[f]acts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy.” The statement that DWR must show why significant and unavoidable impacts relevant to land use must occur in a particular location is not subject to reasonable dispute. (Cal. Code Regs., tit. 23, § 5011, subd. (a).)</p> <p>Notice pursuant to Evidence Code section 452, subdivision (c) (official acts of the State of California). (Cal. Code Regs., tit. 23, § 5032, subds. (c)(3)(B).)</p>
25	<p>California Department of Water Resources. December 3, 2025. <i>SWP Golden Mussel Update</i>. PowerPoint presentation by Brianne Sakata.</p> <p>Cited: Supplemental Submission, p. 2</p>	<p>Notice pursuant to Evidence Code section 452, subdivision (c) (official acts of the State of California). (Cal. Code Regs., tit. 23, § 5032, subds. (c)(3)(B).)</p> <p>Notice pursuant to Evidence Code section 452, subdivision (h), “[f]acts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy.” Evidence Code section 452, subdivision (h) covers facts accepted as established by experts and specialists in the natural, physical, and social sciences which can be verified by reference to treatises, encyclopedias, almanacs and the like or by persons knowledgeable in the subject matter. (<i>Gould v. Maryland Sound Industries, Inc.</i> (1995) 31 Cal.App.4th 1137, 1145.) Here the fact of the emerging threat of golden mussel can easily be verified by subject matter experts at the Council.</p>

TABLE 1
Documents Subject to Notice/Supplementation

Doc No.	Document/Where Cited	Basis for Inclusion
26	<p>About the Delta Independent Science Board Available at: https://deltacouncil.ca.gov/delta-isb/</p> <p>Cited: Appeal of BAS, footnotes 1 & 2</p>	<p>The cited article is a generally accepted technical or scientific matter within the Council’s jurisdiction. (Cal. Code Regs., tit. 23, § 5032, subds. (c)(3)(A), (c)(3)(B).)</p> <p>Notice is also requested pursuant to Evidence Code section 452, subdivision (h) (facts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy). (Cal. Code Regs., tit. 23, § 5032, subds. (c)(3)(B) [Council may take notice of documents that would be subject to judicial notice by a court].)</p>
27	<p>California Department of Water Resources. October 23, 2025. One Year Later: How California is Combating Golden Mussels (Video). Available: https://www.youtube.com/watch?v=zPEN7BNK70Q&t=1s</p> <p>Cited: Supplemental Submission, p. 6</p>	<p>Notice pursuant to Evidence Code section 452, subdivision (h), “[f]acts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy.” Evidence Code section 452, subdivision (h) covers facts accepted as established by experts and specialists in the natural, physical, and social sciences which can be verified by reference to treatises, encyclopedias, almanacs and the like or by persons knowledgeable in the subject matter. (<i>Gould v. Maryland Sound Industries, Inc.</i> (1995) 31 Cal.App.4th 1137, 1145.)</p> <p>Notice pursuant to Evidence Code section 452, subdivision (c) (official acts of the State of California). (Cal. Code Regs., tit. 23, § 5032, subd. (c)(3)(B).)</p>

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Documents Subject to Notice/Supplementation

Doc No.	Document/Where Cited	Basis for Inclusion
28	<p>Rachel Becker, Calmatters, July 15, 2025. “<i>A new invader threatens California water supplies. Can the state stop its spread?</i>”</p> <p>Available at: https://calmatters.org/environment/water/2025/07/golden-mussel-california-water-supplies-spread-inspections/</p> <p>Cited: Supplemental Submission, p. 6</p>	<p>Notice pursuant to Evidence Code section 452, subdivision (h), “[f]acts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy.”</p> <p>Evidence Code section 452, subdivision (h) covers facts accepted as established by experts and specialists in the natural, physical, and social sciences which can be verified by reference to treatises, encyclopedias, almanacs and the like or by persons knowledgeable in the subject matter. (<i>Gould v. Maryland Sound Industries, Inc.</i> (1995) 31 Cal.App.4th 1137, 1145.)</p>
29	<p>Rachel Becker, Calmatters, November 4, 2025. ‘<i>Emerging threat</i>’: <i>An invasive species is upending life in the Delta, with no help on the way.</i></p> <p>Available at: https://calmatters.org/environment/water/2025/11/tiny-invaders-golden-mussels-delta/</p> <p>Cited: BAS, p. 11 Supplemental Submission, pp. 2, 3</p>	<p>Notice pursuant to Evidence Code section 452, subdivision (h), “[f]acts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy.”</p> <p>Evidence Code section 452, subdivision (h) covers facts accepted as established by experts and specialists in the natural, physical, and social sciences which can be verified by reference to treatises, encyclopedias, almanacs and the like or by persons knowledgeable in the subject matter. (<i>Gould v. Maryland Sound Industries, Inc.</i> (1995) 31 Cal.App.4th 1137, 1145.)</p> <p>Here the fact of the emerging threat of golden mussel can easily be verified by subject matter experts at the Council.</p>